

# DOMESTIC WORKERS ORGANIZE AGAINST VIOLENCE & HARASSMENT

## TRAINING PACK



### Unit 7

## LAWS, POLICIES AND PRACTICES ON VIOLENCE & HARASSMENT

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## Overview

This unit shares DWO experiences on using the laws to protect domestic workers from violence & harassment.

We learn about the types of laws against violence & harassment and how we can make these laws work for us in our own and other countries.

We discuss the online sale and human trafficking of domestic workers and we identify the open and hidden types of discrimination against domestic workers.



## UNIT SUMMARY

	TITLE	AIMS	TIME (MINS)
7.1	Laws and DWO actions to fight violence & harassment in domestic work	<ul style="list-style-type: none"> <li>■ To share DWO actions to seek justice for domestic workers against violence &amp; harassment</li> <li>■ To learn how to use and review laws and mechanisms to protect domestic workers from violence &amp; harassment</li> <li>■ To start developing DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in domestic work</li> </ul>	120
7.2	Working in our own country: How can we make the laws work for us	<ul style="list-style-type: none"> <li>■ To learn about the relevant laws and access to justice for domestic workers</li> <li>■ To identify gaps and obstacles in violence &amp; harassment laws and mechanisms for domestic workers</li> <li>■ To develop DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in domestic work</li> </ul>	120
7.3	Working in other countries: How can we make the laws work for us!	<ul style="list-style-type: none"> <li>■ To review how laws, policies and regulations protect women from violence &amp; harassment in migrant domestic work</li> <li>■ To develop DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in migrant domestic work</li> </ul>	120
7.4	Modern slavery and human trafficking in domestic work	<ul style="list-style-type: none"> <li>■ To find out about the use of apps that sell domestic workers online</li> <li>■ To learn about modern forms of slavery, forced &amp; child labor, and human trafficking in domestic work and how to act against it.</li> </ul>	90
7.5	What type of discrimination is it?	<ul style="list-style-type: none"> <li>■ To understand what is direct and indirect discrimination in law and in practice</li> <li>■ To know how to identify and argue cases of discrimination against domestic workers</li> </ul>	90



TOTAL TIME : 540 MINUTES – 9 HOURS



## KEY MESSAGES

**We need to know how to use laws and mechanisms against violence & harassment. We need more effective protection to stop open and hidden forms of discrimination, violence, harassment, modern slavery and human trafficking happening to us. Existing protective laws and mechanisms need to apply to us and we need extra protection against violence & harassment because of the nature of our work. We need better prevention, safe access to justice, fair and equal treatment, and effective support services, remedies, enforcement and sanctions. We need to organize in DWOs to make the laws work for us.**

- We have a right to a job and a life free of violence. We need legal protection just like other workers and we need extra protection against violence & harassment because care work in private households is a high-risk job.
- We need better gender-responsive laws and enforcement to get justice for violence victims and prevent violence & harassment from happening.
- We must have the right to bring a representative of our choice to the police and to the courts.
- Don't restrict us from migrating for work but protect us from violence & harassment.
- We must have the right to change employers especially if we face abuse.
- Slavery is not something from the past. New forms are emerging all the time. Slavery, forced and child labor, and human trafficking need to be outlawed in all countries and international and national laws must be implemented.
- Victims need to be identified, rescued, supported and compensated, and perpetrators need to be punished and sanctioned.
- Organizing in DWOs is vital to detect slavery-type abuses, support victims and advocate legal reform.
- We don't receive protection from direct and indirect discrimination under the law like other workers because we are women and come from marginalized racial, ethnic, tribal or low-caste groups or from rural or indigenous peoples.
- This makes us vulnerable to all forms of violence and harassment, including pay discrimination. We have a right to pay equity.
- We and our DWOs are the most important protection against violence & harassment. Organizing in DWOs is vital to detect abuses, support victims and advocate legal reform. Together we have the power to make the law work for us.



## Training Organization

- This unit is for domestic leaders, organizers, trainers and workers who provide legal aid to violence victims, monitor the work of enforcement agencies and setting DWO legal reform priorities against violence & harassment. It is best to do all unit activities in order in:
  - In a 2.5 to 3-day workshop doing 2 unit activities per day
  - in 5 half-day activities on off-days, doing one unit activity per half-day
- If you want to do only one training activity on laws, policies and practices on violence & harassment, do:
  - **Unit 7.1** Laws and DWO actions to fight violence & harassment in domestic work because it provides the legal basics and shares experiences of DWOs in Asia.



## 7.1 : Laws and DWO actions to fight violence & harassment in domestic work



120 minutes

	Aims	<ul style="list-style-type: none"> <li>To share DWO actions to seek justice for domestic workers against violence &amp; harassment</li> <li>To learn how to review and use laws and mechanisms to protect domestic workers from violence &amp; harassment</li> <li>To start developing DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in domestic work</li> </ul>
	Participants	<ul style="list-style-type: none"> <li>Domestic worker leaders</li> <li>Domestic workers</li> </ul>
	Room Arrangements	<ul style="list-style-type: none"> <li>Step 1: Space for the group to move around</li> <li>Other steps: Seating in small groups and in the big group</li> </ul>
	Materials	<ul style="list-style-type: none"> <li>Computer and projector for slide presentation</li> <li>Flipchart papers and markers for small working groups</li> </ul>
	Training Aids	<ul style="list-style-type: none"> <li>Handout 1: DWO case stories on laws and actions against violence<sup>1</sup></li> <li>Handout 2: Responses to DWO case stories on laws and actions against violence</li> <li>Info note: Laws and DWO actions to fight violence &amp; harassment in domestic work</li> </ul>



### Tip for Trainers

Before the training, try to find out what experience participants have in using the law against violence & harassment in domestic work. Adapt the level of detail to suit their knowledge, experience and interest.



### Session Plan Steps

1.	Streets and roads	Energizer	10 minutes
2.	Laws and actions	Case work in small groups	30 minutes
3.	Laws and actions	Case reporting in big group	35 minutes
4.	Laws and actions	Q&A discussion in big group	40 minutes
5.	Key messages	Conclusion	5 minutes

1 Adapted from IDWF: [Gender-based violence & harassment against domestic workers: Case stories from Asia](https://idwfed.org/en/resources/gender-based-violence-and-harassment-against-domestic-workers-case-stories-from-asia/@@display-file/attachment_1), Hong Kong, 2020, [https://idwfed.org/en/resources/gender-based-violence-and-harassment-against-domestic-workers-case-stories-from-asia/@@display-file/attachment\\_1](https://idwfed.org/en/resources/gender-based-violence-and-harassment-against-domestic-workers-case-stories-from-asia/@@display-file/attachment_1); for case 5, also see: LBH Jakarta, LBH APIK Jakarta, JALA PRT, SPDPRT and ILO, [Compilation of case handling of household workers and child household workers](https://www.ilo.org/wcmsp5/groups/public/asia/ro-bangkok/ilo-jakarta/documents/publication/wcms_559226.pdf) (in Bahasa Indonesia), [https://www.ilo.org/wcmsp5/groups/public/asia/ro-bangkok/ilo-jakarta/documents/publication/wcms\\_559226.pdf](https://www.ilo.org/wcmsp5/groups/public/asia/ro-bangkok/ilo-jakarta/documents/publication/wcms_559226.pdf)



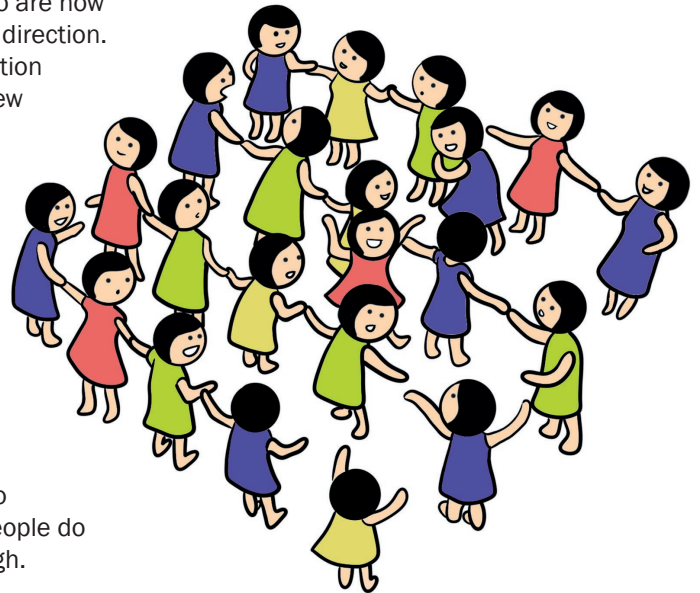
## Preparation

- Read the Info note. Ask someone with legal aid and women's rights experience to help you if you don't feel confident to do this session by yourself, but avoid long lectures. Focus on the DWO case stories, Q&A and group discussions.
- For step 2: There are 5 case stories. If you have a small group or little time, use only 4 stories and skip the first one (it is similar to case story 2). Prepare photocopies of the handout with the case stories, one for each small working group.
- Note that the case stories of Sunita, Murni and Baby Jane are discussed in both Unit 5.2 and 7.1. So, if Unit 5.2 was done earlier with the group, ensure that participants do the small group work in step 3 with a different case story from the one they roleplayed in Unit 5.2.
- Prepare photocopies of the Info note, one each for every participant, for distribution after the session.

## SESSION PLAN

STEP 1	STREETS AND ROADS	ENERGIZER	10 MINUTES <sup>2</sup>
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- Welcome everyone to the training. Ask them to stand up and form a circle.
- Say: In this session we will **discuss how laws help us to fight violence & harassment against domestic workers**. We start with a game of streets and roads:
  - Split the big group in 5 or 6 rows. Ask the small groups each to build a row in the form of a street by joining hands in one direction. The rows stand parallel to one another. Explain that these rows are streets in one direction.
  - Say: When I say 'Roads', all of you will make a quarter turn to the left and join hands with the people who are now besides you. These rows are roads in another direction. When I say 'Streets' return to the original position by making a turn to the right. Practice this a few times with the group.
  - Ask for two volunteers to take on the role of cat and mouse (or giant and child). Tell the cat to catch the mouse, starting on opposite sides of the square.
  - Say: The group forming the streets and roads need to keep the cat away from the mouse by changing quickly from streets to roads and the other way around by following my orders.
  - Say: The cat and the mouse are not allowed to break through a row, but if a row is broken (people do not manage to hold hands) they can go through.
  - Start to give orders for the formation of 'streets' and 'roads' to keep the cat away from the mouse.
  - When the cat has caught the mouse, let the cat and mouse choose two volunteers near the catch to be the next cat and mouse.
- Continue the game until everyone has had fun and the time is up. Invite everyone to their seats.



<sup>2</sup> International Institute for Environment and Development, (IIED), *A trainer's guide for participatory learning and action*, London, 1995

STEP 2	LAWS AND ACTIONS	CASE WORK IN SMALL GROUPS	30 MINUTES
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- Ask: How did you like this game? After a few responses, say: This game is an energizer. It is also a fitting start for this session on laws to protect domestic workers from violence & harassment. For many of us, laws are like unknown streets and roads that seem to be changing the whole time, and it is often difficult to obtain justice from violence & harassment. Let us first discuss some key terms:
- Ask: **What is justice?** After a few responses, agree:
  - Justice is about fairness and equality for everyone.
- Ask: **What are laws?** After a few responses, agree:
  - Laws are rules made for people to follow in societies so that they can trust one another.
  - Different laws have different purposes and lead to different results.
  - Some laws aim to protect the weak from the strong and balance power relations, for example, between employers and workers. Criminal laws punish violators of the law. Other laws protect and compensate victims of violence.
  - Laws create trust, safety and stability in society when everyone knows and can trust that all must follow the same rules and that the rights of all are respected, protected and enforced.
- Ask: **Why do we need laws against violence & harassment?** After a few responses, agree: We need just and fair laws and know how to use them so we can:
  - Recognize that these forms of abuse are unacceptable
  - Prevent and stop these abuses from happening
  - Punish the perpetrators and prevent them from abusing others again
  - Provide compensation for damages and support to violence survivors.
- Say: We start with **discussing how DWOs help violence victims seek justice in different countries** in Asia. Divide the big group in 4 or 5 small groups. Distribute handout 1 with a case story and explain the instructions for the group work. Divide the participants in small groups and give them time to discuss. Walk around and answer any questions which may come up. After 25 minutes, tell the groups they have 5 minutes left to present their case story in the big group. When the time is up, invite everybody back to the big group.

STEP 3	LAWS AND ACTIONS	CASE REPORTING IN BIG GROUP	35 MINUTES
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- Invite each of the small groups to present their case story to the big group for around 3-5 minutes each. *[It is best to start with case 1 and discuss them in order up to case 5.]* After each presentation, ask the group if there are any questions. Ensure that the group understands the main points of each story using Handout 2 which is summarized below:
  - **Case story 1: Sunita and the NDWM** is about the rape and beating up (sexual and physical assault) of a teenage girl from a tribal group in India. She was also sexually violated by the local authorities as she had to undergo the notoriously intrusive ‘two-finger test’ (physical examination and further violation of her vagina). She told her story to an NDWM leader and the NDWM provided her with shelter and legal support. With their support she filed a complaint under the Penal Code and received financial compensation under the state’s victim compensation scheme. **Problems:** Her employers were not arrested; the rapist even tried to stalk her at the shelter; abusive medical testing; bribery; long delays. **Further actions:** Advocacy for separate police units and special courts and court sessions with women officials to handle assault and rape cases. Protection against intimidation of victims. Easy-to-access and efficient compensation systems for crime victims. Women’s shelters and counselling for the victims.
  - **Case story 2: Sabina and the GKS** is about the rape and murder (sexual and physical assault) of a 14 year old girl from an ethnic group in India who was working for a family. Because of GKS support to her family, the evidence was collected, the crime was established and the case was filed and proven in the courts under a law on sexual offenses against children.



**Problems:** The perpetrators were never arrested; the only perpetrator charged was the employers’ driver and not the employers’ son while both were responsible for the crimes. The employer family repeatedly tried to bribe Sabina’s family. The authorities were reluctant to gather and process the evidence, and there were long delays. There is no law to prohibit domestic work of children.

**Further actions:** Change the child labour law and prohibit domestic work of children under 18 years old. Enact a new law to protect domestic workers. Establish separate police units and courts with women officials to handle assault and rape cases. Increase access to and efficiency of the police and prosecution investigations and charging of crimes of sexual assault and rape.

- **Case story 3: Murni and JALA PRT** is about years of physical, sexual, psychological and economic violence Murni experienced from a young age in the abusive household of her employers in Indonesia. She was rescued and helped by the police, JALA PRT and a women’s aid institute. The abusive employers were jailed for 8 years under the Domestic Violence Act. **Problems:** This Act covers only severe assault of domestic workers. The domestic worker endured abuse for a long time before she escaped from the household and complained to the police. There is no effective labor law to protect domestic workers. **Further actions:** Revision of criminal law to permit complaints and punishment of repeated assaults of women. Revision of labour law to include domestic workers and private households, and establishment of complaint mechanisms for domestic workers. Development and adoption of a domestic workers law. Increase public awareness of the situation of domestic workers and their human rights entitlements to protection under the law.
  - **Case story 4: Riza and UNITED** in the Philippines is about the physical, psychological and economic violence & harassment of a young woman from a rural area by an employment agent in the capital. These offenses are prohibited under the domestic workers law so Riza was rescued by UNITED and the responsible government agencies. **Problems:** Riza was not able to file a complaint so nothing could be done to punish the employment agency and prevent it from abusing others in the future. **Further actions:** Better law enforcement.
  - **Case story 5: Baby Jane and FADWU** in Hong Kong is about the unfair dismissal and employment discrimination of a woman migrant domestic worker because of a medical condition – in this case a cancer diagnosis. Baby Jane’s inability to work threatened her physical and economic survival and violates her fundamental workers’ rights to medical treatment and income from work. But she could file 2 complaints under the employment and anti-discrimination ordinances. **Problems:** At the tribunal, her request to have her trade union representative help her to present the case was ignored, and gaps in the laws on migrant domestic work. **Further actions:** Law reform.
- Thank the groups for the presentations with a big applause. Do a few stretches with the group as an energizer and go to the next step.

STEP 4	LAWS AND ACTIONS	Q&A DISCUSSION IN BIG GROUP	40 MINUTES
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- Ask: **Who were the victims?** *[They were young and adult women engaged in domestic work in private households. Three were girls from ethnic groups (Sunita and Sabina) or a rural area (Murni), and 2 were women who migrated to work in a city (Riza) or to another country (Baby Jane).]*
- Ask: **Who were the perpetrators or wrongdoers?** *[Household employers, family members of the household employers (wife, son), other workers of the household employer (driver), and an official of an employment agency.]*
- Ask: **What were the injuries or harm suffered?** *[Murder, rape, confinement, physical and sexual assault and harassment, different forms of mental, emotional and physical abuse, poisoning, degrading treatment as well as excessive hours of work, non-payment of wages, discrimination, unfair dismissal of employment and retaliation for complaining to authorities.]* Some of these are crimes and other acts are violations of other laws such as labour laws, equality laws, domestic workers laws. Domestic workers should be protected from all of these types of actions and injuries by law and in practice.
- Ask: **What did the women domestic workers, or the family in the case of Sabina, want?** *[Personal safety from the acts of violence, harassment and mistreatment listed above. Services of shelter, rehabilitation and protection from retaliation by the employer. Criminal punishment for the employer and members of the family who committed the acts of violence listed above. Victim compensation for injuries and loss of work. Payment of wages. Keeping their job and job benefits in the case of unfair dismissal and discrimination.]* Different laws provide for different types of redress.

- Ask: **Who supported the victims to get help against the violence?** [DWOs in all cases and family members in 3 of the 5 cases (Sabina in India, Riza in the Philippines and Baby Jane in Hong Kong). Other supporting organizations: two government departments in the Philippines; the police and a Women’s Legal Aid Institute in Indonesia; and Baby Jane filed 2 complaints with the labor and equal opportunities commission offices in Hong Kong. DWOs play a very important role in protecting domestic workers from violence & harassment and making sure governmental organizations provide the services according to the law. ]
- Ask: **What laws were used to pursue justice for the violence victims?** Get the list with the laws and write them on a flipchart or board. [The Penal code, the Protection of Children from Sexual Offences Act and several other laws in India, the Domestic Workers Act in the Philippines, the Labor Ordinance and the Disability Discrimination Ordinance in Hong Kong and the Domestic Violence Act in Indonesia.]
- Say: The 5 case stories give a good overview of the **different types of laws** that are **needed** to effectively **protect domestic workers from violence & harassment**, discrimination and unfair labor practices and they provide different types of relief. In many cases we may want to use more than one law and mechanism to get justice. Let us go through the different types of laws one by one, and discuss how these work for domestic workers:
  - Since the 1990s and 2000s, most countries have taken steps to prohibit severe physical and sexual assault under **criminal and penal laws**:
    - **Criminal or penal laws protect all individuals in the country.** They aim to **punish** the wrongdoers or **perpetrators of crimes** of assault and violence, such as murder and rape with jail time and fines. The criminal cases are brought by public prosecutors based on victims’ complaints of violations of the criminal law. These complaints must be made at local police stations.
    - The **burden of proof** in criminal cases is very high which means a lot of evidence is needed to get a conviction. The criminal procedures can be complicated, often take a long time or get dropped along the way by public officials. Sometimes victims may need help to gather medical or other evidence which can be costly.
    - In many countries, victims of crimes also may be awarded money **compensation**, as well as other **support** services and protection against retaliation, under **Victim Assistance or Legal Assistance Acts**. In practice, those accused of crimes may offer money to victims to drop their complaints.
  - Most countries in Asia have **labor or employment laws** and **occupational safety and health (OSH) laws** for the protection of workers, and labor inspection departments and labor courts to enforce these laws:
    - **Labor and employment laws** aim at **balancing the power relations between workers and employers**. They aim at benefitting workers in vulnerable situations and protecting them from violence and unfair labour practices such as slavery, non payment of wages and benefits, excessive hours of work, unfair dismissal. **Occupational safety and health (OSH) laws** aim at protecting the safety and health of workers and require employers to create **safe workplaces**.
    - The **burden of proof** of violations of labour acts is much lower than in criminal cases. Punishment of violations includes fines against employers, stopping unlawful practices, orders for compensation or reinstatement of work or benefits, and orders to stop unsafe or unhealthy practices. It is highly advisable to use trade unions to assist in cases of violations of the labour and occupational safety and health laws.
    - Unfortunately, most **labor** or employment and occupational safety and health **laws** in Asia **do not cover domestic workers and their employers** and labor inspectors do not have the right to enter into private homes. But, many countries are **amending their labor laws to cover domestic workers**. However, where these laws do cover domestic workers, such as the Employment ordinance in Hong Kong, they often **do not provide the same protection** to domestic workers as to other workers.
    - To ensure that domestic workers are adequately covered under a labour law, many countries around the world are adopting **laws** or regulations **especially for domestic workers**, like the Domestic Workers Act in the Philippines. These can protect against violence & harassment, abuse and unfair labour practices and can be implemented by mechanisms and procedures that are adapted to the specific situation of domestic workers. But they usually provide **less labor protection** than to other workers.



- **All workers**, including domestic workers need **effective labor and employment laws** to protect **against work-related violence & harassment** AND domestic workers need **additional labor protection** because the **nature of domestic work** makes them especially vulnerable to violence & harassment.
  - **Equality and non-discrimination laws are important laws for domestic workers** because many of them face discrimination and violence because of their sex and gender, ethnicity or race, social and rural origin, caste or class, nationality, religion, or other grounds. There are often special mechanisms to implement these laws or specialized officers in the labour inspection departments. In Hong Kong, for example, there are laws against discrimination on the grounds of sex, race, disability and family status. And, there is an equal opportunity commission that hears cases of violations of such laws.
  - More countries now have **domestic violence laws**, but these often **do not cover domestic workers or do not protect them** from employment related offenses and abuses. For example, the Domestic Violence Act in Indonesia explicitly covers domestic workers as household members who need to be protected from domestic violence. However, in practice this law only protects domestic workers from severe physical and sexual assault and not from the many other types of domestic violence that take place in households.
  - More and more countries have also been adopting laws against **sexual harassment in workplaces**, and/or **in education** and/or **in public places**. Most of these do **not yet cover domestic workers** in practice and many implementation challenges still exist.
- Ask: **What problems did the domestic workers and the DWOs in the case stories encounter in pursuing justice?** Write responses on a board or flipchart and make a list with participants:
- **Laws don't exist or are not complete**, for example, rape is still not outlawed everywhere. Domestic workers are not adequately protected from violence & harassment at work in the labor law
  - **Laws are not implemented properly** because of bribery and corruption when the perpetrators bribe the police, health services or the judiciary
  - **Long delays and high expenses** of legal proceedings and processes
  - **Lack of victim-friendly complaint channels** and procedures
  - **No practical support services**, income or shelter
  - **No compensation for damages** or other remedial measures for the victims
  - **No punishment** and sanctions for the **perpetrators**
  - **Lack of awareness** by the general public, employers, officials and domestic workers of the **rights and entitlements of domestic workers**.
- Ask: **Why is it so difficult to pursue justice for domestic workers who are violence victims and survivors?** Write responses on a board and make a list with participants:
- Domestic workers are mostly women working in a low-status occupation in patriarchal societies **where discrimination, violence & harassment against women are considered normal** and a natural part of womens' lives that they just have to put up with. **Victim-blaming** is common.
  - Domestic workers come from low-income groups that are discriminated in society because of their sex and gender, ethnicity or race, class, caste or social origin or nationality. There is a **culture of silence**: Many women are told to hide violence & harassment and they just have to suffer in silence.
  - Relevant laws don't exist or are not implemented and enforced because the elites do not want to obey rules but only set rules for others to obey. We need to fight the rule by the strongest.
- Ask: **What do we need to do about this?** After some responses, using a flipchart or slide, explain and conclude with the group:
- **All human beings have the right to a life and work without violence & harassment**, as provided in international human and workers rights law, and in the national laws of all but a few countries:

- **We need:**
  - **the laws to work for us.** We need protection against violence & harassment. We want changes to patriarchal rules, we want women to have the same rights, freedoms and responsibilities as men.
  - **equal status** and **equal treatment** before the law.
  - protection under the labour laws **like other workers** AND **extra protection in a high risk job** in private households.
  - **legal protection, empowerment and equality** for domestic workers.
- **We need to:**
  - **organize** in DWOs. We are stronger in groups. As DWOs we can push for much-needed changes in societies.
  - **work towards better legal protection in law and in practice** to prevent violence & harassment from happening to domestic workers, and to obtain justice for domestic worker victims and survivors.
  - **strengthen the rule of law** in societies so that everyone follows the same laws and rules, and the rights of all are respected and protected.
  - **increase awareness** among the general public, domestic workers and their employers on the important contribution domestic workers make to households and societies, and on the urgent need to protect their human and workers' rights. .

STEP 5	KEY MESSAGES	CONCLUSION	5 MINUTES
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- Conclude and agree with the group:
  - We have a right to a job and a life free of violence.
  - We need extra, not less legal protection against violence & harassment in our job, because domestic work in private households is a high-risk job.
  - We need more and better information and training on the different laws and mechanisms that exist for the protection of domestic workers.
  - We need better laws and law enforcement to get justice for violence victims and prevent violence & harassment from happening.
  - We need to organize. Together we have the power to make the law work for us.
  - We and our DWOs are the most important protection against violence & harassment.



## HANDOUT 1

# DWO case stories on laws and actions against violence

## Case story 1. Sunita and NDWM in Bihar, India

**Read the story of Sunita out loud in your group. Discuss and answer the following points:**

1. What happened: Who was the victim, who was the perpetrator, what were the injuries or harm suffered, what help was needed and who helped her?
2. What laws, mechanisms and services were used to get justice for Sunita? What was the result?
3. What were the problems in getting justice? What needs to be done to improve results?

**Prepare to tell the story with the main answers to the big group.**

### The story

Sunita of the Uraon tribe was 16 years old when a neighbour from her home village brought her to the capital of Bihar State in India to work as a domestic worker for a family. She was never paid for her work, and whenever the female employer was away for work, the male employer would sexually harass her. After 4 months, he raped her repeatedly for 3 days. When she fought back, he threatened her with death. She reported this to the employer's wife, but then both the husband and wife beat her up badly.

When Sunita met Leena, a domestic worker leader of the National Domestic Workers Movement's (NDWM), she cried and told her about it. Leena convinced Sunita to leave her employers, to stay at the NDWM shelter and helped her to file a case with the police. A medical check-up was done where Sunita had to endure the notoriously intrusive 'two-finger test' (physical examination and further violation of her vagina), but the report said that nothing had happened. The NDWM then organized a second, independent medical check-up, which confirmed that Sunita had been raped. However, no one was arrested, because the local police had been bribed, and the rapist even tried to stalk her at the NDWM shelter.

The NDWM, therefore, helped Sunita to take her case to the State Legal Authority of Bihar State using Article 376 on sexual offences in the Indian Penal Code which specifies punishment of sexual assault and rape. Some time later, Sunita was paid Indian Rupees 1 lakh (INR100,000 or around USD1,392) as compensation for the crimes from the 2014 state government's victim compensation scheme. However, until today, no one has been arrested.

Sunita was traumatized but not crushed by the abuse and she was very courageous in continuing the fight for justice. With the help of NDWM she got another job as a domestic worker, completed her 12th standard of education. and is now a strong domestic worker leader. After several years of fighting, the Criminal Investigation Department (CID), contacted her, proposing that the case be brought under the Protection of Children from Sexual Offences Act (POCSO, adopted in 2012 and amended in 2019). However, she has moved forward in life and decided not to pursue the case anymore.

The NDWM and many other rights organizations in India have found that children and women from ethnic groups, the lower castes and lower income groups easily fall victim to physical and sexual assault. These crimes are outlawed under the Indian Penal Code, but, in practice, it is difficult for victims to file a case with the police. When they manage to do so with the help of a support organization, there is bribery and corruption.

## Case story 2. Sabina and GKS in Gurgaon, India

**Read the story of Sabina out loud in your group. Discuss and answer the following points:**

1. What happened: Who was the victim, who was the perpetrator, what were the injuries or harm suffered, what help was needed and who helped her?
2. What laws, mechanisms and services were used to get justice for Sabina? What was the result?
3. What were the problems in getting justice? What needs to be done to improve results?

**Prepare to tell the story with the main answers to the big group.**

### The story

Sabina Khutan, a 14-year old child domestic worker from an ethnic minority, was found dead on 29 January 2014 at the home of the Beri family. Her family tried to file a case with the local police, but they were just sent away. The family was distressed and didn't know what to do. However, the Gharelu Kaamgar Sangathan (GKS, a Domestic Workers' Union came to their rescue and helped them to file the case with the police and bring Sabina's bruised body to a hospital for examination.

The police first refused to release the medical report. But when GKS mobilized domestic workers to come to the hospital and demand it, the hospital gave it to Sabina's family. However, the report did not mention any abuses at all. GKS and the family did not believe this was true and demanded a second examination at another hospital.

The District Court ordered this done. The Beri family then offered Sabina's family INR 300,000 or 3 lakhs (around USD4,178) to stop the inquiry into her death. The family refused, they wanted justice for Sabina, because the second medical report confirmed that she had been physically and sexually assaulted. The family and GKS demanded that the police investigate the Beri family, and blood samples of 4 suspects (the father, 2 sons and the family's driver) were sent for DNA testing.

There were many delays, although GKS contacted many organizations to help. In early 2015 Sabina's brother and GKS filed a request to get the DNA laboratory tests. In early 2016 a petition was filed at a High court to get the DNA reports. Finally, in December 2016, Sabina's family and GKS got the confirmation that the DNA tests proved that 2 of the accused, Apoorva Beri, one of sons and Om Prakash, the family driver had sexually and physically assaulted Sabina. As she was a minor, the charge was made under the Protection of Children from Sexual Offences (POCSO) Act, 2012.

The police issued warrants to arrest them in January 2017, but they had both fled the country. In March 2017, the Beri family persuaded Sabina's family to withdraw the case in return for a bribe of INR800,000 or 8 lakh Indian Rupees (around USD11,140). The same High court rejected the withdrawal of the case, but during a lawyers' strike, another judge shockingly accepted it. The GKS then filed the case under its own name at the court again. A year later, in 2018, the court declared that Om Prakash, the family's domestic worker was guilty, but not the Beri family's son, Apoorva. Since then, the GKS has continued to press for a court hearing to question why Apoorva Beri was not declared guilty. And, after 5 long years, no one has been arrested.

The GKS finds that it is very difficult for common people to get justice. The Child Labour (Prohibition and Regulation) Act is not adequate because it only prohibits child labor in domestic work for minors under 14 years. Minors of 14 to 18 are not allowed to do hazardous work, but domestic work is not defined as 'hazardous work' for them so they can work as domestic workers.

## Case story 3. Murni and JALA PRT in Indonesia

**Read the story of Murni out loud in your group. Discuss and answer the following points:**

1. What happened: Who was the victim, who was the perpetrator, what were the injuries or harm suffered, what help was needed and who helped her?
2. What laws, mechanisms and services were used to get justice for Murni? What was the result?
3. What were the problems in getting justice? What needs to be done to improve results?

**Prepare to tell the story with the main answers to the big group.**

### The story

Murni (not her real name) was born in 1995 in Bogor, outside of Jakarta, the capital. After completing primary school at the age of 12, her aunt recommended her to work with a middle-class family in East Jakarta, who promised to pay for her junior high school. But, her employers did not pay for schooling and never paid her any salary. Murni had to work really hard. She got too little food, they prohibited her from contacting her family, prevented them from visiting her and she could not go out.

They often beat her, poured hot water on her, and burned her with an iron. Her female employer accused her of having an interest in her husband and punished her by stripping her naked and assaulting her vagina with chili and blows. The female employer forced two other male domestic workers in the house to rape Murni. Another time, she forced Murni to eat cat feces and Murni developed tuberculosis from the infection.

In 2016, when Murni was 21 years old, the female employer badly injured her mouth with a broom. Murni found it unbearable, and decided to escape. She climbed down the TV cable and ran straight to a neighborhood police post. Murni was extremely malnourished, she weighed only 25kg when a police officer interviewed her. The officer took her to the police hospital of East Jakarta, contacted her parents in Bogor, and got in touch with the National Network for Domestic Workers Advocacy (JALA PRT) and the Women Legal Aid Institute (IPH APIK) in Jakarta.

JALA PRT looked after Murni, reunited her with her family and enabled her to go to school again. Together with the Women Legal Aid Institute JALA PRT started an advocacy campaign to gain justice for her and the other 3 domestic workers in this abusive employer household. They held press conferences, provided legal assistance and monitored the legal proceedings closely. As a result, Murni's employers were brought to court in October 2016. They were found guilty under the Domestic Violence Law (PKDRT) and received a sentence of 9-year imprisonment. This law states covers domestic workers as household members who must receive protection from violence in households.

Murni's victory marked a milestone in the fight for the protection of women domestic workers against physical and sexual assault in Indonesian households. However, this law does not protect domestic workers from 'household neglect'. Moreover, domestic work is not recognized as real work and domestic workers are excluded from any protection under labor and employment laws. A ministerial labor regulation on the protection of domestic workers was adopted in 2005, but it is not implemented in practice. Families, communities and institutions lack education about the rights of women and domestic workers to a life and work free of violence. JALA PRT and other organizations have, therefore, been developing and advocating the adoption of a new law, the Protection of Domestic Workers Bill (PPRT).



## Case story 4. Riza and UNITED in the Philippines

**Read the story of Riza out loud in your group. Discuss and answer the following points:**

1. What happened: Who was the victim, who was the perpetrator, what were the injuries or harm suffered, what help was needed and who helped her?
2. What laws, mechanisms and services were used to get justice for Riza? What was the result?
3. What were the problems in getting justice? What needs to be done to improve results?

**Prepare to tell the story with the main answers to the big group.**

### The story

Riza from Cotabato province in the Philippines was 23 years old when she was recruited by an employment agency in Manila, the capital, to work as a domestic worker in early 2018. After 1 month the employer sent Riza back to the employment agency and asked for a replacement because she was sick and on medication.

The employment agency detained her for more than a week. Daniel, the agency's owner called her bad names and accused her of being lazy and flirty, and selling sex. She was not given enough water and food and was hungry all the time. She slept on the concrete floor at night without a bed, pillow or blanket. She could not contact anybody unless she paid for it. She wanted to escape and managed to speak to Maricel, one of her relatives.

Maricel got in touch with the United Federation of Domestic Workers in the Philippines (UNITED). UNITED contacted the Department of Labor and Employment (DOLE) and the National Bureau of Investigation, and they went to investigate and rescue Riza.

First, the employment agency's owners denied Riza's complaint and demanded that she pay PHP 6,000.00 (around USD114) for the placement fee before her release. However, after long discussions, they agreed to let Riza go with UNITED. The DOLE staff encouraged UNITED to help Riza to file a complaint against the employment agency, but she refused to do so. She was afraid of Daniel because he was a retired district government employee. She was traumatized, refused to lodge a complaint, and only wanted to return to her hometown to recover.

The Philippines adopted a Domestic Workers Act and it took effect in mid 2013 after the announcement of its Implementing Rules and Regulations (IRR). Since then, the law recognizes domestic work as a labor sector in the country. The Act extends labor and social protection to domestic workers and protects them from abuse in the employer household or by employment agencies. At the district levels, the labor and social welfare departments and the police are responsible for the rescue and rehabilitation of abused domestic workers.

UNITED wants the DOLE to further investigate such cases, even if victims, like Riza, are not able to lodge a formal complaint. Without a complaint, no action can be taken against the perpetrators, except for UNITED using abuse cases in awareness-raising campaigns.

It is still difficult to implement the domestic workers law. Domestic workers work in private homes, and their working conditions cannot be monitored. The district labor and employment offices lack people and money to carry out their duties. Employers of domestic workers, employment agents and governments often have close connections, and domestic workers come from marginalized groups and cannot seek justice, if they don't receive help from DWOs and other agencies.

## Case story 5. Baby Jane and FADWU in Hong Kong

**Read the story of Baby Jane out loud in your group. Discuss and answer the following points:**

1. What happened? Who was the victim, who was the perpetrator, what were the injuries or harm suffered, what help was needed and who helped her?
2. What laws, mechanisms and services were used to get justice for Baby Jane? What was the result?
3. What were the problems in getting justice? What needs to be done to improve results?

**Prepare to tell the story with the main answers to the big group.**

### The story

Baby Jane, a 38 year old Filipina migrant domestic worker (MDW), was employed by a woman, Jamil, since mid 2017. In early 2019, Baby Jane was diagnosed with a stage 3 cervical cancer. The doctor gave her a medical certificate for 3 weeks sick leave. However, Jamil fired her as soon as she heard about the cancer and gave her a termination letter which clearly stated that she was dismissed because she had cancer.

The dismissal meant that Baby Jane lost all her rights as MDW in Hong Kong. She lost her rights to sick leave and to free medical treatment that are provided to domestic workers under the labor law and in the standard employment contract for migrant domestic workers respectively. She also lost her Hong Kong identity card with residence status, which by law expires 2 weeks after termination of a job (the 2-week rule). She was given a visitor status by the Immigration department, because she lodged a complaint but she was not allowed to use public healthcare services or get another job.

Baby Jane called Mary Anne, her sister, also a MDW in Hong Kong, and her sister asked her employer Jessica, for help. Jessica agreed that Baby Jane could move in with her sister and stay at her home. She helped Baby Jane with her cost of living and also raised money for her medical fees through a donation campaign. With the help of Jessica, and the Federation of Asia Domestic Workers Unions (FADWU), Baby Jane filed 2 complaints: one with the Labor Department arguing that the dismissal is unlawful under the Employment Ordinance; and the other with the Equal Opportunities Commission (EOC), arguing that her dismissal is employment discrimination under the Disability Discrimination Ordinance which prohibits discrimination based on health conditions.

After receiving the complaint, the Labour Department first set up a conciliation meeting between the employer and worker to explore the possibility of a settlement. Sick Baby Jane defended her case while Jamil was represented by lawyers. However, a settlement was not reached. The case then went up to the Labour Tribunal. At the first tribunal hearing, however, Baby Jane's trade union representative was not allowed to represent her and the presiding officer pushed Baby Jane hard for a settlement until she accepted an offer of HKD\$30,000 (around USD3,846), to be paid by Jamil.

Baby Jane has continued to pursue her case with the EOC under the Disability Discrimination Ordinance, and in early 2021, the EOC informed her that her case would be taken into consideration, even if Jamil has disappeared without leaving an address.

The FADWU has raised awareness on the gaps in the laws and regulations in Hong Kong which fail to protect MDWs when they fall ill. FADWU priorities for action are abolishment of the 2-week rule; better government support and services for MDWs while they are pursuing legal court cases; and medical insurance and public healthcare services for MDWs during employment and after unfair dismissal.



## HANDOUT 2

# Responses to DWO case stories on laws and actions against violence

## Case story 1. Sunita and NDWM in India

**What happened:** Sunita, a minor of 16 years in Bihar, India was raped by her male employer and beaten up by the employer couple when she told her female employer about it. She was rescued by the NDWM which provided her with a safe shelter, practical and legal help.

The police obstructed the legal process. During the first medical check-up, she had to endure the notoriously intrusive 'two-finger test' (physical examination and further violation of her vagina). The results of this check-up were false, because of bribery. A second medical check-up, organized by the NDWM proved that Sunita was raped. The NDWM helped her to take the case up with the higher legal authorities using the Indian Penal Code which specifies punishment of sexual assault and rape. As a result, Sunita received a sum of money as compensation, but her employers were never arrested.

**Problems:** No punishment of the perpetrators; the rapist stalking her at the NDWM shelter; abusive medical testing; bribery and corruption; discrimination against children and women from ethnic minorities and lower income classes makes it very difficult to obtain justice for violence victims, even if they have organizations helping them.

**NDWM recommendations for further action:**

- Separate courts should be set up to investigate and prosecute assault cases.
- Special units with female police officers should be set up in police stations to handle assault cases.
- Women shelters and counselling services should be provided to female victims.

## Case story 2. Sabina and GKS in India

**What happened:** Sabina, a minor of 14 years old in Gurgaon, India was raped and murdered by a son and a male domestic worker of her employers. Practical and legal help was provided by the Domestic Workers Union, GKS, and Sabina's family.

The first medical report was a fake, but the second medical report proved the rape and murder of Sabina so DNA tests were done of 4 suspects and the victim. The employer family tried to bribe Sabina's family. At first they refused, but later they took the bribe.

The release of the medical reports required a lot of efforts by GKS over many years. Proof of the rape and murder was obtained only after almost 3 years. The case was then pursued under the Protection of Children from Sexual Offences Act (POCSO). Two years later the family driver was convicted but not the employers' son. GKS has continued to pursue the case but due to irregularities at the court this was made very difficult, and no one has been arrested to date.

**Problems:** Bribery, corruption and long delays made it very difficult to get justice for Sabina, who came from a poor family. It is very difficult for common people to get justice. If GKS had not helped the family, no legal action would have happened. The Child Labour (Prohibition and Regulation) Act is not adequate because it only prohibits child labour in domestic work for minors under 14 years. Minors of 14 to 18 are not allowed to do hazardous work, but domestic work is not defined as 'hazardous work' for them so they can work as domestic workers.

**GKS recommendations for further action:**

- Domestic work is hazardous for minors under 18 years and must be prohibited by the law on child labor.
- A separate law and relevant policies are needed to protect domestic workers, and provide for labor inspection to enforce the law in private households.
- Separate police and court units with women staff should handle all assault cases.

**Case story 3. Murni and JALA PRT in Indonesia**

**What happened:** Murni from Bogor, Indonesia was 12 when she started to work for a family in Jakarta. She was seriously mistreated and abused by her employers for many years. She didn't receive proper food, was threatened and not allowed to leave the house or to contact her family. Murni experienced many forms of physical and sexual assault by her employers, including rape and harming her vagina. She got tuberculosis because she had to eat cat feces.

When Murni was 21 years old she escaped and ran to a police office where she was found to weigh only 25 kilos. Murni was rescued by the police, the Domestic Workers Network JALA PRT, and a Women's Legal Aid Institute. JALA PRT helped her to recover, reunite with her family and restart her education. JALA PRT and the Women's Legal Aid Institute provided legal aid, mobilized public opinion and monitored the court hearings. As a result, the employer couple received a jail sentence of 9 years under the Domestic Violence Act.

**Problems:** This Act states that domestic workers are to be protected because they are household members. However, in practice, domestic workers are only protected against serious physical and sexual assaults and are not protected from work-related offenses like violence & harassment. Moreover, this law does not protect domestic workers from 'household neglect'. In fact, domestic work is not recognized as real work and domestic workers are excluded from any protection under labor and employment laws. A ministerial labor regulation on the protection of domestic workers was adopted in 2005, but it is not implemented in practice. Families, communities and institutions lack education about the rights of women and domestic workers to a life and work free of violence.

**JALA PRT recommendations for further action:**

Jala PRT and Komnas Perempuan (National Commission on Violence against Women) and many women's and gender equality organizations are continuing the campaign to eliminate violence against women. Since 2004, Jala PRT has also been at the forefront of developing and advocating for the passage of a Perlindungan Pekerja Rumah Tangga (Protection of Domestic Workers Bill). Progress has been slow so far due to the lack of political will in the Indonesian House of Representatives. However, in early 2020 the House finally started to deliberate this bill for the protection of domestic workers.

**Case story 4. Riza and UNITED in the Philippines**

**What happened:** Riza was recruited from her home province and placed as a domestic worker in Manila by an employment agency. Her employer sent her back to the agency after one month because she could not work. She was held by the agent who wanted her to pay back the placement fee before releasing her. She was verbally abused, she was not given adequate food and accommodation, and could not use her phone.

She managed to contact a relative and was rescued by UNITED, a Federation of Domestic Workers Unions, the Department of Labor and Employment and the National Bureau of Investigation which convinced the employment agent to let her go without any payment. This was possible because domestic workers are protected from abuse by employers and employment agents under the 2013 Domestic Workers Act.

**Problems:** However, Riza didn't want to make a formal complaint because she was afraid of the employment agent, who was a former government official. So no legal action could be taken against the employment agent.

**UNITED recommendations for further action:**

The adoption of a national law on domestic work in the country was a major step forward, but UNITED considers that it is still difficult to implement the law, because:

- Employers, employment agents and government officials have close connections and this hinders effective implementation of the law in practice.
- The workplaces of domestic workers are private homes, and the mechanisms to monitor actual conditions at work are weak.
- The Departments of Labor and Employment (DOLE) at the district levels lack people and money to carry out their duties to implement the law.
- Most victims have low self-esteem and come from groups with a low social status. Without the help of DWOs and government, it is difficult for them to seek justice.

## Case story 5. Baby Jane and FADWU

**What happened:** Baby Jane worked in Hong Kong as a Filipina migrant domestic worker for almost 2 years. When she was diagnosed with cancer, her employer dismissed Baby Jane on the spot. She, therefore, lost her rights to sick leave and medical treatment, as well as her identity card and residence status. Baby Jane was helped by her sister and her sister's employer who provided her with accommodation, daily living expenses and the cost of her medical treatment.

Baby Jane lodged two complaints: one with the Labour Department, arguing that the dismissal was unlawful under the Employment Ordinance, and the other with the Equal Opportunities Commission (EOC), arguing that she was a victim of employment discrimination under the Disability Discrimination Ordinance which prohibits discrimination on the grounds of disability.

She was given a temporary residence permit, to pursue these cases, but this permit did not allow her to use public health services or to work. In response to the first complaint, the Labour Department called for a conciliation meeting which was not successful so a hearing was organized at the Labour Tribunal. At this hearing, however, Baby Jane's trade union representative was not allowed to represent her and the presiding official pressed Baby Jane to accept a compensation from her employer that was lower than the original claim. The second claim about discrimination in employment on the grounds of disability had been pending for 2 years. Only, in early 2021 was she informed by the EOC, that her case would be taken up. Sadly Baby Jane passed away a few months later.

**Problems:** Migrant domestic workers in Hong Kong are covered under the employment and non-discrimination laws, but there are gaps in the employment and immigration regulations and in the legal processes and mechanisms. These gaps can easily result in violence and abuse of migrant domestic workers.

**FADWU recommendations for further action:**

The FADWU has raised awareness on the need to better protect migrant domestic workers when they fall ill. FADWU priorities are:

- Abolish the two-week rule.
- Put in place government support and services for migrant domestic workers so they can pursue legal court cases.
- Provide full medical insurance and public healthcare services for migrant domestic workers not only during employment but also after unfair dismissal.





## Info note: Laws and DWO actions to fight violence & harassment in domestic work<sup>3</sup>

### Justice, laws and the rule of law

**Justice** is about fairness and equality for everyone. **Laws** are the social contract people make to have a civilized society:

- Laws are the rules made for people to obey in civilized societies so that people can **trust** one another, and **the weak are protected from the strong**.
- Laws create trust, safety and stability in society when everyone knows that all need to follow the same rules and that the rights of all are respected, protected and enforced.

For people to trust the law and have a strong **rule of law** in societies, it **needs to apply equally to all**: Every person, party and institution needs to obey it and no one – not a single person, group or institution – is above the law. Laws need to be: clear and easy to understand, accessible to all and enforced for all. The rule of law in societies:

- **Restricts the use of power** by any person, party or institution because everyone needs to obey well-defined and established laws: Public authority is needed to protect against private power and people power is needed to hold public authority accountable.
- Is about the **authority and the influence of law** in society. These are strong in some countries and weak in others. The strength of the rule of law is one of the key indicators for measuring the quality and good governance of a country.

The **rule OF law** is different from the **rule BY law**. Rule by law means rule by force. In societies under the rule by law, the rulers, (like dictators, the military, political or religious ruling parties, elites or mobs/gangs), subject citizens to the law, but the rulers themselves stand above the law. These types of regimes rule by force, limit basic freedoms of citizens and lose their legitimacy sooner or later.

**Equality or equal treatment before the law** (also known as equality under the law, equality in the eyes of the law, or formal legal equality) is about the principle that each human being, woman or man, must be treated equally by the law and that all are subject to the same laws of justice.

### International human and workers' rights laws

The United Nations (UN) member States, represented by governments, have defined a range of basic **human rights**: civil, cultural, economic, political and social rights. These are the absolute rights that a person has by being a human being, no matter what sex, race, nationality, ethnicity, language, religion, class or caste, or any other status, they have. These international standards provide basic protection for people as individuals and as workers by putting restraints on the power of states and other powerful parties and persons. These human rights are set out in 8 major international agreements (Covenants and Conventions) which set out important principles and rights in general, and on race, women, children, disability, migrant workers and torture.

The International Labour Organization (ILO) is the only UN organization where member states are represented by 3 parties: governments, and employers' and workers' organizations. The 3 parties adopt **international labour standards**: These are the minimum, internationally agreed upon standards to: **safeguard** workers' rights, **protect** workers from labour exploitation and **create** more and better jobs.

The main types of international legal standards are:

- **Declarations**: Expressions of commitment to uphold basic human values that are vital to our social and economic lives.
- **Covenants, conventions and protocols**: Legally binding international treaties, that may be ratified by countries, which then have the obligation of translating them into national law and putting themselves under international supervision to ensure that they are applying the provisions of the ratified conventions in law and practice.
- **Recommendations**: Non-binding, authoritative guidelines to help implement the conventions, or provide guidance on specific topics where no convention exists.

<sup>3</sup> ILO, [Making decent work a reality for domestic workers, Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 \(No. 189\)](#), Geneva, 2021; ILO, [Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206](#), Geneva, 2021; ILO, [International labour standards on migrant workers' rights: Guide for policymakers and practitioners in Asia and the Pacific](#), Bangkok, 2007; ILO and Gender and Development for Cambodia (GAD/C), [Women workers' rights and gender equality: Easy steps for workers in Cambodia](#), Bangkok, 2004; ILO, [Action against sexual harassment at work in Asia and the Pacific](#), Bangkok, 2001

Important **international human and workers' rights laws** to protect domestic workers from violence & harassment are:

- The **Universal Declaration of Human Rights** (UDHR, 1948) outlines the basic rights and freedoms of all human beings which are set out in two Covenants – **the International Covenant on Civil and Political Rights** (ICCPR) and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR).
- There are specific UN Conventions that:
  - Prohibit discrimination against **women** (CEDAW, 1979) and persons of different **rac**es and **ethnicities** (CERD, 1965)
  - Protect **children's rights** (CRC, 1989), the rights of all **migrant workers** and their families (MWR, 1990), and the rights of disabled persons (CRDP, 2006)
  - Prohibit all forms of **torture** (Convention against Torture (CAT), 1984).
- ILO Declarations on **fundamental principles and rights at work** (NO to forced labor, child labor and discrimination at work, and YES to freedom of association and the right to organize), 1998, and on **social justice** for a fair globalization, 2008
- ILO Conventions Nos 87 and 98 on **freedom of association and the right to collective bargaining**, 1948 and 1949
- ILO Conventions No 100 on **equal remuneration**, 1951 and No 111 on **non discrimination in employment and occupation**, 1958
- ILO Conventions No 29 of 1930, and No 105 of 1957 on the abolition of **forced labor** and the 2014 Protocol to address forced labor in the modern-day situation
- ILO Conventions No 138 of 1973 and No 182 of 1999 on **child labor**
- ILO Conventions No 97 of 1949 and No 143 of 1973 on **migrant workers**
- ILO Convention 189 on **decent work for domestic workers**, 2011
- ILO Convention 190 to **end violence & harassment in the world of work**, 2019.

After adoption of these standards by the UN or ILO member States, they are internationally accepted as **guides** for national and local action. The UN and the ILO have established **mechanisms** to promote and protect the rights set out in these standards and to assist governments and others in carrying out their responsibilities, such as the adoption of laws and implementing mechanisms.

The covenants, conventions and protocols are open to ratification by each country. **Ratification** means that the government commits to implement the rights contained in the international law in its own national law and practice. Governments that commit to implement these standards are **subject to regular reporting** and UN and ILO **supervisory mechanisms** exist to:

- **Examine** how well a country complies with the international law
- Make **recommendations** on how the country can better implement it
- **Act and follow-up** on complaints.

The Governments submit reports every 3 to 5 years on how they are applying these international standards. **In the UN, NGOs may submit their own reports** to the supervising Committees on how they think a government is doing. **In the ILO, trade unions can file comments or complaints** on how a government is doing in the implementation of the standards. These procedures apply to the standards on domestic workers and on violence & harassment of women and of workers.

All the international standards can be used to advocate, support and promote protection of human and workers' rights, including domestic workers, at national and local levels whether or not they have been ratified by a government. But it is important to know if a Government has ratified a Covenant, Convention or Protocol. In countries where ratification has taken place, the standards can be used much more effectively:

- In some countries, especially in Latin America, ratification means the international standard becomes a part of national law and can directly establish rights and protection of workers. In such countries, the international standard can be argued directly in courts of law or labour tribunals.
- In other countries, ratification means that countries need to revise their national law in line with the ratified international standards.

### CEDAW questions for Indonesia<sup>4</sup>

In 2020, the CEDAW Committee asked Indonesia to specify:

- 1) The measures taken or put in place to address and are aimed at effectively preventing gender based violence against women and girls.
- 2) The measures taken to train judiciary, prosecutors, lawyers and medical personnel on gender sensitive procedures for assisting victims and investigating complaints and enforcing the relevant criminal law.
- 3) The steps taken to protect domestic workers, including awareness-raising campaigns on the rights of domestic workers, supporting unions of domestic workers, strengthening labour inspection mechanisms, developing support services for domestic workers who are victims of abuse, and eradicating domestic child labor.
- 4) The steps taken to ratify C189 on decent work for domestic workers and to adopt, regulate and implement laws that protect (migrant) domestic workers, prevent gender based violence against domestic workers and prosecute and punish perpetrators.

### ILO comments under C189 on domestic workers' rights as workers<sup>5</sup>

Under Convention 189, a trade union raised issues of exclusion of domestic workers from labor laws as a violation of the Convention. It called for support of organizing and freedom of association of domestic workers, protection of wages, establishing protection bodies and specific complaint mechanisms to deal with cases of violence in the domestic work sector and developing rehabilitation programmes and information on the effectiveness and adequacy of penalties imposed on perpetrators and remedies.<sup>4</sup>

In 2021, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) requested the Government of the Philippines about consultations with the Domestic Workers' Association (DWA), freedom of association protections, and measures taken to protect domestic workers recruited or placed by private employment agencies against abusive practices.<sup>5</sup>

Even if governments do not ratify an international standard, it is often used for the establishment of rights in national law. It can also be used to fill gaps in national law coverage and to promote law reform.

**DWOs and trade unions can use the standards and the international procedures** to highlight abuses of domestic workers and the inadequacy of legal protection, to promote national law reform and to better protect the rights of domestic workers set out in international law. An important step is advocacy for the ratification of C189 and C190.

### National laws and policies

A **law** is a system of rules which a country or community recognizes as regulating the actions of its members, and is enforced through penalties or sanctions.

Every law must be accompanied by **implementing rules or regulations**. These rules are the practical guidelines that set out how to apply the law. They are like **the hands and feet of a law**. They specify what agency is responsible for what, what strategies and methods will be used and how, and set timelines and deadlines for what needs to be done.

Some countries also adopt national **policies, guidelines or plans of actions** on certain subjects. These set out what should be done to reach a legal aim:

- If policies are adopted to implement a law or laws, they can be useful, because they:
  - Specify the implementation and enforcement of certain laws

4 OHCHR, [Indonesia, List of Issues and Questions in relation to the 8th periodic report of Indonesia](#), 20 July 2020 CEDAW/C/IDN/Q/8]

5 CEACR, Argentina, Direct Request, CEACR, adopted 2019, published 109th ILC session (2021), [Domestic Workers Convention, 2011 \(No. 189\)](#), ILO, 2019; CEACR, Philippines, Direct Request CEACR, adopted 2020, published 109th ILC session (2021), [Domestic Workers Convention, 2011 \(No. 189\)](#), ILO, 2020

- o Set an agenda for necessary law reform
- o Provide for proactive measures and programs with resources to implement
- o Set up coordination and consultation mechanisms with all relevant parties.
- If policies are adopted as stand-alone measures, instead of binding laws, they are usually weak. When policies are only statements of intention without any binding power on the state or anyone to do (or not do) something, they serve mainly as window dressing.

### Main types of national laws are:

- Constitutional law
- Criminal and civil laws on different subjects, such as labor and employment, health and social welfare, job or other contracts.

In federal states, such as in Brazil, Canada, Germany, India, Malaysia and the USA, power is divided between the central government and local state governments, and regional laws may differ from state to state.

The **constitutional law** is the foundation of all laws in a specific country or territory. It sets out the power and authority of government, as well as the fundamental rights of individuals. Usually constitutions grant the right to equality before the law to both women and men, and prohibit discrimination on sex and gender, race and ethnicity, and religion but this is not always so. In some countries the equality and other principles in the constitution set out aims or goals for the country but not individual rights. In other countries, the constitution sets out a set of rights for all individuals and this can be used in courts of law to seek justice for violations of those rights.

**Different types of laws** can protect us against violence & harassment, and other unfair labor practices. They aim to:

- **Prevent and stop abuses** from happening
- **Punish the perpetrators** and stop them from abusing others again
- **Provide compensation** for damages and **support** services to victims.

Each type of law has different objectives, different complaint and enforcement mechanisms, and provides different types of relief and sanctions. **In many cases a domestic worker may want to use more than one law and mechanism to get justice.**

### Criminal or penal laws

Most countries prohibit the most severe types of violence & harassment like physical and sexual assault and rape, under **criminal or penal laws**. These laws cover the most **serious wrongdoings** in society, protect all individuals in a country and are **intended to punish perpetrators** of crimes such as assault, violence and murder with jail time and fines.

**In the past**, states took **little action to combat violence against women** and tolerated – even endorsed – many types of violence. For example, there were laws stating that sex was a marital obligation, that rapists could escape charges by marrying victims, that parents could marry off their daughters, or that men who murdered adulterous wives were just defending their honor. While such patriarchal laws and practices still exist in some countries, **most countries have outlawed violence against women or gender-based violence** in the 1990s and 2000s. The international agreement nowadays is that such violence is a **serious human rights violation and a sign of gender discrimination**.<sup>6</sup>

**Criminal cases** are brought by public prosecutors based on victims' complaints. These complaints must be made at local police stations. Complainants of physical and sexual assault and violence should be provided with legal representation and assisted in the process and accessing necessary services. The **burden of proof in criminal cases** is very high which means a lot of evidence needs to be presented to get a conviction.

The **lack of evidence and witnesses** has always been a big problem for sexual assault survivors but DNA testing has made it much easier to prove sexual assault. Still, criminal law procedures can be **complicated**, often take a **lot of time** and may get dropped along the way by public officials. Sometimes victims may need to help gather medical or other evidence and to attend all court proceedings which can be **very costly**. The criminal law may not cover the full range of behaviors that constitute violence & harassment at work. Another problem is that law enforcement agencies employ mostly men who are generally not gender-aware and tend to blame rather than protect victims of violence.

6 Htun, M and Jensenius, F.R., [Fighting Violence Against Women: Laws, Norms & Challenges Ahead](#), in American Academy of Arts & Sciences, 2020

In many countries, under **victim's assistance or legal assistance or criminal procedure acts**, victims of crime also may be awarded money compensation, as well as other support services and protection from retaliation for filing the criminal complaint. In practice, victims may not adequately be protected against retaliation for filing complaints, and may not be provided other necessary support services such as shelter and rehabilitation. In some cases, those accused of crimes may offer money to victims to drop their complaints.

### India Supreme Court Judgement on Procedures to protect complainants of sexual assault and rape, 1994<sup>7</sup>

The Supreme Court held that complainants of sexual assaults should be:

- assisted at the police station and in court, and receive guidance on what help is available from different agencies, such as counselling or medical assistance;
- provided legal assistance at the police station; it is the duty of the police to inform the victim of her right to representation before questioning her; and
- provided a list of advocates willing to act in such cases.

### Labor and employment laws, OSH laws and laws on sexual harassment at work

Criminal or penal laws don't cover many harmful practices in the workplace. These practices are outlawed **in labor or employment laws** which set out the **rights and duties of employers and workers and the employment relation between them**. Most countries in Asia have labor or employment laws and occupational safety and health (OSH) laws for the protection of workers, and labor inspection departments to enforce those laws. **Labor and employment laws are intended to balance the power relations between workers and employers and protect workers** in vulnerable situations **from abuse and unfair labour practices** such as non payment of wages, excessive hours of work, slavery, child labor, unfair dismissal, etc.

**Occupational safety and health (OSH) laws** are intended to protect the safety, health and welfare of workers and impose a duty on employers to **create safe workplaces**. Domestic workers in private households are usually not covered by these laws. But progress is being made, for example, Paraguay adopted a Guide to Occupational Safety and Health for Domestic Workers in 2017. The Guide provides employers and workers with information on their OSH rights and duties, including violence, harassment and psychosocial risks, and promotes the use of existing implementation mechanisms for these cases.<sup>8</sup>

As mentioned earlier, many countries in Asia and elsewhere have adopted **special labor laws against sexual harassment at the workplace**. These laws often only protect women in formal employment, and domestic workers are often excluded. Even when these laws explicitly apply to domestic workers, like in India's 2013 Sexual Harassment of Women at the Workplace Act, they lack effective implementation mechanisms in general and exclude domestic and other informal workers in practice.<sup>9</sup> In other countries, labor laws are starting to include provisions to prohibit violence and harassment against domestic workers, for example, the 2019 Viet Nam Labor Code explicitly prohibits employers of domestic workers to maltreat, sexually harass, exact forced labor or use force against domestic workers (Article 165).<sup>10</sup>

It is important to **protect all workers from violence & harassment at work in labor and employment laws**, because the **burden of proof** of violations of labour laws is much lower than in criminal law. Punishment of violators includes fines against employers, stopping unlawful practices, orders for compensation for loss or damage or reinstatement of work or other employment benefits, orders to correct and improve unsafe and unhealthy work places. It is highly advisable to use or consult with **trade unions to assist in making complaints of violations of the labour, occupational safety and health and sexual harassment at the workplace laws**.

7 Delhi Domestic Working Women's Forum v. Union of India, Supreme Court of India, 19 October 1994

8 ILO, *Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206*, Geneva, 2021; for more information on OSH laws on violence & harassment, also see: ILO, *Safe and healthy working environments free from violence & harassment, the report at a glance*, Geneva, 2020

9 HRW, *No #MeToo for women like us, Poor enforcement of India's Sexual Harassment Law*, 2020

10 MOLISA, *The VietNam Labor Code, 2019*, Hanoi



**Labor laws should and in some cases do apply to protect domestic workers. However, in most Asian countries:**

- Domestic workers and household employers are **not or only partially protected by labor law in their own countries.**
- Private **households are not considered to be workplaces** and labour inspectors do not have the right to enter private households.

**Domestic workers are covered under labor and employment laws and regulations in the following ways:**

- Sometimes, the **overall labor laws** apply to domestic workers, but then they often do not receive the same protection as other workers. For example, in Hong Kong, local and migrant domestic workers are covered under the Employment Ordinance but their minimum age is lower than the minimum wage for other workers.
- Sometimes, **only parts of the labor law** are applied to domestic workers through specific regulations. For example, Ministerial Regulation No. 14 on the Protection of Domestic Workers in Thailand provides some protection and labor rights, but does not regulate working hours and minimum wages. In Indonesia, domestic work is not considered as 'real work' and domestic workers are excluded from the Manpower Act. The 2015 Ministerial Regulation which aims at protecting domestic workers has not been effective, so far.
- **Domestic Workers Acts** have been adopted in some countries to ensure comprehensive labour law protection of domestic workers. In Asia, examples are the 2012 Domestic Workers Act in the Philippines and the 2019 Punjab Domestic Workers Act, 2019 in Pakistan. These laws recognize domestic work as real work, can protect against violence & harassment, abuse and unfair labour practices, and can be implemented by mechanisms and procedures that are adapted to the specific situation of domestic workers. But, so far, they usually provide less labor protection than to other workers.
- Other countries have adopted a stand-alone **National Policy** on Domestic Work, as in the case of Bangladesh. Such national policies are useful, if an implementation mechanism and budget are provided, and if they are implemented in practice.

**Labor laws can protect** domestic workers from violence, harassment and other unfair labor practices **when** the implementation **mechanisms and procedures are adapted to the needs of domestic workers. Labor laws** should provide **affirmative duties on the household employer** to provide dignified work in a safe and healthy working environment free from violence & harassment. This means that **household employers must take reasonable steps to provide safe work, and prevent and act against violence and harassment of domestic workers** in their homes, otherwise they are breaking the law.

Domestic work is work like any other, and **domestic workers** should receive the **general protection available under labor laws**, just like other workers. Also, the special nature of domestic work – care work in private households – needs to be taken into consideration, and result in **added protective measures**. Given that domestic work is often excluded from labor laws and policies and important protection gaps still exist, **labor law reform** is, therefore needed in many countries:

- All workers, including domestic workers, need effective legal protection against labor abuses and work-related violence & harassment.
- Domestic workers need extra labor and employment protection because the nature of their work makes them especially vulnerable to violence & harassment.
- Specific units should be set up in labor and OSH inspection departments to cover domestic workers in private households.

## Equality and non-discrimination laws

Equality and non-discrimination laws are also important laws for domestic workers because they generally face discrimination, violence & harassment because of their sex and gender, ethnicity, color or race, social and rural origin, class or caste, religion, health condition, or nationality.

- The fundamental human rights of all citizens are usually guaranteed in a **Constitution**. It usually (but not always) provides for equality and non-discrimination of all citizens regardless of their sex and gender, race, ethnicity, caste, religion or status.
- **Equality and non-discrimination** are sometimes provided for in separate national **human or workers' rights laws**. These can take the form of specific acts against discrimination on the grounds of sex/gender, race, ethnicity, social origin, class, caste, religion, disability and health conditions or other grounds. For example, in Hong Kong, employment discrimination is prohibited on the grounds of sex, race, disability and family status and an Equality Commission was set up to handle complaints.

- Several countries specify women's rights to equality and non-discrimination. For example, Viet Nam has a specific **gender equality law**, prohibiting discrimination against women.

### Use of other laws

In some countries other laws may partially protect domestic workers from violence & harassment, but there are often significant constraints in these laws or in their implementation:

- **Civil laws** set out the rights and duties which citizens have towards one another. Domestic work is sometimes covered under **contract law**. Domestic work is then defined as a service provided to a consumer. As a result, such laws mostly protect employers of domestic workers and not the workers. This approach is used in the Indonesian Ministerial Regulation on the Protection of Domestic Workers (No. 2 of 2015) where the employer is defined as the 'user of domestic work'.
- More countries now also have **domestic violence laws**. These laws explicitly cover domestic workers as household members who need to be protected from domestic violence. It is important to protect domestic workers in any domestic violence law because their work in private households puts them at risk of domestic violence. However, these laws often do not adequately protect against employment related violence & harassment. For example, the Domestic Violence Act in Indonesia protects domestic workers only from physical and sexual assault and not from household negligence.<sup>11</sup>
- Other laws which may apply are **forced labor and child labor laws**. Worldwide, domestic work is the top sector where forced labor is found, accounting for nearly a quarter of all forced labour incidents.<sup>12</sup> However, in Asian countries, forced labor laws are hardly applied to protect domestic workers from violence & harassment. Similarly, child labor laws are hardly applied because domestic work is often not considered to be hazardous work for children.
- Specific laws cover **international migration**, like emigration and immigration laws. The rights of international migrant workers are often restricted because States have the right to determine who can enter their territory and their labour market. However, the international agreement is that the basic human rights of international migrants should be upheld in countries of origin and destination and during transit. See **Unit 7.3**. Working in other countries: How can we make the laws work for us!

### Problems in effective implementation of laws

The development and implementation of effective laws, policies and regulations to protect domestic workers from violence & harassment is often still difficult in many countries. Main reasons are:

- Laws are based on social and cultural norms in society. However, in practice, social, cultural or religious **norms still support violence & harassment** by men towards women, by employers towards workers, by the state towards common people, and by the rich towards the poor. In such cases, the perpetrators can easily get away and are not punished for their acts by the authorities and communities, which tend to **blame the victims** instead.
- This results in a '**culture of silence**' among women, workers, commoners and the poor. Many domestic worker violence survivors have learned to accept the culture of silence expected from violence victims: They often feel ashamed to bring the abuse out into the open. They may not be confident because of 'victim blaming' or they don't have the resources to be able to make a complaint.
- **Filing a legal complaint**, thus, takes **courage, time and money**. It is expensive and often flawed for women and domestic workers, especially if they come from low income and status, ethnic or religious groups. In contrast, powerholding elites often manipulate the legal system in their favor by paying expensive lawyers and legal lobbyists and through bribes and other means. This is known as **class justice** and needs to be abolished.

11 LBH Jakarta, LBH APIK Jakarta, JALA PRT, SPDPRT and ILO, [Compilation of case handling of household workers and child household workers](#) (in Bahasa Indonesia)

12 ILO, Walk Free Foundation and IOM, [Global estimates of modern slavery: Forced labour and forced marriage](#), Geneva, 2017

- Rights can only be protected and enforced when the **laws, legal rules and procedures** are clear and just, when there are **effective law enforcement mechanisms** (police, courts), and when there is **freedom of expression**, so people are able to complain and voice their opinion freely:
  - Every law needs to be accompanied by implementing rules and regulations: The detailed descriptions on who will do what (the implementing mechanism), how to implement the law, and by what time.
  - In many countries, such practical guidance and the people and money needed to implement the law properly are missing, and therefore, it is very difficult for victims to seek justice.
  - Law enforcement agencies are staffed mainly by men, often with patriarchal mindsets, who engage in victim blaming and obey powerholders in society, and who are not interested in upholding justice for women and the poor.
  - Freedom of expression is a fundamental right for all human beings but it is often difficult for women and domestic workers to have a voice and speak out.

### What legal reform do we want to fight violence & harassment in domestic work?

We need **justice, equality and empowerment**, as women and as workers. We need the law to work for us. Protection against violence & harassment is not about protecting women because they are weak. It is about enabling us to go out and earn money in a high risk occupation with proper protections, just like other workers. It is about breaking patriarchal rules, and empowering women to have the same rights, freedoms and responsibilities as men. **Empowered women are the key to ending gender and sexual violence.**

**Domestic work is work like any other**, and domestic workers should be protected under the labor laws, just like other workers. In addition, the special nature of domestic work – care work in private households – needs to be taken into account, resulting in added measures against violence & harassment, not less protection in labour laws and rules. We have a right to a job and a life free of violence. We need **extra, not less legal protection** against violence & harassment, because care work in private households is a high-risk job. We need better and effective laws and law enforcement to prevent and stop violence & harassment, to punish the perpetrators and provide compensation and support services to violence survivors.

In order to eliminate discrimination, violence & harassment, and get justice for domestic workers, **we need to organize** in DWOs. Together we have the power to make the law work for us. We and our DWOs are the most important protection against abuse, violence & harassment. We are stronger in groups, and as DWOs we can push for needed changes in societies. We must work towards:

- **Changing discriminatory laws and practices** that accept or justify unequal power relations between men and women and employers and employees so that women domestic workers are less vulnerable to abuse.
- Better **legal protection in law and in practice** to prevent violence & harassment against domestic workers and stop it from happening, and to obtain justice for domestic worker survivors.





## 7.2 : Working in our own country – How can we make the laws work for us!



120 minutes



### Tip for Trainers

Priorities for action will differ from one place to another. In this unit activity the focus is on law and practice for domestic workers who work in their own country or state. International migrant domestic work is discussed in next **Unit 7.3** Working in other countries: How can we make the laws work for us!

	Aims	<ul style="list-style-type: none"> <li>To learn about the relevant laws and access to justice for domestic workers</li> <li>To identify gaps and obstacles in violence &amp; harassment laws and mechanisms for domestic workers</li> <li>To develop DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in domestic work</li> </ul>
	Participants	<ul style="list-style-type: none"> <li>Domestic worker leaders</li> <li>Domestic workers</li> </ul>
	Room Arrangements	<ul style="list-style-type: none"> <li>Step 1: Open space for the group to stand in 2 circles and move around</li> <li>Other steps: Seating in big or small groups</li> </ul>
	Materials	<ul style="list-style-type: none"> <li>Step 2: Flipchart stands, papers and markers for the small working groups.</li> </ul>
	Training Aids	<ul style="list-style-type: none"> <li>Slide show: Working in our own country – How can we make the laws work for us!</li> <li>Handout: Checklist on justice for violence against domestic workers<sup>13</sup></li> <li>Info note: Working in our own country – How can we make the laws work for us!</li> </ul>



### Session Plan Steps

1.	Statue Stop	Game	10 minutes
2.	How can the laws work better for us?	Sharing in small groups	40 minutes
3.	How can the laws work better for us?	Reporting in big group	40 minutes
4.	Agenda for change	Q&A and discussion in big group	25 minutes
5.	Key messages	Conclusion	5 minutes

<sup>13</sup> Adapted from Amnesty International, [Six-point checklist on justice for violence against women](#), London, 2010; ILO C189, C190, R201 and R206.



## Preparation

- Read the Info note so you can guide the group discussions and prepare for the session. Ask someone with legal aid and women’s rights experience to help you if you don’t feel confident to do this session by yourself. Avoid long lectures, focus on the small group work discussions and ask the resource person to answer questions during steps 2-4.
- For step 1: If you have a group of women and men, check if the game can be done by both sexes together or whether it is better to do the game separately in a women’s group and a men’s group. Or, if there are only a few men, ask them to change the rounds of sculpting every 10-15 seconds by making a loud noise together.
- For step 2: Check and decide how to organize the small group work:
  - If there are **only a few laws** that protect domestic workers from violence and harassment in the country or state, **each group can apply the checklist to all laws.**
  - If there are **several laws** that apply to domestic workers (like the penal or criminal codes, labor and employment laws, gender equality or other non-discrimination laws, domestic violence laws, OSH or sexual harassment laws), **divide the laws among the small working groups** as relevant. For example, some groups can apply the checklist to the criminal law, others to the labor law, and others to the equality law; or half of the groups apply the checklist to laws against assault, and other groups use the checklist to review the laws against sexual harassment.
- Prepare photocopies of the Info note, one each for every participant, for distribution after the session.

## SESSION PLAN

STEP 1	STATUE STOP	GAME	10 MINUTES
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- Say: We start with an energizer: the Statue stop game. Ask participants to form 2 circles of people of equal numbers: one inner circle facing outwards to the outer circle and the outer circle facing inwards. Check that everyone has someone facing her/him. If the number of participants is uneven, ask a trainer to join.
- When the 2 circles are formed, instruct the group as follows:
  - In this game ‘sculptors’ make ‘statues’. Everyone in the inner circle is a sculptor and everyone in the outer circle is a statue.
  - The sculptors have 5-10 seconds to create a statue of the person facing them in the inner circle by bending or twisting their body into any shape they wish. The sculptors should be as creative as possible but make sure they do not hurt their statue and that the position is not offensive. Once they are shaped, the statues must remain frozen in that position without moving or speaking.
  - When I clap my hands (ring a bell or call out), the inner circle moves around one person to the left and sculps another statue. All statues in the outer circle are bent and twisted into a new position.
- Start the game and keep a quick pace changing the statues every 10 seconds or so by clapping your hands or making another loud noise.
- After 4 minutes, stop the sculpting and tell the groups to change roles: Those who were statues become sculptors in the inner circle, and those who were sculptors become statues in the outer circle. Repeat that the sculptors must be as creative as possible but should not put statues in painful or offensive positions. Start the game and keep a lively pace.
- Stop the game after 4 minutes. Say: This game is to have fun and energize ourselves. It is also about law making. Law and policy makers are like sculptors who make laws for people to obey and benefit from in a fair way. As domestic workers we need to make the law work for us: We need to find out what laws affect us, whether these laws are fair and implemented fairly and what changes are needed in law and in practice to better protect us from violence & harassment.



STEP 2	HOW CAN THE LAWS WORK BETTER FOR US?	SHARING IN SMALL GROUPS	40 MINUTES
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- Link the session to the previous session and introduce the unit’s aims by saying: In Unit **7.1** we found that there are different types of laws that may provide protection and redress against violence and harassment. We also found that there are problems with protecting domestic workers from violence & harassment: There are no laws; there are legal gaps; the laws are not implemented; or many domestic workers do not know their rights and the possible procedures to follow.
- Continue by saying: We are going to **share experience on how the laws work for us: What laws exist? What works? What doesn’t? And what needs to be improved** in the countries and communities where we work and live? We will focus on violence & harassment in our workplaces, and violence in our lives.
- Say: We start with making a **list of the different laws** that should protect domestic workers from violence and harassment in their job or family life. *[Make a list with the group and write the main laws on a flipchart or board.]*
- Introduce the handout with the **Checklist on justice for violence against domestic workers** by saying: This checklist can help us to find out:
  - **What works** (good practices)
  - **What does not work** (problems, obstacles, gaps)
  - **What changes are needed** (priorities for action).
- Say: The checklist is based on **international human and workers’ rights laws and standards**. It is organized following the steps that victims need to take to report an act of violence or harassment (under criminal or penal laws, labor and employment laws, equality and non-discrimination laws, domestic violence laws or other laws against violence, like OSH and sexual harassment laws) and seek redress for violence & harassment through the justice system.
- Distribute the handout and go through it with the group. Say: We are going to work in small working groups and use the checklist to find out **What works** (good practices), **What does not work** (problems) and **What changes are needed** (priorities for action). These will differ from one place to another. The checklist has 5 main questions that we want to answer **for each law** in each national or local situation.
  1. Do the **existing laws apply to domestic workers?** Are they **adequate** to protect domestic workers from violence & harassment?
  2. Can violence victims **report safely?** Can they **access support**, services and remedies?
  3. Are **medical examinations and care** appropriate and adequate?
  4. Is **investigation of complaints** of violence & harassment professional and thorough?
  5. Are **complaint and dispute resolution procedures, hearings and trials** fair, competent and efficient?
- Ask if the instructions for the small group work in the handout are clear, and clarify as needed.
- Divide the big group in 5 working groups according to the place where they work and live, and specify which laws will be analyzed by each small group *[see under Preparation for step 2]*.
- Tell the groups to start. Distribute flipchart papers and markers to each of the groups.
- After 30 minutes, remind the groups to write down their main points, and ask everyone to join the big group when they are ready.

STEP 3	HOW CAN THE LAWS WORK BETTER FOR US?	REPORTING IN BIG GROUP	40 MINUTES
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- Ask the reporters of the 5 groups to come forwards and put their flipchart paper upfront.
  - If all small groups answered the checklist for all laws, say: Each of the reporters of the 5 groups will report on 1 of the 5 questions and then other reporters will add new answers to that question that have not yet been mentioned. So one group reporter will give answers to question 1, then the other reporters add new answers to question 1. Then the second group reporter will answer question 2, and other reporters add answer not yet mentioned to question 2, and so on.
  - If the small groups answered the checklist for different laws, say: First we report on question 1. Have all small group reporters report on question 1, then move to question 2 and so on.
- Ask the first reporter to start and guide the discussions until all 5 questions have been discussed. If there are many different experiences to share, allow more time. Keep the pace, and make sure the discussions stay focused and to-the-point. *[There will be many stories on what does not work but make sure that the reporters also highlight clearly what works and why.]*
- When the questions have been discussed, summarize **What works** (good practices), **What does not work** (problems) and **What changes are needed** (priorities for action) for each question from the small group reports. *[Add points not mentioned from the info note, if they are relevant for the group. There is no need to discuss every issue raised in the note. Point to similarities and/or differences between the findings of the 5 groups.]*
  1. **Do the existing laws apply to domestic workers? Are they adequate to protect domestic workers against violence & harassment?** *[Domestic worker violence victims are not effectively protected from violence & harassment under the law in most Asian countries. There are no laws or they are not properly implemented. There are difficulties to access justice due to gender bias and other prejudices against domestic workers among the police, in tribunals and in the courts. There are no safe complaint mechanisms for domestic workers. Labor inspectors may be unprepared to handle cases of violence & harassment against domestic workers.]*
  2. **Can violence victims report safely? Can they access support, services and remedies?** *[Law enforcement agencies in many countries do not provide professional and adequate services to women victims of violence & harassment who mostly come from the 'lower-income classes. It is generally very difficult for domestic workers to report and access support, services and remedies.]*
  3. **Are medical examinations and care appropriate and adequate?** *[Medical evidence is often not, or not properly collected, and may further traumatize the victim. Or, the results may be tampered with due to bribery. It is usually very difficult for domestic worker victims to receive proper medical care and treatment.]*
  4. **Is investigation of complaints of violence & harassment professional and thorough?** *[Few domestic worker violence victims have access to safe and adequate complaint mechanisms and services. Law enforcers are often biased against them and may take matters in their own hands rather than follow the rule of law and proper legal procedures.]*
  5. **Are complaint and dispute resolution procedures, hearings and trials fair, competent and efficient?** *[Domestic workers often don't have access to fair and safe complaint and dispute resolution mechanisms. Where domestic workers can access such mechanisms, these are often not implemented fairly and are not free from discrimination against women and domestic workers.]*

STEP 4	AGENDA FOR CHANGE	Q&A AND DISCUSSION IN BIG GROUP	25 MINUTES
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- Say: Let us now discuss the **solutions and priorities for action** that came out of the small group discussions for each question in the checklist. Summarize the highlights of the small group discussions, and point to similarities and/or differences between the findings of the 5 groups. *[Add points not mentioned from the info note, if they are relevant for the group, but there is no need to discuss every issue raised in the Info note.]* For each of the 5 points, invite comments, discuss and agree on the main DWO priorities:

**1. Law reform priorities to make the laws work for us:**

- Consultation with domestic workers and DWOs on legal reform
- Application of laws to domestic workers
- Clear definitions with a broad scope to protect groups at high risk of violence & harassment in line with international conventions such as C189 and C190
- Specific prohibition of discrimination and victimization of violence survivors seeking justice, and of further violations of their rights
- Strong, effective and fair legal rules and enforcement of all laws (criminal, labor, occupational safety and health (OSH), sexual harassment, equality and non-discrimination, domestic violence)
- Widespread public information campaigns to raise awareness of rights of domestic workers and obligations on employers of domestic workers to provide safe work and prevent violence & harassment.

**2. Priority measures to ensure domestic workers' access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, courts and tribunals:**

- Gender training for all law enforcers who may handle violence & harassment cases
- Prohibition for law enforcers of unprofessional conduct, unfair treatment and victimization of those who report or help to report violence & harassment crimes
- Women-only specialized police and court units for gender-based violence victims if it is not possible to hold all law enforcement staff accountable
- Independent bodies to handle complaints of unlawful treatment of violence victims by enforcement authorities
- Proper registration of cases.

**3. Priority measures to ensure domestic workers' access to gender-responsive, safe and effective support services and remedies**

- 24-hour hotlines, information and legal aid, emergency services and care, and shelters in safe spaces
- Encouraging and obliging 'bystanders' to report abuse
- Right of victims to bring a representative of their choice (for example a DWO representative) to police stations, investigations and court hearings, to free legal services and to fast-track their case
- Right of victims to special court arrangements. For example: Skipping mediation and conciliation services and fast-tracking their case to gender-responsive tribunals or courts; using video testimony to avoid confrontation with the perpetrator, allowing migrant domestic workers to testify from their home country, or offering alternative dispute resolution proceedings in addition to criminal proceedings
- Waiving of fees for any services by the public authorities
- Compensation and income support during recovery
- Right of victims to work and help to find a job.

**4. Priority measures** to ensure immediate **access to** quality **health services** are:

- Medical examination to collect evidence by medical professionals only
- Always combine medical examination with medical care and treatment
- Examination and care must be free of charge.

**5. Priority measures** to ensure that **laws are applied** and **justice is provided in a timely manner**:

- Adequate and clear rules and legal proceedings exist and law enforcers are trained and held accountable to handle investigations and court proceedings
- Police, prosecutors, labor inspectors, judges and other relevant staff do not have the power to apply different rules to different people or set their own rules
- All relevant staff should treat violence victims and survivors with respect
- Violence & harassment statistics are collected and disseminated
- Independent oversight mechanisms exist and are used to oversee law enforcement agencies.

**6. Priority measures** to ensure that **trials are fair** and **free of discrimination**:

- The rights of the victim and the accused must be equally protected, and the unequal labor and power relationship between domestic workers and their employers must be recognized
- Judges are responsible and should be held accountable for ensuring a safe and respectful courtroom environment and fair court proceedings and judgments
- Judges should be screened for gender and other biases and be trained and certified in handling violence & harassment cases, including gender-based violence & harassment
- Sanctions on convicted perpetrators should be proportionate to the crime and take into account the priorities of victims which are: to stop the violence, to be safe, to receive compensation and other services, and to be able to rebuild their lives without threat of further violence.

<b>STEP 5</b>	<b>KEY MESSAGES</b>	<b>CONCLUSION</b>	<b>5 MINUTES</b>
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- Conclude by asking the group to give a big applause and agree together on priorities to make the law better work for us. For example, select 3 to 5 from the below list:
  - We need better and gender-responsive laws to protect us from violence & harassment
  - We must have the right to bring a representative of our choice to the police and to the courts
  - We need gender-responsive police and other law enforcers
  - We need to be able to report safely
  - We need access to safe medical examination and health care
  - We need access to remedies and support services free of charge
  - We have the right to a fair trial
  - We need to have the right to work during and after court cases.



## HANDOUT : CHECKLIST

# Justice for violence against domestic workers<sup>14</sup>

In each working group: For the law(s) assigned to your group, go through the 5 questions below and discuss:

- **What works?**
- **What does not work?**
- **What changes are needed?**

The checklist has 5 main questions that need to be answered for each law in each national or local situation:

- 1. Do the existing laws apply to domestic workers? Are they adequate to protect domestic workers from violence & harassment?**
- 2. Can violence victims report safely? Can they access support, services and remedies?**
- 3. Are medical examinations and care appropriate and adequate?**
- 4. Is investigation of complaints of violence & harassment professional and thorough?**
- 5. Are complaint and dispute resolution procedures, hearings and trials fair, competent and efficient?**

Discuss and write the main findings of your group on a flipchart paper.

Select a reporter to share the main points of your group discussion in the big group.

<sup>14</sup> Adapted from Amnesty International, [Six-point checklist on justice for violence against women](#), London, 2010





## Info note: Working in our own country – How do we make the laws work for us!<sup>15</sup>

The checklist on justice for violence & harassment against domestic workers can help us to find out:

- **What works** (good practices)
- **What does not work** (problems, obstacles, gaps)
- **What changes are needed** (priorities for action).

The checklist is based on international human and workers' rights law and standards, including the international labor standards on domestic workers, C189, and on violence & harassment, C190 and R206. It is organized following the steps that victims need to take to report a crime and seek redress for violence & harassment through the justice system. The strength of the rule of law and legal systems, laws and procedures vary in different parts of the world. Therefore, the specific problems and DWO priorities for solving them will differ from one place to another.

### 1. Do the existing laws apply to domestic workers? Are they adequate to protect domestic workers from violence & harassment?

Domestic worker violence victims have no or little access to justice in most Asian countries: Most countries have **criminal or penal codes** to protect all human beings from physical and sexual assault, including sexual harassment and blackmail, but it is **difficult for domestic workers to report and access justice** under these laws. Other laws may also apply, like laws prohibiting domestic violence or sexual harassment. These may, but often do not, or only partially apply to domestic workers. Labor laws also generally do not protect domestic workers from violence & harassment. Law enforcement agencies do not always effectively implement existing criminal or other laws, because of gender bias and other prejudices against women and domestic workers.

**Domestic work** is known as a high-risk occupation for violence & harassment. But, so far, domestic workers are not effectively protected from such abuses under the law in most Asian countries, and they encounter many difficulties to access justice. However, when they are courageous, and with the support of DWOs or other organizations, they have successfully filed complaints and obtained justice against violence & harassment at the courts or labor tribunals.

Efforts should be made to ensure that **criminal, labor, equality and non-discrimination, domestic violence, OSH and sexual harassment laws apply to domestic workers**. C189 confirms that domestic workers should be considered workers under the law and are entitled to labor law protection. C190 confirms the right of all workers to a workplace free from violence & harassment, including gender-based violence & harassment. This means domestic workers and their DWOs can use these international labor standards together to step up advocacy for better legal protection against violence & harassment.

All forms of violence & harassment against domestic workers must be **effectively outlawed**. **Priorities for law reform** are:

- Consultation with domestic workers and DWOs on legal reform
- Application of laws to domestic workers
- Clear definitions with a broad scope to protect groups that are especially exposed to violence & harassment, based on international conventions such as C189 and C190
- Specific prohibition of discrimination against violence victims and survivors seeking justice and of further violations of their rights
- Strong, effective and fair legal rules and enforcement of all laws (criminal, labor, equality and non-discrimination, OSH, sexual harassment and domestic violence)
- Widespread public information campaign to raise awareness of rights of domestic workers and obligations of employers of domestic workers to not harass or commit acts of violence.

<sup>15</sup> Main sources: ILO, [Making decent work a reality for domestic workers, Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 \(No. 189\)](#), Geneva, 2021; ILO, [Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206](#), Geneva, 2021; Amnesty International, [Six-point checklist on justice for violence against women](#), London, 2010; ILO, [C190: Violence & harassment Convention, 2019; R206: Violence & harassment Recommendation, 2019; Convention No. 190 and Recommendations 206 at a glance](#), Geneva, 2020; ILO, [Brief No. 2: Sexual harassment in the world of work](#), Geneva, 2020; UN Women and ILO: [Handbook: Addressing violence & harassment against women in the world of work](#), New York and Geneva, 2019; Htun, M and Jensenius, F.R., [Fighting Violence Against Women: Laws, Norms & Challenges Ahead](#), in American Academy of Arts & Sciences, 2020

## Consultation with domestic workers and DWOs on legal reform

- Domestic workers and their DWOs need to be **involved and consulted in the law reform process**. This will result in better laws to protect domestic workers from violence & harassment, prevent such abuses from happening to them, and get compensation for damages.
- New law and law reform need to be based on **facts**. The public authorities should carry out **workplace hazards and risk assessments with the participation of domestic workers, their DWOs**, their employers and their representatives, and develop a workplace policy with practical measures to prevent and control these hazards and risks. (see also C190, Articles 8 and 9(c)), and R 206, para. 8).

## Application of laws to domestic workers

- **Criminal** laws that are intended to cover all individuals should in practice protect the most those in the most vulnerable situations.
- **Labor** laws should apply to domestic workers, whether they live in the house of the employer or not. They should provide specific protection against violence, harassment and discrimination that occurs as a result of the employment. Household employers should be obliged to provide safe work and prevent violence & harassment against domestic workers.
- **(Sexual) harassment laws** should apply to all domestic workers whether they live in the house of the employer or not. They should not only protect women and children but people of all sexes, genders and ages.
- **Occupational safety and health laws** should apply to all domestic workers whether they reside in the house of the employer or not.
- **Equality and non-discrimination laws** need to ensure that domestic workers are protected from violence & harassment as women and as workers who often suffer from many forms of discrimination at the same time.
- **Domestic violence** laws should cover domestic workers, whether they live in the house of the employer or not and protect them from all forms of violence & harassment by all members related to that household.

## Need for clear definitions with a broad scope

- Legal definitions of violence & harassment are often not clear, especially when they allow abusers to argue that they never intended any harm. C190 defines violence & harassment as: “unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that **aim at, result in, or are likely to result in** physical, psychological, sexual or economic harm, and includes gender-based violence & harassment, including sexual harassment” (Article 4). This means that it is NOT the intent of the perpetrator **but the actual or likely harm to the victim that counts** in deciding on what is right and what is wrong. In other words, perpetrators do not need to have a deliberate intent to harm the victim, it is the victim who determines the seriousness of the act. Note also, that C190 recognizes all types of harm: **physical, psychological, sexual and economic**.
- Criminal, civil, labor and equality laws should define sexual violence & harassment as **a crime and offense against** the physical and mental **well-being of the victim**, and NOT as a crime against morality, honor or decency. Also, ‘male passion’ or ‘victim provocation’ are NOT valid justifications for violence or harassment. This is, because **victim blaming is common in patriarchal societies**, and in **male-dominated law and order agencies** and it is very difficult for victims to prove offenses against honor or decency.
- Define violence & harassment as **unacceptable behavior and practices** or threats thereof, **that are unwanted** by the victims. Prohibit physical, sexual, psychological and economic violence & harassment in domestic work, including assault, blackmail (you can only keep your job if you provide extra services) and the creation of a hostile work environment.
- Laws or legal provisions against violence & harassment should **protect people of all genders and ages** equally, and irrespective of their ethnicity, race, class, caste, nationality, religion, political opinion, health condition, or any other status. C190 covers all workers in the formal and informal economy in all work-related situations (Articles 2 and 3).

- More legal protection against violence & harassment is required for children and youth under 18 years old. In many countries, law reform is needed to prohibit domestic work for minors under 18 years because it is **hazardous** to them and **interferes with their education**. See also **Unit 7.4** Modern slavery and human trafficking in domestic work.
- **Husbands** and **intimate partners** should **not** be **excluded from any anti-violence & harassment laws**. Marital rape or intimate partner rape are not yet criminalized in many Asian countries because of the outdated patriarchal principles that sex is an obligation of marriage and that women must do what their husbands say.
- Similarly, laws should **not exempt rapists** from criminal penalties if they **marry their victims**.
- There should also be **NO** assumption in law or in practice that a partner, parent, spouse, or employer has the **right to ‘discipline’ a woman** or girl through the threat of or use of violence or harassment.

Specific **prohibition of discrimination** against violence survivors seeking justice and **of further violations** of their rights:

- **Equal protection before the law.** All violence victims and survivors should be equally protected in laws against violence without discrimination on the basis of their sex or gender, age, race, ethnicity, political opinion, religion, marital status, social status, caste or descent, migration status, sexual orientation, gender identity or appearance (for example, the way a woman is dressed), or because of the job they have.
- **Right to information and pursuit of justice.** All victims<sup>16</sup> of violence & harassment have a right to know what legal protections are available under the different laws and they should be given the opportunity to pursue all legal measures of redress (remedy or compensation for a wrong). For example, violence victims should be able to sue for compensation of damages under the civil and labor laws, seek punishment of the accused through the criminal courts and stop the perpetrator from committing further abuse through restraining orders.
- **Trust women victims and survivors.** There must be no legal provisions that undermine or devalue the testimony of women or girls so long as it is clear that they are competent to testify. There should not be an unreasonable demand for witnesses, because often there are no other witnesses other than the victim and the accused. The testimony of women victims is often put in doubt, because of:
  - **Gender stereotypes:** Women’s evidence is thought of as unreliable because they are weak or emotional, or they exaggerate or may easily lie.
  - **Stereotypes about domestic workers:** Some employers and law enforcers hold that domestic workers are supposed to obey their employers and serve all their needs.
  - **Victim blaming:** Common arguments to blame women are about the way they are dressed, their location or their character or morals.
- **Legal protection against victimization, stigmatization<sup>17</sup> and retaliation** is needed for domestic worker violence victims and survivors, and the people who help them:
  - For victims, witnesses, whistleblowers and complainants to feel safe, it is **essential to ensure anonymity and confidentiality, and prevent victimization or retaliation** from their employers or co-workers (C190, Article 10(b)), and from law enforcement or other organizations.
  - A victim who reports violence or harassment **must not run the risk of being charged** with a crime such as adultery, prostitution, fornication, homosexuality, being or working in a country irregularly and so on. She must also not run the risk of losing custody of her children (for example, in cases of marital rape).
- **Strengthen equality and non-discrimination agencies.** The mandate of national bodies responsible for equality and non-discrimination and other relevant bodies such as labor inspection and occupational safety and health should cover violence & harassment in the world of work (see also R206, para. 21). These bodies should not only act as advisory bodies but also have the authority and institutional power to issue binding orders to government units to act.<sup>18</sup>

16 Victims of violence & harassment who file a complaint are known as ‘complainants’ in criminal courts and as ‘claimants’ in labor tribunals. The accused wrongdoers or perpetrators are known as ‘defendants’ in criminal courts and as ‘respondents’ in labor tribunals.

17 **Victimization** happens when a violence victim, a witness or a whistleblower become a target of unjust, aggressive or cruel actions by a powerful person or institution with a view to harm, oppress or destroy them. **Stigmatization** happens when people with power treat a person or group of persons unfairly by publicly disapproving of them, and shaming and discrediting them.

18 See the GKS, NDWM and FADWU case stories in IDWF, [Gender-based violence & harassment against domestic workers: Case stories from Asia](#), Hong Kong, 2020

## Strong, effective and fair legal rules and enforcement

- Perpetrators of all acts of violence & harassment should be **held accountable** and the **punishment** of a **crime** should be in **proportion** to the severity of the act or harm done. It is of vital importance that the **violence & harassment stops**: Perpetrators should be prevented from further access to and stalking of the victim, and any possible future victims. For example, abusive employers or recruitment agents should be blacklisted to prevent them from employing other domestic workers. Perpetrators should be sanctioned, provide compensation to victims, and apologize to them.
- The **'burden of proof'** required from violence victims, especially women subjected to sexual violence & harassment, **should be shifted from the victim to the accused** in all legal proceedings other than criminal proceedings (R206, para. 16(c)).
- Workers should have the right, in law and in practice, to **remove themselves from a work situation** which they have **reasonable justification** to believe presents an imminent and **serious danger** to life, health and safety, due to violence & harassment without suffering retaliation or other undue consequences (R206, para. 20(g)).

## 2. Can violence victims report safely? Can they access support, services and remedies?

In many countries it is **not safe for domestic worker victims to report**. There are difficulties in many countries to guarantee that police officers, labor inspectors, prosecutors, judges or staff from other dispute settlement agencies (like labor tribunals) work professionally with women victims of violence & harassment who are from the 'common people' or lower-income classes. This is even more urgent, when these public service providers handle cases of victims of sexual or gender-based violence & harassment. Domestic worker victims and survivors, therefore, need protection from discrimination and victimization by law enforcement agencies. They often also need protection from petty criminals or gangsters who hang around police stations and offer victims 'help' with filling forms for money.

States must take measures to ensure that all violence victims and survivors have **access to safe and timely avenues** to report acts of violence & harassment and **receive justice** under the relevant criminal, equality, labor or other civil justice systems. C190 provides that all victims of gender-based violence & harassment in the world of work should have effective access to gender-responsive, safe and effective (i) complaint and dispute resolution mechanisms, courts or tribunals and (ii) support, services and remedies. (Article 10 (b)(e), see also R201, para. 17.)

**Priority measures** to make complaint and dispute resolution mechanisms, hearings, courts or tribunals or other procedures, gender-responsive, safe and effective:

- **Gender training** for all law enforcers who may handle violence & harassment cases
- **Prohibition** for law enforcers of **unprofessional conduct, unfair treatment and victimization** towards those who report or help to report a violence crime
- **Women-only and gender-responsive** police and court units for gender-based violence victims if it is not possible to hold all law enforcement staff accountable
- **Independent bodies** to handle complaints of unlawful treatment of violence victims by enforcement authorities
- Proper **registration** of cases.

**Priority measures** to provide gender-responsive, safe and effective support, services and remedies to violence victims:

- **24-hour hotlines, information and legal aid, emergency services and care** at safe spaces or shelters as needed
- Obliging **'bystanders' to report abuse** and **early-warning systems** in communities
- **Right of victims** to (i) bring a **representative** of their choice to police stations, investigations and court hearings, and to **legal services free of charge**, and (ii) skip mediation and conciliation services and to **fast-track** their case to gender-responsive tribunals or courts
- **Waiving of any fees** for services by the public authorities
- **Compensation and income support** during recovery
- **Right to work** and help to find a job.

States should provide violence victims with access to justice through gender-responsive law enforcement agencies. **Priority measures for gender-responsive, safe, timely and effective** complaint and dispute resolution mechanisms, courts and tribunals are:

- Victims who file a complaint should be **interviewed in a safe and private environment**. The police or other investigation officers, like labor inspectors, should immediately check if the complainant is at risk of further violence and, if so, ensure that the victim receives appropriate protection during any ongoing investigation (for example, by forbidding a perpetrator from approaching or stalking a complainant).
- The **police should not do medical examinations** of violence victims. Only professional medical staff should do medical investigations.
- The **police should not hold violence victims overnight** at the police station for ‘their protection’ because the victim may be further harassed and violated. However, sometimes the local police station is the only place where a victim is safe. In such cases the police should contact a hospital, women’s crisis centre, DWO or other support organization so the victim can move to a safe shelter soonest.
- Where gender-responsive law enforcement services are not possible through the regular agencies, **specialized** police, court or complaint and dispute resolution **units** staffed **with trained women officers** should be set up to investigate and prosecute violence & harassment cases<sup>19</sup> (see also R206, para 23(b)).
- States must ensure that any police and other law enforcement officers in **NO way intimidate, threaten or humiliate** victims of violence & harassment, when they file their complaint or during the investigation, or court or tribunal cases. Special measures are needed to protect complainants, victims, witnesses and whistle blowers with protection against **victimization** and retaliation by law enforcement agencies.
- Ways of improving the professional conduct of law enforcers are:
  - **Obligatory, gender-responsive training** for police and other law enforcement officers (as part of their basic training and as ongoing professional training) in interviewing and supporting victims who have been subjected to violence and in dealing with sexual violence victims in a gender-responsive manner. The training should be provided by mixed women and men training teams with proven experience in promoting gender equality and non-discrimination and changing patriarchal mindsets in male-dominated organizations (otherwise the training may lead to or reinforce gender stereotypes that harm women).
  - **Prohibition** against dismissive, discriminatory, aggressive, unduly skeptical or **unprofessional attitudes** by law enforcement agencies through enforceable codes of conduct or other ways of monitoring staff performance. These should include provisions for holding officers accountable in cases where survivors have been mistreated (bribery, sexual harassment or other violence).
  - The police and other law enforcers should know about and be **able to refer** victims to other appropriate services such as shelters, counseling and legal services.
- All cases must be **registered** immediately and full information about the progress and regular updates provided to the complainant and the victim’s advocate or representative. The police and the courts should issue a **unique case number** to facilitate tracking, and to prevent losing the relevant police, health or court case records.
- Domestic worker victims who are in any form of **state custody** or other institutional settings must have a **secure means of making a complaint** to an appropriate entity outside the institution. In no case should the investigation be handled internally. For example, prison or immigration detention officials should not investigate allegations of abuse by prison staff but should refer such cases to independent officers who specialize in investigating violence & harassment.

**Priority support, services and remedies** for domestic worker victims of violence are:

- Basic services such as 24-hour **publicly-funded hotlines** for victims of violence & harassment, and **easily accessible and clear complaint mechanisms** still need to be established in most countries. Telephone numbers of support services should be made widely available and be published widely in public places.
- **‘Bystanders’**, (other members or staff in employer households, neighbors, and especially staff of health, law enforcement or immigration agencies) should have a **legal obligation to report abuse**. This will help to change collective ignorance and the culture of silence around violence & harassment of domestic workers.

<sup>19</sup> See the GKS and the NDWM case stories in IDWF, [Gender-based violence & harassment against domestic workers: Case stories from Asia](#), Hong Kong, 2020



- All domestic worker victims need access to **information and legal aid in safe spaces**. Migrant domestic workers often need interpretation services in languages they understand. DWOs often provide such services but find it difficult to find adequate funding to provide this support.
- Victims of gender-based violence & harassment need **emergency services, medical care** and treatment, and psychological support. They also need **safe shelters or crisis centres**, if they are at risk of further violence & harassment or if they are severely traumatized.
- Domestic worker victims and survivors should receive help from trustworthy organizations, like DWOs, legal aid or other organizations to file complaints. Because of the highly unequal power relations that often exist, they should always have the right to:
  - **Bring a representative of their choice** to any meetings or hearings with the police, court officials or other investigators, conciliators or mediators.
  - Skip mediation and conciliation services and to **fast-track their case** to gender-responsive tribunals or courts.
  - Be provided with **free services** by the public law enforcement authorities
- Violence victims should have access to **compensation and income support** to enable them to recover from injuries or illnesses that result in incapacity to work. Violence victims should also have the **right to work** and get support **to find another job** as soon as they are capable and want to work.
- Victims of gender-based violence & harassment should have effective access to **gender-responsive, safe and effective complaint and dispute resolution mechanisms, support services and remedies** (C190, Article 10 (e)). R206 provides guidance on what these remedies should include:
  - The right to resign with compensation
  - Reinstatement: Provision of another job
  - Compensation for damages
  - Measures to ensure that certain conduct is stopped or that policies or practices are changed
  - Legal fees and costs (para. 14).

### 3. Are medical examinations and care appropriate and adequate?

Problems exist in many countries: Medical evidence (proof) is often **not or not properly collected** and may further traumatize the victim. In some countries, the results are often tampered with due to bribery. It is usually **very difficult** for domestic worker victims to receive proper medical care and treatment.

States must take measures to ensure that:

- Collection and processing of **medical evidence must be done professionally** and not further traumatize the victim
- **Medical examinations** must always be **combined with medical care** and treatment
- Evidence collection and medical care must be **free of charge** and not exclude victims because of cost or their location.

Priority measures to provide **victims** of physical and sexual assault with **immediate access to appropriate health services** are:

- **Medical tests** to collect evidence of a crime (finger, blood or DNA tests) should be done **by trained medical professionals**<sup>20</sup> who should take notes and collect samples in a way that ensures that the evidence can be used in criminal trials. The ‘two-finger’ test (physical examination and further violation of the vagina) is outdated and should be abolished everywhere.
- Medical professionals attending to violence survivors after an act of sexual or gender-based violence should receive **gender-responsive training** to deal with survivors’ needs professionally and supportively, and treat them confidentially and without discrimination.
- Medical professionals should be trained **to write the medical facts** in the medical report in such a way that the police and prosecuting authorities can use it in taking actions against perpetrators.

<sup>20</sup> See the World Health Organization (WHO) [Responding to intimate partner violence and sexual violence against women](#), WHO clinical and policy guidelines, 2013.

- The criminal justice system should provide that victims reporting physical and sexual assault have to do a **medical examination only once** and receive **medical treatment at the same time**. The separation of treatment from evidence collection violates the right to health.
- Medical examinations and treatment should be **free of charge**, and any user fees should be waived. Violence victims should not be charged for collection of samples (such as the cost of 'rape kits') or for documenting the test results in a medical report. Financial assistance for travel costs should be made available.
- Examination should take place **as soon as possible** preferably within 72 hours. If a victim is unable to access adequate health services in a timely manner, that should in no way be used to undermine the complaint.
- Victims seeking health services after an act of sexual or gender-based violence should be able to see a **medical practitioner of their choice** (preferably a woman).
- Health services should provide a woman or girl who has been raped with **appropriate medical care**, such as emergency contraception and medicines to prevent pregnancy or infections, gynaecological and other medical care for injuries, and psychological support. Medical treatment including abortion should be available to women and girls who have become pregnant as a result of rape or incest.
- Health service providers should be able to **refer victims** to other appropriate services such as shelters, counseling and legal services.

#### 4. Is investigation of complaints of violence & harassment professional and thorough?

Many crimes and offenses are **not properly investigated** and only a few domestic worker violence victims **have access to professional, efficient, safe and thorough complaint mechanisms and services**. Problems exist because law enforcers (police, prosecutors, judges, labor inspectors and other relevant staff in courts and tribunals) are often biased against domestic workers who are violence victims. These law enforcers may take matters in their own hands rather than following the rule of law and proper legal procedures.

**States** should ensure that **justice is provided** according to the law in a **timely manner**:

- **Adequate and clear rules and legal proceedings** exist, and **law enforcers** are **trained** and held **accountable** to handle investigations and court proceedings.
- Police, prosecutors, judges, labor inspectors, and other relevant staff in courts and tribunals should **not** have the power to **apply different rules to different people** or set their own rules.
- All relevant staff should treat violence victims and survivors with **respect**.
- Violence & harassment **statistics** are collected and disseminated.
- **Independent oversight** mechanisms exist and are used to control law enforcement agencies such as Ombudsperson Offices, Human Rights Commissions or Women's, Children's or Ethnic Minority Commissions.

**Priority measures** to improve investigation procedures and practices are:

- In many countries **accessible and safe complaint and investigation mechanisms** need to be established for domestic workers.
- The investigating authorities should **protect the privacy** of complainants, victims, witnesses and whistleblowers **and confidentiality**, and ensure that requirements for privacy and confidentiality are not misused (C190, 10(c)). They should also **protect the identity** of the survivor if that is what the survivor wants.
- The police or other investigation officers, like the labor inspectorate, must **not pre-judge the evidence** before the investigation has even started. For example, by ridiculing or disbelieving the victim's version or by informally encouraging them to drop the complaint 'for their own good'.
- The police or other law enforcers should **not mediate agreements** between perpetrators and victims. They should not facilitate informal payment of compensation and they should not encourage resolution through a parallel legal system such as a community, tribal or religious court.

- There should be **clear criteria** defining when the police must refer a case:
  - to the prosecution in the criminal justice system (the legal party responsible for presenting the case in a criminal trial against an individual accused of breaking the law), or
  - to other support, medical or legal aid or other remedial services in case of other law violations.
- When the prosecution does not take further action on a case, it must be obligatory to **record the reasons and inform the victim**. Its reasons and decision should be **available for appeal** to the relevant higher legal authorities.
- **Statistics** on the results of investigations and court cases should be **gathered and published**. They should provide information on cases including factors such as the sex, race and age of victims.

**Prosecutors** in the criminal systems **must initiate proceedings against suspects where ‘probable cause’** (reasonable basis for believing that a crime may have been committed) exists. Other public officials should act carefully and thoroughly on complaints of domestic workers to ensure compliance of labour, OSH and equality and non-discrimination laws:

- If prosecutors decide to discontinue a case, they should record the reasons for this and promptly inform the complainant. They should **NOT minimize charges or refuse to charge when probable cause exists and should NOT be allowed to dismiss cases** in which there is sufficient evidence to proceed and if the complainant wishes to go forward.
- The investigation and prosecution must be carried out in compliance with the principles of **reasonable care** (known as ‘due diligence’: the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do in particular circumstances).
- The lawyers, investigators and clerks in the office of the prosecutor, a labor tribunal or equality commission or other relevant public offices should receive **gender and equality training** in dealing with victims of sexual or gender-based violence, for example on the appropriate use of medical evidence, and use of expert evidence, such as psychological or psychiatric reports.
- Prosecutors and other law enforcers should ensure that victims, witnesses and whistle blowers are properly protected from further violence through witness protection measures, irrespective of whether the threat comes from the alleged perpetrator, or others, including relatives of the complainant who may be acting in the name of family ‘honor’. Under **NO** circumstances should protection take the form of ‘protective’ custody in a jail or prison.
- Prosecutors and other public officials bringing cases for violations of other laws should preserve the **dignity of victims and witnesses** in the courtroom by ensuring that defense lawyers or other investigators cross-examine them professionally, without using bullying tactics to undermine their credibility; and by ensuring that they can use equipment such as closed-circuit cameras to give their evidence, or can give their testimony in a closed court room.
- The office of the prosecutor and other public offices should routinely **collect and publish statistics** on the resolution of cases referred to its office. It should provide information on cases broken down by the sex, race and age of the victim, and on cases that have not been pursued.
- There should be **independent oversight** of the work of the prosecution and other public offices bringing cases for violations of other laws to assess how cases of violence & harassment, especially sexual or gender-based violence, are being managed.

## 5. Are complaint and dispute resolution mechanisms, hearings and trials fair, competent and efficient?

These are not always conducted in a fair and professional manner when the complainant is a domestic worker violence victim, due to gender or other biases of judges.

States must ensure that **trials are fair and free of discrimination**:

- The **rights of the victim and the accused** must be **equally protected**.
- **Judges** are responsible and should be held **accountable** for ensuring a **safe and respectful** courtroom environment and **fair court or tribunal proceedings and judgments**.
- Judges should be **screened for gender and other biases** and be trained and certified in handling violence & harassment cases, including gender-based violence & harassment.
- **Sanctions** on convicted perpetrators should be **proportionate to the crime** and take into account the priorities of victims to stop the violence, to be safe, to receive compensation and other services, and to be able to work, get help to find another job and rebuild their lives without threat of further violence.

**Priority measures** are:

- Judges should be responsible for **maintaining the privacy** of the victim’s identity if the victim so chooses.
- Judges, lawyers and clerks should be **trained** in understanding crimes of sexual and gender-based violence, and learn how to handle cases of **sexual and gender-based violence**.
- Judges should be held **responsible** for maintaining a **safe and respectful environment** in the courtroom, in particular ensuring that witnesses are protected from abusive or demeaning treatment by the defence. Judges must give clear directions on the law to jurors (member of a jury in the Anglo common law legal system), as needed.
- Judges should **not allow evidence** about the previous **personal history** of a complainant to be raised in court, except where such evidence is necessary to avoid a miscarriage of justice, for example, if a complainant says she had not met the accused before, when in fact they had been living together.
- If jury trials are routinely used in cases of sexual violence, jurors should be **screened for any gender, racial or other bias** against women or victims of gender-based violence. They should be drawn from diverse backgrounds, sworn to keep the details of the case confidential and properly guided on the law by the judge.
- **Sentences** and other sanctions imposed on perpetrators found guilty of violence & harassment should be **proportionate to the crime** and **take into account the priorities of victims**:
  - Violence victims above all **want the violence & harassment to stop**. They want to be safe and provided with appropriate compensation and services so that they can regain their health, and pick up their life and work.
  - The **death penalty** is **not appropriate** or acceptable. Actual death penalties or discussions in countries about introducing the death penalty for rapists usually serve propaganda purposes to quiet down public outrage about a murder or rape case in order to avoid adequate law reform for the protection of violence victims.
- Violence survivors should be **informed** when their attackers are to be released or paroled from prison; and updated **safety assessments** should be carried out.
- Perpetrators convicted of crimes of violence & harassment should be given access to appropriate **rehabilitation and counseling** programs **to prevent** violence & harassment from occurring again; and such programs should be monitored for effectiveness.





## 7.3 : Working in other countries: How can we make the laws work for us!



120 minutes



### Tip for Trainers

In **Unit 7.2** we looked at the challenges of domestic workers to access justice against violence & harassment in their own country, and we identified the changes that are needed: Better and fair laws, law enforcement and trials; access to health care and income during recovery; the right to work during court proceedings; and the right to organize in DWOs to make these changes happen.

The above also applies to women migrant domestic workers, but they face many other challenges too. In this Unit we focus on the additional risks of violence & harassment of international women migrants who cross national borders for domestic work, and what changes are needed to protect them from violence & harassment. This unit also applies to women migrant domestic workers in India who cross state borders to work, because laws, policies and regulations on migrant domestic work differ a lot between Indian states.

	Aims	<ul style="list-style-type: none"> <li>To review how laws, policies and regulations protect women from violence &amp; harassment in migrant domestic work</li> <li>To develop DWO priorities for legal reform, advocacy and actions against violence &amp; harassment in migrant domestic work</li> </ul>
	Participants	<ul style="list-style-type: none"> <li>Domestic worker leaders</li> <li>Migrant and local domestic workers</li> </ul>
	Room Arrangements	<ul style="list-style-type: none"> <li>Step 1: Big open space for the group to move around</li> <li>Other steps: Seating in small groups and in the big group</li> </ul>
	Materials	<ul style="list-style-type: none"> <li>Computer and projector, flipcharts</li> <li>Steps 3 and 4: Flipcharts and markers, flipchart stands, big black board or wall space</li> </ul>
	Training Aids	<ul style="list-style-type: none"> <li>Slide show: Working in other countries: How can we make the laws work for us!</li> <li>Handout: Group work on laws, policies and rules in migrant domestic work</li> <li>Info note: Working in other countries: How can we make the laws work for us!</li> </ul>



### Session Plan Steps

1.	Noodle knots	Energizer	10 minutes
2.	Laws, policies and regulations	Small group work	35 minutes
3.	Laws, policies and regulations	Reporting in big group	40 minutes
4.	Agenda for change	Discussion in big group	30 minutes
5.	Key messages	Conclusion	5 minutes





## Preparation

- Read the handout and familiarize yourself with the content. Adapt questions for work in small groups as needed to fit the level and interest of participants.
- For step 1: If you have a mixed group, make 2 circles, one for the women and one for the men, as needed.
- For steps 2-4: Prepare copies of the handout or a flipchart and slide presentation with the main points for use.
- Prepare photocopies of the Info note, one each for every participant, for distribution after the session.

## SESSION PLAN

STEP 1	NOODLE KNOTS	ENERGIZER	10 MINUTES
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- Link the session to the previous session and introduce the aims of this session: We will **discuss how laws, policies and regulations protect women migrant domestic workers** from violence & harassment in practice, and **what changes are needed** to improve them.
- Say: We start with an energizer Noodle Knots and it goes like this:
  - Form circles of 8-14 people each.
  - Stand close together, shoulder-to-shoulder, and put your arms out in front of you.
  - Now join your hands with the hand of two different people on the opposite side of the circle. Don't take the hand of someone standing beside you. **START!**
  - When the groups have formed the knots, say: You have now created noodle knots. Your challenge is to untangle the noodles without letting go of the hands you are holding. Try to untangle your knot but keep holding hands. **START!**
- The members of the group will start to duck under or step over the linked arms of others. Eventually each group should end up in a circle, or sometimes 2 circles, and it may take some time. Sometimes a knot cannot be unraveled. In that case, the trainer can 'cut' one link and then quickly reconnect it again after freeing it from the other hands and bodies that were in the way, and then let the group unravel the rest until they can form a circle, too.
- Congratulate everyone with a big applause and move to the next step.<sup>21</sup>

STEP 2	LAWS, POLICIES AND REGULATIONS	SMALL GROUP WORK	35 MINUTES
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- Explain: Migrant domestic workers face **risks of violence & harassment at all stages of the migration process:**
  - Before departure, when deciding and preparing to migrate
  - During transit, travelling by plane or other transport or in transit countries
  - Upon arrival and in the destination country
  - Upon return to their home country.

<sup>21</sup> Maheshvarananda, Dada, [Cooperative games that teach solidarity](https://www.ru.org/index.php/personal-development/197-cooperative-games-that-teach-solidarity), <https://www.ru.org/index.php/personal-development/197-cooperative-games-that-teach-solidarity>

- Introduce the work in small groups. Distribute the handout and explain the questions for discussion:
  1. **What types of discrimination increase risks of women migrant domestic workers to experience violence & harassment?**
  2. **What laws, policies, and rules increase the risk of violence & harassment against women migrant domestic workers in practice, and why?**
  3. **What changes in laws, policies and practices are needed to effectively protect women migrant domestic workers from violence & harassment?**
- Divide participants in 3 or 6 small groups and ask them to start their discussions. Distribute flipcharts and markers and remind them to finish 5 minutes before the time is up.

STEP 3	LAWS, POLICIES AND REGULATIONS	REPORTING IN BIG GROUP	40 MINUTES
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- Ask the groups to report back. In case of 3 working groups, invite one group to report on point 1, and ask the other groups to add information, then invite another group to report on point 2, with the other groups adding information and so on. In case of 6 working groups, invite 2 groups to answer point 1, and so on. The responses to the questions may vary a lot depending on their knowledge and experience. Stimulate discussion and use the Info note to add points if these are relevant for the group:
  1. **Women in migrant domestic work are at high risk** of exploitation, violence & harassment, because they:
    - Face **gender bias and discrimination** because they are women in a women’s job
    - Face **xenophobia, racism and sexism** because they are foreigners
    - **Are dependent on and tied to their employers**, even if these are abusive
    - Often are **undocumented workers**, especially where it is easy to cross borders without papers.
  2. Biased laws, policies and regulations often increase the risk of violence & harassment against women migrant domestic workers in practice, because:
    - **Gender norms** in their own and destination countries lead to laws, policies and regulations that **limit women’s rights and access** to accurate information, decision-making power and justice in practice.
    - Laws, policies, regulations and practices are misguided because they are **not rights-based and not gender-responsive**. Under the guise of protecting women, they restrict women migrants’ freedom of movement and tie them to their employers and/or recruitment agents. These measures are **patriarchal, based on gender stereotypes and characterized by control**: by men over women, and by the state and organizations over the individual. They deny women the right to decision-making, autonomy and agency to choose their own destiny.
    - There is a **lack of enforceable legislation** in countries of destination and origin. There are many **contradictory and non-transparent measures and malpractices** because of lack of harmonization and coordinated action both between migrant sending and receiving countries, and between different ministries within countries (foreign affairs, security, immigration, interior, labor or others). All of which have different, competing or conflicting, economic and other interests.
    - As a result, women migrant domestic workers often **don’t have access to regular migration channels**. They are not allowed to migrate, or the costs are high and the procedures complicated. As a result, they often use irregular migration channels and this leads to high risks of violence & harassment.
  3. Conclude with the group: **Better rights-based and gender-responsive laws, policies and regulations** are needed to effectively protect women migrant domestic workers from violence & harassment:
    - The **best protection** against violence & harassment for women migrant workers is **their empowerment**.
    - **Enforceable laws** need to be developed **with domestic workers and DWOs** that are based on **international human, women’s and workers’ rights law**.

STEP 4	AGENDA FOR CHANGE	DISCUSSION IN BIG GROUP	30 MINUTES
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- Start a more in-depth discussion using the Info note to highlight keypoints with a focus on the changes that are needed **better protect women in migrant domestic work:**
  1. **Consult** with migrant domestic workers and their DWOs when developing laws and policies to ensure effective protection of migrant domestic workers in practice.
  2. **Extend protection** against violence & harassment to all domestic workers in **criminal, labor, anti-discrimination, domestic violence and other relevant laws, policies and regulations.**
  3. **Lift harmful and discriminatory restrictions** in migrant domestic work, including restrictions to freedom of movement that lead to an increase in violence & harassment, in line with international human, workers' and women's rights.
  4. Require countries of destination and origin to **ensure migrant domestic workers' safety** by adopting **enforceable gender-responsive laws** against violence & harassment in domestic work and ensure access to justice for violence victims and survivors.
  5. **Regulate recruitment agencies and fees**, and provide for accessible and independent complaint mechanisms for domestic workers and oversight of recruitment agencies.
  6. **Outlaw violations of fundamental rights of women in domestic work.**
  7. **Develop or revise freedom of association laws** so that women and men in migrant domestic work can freely join, form and lead organizations of their own choosing.

STEP 5	KEY MESSAGES	CONCLUSION	5 MINUTES
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- Conclude with the main outcomes of the discussion and the points for change. For example:
  - The laws now do not protect us properly against violence & harassment in most countries.
  - We need better gender-responsive laws and law enforcement agencies in migrant sending and receiving countries.
  - Don't restrict us from migrating for work.
  - We have the right to autonomy, decision-making and agency to choose our own destiny.
  - We want decent work and the right to change employers especially if we face abuses.



## HANDOUT : GROUP WORK

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### Laws, policies and rules in migrant domestic work

This exercise discusses the gaps in laws, policies and rules to protect women migrant domestic workers from violence & harassment and the changes that are needed to make this happen. Experiences will differ depending on where you come from and where you work(ed), so make sure all have a chance to share their experiences.

In each working group:

- Discuss the points below and any other issues your group thinks are important.
- Write down the main findings of your group on a flipchart paper.
- Select a reporter to share the main points of your discussion in the big group.

Guide questions:

- 1. What types of discrimination increase risks of women migrant domestic workers to experience violence & harassment?**
- 2. What laws, policies and rules increase the risk of violence & harassment against women migrant domestic workers in practice, and why?**
- 3. What changes in laws, policies and practices are needed to effectively protect women migrant domestic workers from violence & harassment?**



## Info Note: Working in other countries: How can we make the laws work for us!<sup>22</sup>

### International human rights law

**Everyone**, regardless of their migration status, should have access to the **protection of their basic human and workers' rights without discrimination** according to international human rights law. These rights cannot be denied to any human being, and states cannot deny these rights to anyone without justification.

In practice, the rights of international migrant workers are often restricted because destination countries:

- Have the 'sovereign right' to decide who enters their labor markets and under what conditions
- Can refuse entry of non-citizens into their labor markets by issuing or renewing residence or work permits.

However, upon entry in the country of destination, migrant workers should have the rights to equal opportunity, treatment and protection just like national workers. Differences of treatment between citizens and non-citizens, or between different groups of non-citizens, can be made only if they are:

- Consistent with international human rights obligations
- Justified by a legitimate objective
- Proportional to reach that objective.

The use of the '**sovereignty principle**' becomes **problematic** when governments and the private sector operate schemes that make differences between migrant workers and nationals by applying different regulations to them in labor markets. This easily leads to:

- Unacceptable **labor exploitation, violence & harassment** of migrant workers
- **Xenophobia** against migrant workers because nationals worry about the undercutting of existing terms and conditions of work due to the misuse of migrant work.

The fundamental rights of migrant workers are often violated because they are foreigners in the destination countries, where they are not adequately protected under the law. For example, migrants have a right to equal pay for work of equal value, but they are often paid lower than the minimum wage guaranteed to national workers, and women migrant workers often receive even lower wages than men migrant workers.

In recent years, there has been some progress in developing and implementing laws and policies, for example to protect migrant workers from the worst forms of child labor, forced labor and trafficking in persons. But, many difficulties continue to exist in ensuring respect of basic human and workers' rights, particularly the right to freedom of association, the protection from discrimination and freedom from child and forced labor for all migrant workers in many parts of the world.<sup>23</sup>

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22 Main sources: IDWF: [Following the money: The Kafala system and chain of domestic workers' migration](#), Report of the IDWF Panel at the Global South Women's Forum, 14 December 2020; ILO, [Making decent work a reality for domestic workers, Progress and prospects in Asia and the Pacific ten years after the adoption of the Domestic Workers Convention, 2011 \(No.189\)](#), Bangkok, 2021; ILO and UN Women, [Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries](#), Bangkok, 2017; ILO, [Towards achieving decent work for domestic workers in ASEAN, Thematic background paper for the tenth ASEAN Forum on Migrant Labour \(AFML\)](#), 25–26 October 2017, Manila, Philippines; ILO, [Gender equality in labour migration, policy and management, GEM toolkit](#), Bangkok, 2016; ILO, [No easy exit, Migration bans affecting women from Nepal](#), Geneva, 2015; ILO, [International labour standards on migrant workers' rights: Guide for policymakers and practitioners in Asia and the Pacific](#), Bangkok, 2007

23 ILO, [Promoting fair migration: General survey concerning the migrant worker instruments](#), Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part 1B) for the International Labour Conference, 105th Session, 2016, Geneva, 2016, para's 279, 286-287, 300-301



## National laws and bilateral agreements

Specific migration laws and agreements cover **international migrant workers** at the national levels:

- **Emigration laws** in the countries where migrant workers come from – also known as countries of origin or sending countries
- **Immigration laws** in the countries where migrants work – also known as destination countries or receiving countries. Other (criminal, labor and civil) laws also apply to migrant workers in destination countries
- **Bilateral agreements** (BLAs) or MOUs (Memoranda of Understanding) on labor migration between 2 countries (known as migration corridors).

Existing laws, policies and regulations may contradict one another, are often biased, not implemented well and may even increase the risk of violence & harassment against women migrant domestic workers in practice.

### 1. High risks of violence & harassment against women migrant domestic workers

Women migrants in domestic work are at risk of violence & harassment at **all stages** of migration: before they migrate, in the migration process, in their employment and upon their return. They often encounter **discrimination, violence & harassment**<sup>24</sup> as follows:

- **As women vs. men workers** – Because of gender norms in their home countries, women often **lack** access to and control over **information, resources and decision-making power**. They have little education or their family decides about their migration. Many women can only choose to migrate for domestic work, even if they have a good education, because employers want women only to work in their homes. Men who want to migrate generally have access to a wider range of jobs. During the migration process and in the employer household, women may face gender-based violence & harassment by recruitment agents, employers, immigration and police. Domestic work is performed inside private homes where abuse and poor labor practices are hidden and support is largely unavailable, especially if their phones are taken away.
- **As foreigners vs. nationals or locals** – Both women and men migrants are vulnerable, as they are outside the protection of the laws in their home country, and they may not be entitled to or able to access legal protection in the destination country. **Xenophobia and racism** against migrant workers exist in many destination countries, especially in unstable and poor economic times. Women migrants also need to cope with **sexism**: They have a lower status than men workers in both their home and destination countries, and have to cope with the extra disadvantages this brings.
- **As dependent vs. autonomous migrants** – Laws and regulations in destination countries often make migrant domestic workers fully **dependent on their employers and/or their recruitment agents**. They are required to have their temporary work visas and stay-in permits sponsored by a national in the destination country, usually their employer, and they are often not allowed to change employers. Tying the worker to the employer is common in most destination countries and tends to put migrants almost totally under the control of their employer or sponsor. They often have to live at their employers' premises (the 'live-in rule'), are not allowed to go out and their passports and telephones are often confiscated.
- **As migrants without the right papers and status (undocumented):**
  - Women migrants may enter and work in another country without proper residence or working documents for many reasons: It is not possible, too expensive or too time-consuming for them to obtain the right documents, or they are not allowed to migrate. They may enter a country legally with a tourist visa and overstay, or they may have been smuggled in. Or, they enter legally with the right papers but then lose their regular job, visa and residence status.
  - **Restrictive policies** of countries of origin or destination on women's mobility leave no or limited legal migration channels open to them. This can push many women into irregularity, which means higher risks of abuse. The power imbalance between migrant domestic workers and their employers is already large because of their migration status and this is even more so when their status is irregular.

<sup>24</sup> ILO, [Preventing discrimination, exploitation and abuse of women migrant workers, An information guide](#), Geneva, 2003

- o Undocumented workers have **even less access to legal protection** in case of rights violations. They may be too scared to complain and go to the authorities for assistance. Even when they are rescued by the authorities from those exploiting or abusing them, they are often maltreated as ‘bad or loose women’ and ‘criminals’ because they are women and undocumented migrant workers.

## 2. How misguided law and policy increase violence in migrant domestic work

Domestic work is a typical women’s job that is generally **underpaid and undervalued**, and domestic workers **lack labour and social protection** in many countries. This is even more true for migrant domestic workers who are systematically excluded from labour and social protection laws in countries of origin and destination. In Asia in 2010, 61 per cent of domestic workers were entirely excluded from labour protection, and only 3 per cent enjoyed equal protection with other general workers. In the Gulf countries – a major destination for Asian migrants – 99 per cent of domestic workers were not covered by labour laws.<sup>25</sup> Since then, there have been some positive developments, but progress remains slow and uneven.

### Restrictive measures for women migrant domestic workers: Is it ‘real protection’?

When there are incidents of severe violence, harassment and exploitation of women migrant domestic workers abroad, countries of origin tend to respond by restricting women’s labour migration with a view to ‘protect’ them from such abuses. Most sending countries have issued, often temporary, **bans for women to migrate for domestic work** to certain countries of destination. It is also common to set a higher minimum age for women migrating for domestic work as compared to other migrant workers, and women who want to migrate for domestic work abroad require parental or spousal permission in several countries.

Such restrictive measures seem to be the product of patriarchal logic that sees women as passive, ‘naturally weak’ individuals in need of protection, rather than as active agents. In practice, such laws, policies or rules **aim at controlling women in migrant domestic work rather than protecting them**. It has been less common to impose bans or restrictions on men’s migration and, if action is taken to counter exploitation of men migrant workers, it is often done by negotiating for better conditions.

Studies have proven that such policies or rules, like **bans or age limits** for women’s migration, **do not protect women in migrant domestic work** but actually **increase chances of violence & harassment**. Limitations on regular migration channels for women, and cumbersome and expensive rules and paper work mean women will migrate anyway through irregular channels, especially when there are long land borders: The migration process is handled by shady agents, the jobs go underground and women end up at higher risks of violence & harassment.

A 2017 ILO study on **domestic worker bans between** Cambodia and Malaysia and between Myanmar and Singapore found that the bans **didn’t work** and led to **higher migration risks**:

- Women migrated for domestic work despite the bans.
- The restrictions limited women to irregular channels for migration.
- Small, unregulated recruiters increased, as did deception in recruitment and contract substitution.
- Migration costs increased because of informal payments at exit points and travel through third-party countries.
- Migrant domestic workers had no access anymore to regular migration measures (pre-departure training, standard employment contracts, access to complaints mechanisms, or help from a regulated recruitment agency or their home country government).
- Because of the high employer demand for domestic workers and the ban, Cambodian migrant domestic workers in Malaysia reported that recruiters did not allow them to return home and employers forced them to sign contract extensions under penalty.<sup>26</sup>

25 ILO, *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva, 2013.

26 ILO and UN Women, *Protected or put in harm’s way? Bans and restrictions on women’s labour migration in ASEAN countries*, Bangkok, 2017

A 2015 study by the ILO and the Global Alliance Against the Traffic in Women (GAATW) on the effects of restrictive labor policies on women in domestic work in Nepal had similar findings. The migration bans did not prevent people from migrating and discriminated based on gender, class and age. The policies placed women **at greater risk of abuse during the migration journey, and gave them less control over their migration experience**. The study concludes that, to be effective, protective policies must be introduced in a transparent way, be well publicized, and take a comprehensive and **empowering approach**. This includes: more oversight of recruitment actors, more information and skills training for women, and more assistance services in Nepal and abroad for women in need of assistance.<sup>27</sup>

A 2021 analysis of migration bans on the emigration of migrant domestic workers in Indonesia, Nepal, the Philippines and Sri Lanka found that **bans are more effective** when labor sending countries **negotiate for better working conditions and rights** for migrant workers. When countries **enact bans to protect women**, they **appease the public at home by applying patriarchal gender norms on women** without having to deal with the economic consequences of restricting remittances, because women migrants will leave to work and remit money anyway. In both cases, however, migration bans **increase the risks of migrant domestic workers to exploitation** by pushing them into irregular migration channels.<sup>28</sup>

### Lack of 'real' legal protection for migrant women in domestic work

Risks of violence & harassment remain high for migrant domestic workers because:

- Enforceable legislation is lacking in countries of destination and origin, and there is no coordinated action between countries of origin and destination and within countries
- Women lack access to relevant information and fair and easy recruitment channels
- Recruitment agencies are not well-regulated and fees are expensive
- There is no or hardly any access to justice for violence victims in migrant domestic work
- Freedom of association and the right to organize are lacking in destination countries.

### Lack of enforceable legislation and coordination between and within countries

Laws on migrant domestic work are often not effectively implemented and enforced, because of lack of harmonization and coordinated action both between migrant sending and receiving countries, and between different ministries within countries (foreign affairs, security, immigration, interior, labor or others). This **leads to contradictory and non-transparent measures and malpractices**:

- In destination countries, immigration laws are geared at national security and control of migrant labor and have more weight than labor or other laws. The different laws are implemented by different government agencies with competing or conflicting, economic and other interests. Generally, **none of these laws** are well-equipped to **effectively protect domestic workers from violence & harassment**. They are not rights-based and not gender-responsive, and often increase rather than decrease the risks of violence & harassment against migrant domestic workers.
- Most countries of origin offer **no or little legal protection to domestic workers in their own country**, let alone ensure protection for their migrant domestic workers abroad.
- Countries of origin and destination rely on **bilateral agreements** (BLA or MOUs) to organize labor migration. These agreements set migration quota and regulate migration channels. Often, they are **not made available to the public**, information about their **implementation is lacking** and they **fall short** of providing even **the most basic protections**.

**Separate MOUs are often developed for migrant domestic work** in addition to those governing all other migrant labor, because of the special nature of domestic work in private homes. However, these MOUs don't include any specific protections to migrant domestic workers. They favor the interests of employers and, exclude migrant domestic workers from the protections granted to other workers, such as a weekly day-off, freedom of movement outside working hours, set hours of work and a minimum wage. Instead, women migrant workers are expected to be 'on-call' for around-the-clock duties, and have to live with their employer, often for a wage that is lower than the minimum wage for other workers in the destination countries.

<sup>27</sup> ILO, *No easy exit, Migration bans affecting women from Nepal*, Geneva, 2015,

<sup>28</sup> Shivakoti, K. Henderson, S. and Withers, M. *The migration ban policy cycle: A comparative analysis of restrictions on the emigration of women domestic workers*, in *Comparative Migration Studies* 9, 36, 2021

Overall, the **bilateral agreements** for migrant domestic workers are **weak** and **fail to prevent and eliminate violence & harassment** for migrant domestic workers. ILO studies in Asian countries indicate that special MOUs for domestic workers have not resulted in better working conditions for migrants and at times have resulted in migrants incurring insurmountable debt.

Different **MOUs also create wage and other inequalities** among migrant domestic workers in countries of destination, as some countries of origin are more successful in negotiating terms, like wages, recruitment fees, and mandatory days off. This is unfair and discriminatory to migrant domestic workers from different countries of origin with the same skills but different pay and working conditions.

### Lack of access to relevant information and fair and easy recruitment channels

In many countries, women still lack access to information because of traditional gender norms. Many women migrate on the basis of 'hear-say', because **simple and clear information** about legal migration channels is simply not available in the languages they understand and through the information channels they can access. Progress is being made, but is slow and irregular in many countries.

Administrative procedures and recruitment processes require **many papers and a lot of paperwork** in the sending and receiving countries. Documents have to be made up, processed, approved and stamped by various authorities in different languages. These procedures are fine when they protect workers but they are often problematic. The process is overly **complicated and non-transparent**. **Overcharging** happens regularly with different agencies expecting different fees or bribes to process the necessary papers.

Some countries of origin and destination require migrant domestic workers to go through recruitment agencies. In other countries, such as India, there are few official channels to organize migration for migrant domestic workers abroad and, **only in some countries can women organize their migration for domestic work themselves**.

### Lack of regulation of recruitment agencies and high migration costs

Public and private employment and recruitment agencies assist migrant workers with completing emigration and immigration residence and employment procedures, job mediation and placement, preparatory services such as training and orientation, and transit arrangements. Such agencies are based in countries of origin or destination, or both, and migrant workers may have to deal with a range of recruitment intermediaries and agencies during their migration.

The **practices of recruitment agencies** who organize the migration of domestic workers are a matter of concern. Common problems include the charging of **high recruitment fees, exploitative debt arrangements**, contracting workers under **false employment, working, or living conditions**; and physical, labor and sexual **abuse and exploitation**.

The **growth in exploitation in recruitment** processes is related to:

- **Increases in labor migration** and **rapid growth of commercial businesses** and **government units** earning from the movement and employment of migrant workers<sup>29</sup>
- **Limited regulation** of recruitment agents and agencies
- **Limited awareness** and **inability to pay for services in advance** among migrant workers
- **Fraudulent cooperation** between recruiters and government, other authorities, or well-connected persons, and/or the involvement of criminal networks.

Regarding **recruitment fees**, ILO standards provide that recruitment costs should **not be charged to workers**, including domestic workers. Some countries, like the Philippines prohibit recruitment fees for the domestic work sector but many other countries apply fee ceilings (usually 1 to 2-months of the workers' wages) rather than abolish them. However, even when there is no recruitment fee, **travel and training costs** are often charged, and at times **cash advances** are given to workers or their families. Both of these have **high risks of debt bondage** situations in which domestic workers are forced to work to pay-off an (ever increasing) debt.

Fraudulent and unfair recruitment practices remain common and many problems continue to exist. Generally, there is **too little regulation and too little oversight** on the sector. Recruitment agencies that seriously breach regulations may be ordered to close in one place but then may simply reappear somewhere else.

29 IDWF: [Following the money: The Kafala system and chain of domestic workers' migration](#), Report of the IDWF Panel at the Global South Women's Forum, 14 December 2020

## Lack of access to justice in destination countries

Migrant domestic workers generally face the same obstacles to gain access to justice as domestic workers in their own countries (see **Unit 7.2** Working in our own country – How can we make the laws work for us!). However, they face even higher barriers to access justice and assistance when they need to escape from violence & harassment during all stages of migration. In the Asian region, migrant domestic workers generally do not have access to complaint mechanisms or other means of access to justice. They generally face challenges in accessing government services and those who migrate irregularly or end up in an irregular situation are even less likely to seek formal assistance.

For many migrant domestic workers and their employers, recruitment agents are the ones to contact when they need help. This leads to conflicts of interests and employment agents tend to favor employers over workers. Channels for **access to legal aid and justice** for migrant domestic workers who are violence victims **do not yet exist or do not function well** in most countries of destination:

- Making a complaint in general means dismissal and **job loss**. This often means **deportation** because the residence visa is tied to the employment visa, and lack of income.
- It is impossible for many violence victims to go to the police or the hospital because they are **not allowed to leave the house**, and it is difficult to escape.
- In case migrant domestic workers manage to escape, there are **language barriers** and often **discriminatory attitudes and acts** against women migrants in domestic work by the police and the judiciary.
- Migrant domestic workers, the police, the judiciary, the labor inspectorate and labor tribunals, cannot take legal action because **existing** criminal, immigration and labor **laws** are **not adequate** and **don't provide for complaint and conflict resolution** mechanisms, **penalties and redress** for victims.
- Where action can be taken, complaint and court proceedings can take **a long time**. The migrant domestic worker may be allowed to stay but has **no access to income** and is **not allowed to work** during this period.

**Embassies or consulates** from countries of origin in the destination countries sometimes come to the rescue and some run shelters for abused domestic workers. However, even then, many constraints exist, because violence survivors are usually not allowed to work, don't have money to travel back home and court cases take a long time. Right now, migrant domestic workers' best chance is to seek **help from DWOs, rights-based or other organizations or individuals** who can help them with legal and practical help to access justice.<sup>30</sup>

## Freedom of association

The **right to form, join and lead workers' organizations is a fundamental workers' right**. Yet, organizing of migrant domestic workers in DWOs is not allowed in many Asian countries, because domestic workers are not recognized as 'real' workers. Also, the right to freedom of association and the right to organize, in general, are not or only partially recognized in national legislation and practices in many Asian countries. Hong Kong and Taiwan are the only places in East Asia where migrant domestic workers have the right to form and join a trade union.

In addition to these legal restrictions, migrant domestic workers face many other barriers to organize: long working hours, lack of days off, isolated workplaces, language, and limited knowledge of rights. Many also fear being fired or facing sanctions from local authorities. Nevertheless, **domestic workers** – nationals and migrants – **are organizing** in membership-based organizations, solidarity groups and associations in an increasing number of countries in Asia and worldwide.

## Protection of women's sexual and reproductive rights and their right to equal pay

There are several laws, policies and rules that amount to violence against women, because they violate women's sexual and reproductive rights. In destination countries:

- Pregnancy and other tests upon departure and upon entry are quite common in many countries. Pregnancy tests must be repeated every 6 months in some countries, for example, in Singapore.
- Women migrant workers lack freedom of movement even in their free time as their employers fear they may end up pregnant.

<sup>30</sup> For example, see the case story of Maria and the SKDWA in IDWF, [Gender-based violence & harassment against domestic workers: Case stories from Asia](#), Hong Kong, 2020



- Pregnancies may lead to abortion, often done illegally in unhygienic conditions and at high cost. Pregnant migrant workers often face (immediate) dismissal, become undocumented workers and risk deportation.
- In Hong Kong, migrant domestic workers are entitled to maternity leave, and in Thailand they are entitled to public maternity care but in practice, most household employers don't allow their pregnant migrant workers to stay and give birth.

**Women domestic workers** generally **earn very low wages**, in comparison to men domestic workers and to other workers who carry out work of equal value: The same work or work that is different but comparable, because it requires the same level of skill, effort and responsibility and is undertaken under similar working conditions. For example, in Hong Kong, the minimum wage for migrant domestic workers is lower than for other workers. Such **pay discrimination** is also common for women who carry out domestic work in their own country. For example, in the Philippines, the minimum wage for domestic workers is lower than the minimum wage for other workers.

### 3. Priorities for legal protection of women in migrant domestic work

The **best protection** against violence & harassment for **women migrant workers** is their **empowerment**. Enforceable laws need to be developed with domestic workers and DWOs that are based on international human and workers rights law. Priorities depend on the specific situation of women migrant domestic workers in each case but generally will include the following:

1. **Consult** with migrant domestic workers and their DWOs when developing laws and policies to ensure effective protection of migrant domestic workers in practice.
2. Extend **protection** against violence & harassment to all domestic workers in **criminal, labor and other relevant laws, policies and regulations**.
3. **Lift** harmful and discriminatory **restrictions** in migrant domestic work, including restrictions to freedom of movement that lead to an increase in violence & harassment, in line with international human, workers' and women's rights.
4. Require countries of destination and origin to ensure migrant domestic workers' safety by adopting **enforceable laws** against violence & harassment in domestic work and ensure **access to justice** for violence victims and survivors.
5. **Regulate recruitment agencies and fees**, and provide for accessible and independent complaint mechanisms for domestic workers and oversight of recruitment agencies.
6. **Outlaw violations of fundamental rights of women in domestic work**.
7. Develop or revise **freedom of association laws** so that migrant domestic workers can freely join, form and lead organizations of their own choosing.

As long as there are significant poverty problems between and within countries, and unpaid household and family care work by women in their home remains the norm, there will remain a high demand worldwide for women migrants in 'typical women's jobs' such as domestic work and other care jobs.

Migration can be a **positive and empowering** experience but **just and fair laws and policies** are **needed** to make this happen. Adequate **human and workers' rights protection** through **enforceable laws, policies and rules** on migrant domestic work are needed in countries of origin and destination countries to prevent and address violence & harassment against migrant domestic workers.

#### 3.1 Consult with migrant domestic workers and their DWOs

Law and policymakers must consult with migrant domestic workers and their DWOs in the development of any law or policy that affects them. DWOs are able to reach out to migrant domestic workers who are at risk of violence & harassment or have become violence victims and survivors both in countries of origin and destination. The **voice of women workers who live the experience** is vital for developing laws and policies that prevent and stem violence & harassment effectively in practice.

CEDAW General Recommendation No. 26 promotes the development of gender-sensitive and rights-based migration policies with the **active involvement** of women migrant workers and NGOs in policy formulation, implementation, monitoring and evaluation. Similarly, C190 calls on ILO members to consult with **representative employers' and workers' organizations** in adopting a gender-responsive approach for the prevention and elimination of violence & harassment in the world of work (Article 4.2). R206 further calls on ILO members to provide **resources and assistance for informal economy workers and their associations** to prevent and address violence & harassment (para. 12).

### 3.2 Extend protection under criminal, labor and other relevant laws

Migrant domestic workers need **effective protection under criminal laws** to protect against the most severe forms of violence & harassment, through the provision of gender-responsive services, like emergency shelters run by DWOs. **Law enforcement agencies** should strictly **apply non-discrimination principles** when handling complaints of migrant domestic workers.

Women domestic workers, migrant or otherwise, also require **explicit protection against violence & harassment under labor law**. Domestic work is work, and domestic workers, nationals and migrants, should receive adequate protection against violence & harassment, including gender-based violence & harassment, that is available to other workers under the labor laws:

- In many destination countries, domestic work by national and migrant workers still has to be fully recognized **as work**. Most migrant domestic workers have a standard employment contract under a foreign employment law or bilateral agreement, but they are **not granted the labor rights of national workers**, while working in the destination country. No East Asian destination country fully protects migrant domestic workers under labor or employment laws. Hong Kong is the only territory where domestic work is considered as work in an employment relationship, and all workers including migrant workers are covered under the labor law<sup>31</sup>, and the ordinances against employment discrimination. Where laws or policies exist to **outlaw sexual harassment** or **promote OSH**, these should **apply to domestic workers** and be **implemented in practice**.
- Among Asian migrant **sending countries**, the **Philippines** is the only country which provides **substantial** labor rights, benefits and protection to the domestic workers in the country. The labor benefits are generally lower than those for other workers, but the law includes specific **protection against abuse, violence & harassment with implementation mechanisms at the local levels**. The adoption of the Philippines of the 2013 Domestic Workers Act increases this country's bargaining power when they negotiate terms and conditions with destination countries for sending migrant domestic workers. Other countries of origin should follow suit so that they can protect domestic workers in their own countries as well as in destination countries.
- Domestic workers must be adequately protected under any other relevant laws, policies, regulations and mechanisms, aimed at promoting gender and racial equality and fighting discrimination and domestic violence.

### 3.3 Lift harmful and discriminatory restrictions in migrant domestic work

**Restrictive measures** (the live-in rule, dependency on the employer, visa restrictions, medical testing) based on gender stereotypes are characterized by control: by men over women, and by the state and organizations over the individual. They **deny women the right to autonomy, decision-making and agency** to choose their own destiny.

Given the special nature of domestic work – care work in private households – there is a need for added protective measures against violence & harassment, especially but not only in migrant domestic work. Governments need to put in place **rights-protective and empowering** measures, rather than **'protective'** measures that hinder women's access to gainful jobs.

Many laws, policies and regulations aimed at protecting women in migrant domestic work and others jobs are gender-biased. They **restrict and control women** by protecting them for their own good. Restrictions on legal migration reduce women's opportunities to migrate legally and have forced many of them to migrate through irregular channels with fewer protections in place. Other restrictions on freedom of movement, like the live-in rule, also increase rather than decrease women's risks to discrimination, exploitation, violence & harassment.

**C190** is the **first international labor standard** that clearly recognizes that gender-based violence & harassment exists. It states that a **gender-responsive approach is essential for ending violence & harassment** in the world of work, and that such an approach should tackle underlying causes and risk factors, such as gender stereotypes, multiple forms of discrimination, and unequal gender-based power relations (Preamble).

The international agreement is: **'In equality we trust – Protection only if we must.'** The UN CEDAW on the elimination of discrimination against women, which is signed by virtually all States, obliges them to **repeal sex-specific bans** and discriminatory restrictions on women's labor. ILO R206 also provides that **measures** against violence & harassment should not result in the restriction of the participation in specific jobs or occupations or their exclusion therefrom, of women workers as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability (R206, para. 12 and C190, Article 6).

<sup>31</sup> Employment Ordinance 1968 guarantees a standard employment contract, minimum wage (but lower than the minimum wage for other labour sectors), free food, accommodation and health care. Migrant domestic workers are guaranteed equality of treatment with other workers and wage deductions are strictly regulated.

The **UN and ILO supervisory machineries** for the application of international standards advise governments to **regularly review restrictive measures** to assess whether they continue to be needed, and that **such measures need to be proportional**:

- They must be appropriate to achieve real protection.
- They must be the least intrusive instrument to achieve the desired result.
- They must be relevant to the interest to be protected.
- The principle of proportionality must be written into the law and be applied by the responsible judicial and administrative authorities.<sup>32</sup>

### 3.4 Require countries to adopt enforceable laws and access to justice

Women migrant domestic workers need **'real' protection**: They are at **high risk** of violence & harassment, and require specific measures to protect them against it because they are women, they are migrants and they are domestic workers (see C190 Articles 6 and 9; R206 Para's 9 and 10).

In the experience of IDWF and DWOs, migrant domestic workers' safety requires **countries of destination and origin** to adopt and implement **enforceable laws and practical measures** to prevent violence & harassment from happening to them and to provide access to justice for violence victims and survivors. This requires action on many fronts:

- The relevant public authorities should carry out **risk assessments** to identify hazards and assess the risks of violence & harassment **with the participation of domestic workers**, employers and their representatives, and take measures to prevent and control these hazards and risks covering all stages of migration.<sup>33</sup>
- Once such evidence has been collected, **laws and regulations** need to be **designed or revised** that aim at preventing violence & harassment, and providing access to justice in practice. This includes ensuring easy and effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies. For more information, see **Unit 7.2** Working in our own country – How can we make the laws work for us!
- **In countries of destination**, there is an urgent need to prohibit violence & harassment in migrant domestic work and to protect migrant workers in irregular situations:
  - **Review and revise provisions under the immigration and labor laws.** Tying the worker to the employer through visa and residence permits and the live-in rule increases the risks of women migrant domestic workers to experiencing violence & harassment. It also makes it very difficult for migrant domestic workers to change employers, even if these are abusive. R206 provides that migrant domestic workers should have **the right to remove themselves** from a work situation that they consider to be **dangerous** because of violence & harassment, without suffering retaliation or negative consequences (Para. 10 (g)).
  - Access to justice is an urgent need of migrant domestic workers and C189 states that they should have effective access to courts, tribunals, or other dispute resolution mechanisms (Art. 16).
  - Provide violence victims and survivors with **gender-responsive legal and practical support and services** by the police, the judiciary and other relevant law enforcers, health and other agencies, income during recovery, and the right to work and live in the destination country or return home during the court proceedings.

<sup>32</sup> Gallotti, 2014 in ILO, *Gender equality in labour migration, policy and management, GEM toolkit*, Bangkok, 2016,

<sup>33</sup> See C190, Article 8 which points out the important role of the public authorities in preventing violence & harassment against informal economy workers and in taking measures to effectively protect them; and C190, Article 9 (c) and R206, para. 10 on the aims, contents and methods of a workplace risk assessment.

- o **Gender-responsive training and monitoring** mechanism are needed for all law enforcement agencies. **Training of employers** of migrant workers should be **obligatory** and include information on **their responsibilities**. These include:
  - **No confiscation** of identity and other **documents**, or their **phones** which they should be able to use freely outside their working hours
  - **Freedom of movement** outside working hours
  - **Mutual respectful treatment and terms**
  - **Safe** and proper **room with a lock**.
- **Countries of origin** should:
  - o Ensure adequate **information and training** for women migrant domestic workers on their rights and ways to handle conflicts and negotiate working conditions as well as on practical means of protection against violence & harassment, and **relevant phone numbers, addresses and web addresses** in case of problems.
  - o **Organize support services in destination countries**, for example, equip embassies with staff and money and give them the mandate to provide gender-responsive services to migrant domestic workers (help line, case handling).
  - o Establish a **violence & harassment emergency assistance fund** for migrant domestic workers who need to be rescued from violence & harassment.

### 3.5 Regulate recruitment agencies and fees

As private recruitment agencies organize most of the documented movement of migrant domestic workers, properly regulating them through binding legal obligations is key. States should govern the operation of recruitment agencies; ensure independent processes for investigation of complaints; and prevent abuses of recruited domestic workers. (C189, Article 15). **Measures to regulate and control recruitment agencies** are:

- **Strict requirements for the set-up** of recruitment agencies such as minimum capital and a bond deposit to ensure against claims.
- **Obligatory licensing** of recruitment agencies and recruitment sub-agents in labor source areas (pre-screening of those who want to enter the industry; strict criteria for accreditation; limitations on the duration of licenses; regular and close monitoring on compliance; and strict enforcement of penalties).
- Use of **clear and standard employment contracts** in languages and terminology that migrant workers can understand, and use of a 'paper or electronic trail'. Migrant domestic workers should receive a written and enforceable job offer or contract with clear terms and conditions of employment before crossing borders, and there must be clear conditions governing entitlements to repatriation (C189, Article 8).
- Access to **easy, safe and transparent complaint mechanisms** with free phone number for emergencies and complaints; involving migrant workers in evaluating the services of employment agencies; and regular scrutiny of migrant workers' complaints upon license renewal.
- **Monitoring the quality of services**, and (where possible) ensuring that live-in arrangements are not obligatory and that gender-responsive, safe and hygienic premises are provided.
- Protection from violence and abuse through measures such as **providing alternative employers in case of labor abuse** and **blacklisting** abusive employers and recruitment agents and agencies.

**Further regulation and oversight are needed to cap the overall costs** charged to migrant workers by recruitment agencies to reasonable levels:

- ILO conventions prohibit worker-paid recruitment fees or related costs (C181 on private employment agencies, Article 7.1). C189 (Article 15) requires national governments to **ensure recruitment fees are not charged or deducted from the pay** of migrant workers. The payment of cash advances to migrant workers to cover travel and/or preparation costs should also be strictly regulated to prevent debt bondage situations.
- There is also a need to **review the fees charged by recruitment agencies to employers of migrant domestic workers** as these fees tend to limit domestic workers' freedom of movement and increase chances of employer violence against them.

### 3.6 Outlaw violations of fundamental rights of women in domestic work

Limiting the free movement of women domestic workers in their free time, pregnancy testing for women who migrate for domestic work, immediate dismissal upon pregnancy and discrimination in pay **violate women's sexual rights and their rights as women workers to equality and non-discrimination in employment and pay equality** as laid down in C111 on non-discrimination at work and C100 on equal pay for work of equal value. See also **Unit 7.5** What type of discrimination is it?

### 3.7 Abolish restrictions to the right to form, join and lead workers' organizations

It is urgent to remove the many legal and practical restrictions that migrant domestic workers face in **joining, forming and leading workers' organizations**, which is another **fundamental workers' right**.

**Self-organization and sharing information and experience** are vital tools against the prevention of violence & harassment against women in migrant domestic work and are also essential for violence victims and survivors. Because they have first-hand experience, **domestic workers and DWO's are essential partners** for government authorities and employers' organizations in reviewing and developing legislation and regulations on migrant domestic work.





## 7.4 : Modern slavery and human trafficking in domestic work



90 minutes

	Aims	<ul style="list-style-type: none"> <li>To find out about the use of apps that sell domestic workers online</li> <li>To learn about modern forms of slavery, forced &amp; child labor, and human trafficking in domestic work and how to act against it.</li> </ul>
	Participants	<ul style="list-style-type: none"> <li>Domestic worker leaders</li> <li>Domestic workers</li> </ul>
	Room Arrangements	<ul style="list-style-type: none"> <li>Step 1: Space for the group to stand in a big circle</li> <li>Circle seating in big group and small groups</li> </ul>
	Materials	<ul style="list-style-type: none"> <li>Flipchart papers and markers</li> <li>Computer, big screen and good Internet connection to show an online video. If not available, use handout 1.</li> </ul>
	Training Aids	<ul style="list-style-type: none"> <li>BBC, Video, <a href="#">Slave markets found on Instagram and other apps</a>, 2019 (Summary, 10.18 minutes)</li> <li>Provide the weblink to the full version of the BBC, Video, <a href="#">Silicon valley's online slave market</a>, 2019 (Full documentary, 51 minutes) to the group at the end of the session to those who want to view it in their own time.</li> <li>Slide show: Modern slavery and human trafficking in domestic work</li> <li>Handout 1: Case story: Slave markets found on Instagram and other apps</li> <li>Handout 2: Questions for group work: Online sales of domestic workers</li> <li>Info note: Modern slavery and human trafficking in domestic work</li> </ul>



### Session Plan Steps

1.	My corner	Energizer	5 minutes
2.	Online slavery	Video and case story	20 minutes
3.	Online slavery	Small group work	30 minutes
4.	Online slavery	Reporting and discussion	30 minutes
5.	Key messages	Conclusion	5 minutes





## Preparation

- Have a look at the video and the handouts, check the questions for the small group work, and revise them if needed. It is best to show the video (Option A), but the exercise can also be done with the handouts only (Option B).
- For step 2: Review the questions for the group work on a slide or flipchart, handout 2.
- Option A: Make sure that the computer and the internet connection work **before the start** of this activity.
- Prepare photocopies of the Info note for everyone for distribution after the session.

## SESSION PLAN

STEP 1	MY CORNER	ENERGIZER	5 MINUTES <sup>34</sup>
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- Ask the group to form a circle and hold hands.
- Ask everyone to choose one corner of the room that is 'her/his' but not to tell anyone.
- Say: The aim of the game is to get as many people to visit 'your corner'. The circle must not be broken in the process.
- Give a sign for the group to START. [*What often happens in the game is that people try to persuade everyone to go to their corners, because most people think that they have to visit and stay there. Groups rarely decide to visit all corners in turns and in this way achieve the aim of the game for everyone.*]
- Give the group some time to unsuccessfully move in all directions and then start to give a hint by saying: The aim of the game is for everyone **to visit her/his corner, not to stay there**. Repeat the hint, until the group does what it needs to do: The circle of people runs from one corner to another until everyone has visited 'her/his corner' and the 3 other corners of the room. Have the group run around a few times and have fun.
- Finish with a big applause for **achieving everyone's aim through group cooperation**.

STEP 2	ONLINE SLAVERY	VIDEO AND CASE STORY	20 MINUTES
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- Link the session to the previous session and introduce the session's aims by saying: We are going to **discuss the online buying and selling of domestic workers, and what to do against such crimes**.
- Show the video (Option A) or ask volunteers to read the case story in handout 1 in a loud voice (Option B). Distribute the case story to all groups.

STEP 3	ONLINE SLAVERY	SMALL GROUP WORK	30 MINUTES
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- Distribute handout 2 and introduce the questions for group work:
  1. **What happened to the domestic workers in the video/case story? Who were the wrongdoers?**
  2. **What national and/or international laws apply?**
  3. **What was done to end the abuses? And who did it?**
  4. **What further actions need to be taken? And by whom?**

34 International Institute for Environment and Development, (IIED), *A trainer's guide for participatory learning and action*, London, 1995

- Check with the group if the questions are clear and answer any questions. Divide the big group in 4 or more small working groups of 5-6 people and ask them to start the discussion.
- After 5 minutes, distribute flipcharts and markers to each small working group. Around 5 minutes before the time is up, remind them to write down their key findings, and prepare for reporting.
- When the small groups are ready, invite them to the big group.

STEP 4	ONLINE SLAVERY	REPORTING AND DISCUSSION	30 MINUTES
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- Ask the groups to briefly report back. In case of 4 working groups, invite one group to report on point 1, and ask the other groups to add information, then invite another group to report on point 2, with the other groups adding information and so on. In case of more working groups, invite 2 groups to answer point 1, and so on.
- Start discussing the main findings by asking a group to volunteer and report on question 1. **What happened to the domestic workers in the video/case story? Who were the wrongdoers?** Ask the other groups to add new information to the report of the first group. The responses to the questions may vary a lot depending on the participants' knowledge and experience. Stimulate discussion, using the Info note to add points until all types of violence and exploitation against domestic workers in the video/case story have been discussed:
  - Social media tech giants like Facebook, Google and Apple in Kuwait and Saudi Arabia facilitate the **buying and selling of migrant domestic workers in an illegal, online modern slave market on apps** in Arabic where customers buy and sell products. The apps allow racial profiling, or discriminating domestic workers because of their race or ethnicity and setting different prices for different nationalities.
  - Employers sell domestic workers online to other employers of domestic workers. The **sellors don't obey the laws and don't respect the rights of domestic women workers** and encourage possible buyers to do the same. They keep their passports, forbid them to leave the house, enforce very long working hours, deny them any time off and give them little or no access to a phone. The prices of domestic workers vary per race, color, ethnicity or nationality. They use demeaning and racist language when talking about and to domestic workers, calling them animal names like cow and one domestic worker was told by her employer to sleep in a cowshed.
  - The BBC undercover team went to a place where Fatou, a **16-year old girl, was offered for sale**. She had been **trafficked** from Guinea in Africa. By the time she was rescued, she had been sold 3 times to different employers.
  - The ex-domestic workers who had returned to Guinea and spoke to the BBC team said it was like a **real hell**, no food, no sleep, nothing.
  - Briefly **discuss and define** what is modern slavery, forced and child labor, and human trafficking with the group, using the Info note:
    - **Modern slavery:** Situations of exploitation that a person cannot refuse or leave, because of threats, violence, coercion, deception, and/or abuse of power. It covers forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and trafficking in people or human trafficking.
    - **Forced labor:** Situations in which people are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, withholding of identity papers and wages, or threats.
    - **Child labor:** Any activity done by under 18 year olds that damages their well-being and has negative effects on their well-being, health, education and participation in society, and work done by those who are below the legal minimum age to be allowed to work
    - **Human trafficking:** Done by human traffickers, who use or threaten to use force, fraud or coercion to lure and persuade their victims into exploitation.

- Ask another group to volunteer to report on question 2. **What national and international laws apply?** Encourage sharing and discussion, and add information from the Info note as relevant.
  - **National laws in Kuwait:** The BBC video and case story say that domestic workers in Kuwait must be over 21 years and trafficking of children and adults for labor exploitation in domestic work is outlawed. Kuwait introduced new laws to help protect migrant domestic workers in 2015. However, migrant domestic work is regulated through the sponsorship or Kafala system and domestic workers cannot change or quit their jobs, and cannot leave the country without their employers' permission. This easily leads to exploitation, violence and slavery-like practices, such as the online slave market in the video and case story.
  - **International laws.** Ask the group if they know about international laws and actions against slavery and human trafficking. After some responses, briefly mention the international conventions against slavery and the appointment of a Special Rapporteur on Contemporary Forms of Slavery in 2008, the UN international human rights instruments and the Trafficking Protocol of 2000, and the ILO fundamental conventions against child and forced labor and its new Protocol on forced labor of 2014.
- Continue in the same way with question 3. **What was done to end the abuses? And who did it?** After the group report and discussion, conclude:
  - Discovery of the illegal online slave markets by a BBC undercover team who posed as employers looking for a domestic worker on online apps and visited employers who were selling their domestic worker.
  - Advice by Ann Abunda of the Sandigan Domestic Workers Association (SDWA) to the BBC team to contact the government and urge them to act.
  - After seeing the BBC video the government searched for, and within 10 days, found and rescued Fatou who had been sold to a new employer. They took her to the government-run shelter for domestic workers, and 2 days later, she was deported back to Guinea for being a minor.
  - The BBC contacted the apps in Kuwait and Saudi Arabia and tech companies about their findings. The 4Sale app removed the domestic worker section from the online platform and Facebook banned the Arabic hashtag #maidsfortransfer, but the Saudi app Haraj remained silent.
- Do the same for question 4. **What further actions need to be taken? And by whom?** After the reporting, make sure to briefly discuss the following points:
  - Despite Fatou's rescue, the Kuwaiti government has not taken any legal action against the employer who tried to sell her and did not take any significant action against the online marketplace platforms. The BBC reported that the online sales of domestic workers was still ongoing on Haraj, Instagram and other apps at the time of the publication of the video in 2019. Big tech firms like Apple, Google and Facebook still don't adequately monitor the apps and online platforms that use their services. So, in practice, they continue to facilitate such serious abuses.
  - The BBC video and case story show how important it is to have 1) a free press with journalists who are committed to identifying and fighting serious human and labor rights abuses, and 2) DWOs like the Sandigan Domestic Workers Association (SDWA) in every country, who are very active in discovering and helping domestic workers who are victims of violence.
- Finally ask: **Have you heard about slavery, forced & child labor, and human trafficking happening to domestic workers?** Invite the group to share their experiences. *[There are child and adult domestic workers who have been made slaves by their employers in many countries. Many children have been made slaves to pay-off debts of their parents. Tribal, indigenous, rural or lower caste children and adults from families in poverty are trafficked for labor exploitation to cities and other countries.]*
- Conclude by agreeing with the group:
  - Slavery and slavery-like practices happen in domestic work: Almost 1 of every 4 forced labor situations is in domestic work. It is not something that is far away. It happens in our own countries too. **Many countries have no laws against these crimes, and implementation is lacking.**
  - **Many DWOs advocate outlawing child labor in domestic work**, because of the high risks of abuse and violence against child domestic workers.

- **DWOs are vital:** They are often the first to detect slavery in domestic work, they call for and support rescue operations, help protect the victims and organize to prevent such abuse and violence.
- **Priorities for action** to abolish slavery and human trafficking:
  - **Address slavery’s root causes:** poverty, social exclusion and discrimination
  - **Tackle the economic interests** that make slavery and forced and child labor profitable
  - **Design and adopt laws with practical mechanisms** to implement and enforce the laws with the necessary human and financial resources to punish the perpetrators and protect, help and compensate the victims.

STEP 5	KEY MESSAGES	CONCLUSION	5 MINUTES
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- Conclude the exercise with the group, for example, with the following key messages:
  - Slavery is not something from the past. New forms are emerging all the time. Many slaves are child and adult domestic workers.
  - Slavery, forced & child labor, and human trafficking must be outlawed by all countries and international and national laws must be implemented.
  - Victims must be identified, rescued, supported and compensated, and perpetrators must be punished and sanctioned.
  - Organizing in DWOs is vital to detect abuses, support victims and advocate legal reform against slavery in domestic work.
- Provide the weblink to the full version of the BBC video ‘[Silicon valley’s online slave market](https://www.youtube.com/watch?v=2IdII_n28e0)’, 2019, [https://www.youtube.com/watch?v=2IdII\\_n28e0](https://www.youtube.com/watch?v=2IdII_n28e0) (51 minutes) to the group at the end of the session to those who want to view it in their own time.



## HANDOUT 1 : CASE STORY

# Slave markets found on Instagram and other apps<sup>35</sup>

Drive around the streets of Kuwait and you won't see these women. They are behind closed doors, they have no basic rights and are unable to leave and at risk of being sold to the highest bidder. BUT, pick up a smartphone and you can scroll through thousands of their pictures, categorized by race, and available to buy for a few thousand dollars.

An undercover investigation by BBC News Arabic found that domestic workers are being illegally bought and sold online in a booming black market. Some of the trade has been carried out on Facebook-owned Instagram, where posts have been promoted via hashtags (#), and sales negotiated via private messages.

### Slave market

Every 9 out of 10 Kuwaiti homes have a domestic worker. They migrate to the Gulf countries from poor parts of the world, aiming to make money to support their families at home.

Posing as a couple newly arrived in Kuwait, the BBC Arabic undercover team spoke to 57 app users and visited more than 12 people who were trying to sell them 'their' domestic workers via a popular commodity trading app called 4Sale:

- Almost all the sellers told the couple to take away and keep the women's passports, to forbid them to go outside the house, to deny them any time off and to give them little or no access to a phone.
- The 4Sale app allowed users to filter by race, with different prices for different nationalities.
- "African worker, clean and smiley," said one listing. Another: "Nepalese who dares to ask for a day off."
- When speaking to the sellers, the undercover team frequently heard racist language. "Indians are the dirtiest," said one, describing a woman being advertised.

### Rights violations

The undercover team were urged by app users, who acted as if they were the 'owners' of these women, to deny them other basic human and workers' rights, such as giving them a 'day or a minute or a second' off.

One man, a policeman, looking to sell his worker said: "Trust me she's very nice, she laughs and has a smiley face. Even if you keep her up till 5am she won't complain." He told the BBC team how domestic workers were used as a product, a commodity. "You will find someone buying a maid for 600 KD (\$2,000), and selling her on for 1,000 KD (\$3,300)," he said. He suggested how the BBC team should treat her: "The passport, don't give it to her. You are her sponsor. Why would you give her her passport?"

In one case, the BBC team was offered a 16-year-old girl, Fatou (not her real name). Fatou had been trafficked from Guinea in West Africa. She had been employed as a domestic worker in Kuwait for 6 months, when the BBC discovered her. Her seller told the team that she had not given Fatou any time off, her passport and phone had been taken away, and she had not allowed her to leave the house alone – all of which are illegal in Kuwait.

<sup>35</sup> Adapted from script of BBC, [Video, Slave markets found on Instagram and other apps](https://www.bbc.com/news/technology-50266663), 2019 (Summary, 10.18 minutes) or click the video on <https://www.bbc.com/news/technology-50266663>



### Sponsor's permission

“This is a typical example of modern slavery,” said Urmila Bhoola, UN Special Rapporteur on Contemporary Forms of Slavery, “Here we see a child being sold and traded like a cow.”

In most places in the Gulf region, migrant domestic workers are brought into the country by agencies and then officially registered with the government. A potential employer pays an agency a fee and becomes the official sponsor of the domestic worker. Under what is known as the sponsorship or ‘Kafala’ system, a domestic worker cannot change or quit her job, nor leave the country without her sponsor’s permission.

Kuwait’s laws say that domestic workers must be over 21 years and new laws to protect domestic workers were introduced in 2015. But the law was not popular with everyone. Apps including 4Sale and Instagram enable employers to sell the sponsorship of their domestic workers to other employers, for a profit. This creates an unregulated black market which leaves women vulnerable to abuse and exploitation.

This online slave market is not just happening in Kuwait. In Saudi Arabia, the investigation found hundreds of women being sold on Haraj, another popular commodity app. There were hundreds more on Instagram, which is owned by Facebook.

### ‘Real hell’

The BBC team travelled to Guinea to try to contact the family of Fatou, the child they had discovered being offered for sale in Kuwait. Every year hundreds of women are trafficked from there to the Gulf as domestic workers. “Kuwait is really a hell,” said one former domestic worker, who recalled being made to sleep in the same place as cows by the woman who employed her. “Kuwaiti houses are very bad,” said another. “No sleep, no food, nothing.”

### “Take action”, says Ann Abunda of SDWA

The BBC team turned to the Sandigan Domestic Workers Association in Kuwait for help. Ann Abunda advised the team to contact the government, show them the video and see if underage Fatou could be found. Ten days later, they found and rescued Fatou who had been sold to a new employer. They took her to the government-run shelter for domestic workers, and 2 days later, she was deported back to Guinea for being a minor.

Fatou told the BBC about her experience working in 3 households during her 9 months in Kuwait: “They used to shout at me and call me an animal. It hurt, it made me sad, but there was nothing I could do.” Now she is back at school in Conakry, where the BBC visited her. “I am so happy,” she said. “Even now, talking about it, I’m still happy. My life is better now. I feel like I’m coming back from slavery.”

### Results

The Kuwaiti government says it is ‘at war with this kind of behavior’ and insisted the apps would be ‘heavily scrutinized’. But, so far, no significant action has been taken against the online marketplace platforms. And there has not been any legal action against the employers who tried to sell Fatou.

The BBC team contacted the apps and tech companies about their findings because “If Google, Apple, Facebook or any other companies are hosting apps like these, they have to be held accountable.” Some action was taken:

- 4Sale has removed the domestic worker section of its platform.
- After being alerted to the issue, Facebook said it had banned the Arabic hashtag “تامداح #لزانتلل” - which translates as “#maidsfortransfer”.
- But, the BBC has found there are many such listings still active on Facebook’s Instagram, and other apps available via Apple and Google.
- The illegal sales clearly break the US tech firms’ rules for app developers and users. But the firms continue to distribute the Saudi sales commodity app Haraj app and others apps and listings.



## HANDOUT 2 : QUESTIONS FOR GROUP WORK

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### Domestic workers for sale online

After seeing the video or reading the case story, discuss the following questions with your group:

1. **What happened to the domestic workers in the video/case story? Who were the wrongdoers?**
2. **What national and/or international laws apply?**
3. **What was done to end the abuses? And who did it?**
4. **What further actions need to be taken? And by whom?**

Write down your main findings on a flipchart and prepare to share them in the big group.



## Info Note: Modern slavery and human trafficking in domestic work

### Key terms

**Modern slavery** is an umbrella term that refers to situations of exploitation that a person cannot refuse or leave, because of threats, violence, coercion, deception, and/or abuse of power. It covers forced labor, debt bondage, forced marriage, other slavery and slavery like practices, and trafficking in people.

**Forced labor** is about situations in which people are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, withholding of identity papers and wages, or threats. Forced labor, contemporary forms of slavery, debt bondage and human trafficking are closely related terms, though not exactly the same in a legal sense.<sup>36</sup>

Worldwide, **domestic work is the top sector** where forced labor is found, accounting for almost a quarter (24%) of all forced labour incidents.<sup>37</sup>

**Child labor** is:

- Any activity done by children and adolescents under 18 years that damages their well-being and has negative effects on their well-being, health, education and participation in society
- Work done by children and adolescents who are below the legal minimum age to be allowed to work.<sup>38</sup>

The **worst forms of child labor** are:

- All **forms of slavery or practices similar to slavery**, such as the sale or trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflicts.
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
- The use, procuring or offering of a child for illicit activities, in particular for the production or trafficking of drugs as defined in the relevant international treaties;
- Work that, by its nature or the circumstances in which it is carried out, **is likely to harm the health, safety or morals of children** (C182, Article 3).

Because child domestic workers often suffer from violence and exploitation, and work and live in slavery-like conditions, many **DWOs** advocate prohibiting **domestic work by children as a matter of priority**.

**Human trafficking** or **trafficking in persons** is done by **human traffickers, who use or threaten to use force, fraud or coercion to lure and persuade their victims into exploitation**:

- Acts of trafficking include all actions of recruiting, transporting, transferring, housing or receiving persons that lead to and result in exploitation.
- Exploitation means the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.
- In the case of children under 18 years, any act committed for the purpose of exploitation is a case of human trafficking even if there is no use or threat of force, fraud or coercion.
- In all cases, the consent of a victim of trafficking to the intended exploitation is irrelevant when there was any use or threat of use of force, fraud or coercion.<sup>39</sup>

36 ILO, Walk Free Foundation and IOM, [Global estimates of modern slavery: Forced labour and forced marriage](#), Geneva, 2017; ILO, [Protocol of 2014 to the Forced Labour Convention, 1930 \(No. 29\)](#); ILO, [C29 – Forced Labour Convention, 1930 \(No. 29\)](#); ILO, [C105 – Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)

37 ILO, Walk Free Foundation and IOM, [Global estimates of modern slavery: Forced labour and forced marriage](#), Geneva, 2017

38 SINED (National Trade Union of Domestic Workers), Mozambique, Resolution 9, Eradication of child labour, in IDWF, [Resolutions, Adopted by the 2nd IDWF Congress 2018, Cape Town](#), South Africa

## International laws and commitments

**Slavery has existed since ancient times** and the first international instrument to abolish it dates from 1815. The international community adopted the Slavery Convention to suppress slavery and the slave trade in 1926 and another Convention against slavery followed in 1956. The Universal Declaration of Human Rights (UDHR) of 1948 says: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (Article 4).

Since then all main international human rights instruments **prohibit** slavery. For example, the International Covenant on Civil and Political Rights (ICCPR) prohibits slavery and the slave trade in all their forms, and complaints can be brought before the Office of Human Rights.<sup>40</sup> A United Nations **Special Rapporteur on contemporary forms of slavery has been appointed since 2008** to receive information and complaints about human rights violations in contemporary forms of slavery.

Old and new forms of slavery for labor exploitation are prohibited in the ILO’s fundamental **labor standards on forced labor**, C29 and its updated Protocol of 2014, and C105. C182 on the **worst forms of child labor** has been ratified by all ILO member States. This means they have committed to take immediate and effective measures to prohibit and eliminate all forms of slavery and slavery-like practices slavery, and all hazardous work that is likely to harm the health, safety or morals of those under 18 years as a matter of urgency. DWOs, trade unions and governments use these standards to fight forced and child labor practices which has been ratified by all ILO member States.

The **Trafficking Protocol**, also known as the Palermo Protocol, is the international standard to prohibit the contemporary slave trade of trafficking in persons for labor or sexual exploitation. It was adopted in 2000 to add to the UN Convention against Transnational Organized Crime (UNTOC). The **ILO Protocol of 2014 to C29** is the most recent international labor standard to address trafficking in persons.<sup>41</sup>

Target 8.7 of the Sustainable Development Goals (**SDGs**) specifically calls for States to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour by 2030.

## National laws and practices

Research from 2020<sup>42</sup> shows that legal ownership of people has been abolished in most countries over the past 200 years. But this has not been sufficient for rooting out old and new forms of slavery and slavery-like practices, among others because **slavery has not been made a crime in many countries**:

- Among the 193 member states of the UN, 96% have some laws against domestic anti-trafficking legislation in place, but many of them have failed to prohibit other forms of slavery in their national laws.
- Almost half the countries in the world (49%) still have to make it a crime to enslave another human being because these countries do not seem to have criminal laws prohibiting slavery, and 112 states (58%) seem not to have put in place penal provisions to outlaw forced labor.

**Migrant workers are at high risk of slavery and slavery-like practices** in most destination countries around the world, because they **are tied to their employers** who must arrange for their entry, work and residence permits. **Women migrant domestic workers** are even at **higher risk** because they are often not allowed to leave the place where they work and live. In the Middle-East and Gulf countries, migrant domestic work is organized through the **sponsorship or Kafala system**, a set of laws and policies that tie migrant workers’ status, their entry, stay, work and exit, to their employers or ‘sponsors’. With few exceptions, migrant domestic workers in these countries fall entirely under the authority of their employer, and they cannot change employers even if these are abusive. They are excluded from most labor laws and are denied basic labor protections enjoyed by other workers, such as a minimum wage, compensation for unfair dismissal, and social security.

39 Trafficking in persons is prohibited in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol, also known as the Palermo Protocol), which was adopted in 2000 to add to the UN Convention against Transnational Organized Crime (UNTOC). The Trafficking Protocol defines trafficking in persons as “the recruitment, transportation, transfer, harboring 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.” Member States ratifying the Trafficking Protocol must: 1) prevent and combat trafficking in persons, paying particular attention to women and children; 2) protect and assist the victims of such trafficking, with full respect for their human rights; and 3) promote cooperation among States Parties in order to meet those objectives. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>; ILO and VCCI, *Preventing forced labour in the textile and garment supply chains in Viet Nam: Guide for employers*, Hanoi, 2016

40 OHCHR, *Abolishing slavery and its contemporary forms*, New York and Geneva, 2002

41 ILO, *Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)*

42 The Conversation, *Slavery is not a crime in almost half the countries of the world – New research, 2020*, United Kingdom

Employers pay government and employment agencies several fees for allowing them to recruit and employ migrant domestic workers. As a result, employers consider that they 'own' their domestic workers, and the BBC case story shows how Apps including 4Sale and Instagram in Kuwait and Saudi Arabia enable employers to sell the sponsorship of their domestic workers to other employers, for a profit.

In 2015, Kuwait passed a law to provide migrant domestic workers with the right to a weekly day-off, 30 days of annual paid leave, a 12-hour working day with rest and end-of-service benefits. Implementing regulations were passed in 2016 and 2017, obliging employers to pay overtime compensation and a decree set a minimum wage of USD200 (per month) for migrant domestic workers. But, protections for domestic workers are still weaker than those in Kuwait's labor law. The domestic worker law fails to set out enforcement mechanisms, such as inspections of working conditions in households. The law also does not set out sanctions against employers who confiscate passports or fail to provide adequate housing, food, medical expenses, work breaks or weekly rest days. As a result migrant domestic workers remain vulnerable to severe abuse and exploitation, and can be arrested for 'running away' from their employer, because of the Kafala system.<sup>43</sup>

In 2020, Qatar became the first country in the Middle East to make changes to its labor and Kafala laws.<sup>44</sup> It is now possible for all migrant workers to change employers, although some provisions still carry risk of abuse. For example, employers are still responsible for renewing their workers' residence permits.

The exploitation of migrant domestic workers brings enormous economic benefits to all intermediary parties who arrange for the recruitment, transfer and permits of migrant domestic workers. Migrant destination countries benefit tremendously from the fees charged for entry and yearly renewal permits. These economic interests stand in the way of reforming or abolishing the Kafala system in the Middle East and Gulf countries, as well as legal reform in migrant destination countries elsewhere.<sup>45</sup>

### Priorities for action

Slavery was the first human rights issue of wide international concern. But it still continues today and slavery-like practices remain a grave and persistent problem. In order to effectively eradicate slavery in all its forms, it is necessary to:

- **Address the root causes** of slavery such as poverty, social exclusion and all forms of discrimination.
- **Tackle the economic interests** that make slavery and slavery-like practices profitable for legal and illegal actors in companies, organizations and states.
- **Improve international and national laws** and provide for **implementation mechanisms and budgets**. Emphasis should be put on punishing perpetrators and protecting and assisting victims so they are able to seek help, recover, obtain decent jobs and rebuild their lives.

Given that child domestic workers often suffer from exploitation and work and live in slavery-like conditions, many **DWOs** prioritize outlawing **domestic work by children**.



**A free press and DWO organizations** play a key role in detecting abuses and violence against all domestic workers. Freedom of information and freedom of association and the right to organize need to be enshrined in law and implemented and enforced in practice everywhere to prevent and address slavery in all its forms.

43 HRW, [Kuwait, Events of 2018](#), in World Report 2019

44 HRW, [Qatar: Significant labor and Kafala reforms](#), Sep. 2020

45 IDWF: [Following the money: The Kafala system and chain of domestic workers' migration](#), Report of the IDWF Panel at the Global South Women's Forum, 14 December 2020





## 7.5 : What type of discrimination is it?<sup>46</sup>



90 minutes

	Objectives	<ul style="list-style-type: none"> <li>To understand what is direct and indirect discrimination in law and in practice</li> <li>To know how to identify and argue cases of discrimination against domestic workers</li> </ul>
	Participants	<ul style="list-style-type: none"> <li>Domestic worker leaders</li> <li>Domestic workers</li> </ul>
	Room Arrangements	<ul style="list-style-type: none"> <li>Step 1: Big open space for the group to move around</li> <li>Other steps: Seating in big and small groups</li> </ul>
	Materials	<ul style="list-style-type: none"> <li>Markers, flipchart paper and a roll of masking tape</li> </ul>
	Training Aids	<ul style="list-style-type: none"> <li>Slide show: What type of discrimination is it?</li> <li>Handout 1: Questions for group work: What type of discrimination is it?</li> <li>Handout 2: Statements: What type of discrimination is it?</li> <li>Handout 3: Answer table: What type of discrimination is it?</li> <li>Info note: What type of discrimination is it?</li> </ul>



### Session Plan Steps

1.	'A's and 'B's	Energizer	5 minutes
2.	Definition and types of discrimination	Discussion in big group	20 minutes
3.	What type of discrimination is it?	Small group work	30 minutes
4.	What type of discrimination is it?	Discussion in big group	30 minutes
5.	Key messages	Conclusion	5 minutes



### Preparation

- Read the session plan, the handouts and the Info note.
- For step 2: Copy the figure with the 3 parts of legal definitions of discrimination from the Info note on a flipchart or prepare to use the slide.
- For step 3:
  - Make a copy of handout 2 with the statements of discrimination, cut out the statements, shuffle and mix them. Every small group gets 5 to 6 paper slips.
  - Using handout 3 as example, draw the answer table with 5 empty boxes and write the 5 headings on a flipchart and put it in front of the class.
- Prepare photocopies of the Info note for everyone for distribution after the session.

<sup>46</sup> Adapted from: ILO, *Equality and non-discrimination at work in East and South-East Asia, Training package: Guide and Exercise and tool book for trainers*, Bangkok, 2011, Guide at: [https://www.ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/sro-bangkok/documents/publication/wcms\\_178415.pdf](https://www.ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/sro-bangkok/documents/publication/wcms_178415.pdf); Exercise and tool book for trainers at: [https://www.ilo.org/asia/publications/WCMS\\_178417/lang-en/index.htm](https://www.ilo.org/asia/publications/WCMS_178417/lang-en/index.htm)

## SESSION PLAN

STEP 1	'A'S AND 'B'S	ENERGIZER	5 MINUTES <sup>47</sup>
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- Ask everyone to stand in a circle and say: We are going to warm-up our body and brains. Each person selects 2 persons in the group: one is 'Person A' and the other is 'Person B'. There is no need to have a reason for your choice and don't tell anyone about your choice. Everyone must remember who is their 'A' person and who is their 'B' person during the game.
- When everyone has made their choice, tell the group to run and get as close to their 'A' person as possible and as far away from their 'B' person as they can. Encourage everyone to move quickly but not to touch, grab or hold anyone. GO
- After 2 minutes, ask everyone to stop and do it the other way around: Everyone needs to chase after their 'B' person and avoid their 'A' person as quickly as possible. Again, do not to touch, grab or hold anyone. GO
- Finish the game after 2 minutes and say: We had a good run and fun and we are warm now. Ask everyone to take a seat and move to step 2.

STEP 2	DEFINITION AND TYPES OF DISCRIMINATION	DISCUSSION IN BIG GROUP	20 MINUTES
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- Link the session to the previous session and introduce the aims of the exercise by saying: There are many different types of discrimination, some of them are prohibited and some are not prohibited by law depending on which country we live and work in. Sometimes the discrimination we face is very clear and out in the open. Other times the discrimination is hidden and difficult to identify. We are going **to look into these different types of discrimination so that we know how to identify and argue cases of discrimination against domestic workers.**
- Who remembers **the definition of discrimination** from **Unit 2.2** What is discrimination and diversity? Get some responses and say: Discrimination is about **making an unfavourable decision about a person, based on the group, class or category to which a person belongs.** It is about disadvantaging people, not because of who they are but because of a personal characteristic like their sex or their race which they can not change.
- Who remembers the definition of **discrimination at work?** Get some responses and say: This is about **unequal opportunities and treatment of workers that result in disadvantages** for these workers in their job, in job recruitment or promotion.
- Say: If we want to identify and argue a case of discrimination at work, there are **3 key questions to analyze legal definitions of discrimination** [Show and explain the figure in the Info note on a flipchart or slide.]:
  - What are the **causes** of an action?
  - What are the **facts**, what happened?
  - What are the **effects and results** of the action?
- Say: There are 4 main types of discrimination: Discrimination in law and in practice, and direct and indirect discrimination. [In the explanation below, make sure to give examples that participants recognize from their own experience.]
- Say: First we discuss what is **discrimination in law and in practice:**
  - **Discrimination in law:** Sometimes discrimination has been **written into laws and regulations.** Examples: In some countries labor regulations set lower minimum wages for women workers than for men workers while women and men do the same jobs or jobs of equal value. Or, a labor code states that persons from one race, color or ethnicity shall receive less pay and benefits for the same or similar jobs than persons of another race, color or ethnicity. Discrimination in law has been outlawed in many countries but it still exists. For example, in some countries, laws limit the type of work women can do, or exclude them from jobs in the police or the judiciary.

<sup>47</sup> International Institute for Environment and Development, (IIED), *A trainer's guide for participatory learning and action*, London, 1995,

- **Discrimination in practice:** This is discrimination that **happens in real life**. It is widespread, especially in the job market. In most countries, employers prefer to hire women in women’s jobs and men in men’s jobs, or they prefer to hire people of one race for certain jobs and people of another race or color for other jobs. It is very common if there are no laws against discrimination but it also happens when there are laws but people don’t obey them.
- Say: But we need to find out more and also know **what is direct and indirect discrimination. Direct discrimination happens when a prohibited ground of discrimination is used to treat people differently, either in law or in practice**. Examples: A labor regulation stating that rural migrants in cities shall get lower wages than the urban residents of these cities for a job as domestic worker is **direct discrimination in the law** on the ground of social origin. Employers who pay black domestic workers less than white domestic workers engage in **direct discrimination in practice** against black domestic workers because of their race, color and ethnicity. This type of **direct or ‘taste-based’ discrimination in practice** is very common in the job market. Many employers seek to employ people of a certain sex, gender, color or nationality for a certain job because they think that people with that sex, gender, color or nationality will do that job better and/or can be paid less.
- **Indirect discrimination is more hidden: It is about laws, rules or practices that appear to be neutral but in practice lead to disadvantages suffered by people of one sex, race or color only and are not a necessary requirement of a job**. Examples: Wage regulations providing domestic workers with lower minimum wages than other workers in the law while 90 per cent of domestic workers are women amounts to **indirect pay discrimination against women in law**. Household employers who pay cooks (mostly men) higher wages than assistant cooks (all women) engage in **indirect pay discrimination against women in practice** when they use different job titles and pay higher wages to cooks than to assistant cooks and both groups have the same cooking skills and cook equally well. Also, when employers require a certain height for a job as manager, they engage in indirect discrimination against women in practice because it is known that women are generally less tall than men, and the height of people says nothing about their capacity to perform a job as manager.

STEP 3	WHAT TYPE OF DISCRIMINATION IS IT?	SMALL GROUP WORK	30 MINUTES
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- Say: In small groups we are going to discuss examples of the different types of discrimination and the grounds of discrimination in small working groups. Divide the big group into groups of 4 to 6 persons and explain the group work using handout 1:
  - For each example, discuss and decide whether it is discrimination in law or in practice, and whether it is direct or indirect discrimination, and on what ground(s).
  - When the groups have made their choice, they paste their examples in one of the boxes on the flipchart in front of the class.
- Distribute 5 to 6 paper slips with the statements of the different types of discrimination to each of the groups. Each paper slip should be discussed by 2 or more groups to encourage discussion on different answers, and selecting the right one.

STEP 4	WHAT TYPE OF DISCRIMINATION IS IT?	DISCUSSION IN BIG GROUP	30 MINUTES
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- Go through the table with the boxes with the examples of the different types of discrimination on prohibited grounds. Ask volunteers from the groups to introduce the examples given to them and to paste them in the right place on the flipchart for everybody to see.
- Discuss each example one by one, and agree with the group to place the examples in the right box of the table on the flipchart. Use the detailed answers given below as you see fit for the group.
  1. **Laws which state that women can not open a bank account unless they have written permission from their husband:** This example is a clear case of **direct sex and gender discrimination in the law** because men don’t need the permission of their wives to open a bank account but married women can’t do the same without the written permission of their husband.

2. **Legal regulations which state that tribal people who apply for a bank loan need to have a local guarantor in the city. People who have moved to cities from their tribal lands have difficulties in finding local guarantors:** This is an example of **indirect discrimination in law based on ethnicity and social origin**. The law does not explicitly exclude tribal people from taking a loan, but in practice the requirement of having a local guarantor seems to be neutral but makes it much more difficult for tribal people to get a loan.
3. **Legal provisions prohibiting women to work as police officers and judges:** The example is a case of **direct sex and gender discrimination in the law** because the prohibitions exclude women from employment opportunities. In the past many countries prohibited women to work in jobs considered not suitable for them due to gender stereotypes, like women don't have sound judgement, or certain jobs are too dangerous for them. Prohibition of women's employment in certain occupations by law leads to reduced jobs and incomes for them in practice.
4. **Different salary scales for women and men workers doing the same work or work of equal value set in the law:** This is a clear example of **direct sex and gender discrimination in law** because the law states that women and men get different pay for the same work or work of equal value.
5. **Wage regulations providing domestic workers with lower minimum wages than other workers in the law. More than 90 per cent of domestic workers are women:** It is still quite common to set lower minimum wages for domestic workers than for other workers in the laws of many countries. This is an example of direct discrimination against domestic workers which is often not prohibited in the law. But, it is also an example of **indirect discrimination in law against women** which is prohibited in many countries. It is done because of gender and other stereotypes about domestic work, like it is an unskilled, low-status, women's job done by mostly women. Many other prohibited grounds often also apply like, race, color or ethnicity, and social or national origin. In destination countries, nationality and migrant status are also often grounds for discrimination against migrant domestic workers but these are generally not prohibited.
6. **Legal regulations prohibiting employment of pregnant women or of HIV or hepatitis B positive persons in domestic work:** These are clear examples of **direct discrimination in law** based on persons' **health conditions**. Pregnancy only happens to women so this also an example of **direct discrimination based on sex**. Pregnancy is a brief, temporary health condition for women, and HIV or hepatitis B cannot be transmitted in regular workplace contact in domestic work, so there is no justification for exclusion of people with these health conditions in these jobs. Migrant domestic workers are subject to health checks upon entry into the destination country and they are sent back immediately if they are found to be pregnant or have other health conditions. Destination countries are allowed to set conditions for entry of migrant workers in their job markets. However, obligatory 6-monthly health checks of migrant domestic workers in the destination countries are clearly discriminatory for migrant domestic workers and a violation of their rights. In practice they also lead to restrictions on women's freedom of movement, because employers don't want them to go out even in their free time.
7. **Legal provisions that exclude domestic workers from labour and social protection laws. More than 80 per cent of domestic workers are women.** This is an example of **indirect discrimination in law based on sex and gender**. The decision of law makers to exclude the job of domestic work from protection under the labour and social protection laws disadvantages women who form the majority of workers in this job.
8. **Job advertisements which state that only women can apply for jobs as nannies or that only men can apply for jobs as family drivers or butlers:** These are clear examples of **direct sex and gender discrimination in practice**. Such job advertisements clearly exclude men from job opportunities in child care, and women from job opportunities as drivers or butlers for families. Salaries are generally lower in women's jobs and higher in men's jobs, so women who can not enter men's jobs are the most disadvantaged.
9. **Household employers pay cooks more than assistant cooks. Cooks and assistant cooks have the same cooking skills and cook equally well. The cooks are mostly men and all assistant cooks are women.** This is an example of **indirect pay discrimination by sex in practice**. The difference in salary level seems to be neutral because of the different job titles, but the cooks and the assistant cooks have the same skills and do the same work so this practice disadvantages the women assistant cooks.

10. **Women can only migrate for work as domestic workers or nurses while men can migrate for work in many other types of jobs.** The concentration of women in a limited range of occupations usually at the lower levels of the job ladder is **sex discrimination in practice**. All over the world labour markets are divided with women concentrated in certain jobs and men concentrated in other jobs. In some countries this type of job division by sex is rigid while in others it is not so strict. Wide variations exist as to what are considered typically ‘men’s jobs’ and ‘women’s jobs’, for example, cooking and sewing are considered men’s jobs in some countries and women’s jobs in other countries.
- Some consider that this is ‘natural’ and not problematic. Others think that this serves to protect women from work considered ‘unsuitable’ for them. However, many studies worldwide have shown that job segregation by sex limits the job choices for women and men, and leads to inefficient job markets. Fewer types of jobs and occupations are available to women as compared to men. And because of the undervaluation of jobs done by women, they are often disadvantaged in terms of lower salary levels and job promotion.
11. **Setting irrelevant weight and height requirements for domestic workers applying for elderly care jobs in families or homes for the elderly:** This is a clear example of **indirect discrimination in practice on the ground of health conditions** which negatively affects women who are considered to be too light or too heavy, or too short or too tall to be a good elderly carer. It is common for recruitment agencies to set such requirements for migrant domestic workers, and employers often don’t want to employ women who they consider to be too fat or too skinny, or too tall or too short. However, body weight and length do not equal strength. Elderly carers have to learn how to lift and turn people, and the carers’ specific weight or length are not relevant for job performance.
12. **Some household employers prefer to employ transwomen as domestic workers but pay them less than other domestic workers:** This is an example of **direct discrimination in practice** based on **sexual orientation and gender identity**. Some household employers prefer to employ transwomen as domestic workers because they think transwomen are stronger because they were men before with supposedly stronger muscles than women. The preference for transwomen is based on a gender stereotype: Men generally do have more muscles in their body than women, but more muscles do not equal strength. For example, women domestic workers are generally much stronger than men with office jobs. These employers get away with paying transwomen less than other domestic workers because discrimination against LGBTI+ people is not outlawed yet in many countries, where they are looked down upon and often face violence and harassment.
13. **Concentration of women in domestic work:** Concentration of women in low-pay, low status ‘women’s’ jobs often indicates that they lack access to other types of employment. For this reason, the concentration of women in domestic work is a sign of **direct sex and gender discrimination in practice**.
14. **Employment agencies in destination countries provide information on working conditions and complaint procedures to migrant domestic workers in the country’s main language only.** It is well known that most migrant domestic workers cannot read the main language. This is an example of **indirect discrimination in practice** based on migrant status. In most destination countries this is not prohibited but C189 states that job contract information should be provided in languages that migrant domestic workers understand.
15. **Household employers want to employ a woman domestic worker to provide personal care services to an elderly woman.** Say: This is the only statement which is **not prohibited discrimination**: In exceptional cases a personal characteristic such as sex or religion, can be a **necessary requirement of a job**, because only a person with these characteristics can perform this job well. If a sick or old woman or man needs personal care at home, it is justified if a household employer wants to employ a domestic worker of the same sex to provide such care, because of the intimate nature of the job.



- When all statements are discussed and put in their right place, applaud the group for their hard work and efforts. Say:
  - It is important to **know the laws on discrimination** and **what grounds of discrimination are prohibited in the laws** of the country that we work in.
  - Domestic workers often face **sex and gender discrimination** because they are women in women's jobs, and they often face discrimination **on other grounds too**, like their race, ethnicity or color, their religion or caste, their origin or nationality.
  - Many countries are making **progress in addressing direct discrimination**, and **increasing the grounds of discrimination** that are **prohibited under the law**. For example, discrimination based on health conditions has become outlawed in many parts of the world.
  - **Indirect discrimination** because of sex and gender, race, color and ethnicity is also becoming **better recognized and outlawed in countries**.

STEP 5	KEY MESSAGES	CONCLUSION	5 MINUTES
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- Conclude with the key messages, for example:
  - We don't receive the same protection from discrimination under the law like other workers and this makes us vulnerable to all forms of violence and harassment.
  - We often face direct and indirect discrimination in law and in practice in our work and life, because we are women and have a different race, ethnicity or color, origin or nationality, caste or class, or religion than our employers.
  - We are often excluded from labor, social and health protection, because we are women or migrants, we come from discriminated racial, ethnic, tribal or low-caste groups or from rural or indigenous peoples, or LGBTI+ communities.
  - We will fight to outlaw all types of discrimination against us.



## HANDOUT 1 : QUESTIONS FOR GROUP WORK

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### What type of discrimination is it?

Each small group will receive 5-6 examples of different types of discrimination on different grounds.

For each example, discuss and decide:

- **Is it discrimination in law or in practice?**
- **Is it direct or indirect discrimination?**
- **What is the ground of discrimination?**

When the group has made their choice, paste the examples in one of the boxes on the flipchart in front of the class.



## HANDOUT 2 : STATEMENTS

### What type of discrimination is it?



.....  
Laws which state that women can not open a bank account unless they have written permission from their husband. (1)



.....  
Legal regulations which state that tribal people who apply for a bank loan need to have a local guarantor. People who have moved to cities from their tribal lands have difficulties in finding local guarantors. (2)



.....  
Legal provisions prohibiting women to work as police officers and judges. (3)



.....  
Different salary scales for women and men workers doing the same work or work of equal value set in the law. (4)



.....  
Wage regulations providing domestic workers with lower minimum wages than other workers in the law. More than 90 per cent of domestic workers are women. (5)



.....  
Legal regulations prohibiting employment of pregnant women or of HIV or hepatitis B positive persons in domestic work. (6)



.....  
Legal provisions that exclude domestic workers from labour and social protection laws. More than 80 per cent of domestic workers are women. (7)



.....  
Job advertisements which state that only women can apply for jobs as nannies or that only men can apply for jobs as family drivers or butlers. (8)



.....  
Household employers pay cooks more than assistant cooks. Cooks and assistant cooks have the same cooking skills and cook equally well. The cooks are mostly men and all assistant cooks are women. (9)



.....  
Women can only migrate for work as domestic workers or nurses while men can migrate to work in many other types of jobs. (10)



.....  
Setting irrelevant weight and height requirements for migrant domestic workers applying for elderly care jobs in families or homes for the elderly. (11)



.....  
Some household employers prefer to employ transwomen as domestic workers but pay them less than other domestic workers. (12)



.....  
Concentration of women in domestic work. (13)



.....  
Employment agencies in destination countries provide information on working conditions and complaint procedures to migrant domestic workers in the country's main language only. (14)



.....  
Household employers want to employ a woman domestic worker to provide personal care services to an elderly woman. (15)



## HANDOUT 3 : ANSWER TABLE

### What type of discrimination is it?

	<b>DISCRIMINATION in LAW</b>	<b>DISCRIMINATION in PRACTICE</b>
<b>DIRECT DISCRIMINATION</b>	<p>Laws which state that women can not open a bank account unless they have written permission from their husband. (1)</p> <p>Legal provisions prohibiting women to work as police officers and judges. (3)</p> <p>Different salary scales for women and men workers doing the same work or work of equal value set in the law. (4)</p> <p>Legal regulations prohibiting employment of pregnant women or of HIV or hepatitis B positive persons in domestic work (6)</p>	<p>Job advertisements which state that only women can apply for jobs as nannies or that only men can apply for jobs as family drivers or butlers. (8)</p> <p>Women can only migrate for work as domestic workers or nurses while men can migrate to work in many other types of jobs. (10)</p> <p>Some household employers prefer to employ transwomen as domestic workers but pay them less than other domestic workers. (12)</p> <p>Concentration of women in domestic work. (13)</p>
<b>INDIRECT DISCRIMINATION</b>	<p>Legal regulations which state that tribal people who apply for a bank loan need to have a local guarantor. Tribal people who have recently moved to the city from their tribal lands have difficulties in finding local guarantors. (2)</p> <p>Wage regulations providing domestic workers with lower minimum wages than other workers in the law. More than 90 per cent of domestic workers are women. (5)</p> <p>Legal provisions that exclude domestic workers from labour and social protection laws. More than 80 per cent of domestic workers are women. (7)</p>	<p>Household employers pay cooks more than assistant cooks. Cooks and assistant cooks have the same cooking skills and cook equally well. The cooks are mostly men and all assistant cooks are women. (9)</p> <p>Setting irrelevant weight and height requirements for migrant domestic workers applying for elderly care jobs in families or homes for the elderly. (11)</p> <p>Employment agencies in destination countries provide information on working conditions and complaint procedures to migrant domestic workers in the country's main language only. (14)</p>
<b>OK</b>	Household employers want to employ a woman domestic worker to provide personal care services to an elderly woman. (15)	



## Info note: What type of discrimination is it?

### Equality of opportunity and treatment and discrimination in our work

Equality and discrimination are two sides of the same coin. Discrimination means absence of equality. Equality and non-discrimination at work are important to enable workers to claim a fair share of the wealth which they help to create:

- The principle of **equal opportunity at work** aims to ensure that people have equal chances to develop their potential to the fullest and put their time and energy where they can earn the most.
- The principle of **equal treatment at work** aims to ensure that people's work performance is rewarded according to their productivity and merit, and not because of their sex, race, caste or religion.

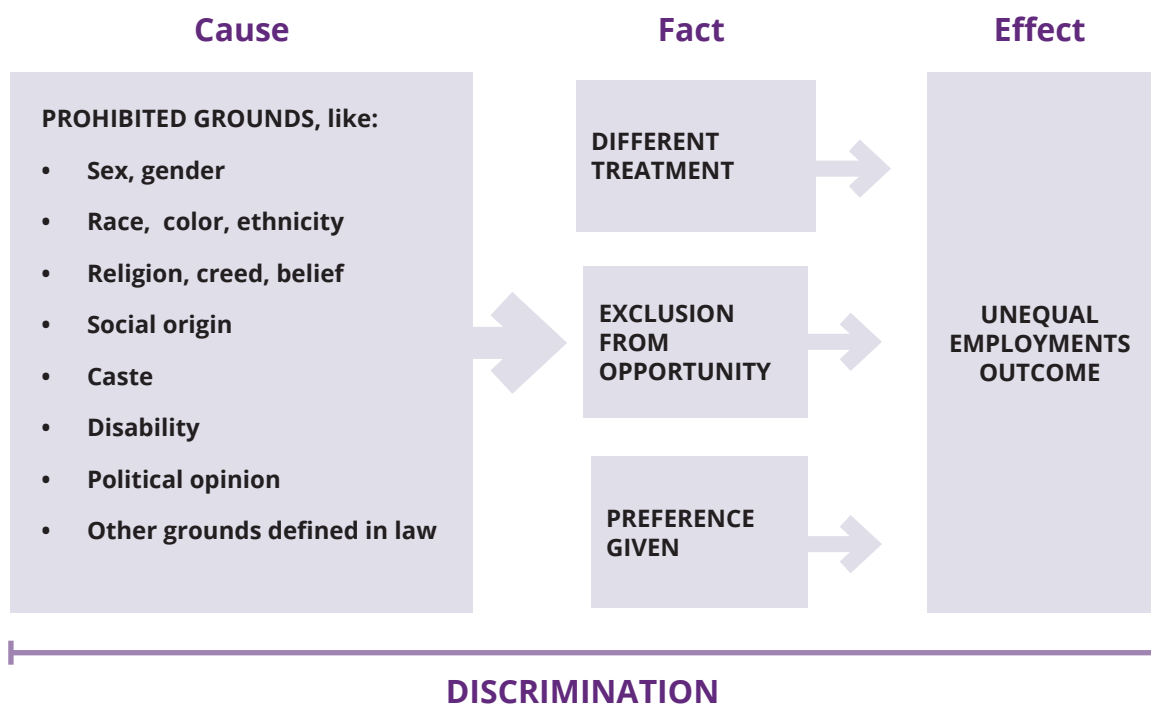
**Discrimination** is about making an **unfavourable decision about a person, based on the group or class** the person belongs to. It is about disadvantaging people because of a personal characteristic, like their sex or their color, that is not their fault and which they cannot change. **Discrimination at work** is about **unequal opportunities and treatment of workers** for which there is no sound reason (legitimate justification), and which results in **disadvantages** for these workers **in their job**, in job recruitment and job promotion.

For example, discrimination happens when 2 domestic workers with the same skills but of a different sex, race or caste are paid different salaries while they do the same or a similar job. An employer has a sound, legitimate reason to pay a domestic worker with more skills a higher salary than one with less skills. But, an employer, who pays one domestic worker more than another not because of a difference in skills but because they have a different sex, race or caste, engages in discrimination.

There are 3 key parts in legal definitions of discrimination that we need to analyze if we want to identify and argue a case of discrimination at work:

- What are the causes of an action?
- What are the facts, what happened?
- What are the effects and results of the action?

### The 3 key parts of definitions of discrimination in law



### What is the CAUSE of discrimination: Prohibited grounds in law

International and national laws that prohibit discrimination at work always specify **what are the prohibited grounds of discrimination**. For example, the prohibited grounds in ILO's C111 on non-discrimination in employment are race, color, sex, religion, national or social origin, political opinion and any other ground determined at national level. Other common prohibited grounds nowadays in many countries are gender, health conditions and disability, sexual orientation and gender identity, family responsibilities.

A **difference in treatment of workers** that is not based on any of these prohibited grounds, but is **related to the content of a job**, does **not amount to discrimination**. Job seekers or workers usually need to have specific skills, education or work experience to perform a certain job well, and these are known as necessary (or inherent) job requirements. Only, in very few cases, a personal characteristic such as sex, religion or absence of a disability or health condition, can be necessary for performing a job well. For example, a clothing shop that wants to hire only women to showcase female clothes does not engage in prohibited discrimination.

### What are the FACTS? What HAPPENED?

Discrimination at work happens when a person (or group of persons) is excluded from an opportunity, preferred over another one, or treated differently because of personal characteristics not related to the job. Examples:

- **Distinction in treatment:** Laws with different regulations for men and women, such as differences in the retirement age, or restrictions on the employment of women in certain jobs or at certain hours.
- **Exclusion from a job or job opportunity:** Rejecting a job applicant who carries the HIV or hepatitis B virus or specifying one sex only in job advertisements.
- **Preference given:** Preferring good-looking young women and men as sales persons, or giving preference to members of a certain ethnicity, religion or political party in job recruitment.

### What is the EFFECT or RESULT of discrimination: Unequal labor market outcomes

If different treatment based on any of the prohibited grounds leads to unequal outcomes or less favorable results for workers, this amounts to discrimination. When analyzing whether discrimination has taken place the focus should be on assessing the **actual outcomes** for people in labour market situations or in pay levels.

Whether or not the discrimination is intended by employers or others is not very relevant: Even if there is no intention to discriminate, a certain act or fact can still be discrimination. To conclude that discrimination has actually taken place, it is sufficient to prove that the different treatment:

1. Has a negative, unequal and unjust impact on a group in which most persons have a particular sex, ethnicity, social status, religion or political opinion.
2. Can not be justified and convincingly explained by stating that the job can only be done well by someone from a preferred group and cannot be done well by someone from a discriminated group.

### Different types of discrimination

If we want to better understand and address discrimination, it is useful to identify the different forms it can take. It can exist in law or in practice, and happen directly or indirectly. It often involves violence & harassment against the discriminated person or group. It is often structural, in other words, deeply embedded in society, its institutions and customs, as explained in **Unit 3.5** Domestic violence and institutional violence.

### What is discrimination in LAW and in PRACTICE?

Discrimination can exist in laws or regulations (known as 'de jure' in legal circles), and/or exist in practice and in our real life and work (known as 'de facto'). Examples:

- A labor code stating that female domestic workers shall receive less pay than male domestic workers because of their sex is discrimination in law.
- The actual practice of paying male domestic workers more than female domestic workers, without there being any law or regulation about this, is discrimination in practice.

Over the past 50 years there has been a lot of **progress** in outlawing common and widespread types of discrimination and **prohibiting it in laws and regulations**. In many countries laws and rules preferring or excluding one group over another have been changed.



But, discriminatory provisions in laws and regulations still exist in many countries. Examples:

- Domestic workers are excluded from labor law protections provided to other workers.
- Many migrant sending and receiving countries specify the sex of domestic workers for specific jobs in domestic work. Female migrants are wanted most for caring, cooking and cleaning jobs within the home, and male migrants are wanted for gardening, driving and security jobs outside the home.
- In some countries, laws still place limitations on the type of work women can do, or exclude them from certain sectors or occupations such as the judiciary or the police.
- In many countries men are often also entitled to more job benefits than women engaged in the same work or in jobs of equal value.

**Discrimination in practice** is still **widespread** and is more **challenging to combat**. Example: In many countries it is now forbidden to specify one sex or ethnicity in job advertisements like, 'Only men can apply for manager jobs' or, 'Only women can apply as babysitter.' But, in practice, employers continue to only recruit only men as managers and women as babysitters. So, bias and discrimination against women who want a job as manager, and against men who want a job as babysitter continue to exist in practice in many places.

### What is DIRECT and INDIRECT discrimination

It is also useful to know the difference between direct and indirect discrimination. **Direct discrimination** happens when a prohibited ground, like sex or race, is explicitly used for job-related differential treatment in laws, rules or practices. Examples:

- **In law:** A labor law stating that male workers shall receive more pay than female workers in the same job or a job of equal value is direct sex discrimination in the law.
- **In practice:** Employers who pay black domestic workers less than white domestic workers engage in direct discrimination against black domestic workers because of their race, color and ethnicity.

**Direct discrimination** continues to be **very common in actual employment practices**. Explicit or direct '**taste-based**' discrimination often occurs when employers select one sex or race only in jobs where they think that this sex or race has an advantage. Examples of direct discrimination in practice are:

- Restaurant owners recruit women only as waitresses because they think clients spend more money on food and drinks if they are served by women.
- Construction companies recruit men only as electricians because employers think that female electricians are no good.
- Many employers seek to employ people of a certain sex, gender, color or nationality for a certain job because they think that people with that sex, gender, color or nationality will do that job better and/or can be paid less.

**Indirect discrimination** refers to laws, rules or practices that appear neutral but in practice lead to disadvantages primarily suffered by people of one sex, race, color or other characteristics, and that cannot be justified by objective job requirements like skills, education or work experience. Indirect discrimination may involve certain requirements (like physical height or dress code), conditions (like working hours) or practices (like blaming for common incidents) that have a disproportionately negative impact on members of a certain group, such as women, ethnic or religious groups. Examples:

- Job advertisements for managers which require a certain height, indirectly discriminate against women, because most women are shorter than men.
- When it is customary for households to provide lower pay rates for child carers and higher pay rates for security guards, and most child carers are women and most guards are men, it can be successfully argued that this rule amounts to indirect pay discrimination against child care workers, most of whom are women.

**Excluding domestic workers** (and agricultural workers, home-based workers or part-time workers) **from labour, social and health protection** amounts to **direct discrimination** and unequal treatment that jeopardizes their livelihood and well-being. Usually there are no laws that prohibit discrimination against these occupational groups. However, it can often be successfully argued that this exclusion amounts to **indirect discrimination**, that is prohibited under the law, because a majority of domestic workers are women workers, workers from rural areas, or black, colored, ethnic or indigenous peoples.

They are often over-represented in these types of work and they suffer disproportionately from lacking such protection. In other words, **direct discrimination against domestic workers** (that is often not prohibited) often **amounts to indirect discrimination against them** because they are women, or because of their race, color, origin or caste (which are prohibited grounds of discrimination in many countries).

**Indirect discrimination** is often **hidden and invisible at first glance**. It may be unintentional and stem from **unconscious and culturally accepted practices**. In many instances indirect discriminatory practices are considered 'business as usual' or 'normal' procedures that are in line with long-accepted traditions.

When we want to act against indirect discrimination we must often challenge established customs and assumptions and convincingly document their negative impact and outcomes on workers. We must not ask what are the motives of employers or employment agents but **what are the results of their action**. **Statistics** play a vital role in establishing or disproving indirect discrimination, because hard data can provide the evidence that an employment practice has a negative impact on one group and not on another.

### Justifiable job requirements

In exceptional cases, a personal characteristic, like someone's sex or religion can be an objective (genuine, legitimate and justifiable) job requirement that a worker needs to have to be able to perform a job well. For example, in domestic work, when a sick or old woman or man needs personal care services, it is justified if household employers want to employ a domestic worker of the same sex to provide personal and intimate care. Or Jewish or Muslim household employers may want to employ cooks of the same religion to prepare 'halal' food.



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