

# Behind Closed Doors: Trafficking into Domestic Servitude in Singapore

Libby Clarke<sup>1</sup>

## 1. Introduction

In recent years, the problem of human trafficking into Singapore has received increased attention both by international observers – including the Committee on the Elimination of Discrimination against Women (CoEDAW)<sup>2</sup> and the US Department of State<sup>3</sup> – and national stakeholders. The establishment of the Inter-Agency Taskforce on Trafficking in Persons in 2010, the purpose of which is to combat trafficking “more effectively by implementing holistic, co-ordinated strategies”,<sup>4</sup> was a notable development. Identified as a “destination country for men, women and girls subjected to sex trafficking and forced labour”,<sup>5</sup> efforts are now underway in Singapore to address the problem through the launch of a National Plan of Action against Trafficking in Persons 2012-2014 (the NPA) in March 2012, in which the government set out its plans for countering all forms of trafficking.<sup>6</sup> The NPA follows the structure of the primary international law instrument relating to trafficking – the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the UN Trafficking Protocol)<sup>7</sup> – by adopting a “3P” approach of prosecution, prevention and protection, and focussing on a criminal justice response.

This article seeks to analyse the adequacy of the criminal justice response to human traf-

ficking, taking into account that as well as being a transnational crime, it is also, *inter alia*, a violation of the right to equality and, in some cases, a form of discrimination which is, in addition, contributed to by a range of other inequalities and discriminatory laws, policies and practices relating to a range of prohibited grounds, including sex, nationality and economic status. The article centres its analysis on the results of a study conducted by the Humanitarian Organization for Migration Economics (HOME) during 2012 (the HOME FDW Study) in which the cases of 151 foreign domestic workers (FDWs) in Singapore were examined in order to establish the specific characteristics of trafficking into domestic servitude – a form of gender-based discrimination recognised in CEDAW and in the recommendations of the CoEDAW – in Singapore and to determine whether the approach set out in the UN Trafficking Protocol is sufficient to address such characteristics.<sup>8</sup> It assesses whether the criminal justice response required by the UN Trafficking Protocol would prove more effective when incorporated as part of a broader approach which has, at its core, the obligation of countries such as Singapore to “take all appropriate measures” to combat trafficking as a violation of the right to equality and a form of discrimination.

Singapore is an interesting specimen for analysis in this regard for a number of reasons.

Firstly, it is better known as a destination country for foreign migrant workers<sup>9</sup> – with over one-fifth of the population made up of non-citizens – than as a destination country for human trafficking and, as stated above, the government is currently in the relatively early stages of developing its response to this complex issue. Secondly, and perhaps more significantly, Singapore has demonstrated a weak commitment to international human rights mechanisms through its poor record on signing and ratifying international human rights treaties.<sup>10</sup> The human rights obligations which it has assumed, however, centre around issues of equality and non-discrimination – having ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 and having signed the Convention on the Rights of Persons with Disabilities on 30 November 2012. An approach to human trafficking which focuses less on the language of human rights in general and more specifically on the language of equality and non-discrimination may, therefore, gain more traction in this rights-averse city-state.

## 2. Human Trafficking: A Global Crime of Inequality

International law provides guidance as to both the definition of human trafficking and the steps which must be taken to effectively combat all of its manifestations. Both UN human rights treaties to which Singapore is a party – CEDAW and the Convention on the Rights of the Child (CRC) – impose obligations regarding the enactment of legislation and other measures to suppress and prevent trafficking.<sup>11</sup> It is, however, the UN Trafficking Protocol – to which Singapore is not yet a party – which provides the most comprehensive guidance as to the prevention and prosecution of trafficking in persons and the protection of those who have been trafficked.

The UN Trafficking Protocol sets out a framework for states parties to follow in order to address comprehensively the issue of trafficking within their national borders. It requires states to prohibit and prosecute trafficking through the enactment of a criminal offence of trafficking, in all its forms, based upon the following definition set out in Article 3:

“‘Trafficking in Persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>12</sup>

Whilst the definition set out in Article 3 of the UN Trafficking Protocol is used as the international “standard”, it is notable that there is no explanation within the UN Trafficking Protocol itself of the different concepts upon which the definition is built. A helpful starting point is to identify the three different elements within the definition, all of which must be present for a case to be one of trafficking. These elements are as follows:

- a) Action (recruitment, transportation, transfer, harbouring or receipt of persons);
- b) Means (force, coercion, deception, fraud, abuse of power, abuse of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person); and

c) Purpose of exploitation (including, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

The terminology used to describe the “action” element is self-explanatory, whilst that used to describe the “means” and “purpose” is somewhat opaque. Assistance can be found in the definitions provided in the UNODC Model Law against Trafficking in Persons,<sup>13</sup> the ILO Convention concerning Forced or Compulsory Labour,<sup>14</sup> the Slavery Convention 1926<sup>15</sup> and the Supplementary Convention on the Abolition of Slavery 1952.<sup>16</sup> In addition, organisations such as the United Nations Office on Drugs and Crime (UNODC) and the International Labour Organisation (ILO) have provided lists of indicators which can be used to assist law enforcement officers, immigration officials, legal practitioners and civil society organisations in identifying trafficked and potentially trafficked persons.<sup>17</sup>

In addition to being recognised as a transnational crime in the UN Trafficking Protocol, trafficking has also widely been recognised as a form of discrimination. Article 6 of CEDAW specifically requires states parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The CoEDAW expands on this obligation in General Recommendation 19, in which it categorises trafficking as a form of gender-based violence which is therefore “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”. As such, states parties are recommended to take a range of actions, including taking “appropriate and effective measures to overcome all forms of

gender-based violence, whether by public or private act”.<sup>18</sup> Further, states parties are recommended to take both “preventive and punitive measures to overcome trafficking” and provide “effective complaints procedures and remedies, including compensation”.<sup>19</sup>

In 2010, the UN High Commissioner on Human Rights called for “a human-rights based approach to trafficking”, which “seeks to both identify and redress the discriminatory practices and the unequal distribution of power that underlie trafficking, which maintain impunity for traffickers and deny justice to their victims”.<sup>20</sup> The Commentary to the Office of the High Commissioner on Human Rights’ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* reiterates the fact that trafficking of women is a form of sex-based discrimination, and is therefore captured by the obligations of states to protect the fundamental human right to equal treatment and non-discrimination which is “firmly enshrined in all major international and regional instruments”.<sup>21</sup> Such instruments include those entered into by the members of ASEAN, such as the ASEAN Declaration of Human Rights, which includes the principles of equality and non-discrimination as “General Principles”.<sup>22</sup>

Perhaps the most expansive recent assessment of the relationship between inequality, discrimination and human trafficking took place in October 2012 at the Organization for Security and Co-operation in Europe (OSCE)’s 12th High-level *Alliance against Trafficking in Persons* conference entitled “An Agenda for Prevention of Human Trafficking: Non-Discrimination and Empowerment”.<sup>23</sup> The concept note drafted in advance of the event (the OSCE Concept Note)<sup>24</sup> provides a very enlightening description of the inextricable relationship between the rights to equality and non-discrimination and the

challenges of protecting individuals from human trafficking. It points to the centrality of equality concepts in the OSCE Action Plan to Combat Trafficking in Human Beings,<sup>25</sup> and sets out how

“[T]he conference aims to pave the way to better identify linkages between trafficking in human beings and various aspects of discrimination, and to explore how anti-trafficking and anti-discrimination measures can enhance each other.”<sup>26</sup>

In his opening speech, the OSCE Secretary-General Lamberto Zannier elaborated further on the issue, as follows:

“Discrimination creates social vulnerabilities that can lead to victimisation and trafficking. Let me add that, when trafficking occurs in the course of the migration process, discrimination also hampers the identification and therefore the due assistance, protection and reintegration of trafficking victims in countries of destination, especially when migrants do not have a regular status. We have to admit that discrimination and exploitation of the most vulnerable and the least protected often go hand in hand in our societies. Truly, measures to eradicate human trafficking will be more successful if anti-discriminatory policies are placed higher up in the hierarchy of state priorities.”<sup>27</sup>

Despite wide acknowledgement of these equality-related features of human trafficking, the UN Trafficking Protocol fails to address these features in any meaningful way. Whilst it does require the development of a system of protection for “victims” of trafficking,<sup>28</sup> and it obliges states to take a range of actions in order to prevent trafficking,<sup>29</sup> the focus of the UN Trafficking Protocol is entirely on a criminal justice response to human

trafficking.<sup>30</sup> This is evidenced, not least, by the fact that it is a protocol to the UN Convention against Transnational Organized Crime rather than being associated with the corpus of UN human rights treaties. Trafficking is referred to throughout the UN Trafficking Protocol as a “crime”, and the scope of the protocol is limited in Article 4 to:

“[T]he prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences”.

The first substantive obligation identified in the UN Trafficking Protocol is that of criminalisation, under Article 5, and the focus of the provision relating to protection of victims relates to their involvement in legal proceedings.<sup>31</sup> Further, the obligation to repatriate victims, under Article 8, is stated to be subject to due regard “for the status of any legal proceedings related to the fact that the person is a victim of trafficking”.<sup>32</sup>

At no point does the UN Trafficking Protocol refer to trafficking as a human rights violation. Buried in Article 9(4) of the UN Trafficking Protocol, however, there is a suggestion that trafficking may involve more than activities masterminded by transnational organised crime syndicates. It requires states parties to:

“[T]ake or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity”. Further, in Article 14(2), it states that:

“The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.”

By focussing on lack of equal opportunity and the non-discriminatory application of its provisions, however, the UN Trafficking Protocol fails to acknowledge the perhaps more concerning social inequalities and proactive laws, policies and practices of discrimination which arguably play a role as one of the causes of human trafficking before the need to apply its provisions arises. It is the significance of such factors, and other elements of inequality and discrimination associated with the issue of trafficking, which this article seeks to shed increased light on, examining whether the eradication of these factors should play a key role in anti-trafficking efforts.

### ***Specific Nature of Trafficking into Domestic Servitude***

This analysis focuses on the specific manifestation of human trafficking within the domestic work sector. Whilst it is recognised that all forms of human trafficking – both the often prioritised sex trafficking and the frequently misunderstood labour trafficking – feature characteristics of inequality and discrimination, trafficking into domestic servitude is of particular interest given that it features the intersectionality of several potential sources of disadvantage, including gender, nationality, immigration status and economic status. A recent report published by the International Labour Organization has commented on the highly feminised nature of the domes-

tic work sector globally, with 83% of all domestic workers being women.<sup>33</sup> It also states that for Asian women, domestic work is one of the most important sources of employment beyond the borders of their countries of origin, and refers to the “genderisation of migration flows”, in accordance with which men migrate to work in the construction sector; whilst women migrate into domestic work.<sup>34</sup> In summary, it suggests that:

“An almost universal feature is that domestic work is predominantly carried out by women, many of whom are migrants or members of historically disadvantaged groups. The nature of their work, which by definition is carried out in private homes, means that they are less visible than other workers and are vulnerable to abusive practices.”<sup>35</sup>

Further, the OSCE Concept Note summarises the intersectionality of the experience of those trafficked into domestic servitude as follows:

“[A]n intersectional approach to trafficking for the purposes of domestic servitude would thus examine the intersection of a worker’s complex identity as female, foreign national, migrant worker, poor and of low social status; and how that particular constellation of vulnerability may relate to a broad spectrum of laws and policies (such as employment, citizenship, and policies relating to gender-based violence).”<sup>36</sup>

Before turning to examine the specific characteristics of trafficking into domestic servitude in Singapore, this section will first elaborate further on what exactly this form of trafficking looks like. The issue of trafficking into domestic servitude has become somewhat controversial, with political will often pitched against the eradication of such

violations of the rights of FDWs due to the implications for voting employers. Irrespective of this, there is a growing consensus internationally on the existence of this particular form of trafficking.

The ILO Convention No. 189 concerning Decent Work for Domestic Workers (ILO Domestic Workers Convention) acknowledges the particular vulnerabilities of domestic workers, noting in its Preamble that:

“[D]omestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights”.<sup>37</sup>

In addition to recognition of the vulnerability of domestic workers to discrimination, there has also been specific acknowledgement of their vulnerability to trafficking into domestic servitude. General Recommendation 19 of CoEDAW states that “the recruitment of domestic labour from developing countries to work in developed countries” is a new form of trafficking,<sup>38</sup> and its General Recommendation 26 on Women Migrant Workers analyses in some detail the specific forms of discrimination, often based on “gendered notions of appropriate work for women” and result in women migrant workers being employed in the “informal sector” which includes domestic work and which is often excluded from labour law protections.<sup>39</sup>

International authorities – including the UN Special Rapporteurs on Contemporary Slavery and on Trafficking – have acknowledged the existence of this form of trafficking, whilst also recognising its unique characteristics. In her 2010 report, the UN Special

Rapporteur on contemporary forms of slavery, including its causes and consequences - Gulnara Shahinian - addressed “the manifestations and causes of domestic servitude”.<sup>40</sup> She noted that:

“[T]he specificities of the sector make domestic workers particularly vulnerable to economic exploitation, abuse and, in extreme cases, subjugation to domestic servitude and domestic slavery”.

She proceeded to highlight the specific nature of trafficking into domestic servitude which “usually takes place under the cover of activities that seem legal or enjoy widespread social acceptance”.<sup>41</sup> Unlike other manifestations of human trafficking which are commonly perpetrated by organised transnational crime syndicates, trafficking into domestic servitude is (as is confirmed by the results of this study) carried out by seemingly innocent members of society conducting their day-to-day activities as an employment agent, or exercising their right to employ somebody to assist with household tasks as an employer. Such “perpetrators” of trafficking will often not realise that they are complicit in the trafficking process. Gulnara Shahinian helpfully explained that:

“Agents recruiting domestic workers become perpetrators of trafficking if they deliberately deceive their clients about the conditions of work or engage in illegal practices of control (such as the withholding of passports), while knowing that such practices will result in the exploitation of their recruits.”<sup>42</sup>

Similarly, FDWs themselves will willingly engage in the process, despite potentially deceptive and coercive behaviours on the part of their agents and employers, given their goal of earning money to remit to their families back home.

The Polaris Project, the home of the National Human Trafficking Resource Centre in the United States, has emphasised the role of employers stating that:

“[A] situation becomes trafficking when the employer uses force, fraud and/or coercion to maintain control over the worker and to cause the worker to believe that he or she has no other choice but to continue with the work.”<sup>43</sup>

Various human rights reports have sought to describe trafficking into domestic servitude. They generally focus on deception and coercion as the “means” used to carry out the trafficking “action”. When looking at the use of deception, the role of recruitment agents in deceiving migrants in relation to key aspects of their contract and the use of contract substitution as a means of formalising such deception have been emphasised.<sup>44</sup> In describing the manifestation of trafficking into domestic servitude in Lebanon, the UN Special Rapporteur on Trafficking described deception regarding employment conditions at the time of recruitment and contract substitution, often “concluded in a situation characterised by deception and duress”.<sup>45</sup>

The role of different forms of coercion has also received significant coverage. Debt bondage arising from the waiving of an upfront fee by the recruitment agency which then collects repayment through salary deductions is a key example. The UN Special Rapporteur on Contemporary Forms of Slavery describes this as follows:

“‘Neo-bondage’ may also emerge in the context of migration for domestic work. Migrant domestic workers will often assume a considerable debt towards the employer or the agency organising her recruitment and transport to cover the cost of the air ticket

and recruitment fees. The domestic worker is then expected to work off this debt (...) They cannot leave their position before they have worked off their recruitment debt. With salaries being often as low as US\$100-300 per month, this means that migrant domestic workers become bonded for long periods to a single employer, making them easily exploitable.”<sup>46</sup>

The UN Special Rapporteur on Trafficking refers to other coercive practices which keep FDWs in a situation of exploitation, including confiscation of passport, withholding of salary, isolation and restriction of freedom of movement, lack of access to means of communication and physical and psychological violence.<sup>47</sup> According to Anti-Slavery International, the exploitation faced by FDWs who have been trafficked results from a combination of unacceptable working and living conditions. It has described the relevant working conditions as:

- (i) Wide-ranging yet non-defined duties, resulting in the worker essentially being at the employer’s disposal;
- (ii) Long working hours, with some women being on duty 24 hours each day;
- (iii) Inappropriate work management techniques, including the use of verbal violence and restriction on freedom of movement;
- (iv) Non-payment, low payment or withholding of wages.

It has described the relevant living conditions as follows:

- (i) Accommodation which lacks both comfort and privacy;
- (ii) Inadequate food;
- (iii) Limited or no access to health care; and
- (iv) Restrictions on social life and cultural habits, often resulting from restrictions on movement which are intended, inter alia, to

prevent the domestic worker from building relationships which may cause problems (e.g. pregnancy) for the employer to resolve.<sup>48</sup>

One of the main obstacles to the development of effective law and policy to prevent and protect victims of trafficking into domestic servitude is the on-going problem of identification. In a report on the United Arab Emirates, the UN Special Rapporteur on Trafficking in Persons, especially Women and Children, commented on the prevalence of trafficking of women into domestic servitude, noting that “the identification of victims, especially domestic workers trafficked for labour exploitation still remains non-existent and problematic” and urging the UAE government “to expand the definition of trafficking, to explicitly include labour exploitation, domestic servitude as well as other forms of trafficking”.<sup>49</sup> Similarly, in recognition that there have been “very few prosecutions and convictions for trafficking in human beings for labour exploitation in most OSCE participating States”, highlighting that:

“[T]he main legal challenge is rooted in the difficulty for law enforcement and the judiciary to differentiate between situations where there is exploitation in violation of the labour law (...) and situations where a person has been trafficked for the purpose of labour exploitation.”<sup>50</sup>

There have, however, been some recently reported cases in which cases of trafficking for domestic servitude have been prosecuted under anti-trafficking legislation, including in Israel,<sup>51</sup> the United States<sup>52</sup> and Malaysia.<sup>53</sup>

Trafficking into domestic servitude has therefore been acknowledged in the international forum as a form of trafficking which presents unique challenges, due to both its basis in fundamental problems of inequality

and discrimination, but also in the difficulty in applying the “standard” criminal justice response as the primary means of combating its existence.

### **3. Trafficking into Domestic Servitude in Singapore**

The domestic work sector in Singapore provides a helpful example upon which to base an assessment of the potential role of an equality and discrimination focussed approach to trafficking due to the multiplicity of disadvantage and vulnerability faced by those working within it. Human trafficking in Singapore affects primarily non-Singaporeans who have travelled to the city-state, whether willingly or not, to seek employment, and this study focusses solely on trafficking of foreign domestic workers in domestic servitude, given that there are very few, if any, Singaporean live-in domestic workers in Singapore. Further, all foreign domestic workers in Singapore are female by virtue of the work permit requirements.<sup>54</sup> An assessment of the legally-based inequality and discrimination encountered by foreign domestic workers is elaborated further in Sections 4 and 5 below, but, by way of an introduction to the issue, it is notable that unlike all other migrant workers, foreign domestic workers are excluded from Singapore’s Employment Act, protected only by the less rigorous requirements of the Employment of Foreign Manpower Act and its secondary legislation, and subject to other requirements – particularly in relation to pregnancy – which enhance their vulnerability. The US Department of State has highlighted the particular vulnerability of domestic workers to forced labour situations, due to the long-standing lack of a mandatory day off provided under Singaporean law,<sup>55</sup> and the trafficking-like conditions in which many foreign domestic workers live have been referenced in academic literature.<sup>56</sup> The results

of the HOME FDW Study add further detail to the picture of trafficking into domestic servitude painted by the US TIP Report.

Between March and July 2012, 151 FDW residents of the HOME shelter (from the Philippines (84.1%), Indonesia (10.6%), Myanmar (4.6%) and India (0.7%)) were interviewed in order to determine the extent to which the ILO Operational Indicators of Trafficking in Human Beings (the ILO Indicators)<sup>57</sup> were present in each case.<sup>58</sup> An overview of the results demonstrates that for 149 of the women interviewed, all three elements of the definition of human trafficking – action, means and purpose – were present. 149 of the 151 women were held in situations of exploitation, with 150 women subjected to coercive practices to keep them in such situations. 54 women were deceived during the recruitment process and the vulnerability of 54 women was abused by their recruiters in order to lure them into situations of exploitation.

### 3.1 Recruitment

The recruitment of FDWs to travel for employment in Singapore was the key “action” which took place in relation to all of the women interviewed. For the majority, the recruitment was accompanied by transportation from their country of origin to Singapore. Almost all of the women (97.4%) engaged the services of employment agents during the recruitment process. The analysis of the interviews demonstrated prevalent patterns of deception and abuse of vulnerability during the recruitment phase.

#### *Deception*

According to the ILO Indicators calculation, 54 (35.8%) of the women interviewed demonstrated sufficient indicators to test positively for deception during the recruitment

process. These women were deceived regarding key aspects of their prospective employment and thereby tricked into entering into an arrangement which would ultimately result in their exploitation. The forms of deception experienced related to:

- (i) Nature of the job, location or employer (34.4%);
- (ii) Conditions of work, including working hours and number of rest days (31.8%);
- (iii) Content of work contract (51.7%);
- (iv) Housing and living conditions (1.3%); and
- (v) Wages and earnings (40.4%).

The main method by which such deception was carried out was through contract substitution. 61.6% of the women interviewed signed a contract in their country of origin which was subsequently substituted with a replacement contract upon arrival in Singapore. Of those substituted contracts, 91.4% were on less favourable terms.

#### *Abuse of Vulnerability*

According to the ILO Indicators calculation, 54 (35.8%) of the women interviewed were subject to abuse of vulnerability during the recruitment process. In several cases, such abuse played a role in allowing the deception described above to take place. This is particularly the case where the lack of education of the women, and particularly the lack of understanding of the contracts which they read due to language and/or the complexity of the terms, prevented them from understanding what they were signing up to, or where a lack of information provided by the agent or recruiter prevented them from realising that they were being deceived. The

vulnerability of recruits arising from financial difficulty and family problems also impacted on the recruitment process, and their willingness to accept employment arrangements with limited understanding of the terms and conditions.

The interview analysis showed that the following vulnerabilities of the interviewees were abused during the recruitment process:

- i) Lack of education, preventing understanding of the language and/or complexity of the employment contract (11.9%);
- ii) Lack of information, preventing the woman from being fully aware of the situation she is entering into (88.7%) (examples include being prevented from reading the employment contract prior to signing it and not being given any terms or conditions of employment prior to travel to Singapore);
- iii) Financial vulnerability, in which the women faced particular financial difficulties, including being the sole breadwinner for the family, being heavily indebted prior to recruitment and being encumbered with high medical fees for family members, which rendered them vulnerable to abuse on recruitment (66.2%); and
- iv) Difficult family situation, including family dependence on their earnings, abusive family set-ups and family ill-health (39%).

The connection between the “abuse of vulnerability” element of the trafficking definition, as found in the cases of the women interviewed, and the underlying factor of systemic inequality between developing and developed countries acting both as a “push” and a “pull” factor in the process of female migration for employment, in the cases of

domestic workers travelling from their country to Singapore, may result in trafficking.

### **Coercion**

In a total of 62 cases (41.1%), coercion was present in one or more ways during the recruitment phase. These 62 women were (i) placed in agency accommodation, in which control over their lives was essentially surrendered to the agents responsible for their recruitment (14 women, 22.6%); (ii) subjected to undue pressure at the time of entering into the contractual arrangements which would govern their employment in Singapore (35 women, 56.5%); or (iii) forced to relinquish possession of their identity documents to their employment agent prior to deployment (33 women, 53.2%). Each of these actions diminishes the control which the FDW has over her situation and the ability to make free choices at each stage of the process.

The presence of inequality is again notable in the patterns of coercive recruitment found in the cases of the FDWs interviewed, this time in the relationship between the FDW and her recruiter and/or employment agent. The imbalance of power in this relationship, founded ultimately on the fact that the latter has exactly what the former needs in order to fulfil her aims – i.e. the ability to arrange a job for her.

### **3.2 Employment**

It is upon arrival into Singapore and commencement of employment at the homes of their employers that coercive practices are commonly used in order to keep FDWs in an exploitative situation of forced labour or servitude. The nature of the exploitation which 149 (98.7%) of the women interviewed experienced was varied, yet for many, touched

upon all aspects of their lives including both their working and living conditions. The ILO Convention on Forced or Compulsory Labour defines “forced labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The UNODC Model Law against Trafficking in Persons defines “servitude” as follows: “‘Servitude’ shall mean the labour conditions or the obligations to work or to render services from which the person in question cannot escape and which he or she cannot change”. It is the element of coercion and the resulting lack of choice which turns a situation in which an individual is exploited through violation of their labour rights into one of forced labour or domestic servitude, and therefore these sets of indicators are here examined alongside each other.

### ***Exploitation***

As stated above, 149 of the women interviewed had been subjected to varying forms of exploitation during their employment in Singapore. The different forms of exploitation are as follows:

- i) Excessive working days (96.7%);<sup>59</sup>
- ii) Excessive working hours (96%);<sup>60</sup>
- iii) Very bad working conditions, including being forced to give massages to employer and/or his family and being forced to work illegally in multiple locations (36.4%);
- iv) Bad living conditions, including being given insufficient or inadequate food, or being forced to accept inappropriate sleeping arrangements (due to lack of private space or being forced to share with adults and/or children) (47%);
- v) Hazardous work, including being forced to clean the outside of windows on high storeys without any safety precautions being taken (20.5%);<sup>61</sup>
- vi) Low or no salary – Given that there is no minimum wage in Singapore, the measure for this indicator was taken to be the minimum wage set out in the Philippines standard form contract for its overseas domestic workers of US\$400 per month, of which 98.7% of the women interviewed earned below;
- vii) No respect of contract signed (59.6%).

### ***Coercion***

According to the ILO Indicators calculation, 150 women were subjected to coercion as a means of keeping them in the situation of exploitation they found themselves in upon deployment in Singapore. Such coercive practices are implemented by employment agents and/or employers, primarily to ensure in the first instances that the repayment of the recruitment debt, through salary deductions, is made in full. In Singapore, market practice dictates that it is the FDW herself who bears the cost of her deployment, including not only the transportation and administration costs involved in bringing her from her country of origin to Singapore, but also the fees of the employment agents (both in the country of origin and in Singapore) who assist in making all the necessary arrangements. Given that many potential FDWs are not in a position to pay such costs upfront, the process is “facilitated” through a practice of salary deductions, whereby the FDW receives no salary for a certain number of months whilst her recruitment debt is repaid. Of the 151 women interviewed, 96.7% reported incurring debt through their recruitment process which resulted in them

being placed in a situation of debt bondage during their deployment in Singapore. The average number of months of debt incurred by these women was 6.9 months of salary, with the largest number incurring seven months of debt.

The imposition of such debt obligations upon FDWs is itself a means of coercion, as they are led to believe that they are not able to leave their employment prior to complete repayment of the debt, but it also results in further coercive behaviours being used by agents and employers in order to ensure that the FDW meets those obligations. The patterns of coercive behaviour identified through the interviews did not all involve the use of physical force in order to “force” women to work, but rather the use of more subtle means of influence in order to create in her the belief that she has no choice but to continue to work despite the exploitative conditions, if only to ensure that she earns money at some point in the future and avoids any negative repercussions for her and her family.

Such patterns include:

- i) Physical violence, including sexual abuse: 23.8%;
- ii) Verbal abuse: 75.5%;
- iii) Confiscation of identity documents, including passport and work permit: 96%;
- iv) Isolation, confinement and surveillance, including restrictions on communication with others by phone or in person, restrictions on freedom of movement and being subject to CCTV surveillance at all times: 62.3%;
- v) Use of threats, including threatening to report to the police, repatriate and blacklist to prevent future employment: 23.1%; and

vi) Withholding money: 33.1%.

An assessment of the key indicators of trafficking into domestic servitude identified through the HOME FDW Study highlights some of the challenges in adopting a solely criminal justice response to this form of trafficking. Some of the indicators are clearly criminal acts in and of themselves, such as physical and sexual violence<sup>62</sup> and wrongful confinement.<sup>63</sup> Others – such as illegal deployment, withholding salary and hazardous work – are violations of the Work Passes Regulations 2012 which govern the employment conditions of FDWs.<sup>64</sup> So long as individual indicators can be characterised as violations of law in their own right, they tend to be treated as such and the bigger “trafficking” picture is missed. A further problem is that many of the actions referred to would not necessarily be viewed as criminal in nature and as such are very easily missed as indicators of trafficking. Further, many of the indicators – including excessive working hours and working days, contract substitution and confiscation of handphones – are not prohibited by law, and as such are viewed as lawful and acceptable means by which employment agents and employers can manage their relationship with FDWs.

#### **4. The Response of the Singapore Government**

In addition to recognising the vulnerability of FDWs in Singapore to forced labour in its 2012 report, the US Department of State also pointed out the inadequacy of the response of the government to such forms of trafficking. It states that during the relevant period, there were four convictions of sex trafficking offenders, but no prosecutions or convictions of labour trafficking offenders.<sup>65</sup> The inadequacy of the government’s response was also reflected in the results of the HOME FDW Study.

Based on the information collected from the women interviewed as part of the HOME FDW Study, the actions being taken by the Singapore government to combat this form of trafficking are not encouraging. The majority of the women (62.9%) sought assistance from HOME, a non-governmental organisation, rather than utilising the avenues of assistance provided by the Ministry of Manpower (MOM). Several women referred to being afraid of approaching the authorities, whilst others said that they were unable to make contact through the helpline due to having had the relevant information confiscated by their employers and/or an inability to make phone calls due to confiscation of their handphones. Of the seven women who did approach MOM for assistance, either via the helpline or in person, three reported being unable to speak to anyone via the helpline as there was no answer and another three women were advised by the MOM officer they spoke to on the phone to discuss their “problem” with their employer. The “problems” in question included illegal deployment, passport confiscation and being locked in the house. Eight women sought the assistance of the police. Four of these had positive experiences in which their complaints were taken seriously and they were referred to the HOME shelter for accommodation. Three women, however, were returned to their agency and one to their employer against their wishes.

Analysis was also conducted of the role played by the authorities in assisting with case resolution and whether any action was taken based on the presence of trafficking indicators in the cases of the individuals in question. In the introduction to its own list of human trafficking indicators, the UN Office on Drugs and Crime states that whilst the presence or absence of any of its indicators will not prove or disprove that traf-

ficking has taken place, their presence will indicate the need for further investigations to be carried out.<sup>66</sup> Of the 151 women interviewed, 77 (51%) had their cases referred to the authorities. 59 of them (76.6%) were referred to MOM, 11 (14.3%) were referred to the police and seven were referred to both MOM and the police. **None of these women were flagged by the government officials who reviewed their cases as potential trafficked persons.** It is notable, however, that the experience of HOME caseworkers demonstrates that the outcomes of MOM and police investigations are, in many cases, not reported to the FDW herself, other than if the outcome affects her directly such as the payment of salary which is owed to her. This lack of transparency prevents the FDW from knowing whether any punishment has been meted out to the employer and prevents civil society organisations like HOME from monitoring the response of the authorities to the cases of trafficked and potentially trafficked persons.

The results of the HOME FDW Study therefore strongly suggest that the accessibility of direct forms of government assistance appears to be lacking for victims and potential victims of trafficking (which is also, according to CEDAW, a form of discrimination). This is a notable failure to comply with international equality standards, which, as confirmed in the Declaration of Principles on Equality, require that “[p]ersons who have been subjected to discrimination have a right to seek legal redress and an effective remedy”.<sup>67</sup>

This is not, however, for lack of efforts being made by the state to address the issue of trafficking in Singapore. With the launch of its NPA in March 2012, the Taskforce committed itself to a three-year plan based on the UN Trafficking Protocol’s criminal justice model. The lack of subsequent progress in relation

to the protection of FDWs from trafficking is due, in part, to the lack of any notable action having been taken by the Taskforce in compliance with the NPA. It is also, however, indicative of the inherent inadequacy of a focus solely on criminal justice responses to addressing trafficking into domestic servitude.

The main inadequacies of the UN Trafficking Protocol's criminal justice response to trafficking are summarised as follows. Firstly, whilst setting out a system which includes the different elements of prosecution, protection and prevention, the UN Trafficking Protocol does not actually require that a comprehensive system must be put in place through the enactment of specific anti-trafficking legislation (as can be found in other ASEAN jurisdictions, including Malaysia and the Philippines). Such legislation is arguably a key way to ensure that labour trafficking does not get ignored by legislatures in favour of a focus on sex trafficking which is arguably easier to define, identify and prosecute. In the NPA, the Taskforce does not commit to enacting a single all-encompassing piece of legislation, but rather suggests that it will "define sex and labour trafficking offences, as well as related offences within existing legislation",<sup>68</sup> and proposes to "review all legislation related to TIP to ensure that the desired legislative framework facilitate the achievement of key TIP objectives", and "to ensure that Singapore's legislation adequately addresses the complexity of TIP crimes and that penalties are commensurate with crimes".<sup>69</sup> Such proposals are far from the preferred "comprehensive anti-trafficking legislation" approach which is favoured.

Secondly, as stated above, the UN Trafficking Protocol provides a definition of trafficking which is, in relation to some of its key terms, opaque and not user-friendly. This is particularly notable when dealing with cases of

trafficking into domestic servitude in which some of the less clear terms – such as "deception", "coercion" and "abuse of vulnerability" – are all-important. Whilst sets of indicators, such as the ILO Operational Indicators used in the analysis undertaken as part of the HOME FDW Study, provide valuable assistance in understanding how the UN Trafficking Protocol definition becomes operationalised, the decision remains with individual states as to what indicators they will adopt to assist in identification. A notable difference can be seen, for example, between the ILO Operational Indicators and the indicators adopted by the US Government which are far narrower in scope and, as such, may not capture all cases that would be caught by the ILO Operational Indicators.<sup>70</sup> As stated above, one of the key challenges in relation to combating trafficking of domestic workers into domestic servitude is the challenge of identification. The lack of guidance provided within the UN Trafficking Protocol is another weakness of this regime which requires supplementation. In a recent speech to the conference held by the OSCE Alliance against Trafficking in Persons, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, described such failure to identify all forms of trafficking as a further example of discrimination:

"We are confronted every day with the fact that, in practice, many cases in which there are clear indications of trafficking – confiscated documents, excessive working hours, no salary and even injuries as a consequence of physical punishment – even these cases very often are not classified as trafficking cases but treated as less serious crimes. One of the reasons behind this shocking situation is that very often the competent authorities fail to grasp the gravity of the exploitation involved. Well, when we dig

and try to better understand and analyse the reasons for this “blindness”, we find, among other factors, discrimination. We discover, for example, how influential the cultural construction of the migrant as the “other”, and of “otherness” as “inferiority” is, although it mostly works in a subtle and hidden way. The same constructions are reflected in any form of discrimination and racism. The same constructions were once used to validate and justify historical slavery.”<sup>71</sup>

Thirdly, and perhaps most importantly, the criminal justice response to human trafficking is problematic due to the fact that it addresses the problem of trafficking in isolation, without acknowledging the frequently systemic factors that lie behind it, and outwith the criminal responsibility of transnational organised syndicates. It treats the trafficking process as a singular crime, rather than identifying the multifarious elements which contribute to a finding of trafficking, each of which should also be addressed. Jonathan Todres has recently described the fundamental problem in the framing of the UN Trafficking Protocol approach as follows:

“A central failing in international law’s response to human trafficking has occurred at the design stage. The Trafficking Protocol grew out of a criminal law framework rooted primarily in concern for combating transnational organised crime syndicates rather than an independent assessment of what is needed to prevent human trafficking. As a result, the international community not only developed a narrow response focused primarily on criminal law measures, but its anchoring of anti-trafficking law in criminal law concepts subsequently served to marginalize other vital perspectives. This failure to draw upon a broad range of perspectives to address the root causes of human trafficking underlies many of the shortcomings

in the international community’s response to the issue. It also likely means that even if compliance with international human trafficking law continues to improve, human trafficking is unlikely to decline significantly. As a result, we need to rethink our approach to the problem and redesign international law’s response.”<sup>72</sup>

Todres proceeds to explain how the “anchoring” phenomenon – through which “an initial step (such as a first offer in negotiations), whatever it may be, significantly influences and shapes the subsequent course of action and final outcomes (for example, the remainder of the negotiation and settlement amount agreed to by the parties)”<sup>73</sup> – can be used to explain how the “initial framing of human trafficking as a criminal law issue has limited the range of options considered when seeking to develop anti-trafficking laws and programs”.<sup>74</sup>

It is here that we return to trafficking as a form of discrimination, against which states such as Singapore are obliged to take “all appropriate measures” (not only criminalisation) in order to achieve its eradication. States should, but too often do not, combine the criminal justice response with a broader legislative and policy review which identifies areas of discrimination and deficiency which enable the crime to flourish. The final section of this article endeavours to provide an initial road map for Singapore as to what such a broader legislative and policy review might address.

## 5. A Broader Approach

The above assessment of the weaknesses of the criminal justice approach to addressing trafficking into domestic servitude demonstrates the need for the Singapore government to take additional steps

to address the issue of trafficking into domestic servitude. In compliance with its general obligation under CEDAW to “pursue by all appropriate means” a policy of eliminating discrimination against women, and its specific obligation under Article 6 to “suppress all forms of traffic in women”, Singapore should review all laws which impact on the recruitment, employment and immigration status of domestic workers in order to eradicate any provisions or policies which make them vulnerable to the crime of trafficking, or the individual elements (or indicators) which contribute to the crime. Further, in his opening speech to the conference of the OSCE Alliance against Trafficking in Persons in October 2012, Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) advised as follows:

“Being aware of the alarming impact of discrimination on the prevalence of trafficking of women, men and children, we are convinced of the need to combat all forms of discrimination based on race, ethnicity, gender, disability, social and other status as part of an effective response to human trafficking. The vulnerability of potential victims of trafficking is further aggravated when participating States fail to provide for basic social and economic rights to all – without discrimination.”<sup>75</sup>

Principle 11 of *The Declaration of Principles on Equality* requires states, *inter alia*, to “[t]ake all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that conflict or are incompatible with the right to equality”.<sup>76</sup> This section sets out some of the key steps which Singapore could take in fulfilment of this requirement in relation to FDWs.

## **5.1 Improve Protection of the Right to Equality and Non-Discrimination for Non-Citizens**

Whilst Part IV (Fundamental Liberties) of the Singapore Constitution protects the rights to equality and non-discrimination, such protection is notably limited, particularly for non-citizens. Article 12(1) sets out the right to equality before the law and equal protection of the law for all persons, whilst Article 12(2) prohibits discrimination against only citizens, on a very limited list of prohibited grounds (i.e. religion, race, descent or place of birth).<sup>77</sup> Whilst foreign domestic workers are excluded from the constitutional protection from discrimination due to their nationality, and whilst certain features of their vulnerability – e.g. gender – are not recognised as a prohibited ground of discrimination, it is arguable that efforts to combat human trafficking – a particularly heinous form of discrimination – will be ineffective. Further, as commented upon by the CoEDAW in its latest Concluding Observations on Singapore,<sup>78</sup> Singapore has yet to domesticate its obligations under CEDAW into national legislation. The enactment of comprehensive anti-discrimination legislation which provides protection for all persons within Singapore across a broad range of prohibited grounds, including sex, nationality and economic status, will almost certainly improve the situation for foreign domestic workers and reduce the risk of them becoming subject to human trafficking. It is notable that anti-discrimination legislation in the US – and particularly the Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, colour, religion, sex, or national origin, has been used by the Equal Employment Opportunity Commission to significant effect in trafficking cases.<sup>79</sup> The case setting the precedent was *Chellen and EEOC v John Pickle*

*Company, Inc.*,<sup>80</sup> in which 52 unskilled Indian labourers received \$1.3 million in damages having been employed on terms and conditions far worse than those upon which their US-born colleagues were employed. They earned minimal amounts in salary and were forced to live in appalling conditions. David Lopez, General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC), described this decision as “a key victory for the EEOC in the fight against human trafficking, forced labour, and employment discrimination” which will “serve as precedent for bringing a civil case with civil remedies against employers involved with the trafficking of people”.<sup>81</sup>

## 5.2 Review and Amend Unequal and Discriminatory Labour Laws

A review of the labour law protections which Singapore provides to FDWs is urgently required. Singapore labour laws do not adequately protect the rights of FDWs. There are significant gaps in the labour laws affecting all workers in Singapore which impact on the lives of FDWs, such as the absence of a minimum wage in all categories of employment. That said, there are protections which are guaranteed to other workers which are denied to domestic workers. All domestic workers, whether migrants or otherwise, are excluded from the Employment Act (Cap 91), along with seamen and certain persons in managerial and executive positions.<sup>82</sup> As a result, FDWs are not able to benefit from a range of protections including those relating to contract termination, salary payment (including overtime), rest days, working hours, annual leave, sick leave and maternity cover.

The employment rights of FDWs in Singapore are governed instead by the Employment of Foreign Manpower Act (EFMA)<sup>83</sup> and, more

specifically, the Work Passes Regulations.<sup>84</sup> EFMA establishes the Work Pass regime according to which the employment of foreign employees is governed. Far from being legislation which grants protection of the labour rights of foreign employees, EFMA sets out the rules according to which employment is permitted, the offences associated with breach of such rules and the powers of arrest and enforcement held by the authorities. The Work Passes Regulations – enforced by MOM – provide more concrete protections to FDWs as follows:

- i) prohibition of illegal deployment;
- ii) no retention of Work Permit and visit pass by employer;
- iii) acceptable living conditions, including adequate food, medical treatment and acceptable accommodation;
- iv) salary payments (method, rather than amount);
- v) prohibition of ill-treatment;
- vi) working conditions, including safe working environment, “adequate” daily rest, rest days in accordance with contract;
- vii) repatriation to international port of entry affording reasonable access to the employee’s hometown, and reasonable notice of such repatriation; and
- viii) prohibition of causing employee to be engaged in illegal, immoral or undesirable conduct or activity.

There are a number of notable exclusions from the list of protections, including a minimum wage and a maximum number of daily working hours. Further, there are no guarantees of freedom of association and collective bargaining for FDWs – in fact such freedom is specifically denied under other legislation – and there are no protections of the right of workers to live in accommodation of their choosing and to have freedom of movement.

There are no social security protections for FDWs who become pregnant; instead they are repatriated given they are not entitled to be Work Permit holders whilst pregnant.<sup>85</sup> Similarly, FDWs who are “certified medically unfit” will have their Work Permit revoked.<sup>86</sup> The ILO Domestic Workers Convention sets out the blueprint for protections which all FDWs should enjoy, and it is when compared against this blueprint that the inadequacies of the current Work Passes Regulations become apparent.

Vague language throughout the Work Passes Regulations serves to reduce the impact of the protections, such as the use of “adequate” in relation to food and daily rest, “acceptable” in relation to accommodation, and “reasonable” in relation to access to the employee’s hometown and the notice of repatriation. Whilst the MOM website provides additional guidelines for employers which do expand on these to a certain extent<sup>87</sup> - such as suggesting that “where possible”, FDWs should be given a separate room of their own - they remain very “soft” provisions, and when it comes to enforcement of such protections, the impact of these vague terms is notable.

The experience of HOME’s caseworkers is that certain provisions of the Work Passes Regulations are not well-enforced. For example, the provisions preventing illegal deployment are essentially waived where such deployment is to the homes of family members, such as the employer’s parents or siblings. The fact of such illegal deployment will have equal impact on the experience of the FDW, irrespective of the relationship between the employer and the person to whom the FDW is illegally deployed and therefore such “bending of the rules” is problematic. A similar lack of enforcement is seen in relation to the confiscation of passports and work per-

mits which is the “norm”, but for which punishment is not often imposed.

In March 2012, Singapore’s Ministry of Manpower announced the introduction of a mandatory weekly rest day for FDWs; a standard labour right which had previously been denied to them. Whilst this was initially viewed by civil society and the domestic worker community as a very positive step forward towards improved labour law protections for FDWs, a closer analysis of the policy detail demonstrates that it may have little impact on the lives of Singapore’s FDWs and also further entrenches the discrimination they regularly suffer. Despite being announced in March, the policy did not come into effect until 1 January 2013 and even then only for new contracts. FDW contracts usually have a duration of two years, which means that some FDWs will actually have to wait until 1 January 2015 before this new protection will apply to them. Further, there is no specification as to the number of hours which comprise a weekly rest day. The ILO Domestic Workers Convention states that a rest day should be 24 consecutive hours, but few FDWs in Singapore enjoy such a luxury, with strict curfews frequently imposed on any off day. Finally, the policy provides that FDWs may be compensated in lieu of a weekly rest day provided she mutually agrees with her employer to this option. The compensation is, however, to be calculated as the equivalent of one day of salary and is, as such, not equal to the compensation which all other workers (including migrant workers who are not domestic workers) receive for overtime under the Employment Act. In addition, the suggestion that an FDW will be in a position to meaningfully negotiate with her employer regarding whether or not she actually takes her mandatory weekly rest day fails to acknowledge the unequal bargaining power

that exists as a result of the debt bondage which many FDWs find themselves in upon arrival in Singapore.<sup>88</sup>

The situation in which foreign domestic workers in Singapore, as in many other jurisdictions across the globe, find themselves has recently been referred to by Virginia Mantouvalou as “legislative precariousness”,<sup>89</sup> due to their explicit exclusion from the Employment Act and the far lower level of protection which is provided to them under the Employment of Foreign Manpower Act. She has pointed to the landmark Advisory Opinion of the Inter-American Court of Human Rights on “Juridical Condition and Rights of the Undocumented Migrants”<sup>90</sup> as having relevance to the situation of foreign domestic workers who, whilst not necessarily undocumented, may benefit from the reasoning provided in the Opinion. As Mantouvalou explains:

“The IACtHR ruled that the exclusion of undocumented migrants from labour rights breached international principles of equality before the law and non-discrimination, which it recognised as norms of jus cogens. The Court emphasised that it would not be lawful to deny labour rights once someone is already employed.”<sup>91</sup>

### **5.3 Enhance Regulation and Monitoring of Employment Agencies**

Principle 11(g) of the Declaration of Principles on Equality requires that states must

“[t]ake all appropriate measures to eliminate all forms of discrimination by any person, or any public or private sector organisation”.<sup>92</sup> As key players in the process which results in the trafficking of foreign domestic workers into domestic servitude, it is submitted that Singapore must take in-

creased action to regulate and monitor the activities of employment agencies. The recruitment of FDWs by recruitment agents in both the source country and in Singapore is inadequately monitored by Singapore’s existing legislation – the Employment Agencies Act (the EAA). Given that Singapore’s agencies work in partnership with agencies in source countries, it is not sufficient for the EAA only to govern the actions of agencies based in Singapore. The governments of source countries – such as the Philippines – monitor the actions of Singapore-based agencies as part of their prevention mechanisms and Singapore should therefore do the same. Further, the terms of the EAA are inadequate to prevent the errant behaviours of Singapore-based agents – including deception, coercion, and abuse of vulnerability – which lead (and arguably traffic) individuals into labour exploitation.

Whilst all Singapore-based employment agencies and their key personnel must be licensed under the provisions of the EAA, such licences are usually granted for three-year periods<sup>93</sup> and there is no system for interim monitoring. Whilst employment agency inspectors do have the authority to carry out inspections pursuant to Section 18 of the EAA, there is no system for proactive and regular monitoring of agencies and therefore no real deterrent during the period of the licence for agencies to avoid suspect behaviour.

Following a seemingly positive set of amendments passed in early 2011, the EAA now imposes a limit for the fees which employment agents may charge to applicants,<sup>94</sup> which was further prescribed in the Employment Agencies Rules 2011 as one month salary per year of the contract,<sup>95</sup> such limit is subject to notable exclusions including “any fee charged or received by a licensee in respect

of costs incurred by or on behalf of an applicant for employment outside Singapore”.<sup>96</sup> This therefore allows employment agents to add on top of the two-month permitted fee any pre-deployment costs, such as transportation, training, medicals etc. with the result that the “cost” incurred by FDWs becomes far higher than the limits imposed by the EAA.

The EAA is silent on the issue of employment contracts and the administration of such contracts – including the issue of contract substitution. The deployment process does require the issue of an In-Principle Approval letter to the employee prior to departure from the country of origin which sets out the key terms of the contract, but this may not be understood by the employee and also does not refer to all relevant terms – particularly salary deductions.

Finally, the EAA provides no “code of conduct” which governs the standard of service which agents must provide to the FDWs who are as much their clients as the employers to whom they are deployed. In fact, one might argue that given that it is the FDW who pays the agent’s fee, they should expect a better service than the employer! There is therefore nothing which governs the timing or nature of responses of agents to problems encountered by employees during deployment, nor the requirements of responding promptly to the wishes of the employee, e.g. when she wishes to terminate her employment and return home. Likewise, there is no responsibility imposed on licensed employment agents to investigate and/or report to the authorities behaviours by employers which are contrary to the Work Passes Regulations.

The inadequate regulation by the Singapore government of private employment

agencies in Singapore, and indeed their counterparts in source countries, renders FDWs vulnerable to deception, coercion and exploitation from the moment they are recruited at the very outset of their migration experience.

#### **5.4 Abolish Laws which Create a Fertile Ground for Discriminatory Practices**

In addition to the provisions of the EAA, EFMA and the Work Passes Regulations which, whether implemented effectively or not, represent an attempt to protect the labour rights of migrant workers, there are a number of legislative and policy provisions which create a fertile ground in which trafficking indicators flourish. These relate to (i) the financial burdens imposed upon employers of FDWs and (ii) the dependence of the legal immigration status of the FDW upon their employer.

In addition to the salary which employers pay to their FDWs, they are also saddled with two further financial burdens in relation to the employer of said FDW. Firstly, employers are required to post a security bond of \$5000 with the government which guarantees the upkeep and maintenance, provision of acceptable accommodation and the repatriation of the FDW upon termination of employment and cancellation of the work permit.<sup>97</sup> The potential cost of violating the terms of the security bond is used by employers as justification for refusal to grant rest days to their FDW, for imposing restrictions on their movement and for confiscating documents. The lack of rest days and confinement to the home are both indicators of trafficking and therefore it could be argued that there is a direct link between the requirement of the security bond and such coercive behaviours.

In addition to posting a security bond, employers must pay a monthly levy of up to \$265 to the government throughout the period of employment of a FDW.<sup>98</sup> As a percentage of the average monthly salary paid to the FDWs interviewed as part of this study – \$409.73 – this levy is a significant additional cost for the employer. It is likely that the imposition of this levy requirement serves to suppress the salary levels of FDWs, especially for employers who are not themselves high-earners.

### **5.5 Eradicate Sponsorship System which Restricts Access to Justice**

The final way in which Singapore's policies relating to FDWs serve to encourage, albeit unintentionally, patterns which violate the rights of such workers and promote indicators of trafficking is through the tying of the immigration status of the FDW to their the will of the employer. The immigration status of each foreign migrant worker in Singapore is wholly tied to the employment relationship with the employer. In all cases other than where an FDW is transferring from one employer to another within Singapore, the FDW will enter Singapore on an entry visa contained within an In-Principle Approval letter which sets out the name and address of their employer. This letter will then be replaced with the Work Permit which also specifies the same details. It is the Work Permit which grants the employee the right to stay in Singapore. When an employer terminates the employment contract of the FDW, they must cancel the Work Permit and visit pass within seven days. The FDW must then be repatriated within a further seven days unless she enters an employment contract with a new employer within that period.<sup>99</sup> In situations where the provisions of the Work Passes Regulations and/or the Penal Code have been

violated and are under investigation by either MOM or the police, the FDW will be granted a Special Pass to enable her to remain in Singapore whilst the issue is resolved.

Neither the knowledge nor consent of the FDW is required in order for the Work Permit to be cancelled, which means that she may become an unlawful over-stayer without realising, the penalty for which is imprisonment and deportation. Further, it is solely the prerogative of the employer as to whether he/she will permit the employee to transfer to another employer at the end of the contract or whether to comply with the obligation to repatriate under the Work Passes Regulations. The impact of this is to add weight to the coercive threats of employers regarding repatriation prior to completion of loan repayment and the fear of FDWs of reporting cases of exploitation. Further, the requirement of prompt repatriation upon cancellation of Work Permit negatively impacts on the ability of the potentially trafficked FDW to seek legal assistance and obtain redress.

This overview of some of the key inadequacies of Singapore's legislative framework from an equality and non-discrimination perspective demonstrates the urgent need for a thorough review of the laws governing the recruitment, immigration status and employment of FDWs in order to ensure that "all appropriate action" is being taken to combat trafficking into domestic servitude in line with Singapore's obligations under CEDAW and international equality standards. So long as such inadequacies remain, a criminal justice response will be ineffective because a fertile ground has been created in which otherwise law-abiding citizens become criminals through simply complying with the legislative regime in place.

## 6. Conclusion

Human trafficking is both a human rights violation and a crime which takes multiple forms and presents very complex challenges for states caught in its clutches, both in sending and receiving countries. As highlighted most recently by the OSCE, factors of inequality and discrimination play a central role in the trafficking process and should therefore be taken fully into consideration by states when devising responses to this transnational crime and human rights violation. This article has outlined some of the characteristics of a particular form of labour trafficking – trafficking into domestic servitude – and the legal framework which arguably contributes to its existence, in order to illustrate the need for an approach which goes beyond the criminal justice response proposed in the Taskforce’s NPA and addresses comprehensively factors relating to the right to equality and non-discrimination. A strong criminal justice response, in relation to which severe punishments should certainly be imposed, is undoubtedly an important feature of the response to all forms of trafficking. How-

ever, characterising trafficking of female migrant workers into domestic servitude as a complex form of multiple discrimination on the grounds of sex, nationality, immigration status and economic status expands the extent of the obligations in terms of a response which governments must develop. Indeed, it is envisaged that a similar assessment of other forms of trafficking will highlight a similar need for a broader approach.

Activists have long-called for a human rights approach to trafficking, but this is often viewed as an approach which places the “victim”, her rights and her needs at the centre of any response. Whilst this is crucial, a human rights approach must also involve going beyond a criminal justice response in order to identify all violations of rights, including the right to equality and non-discrimination, which play a role in the trafficking process and seek to eradicate them from society through a thorough legislative review and amendment and a corresponding public education campaign which will, inevitably, be required in order to eliminate the culturally entrenched practices towards FDWs in countries such as Singapore.

---

1 Libby Clarke is a UK qualified lawyer and former Legal Officer at The Equal Rights Trust. From January 2012 to January 2013, Libby was a Senior Consultant to the Anti-Trafficking Programme at the Humanitarian Organization for Migration Economics (HOME) in Singapore. HOME is a non-governmental organisation and registered charity which is dedicated to serving the needs of the migrant worker community in Singapore. It was established in 2004 and has since provided services to thousands of migrant workers in need through its provision of shelters, legal assistance, training and rehabilitative services. Roughly 60% of those assisted by HOME are foreign domestic workers. Further information about HOME’s work can be found at [www.home.org.sg](http://www.home.org.sg). The author wishes to acknowledge the contributions of Marijke Bohm, Lydia Bowden, Vermili Saucelo and Judy Sotelo as research assistants in the study upon which this article is based.

2 UN Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Singapore*, 10 August 2011, CEDAW/C/SGP/CO/4, Para 25.

3 US Department of State, *Trafficking in Persons Report 2011*, June 2011, p. 319; US Department of State, *Trafficking in Persons Report 2012*, June 2012, p. 308.

4 For further information about the composition of the Singapore Inter-Agency Taskforce on Trafficking in Persons, see: <http://app1.mcs.gov.sg/Policies/HelpingtheNeedy/SingaporeInterAgencyTaskforceonTrafficking.aspx>.

- 5 See above, note 3.
- 6 Singapore Inter-Agency Taskforce on Trafficking in Persons, *National Plan of Action Against Trafficking in Persons, 2012-2015*, March 2012, available at: [http://app1.mcys.gov.sg/Portals/0/Topic/Issues/RPD/tipbooklet\\_080812.pdf](http://app1.mcys.gov.sg/Portals/0/Topic/Issues/RPD/tipbooklet_080812.pdf).
- 7 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the UN Trafficking Protocol).
- 8 Humanitarian Organization for Migration Economics, *FDW Trafficking Research Report*, December 2012, available at: <http://www.home.org.sg/library/research/>.
- 9 Piper, N., "A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania", *International Migration*, Vol. 43, Issue 1-2, p. 204.
- 10 Singapore has not ratified, for example, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture or the Convention on the Rights of All Migrant Workers and Members of Their Families.
- 11 See Article 6 of CEDAW and Article 35 of CRC.
- 12 See above, note 7, Article 3.
- 13 United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons*, Article 5.
- 14 ILO Convention No. 29 on Forced or Compulsory Labour, 1930.
- 15 UN Slavery Convention, 1926.
- 16 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.
- 17 United Nations Office on Drugs and Crime, *Human Trafficking Indicators*, available at: [http://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf); and International Labour Organisation, *ILO Operational Indicators of Trafficking in Human Beings*, 2009, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf).
- 18 CEDAW, General Recommendation 19, UN Doc A/47/38, 1992, Para 24(a).
- 19 *Ibid.*, Paras 24(h) and (i).
- 20 UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 2010, p. 3.
- 21 *Ibid.*, p. 40.
- 22 Association of South East Asian Nations, *ASEAN Human Rights Declaration*, 2012.
- 23 Further details about the OSCE's 12th High-level *Alliance against Trafficking in Persons* conference are available at: <http://www.osce.org/event/alliance12>.
- 24 OSCE, *Alliance against Trafficking in Human Beings – An Agenda for Prevention of Human Trafficking: Non-Discrimination and Empowerment – A Concept Note*, October 2012, available at: <http://www.osce.org/cthb/93890>.
- 25 OSCE, *Action Plan to Combat Trafficking in Human Beings*, 24 July 2003, Part IV, Paragraphs 1 and 3.3, available at: <http://www.osce.org/pc/42708>.
- 26 See above, note 24, p. 2.
- 27 Zannier, L., "Opening Remarks", at OSCE, *Alliance against Trafficking in Human Beings – An Agenda for Prevention of Human Trafficking: Non-Discrimination and Empowerment*, October 2012, available at: <http://www.osce.org/cthb/97267>.
- 28 See above, note 7, Articles 6-8.
- 29 *Ibid.*, Articles 9-13.
- 30 Todres, J., "Widening our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking", *Michigan Journal of International Law*, 2011, Vol. 33, pp. 57 and 63.
- 31 See above, note 7, Article 6.

32 *Ibid.*, Article 8(2).

33 International Labour Organization, *Domestic Workers Across the World: Global and regional statistics and the extent of legal protection*, 9 January 2013, p. 19, available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf).

34 *Ibid.*, p. 28.

35 *Ibid.*, p. 39.

36 See above, note 24, p. 5.

37 ILO Convention No. 189 concerning Decent Work for Domestic Workers, 2011, Preamble.

38 See above, note 18, Para 14.

39 CEDAW, General Recommendation 26 on Women Migrant Workers, 5 December 2008, Paras 13-14.

40 UN Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, p. 1, available at: [http://www.ohchr.org/Documents/Issues/Slavery/SR/A.HRC.15.20\\_en.pdf](http://www.ohchr.org/Documents/Issues/Slavery/SR/A.HRC.15.20_en.pdf).

41 *Ibid.*, Para 60.

42 *Ibid.*

43 Polaris Project, *Domestic Work*, available at: <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us/domestic-work>.

44 Amnesty International, *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*, December 2011.

45 UN Economic and Social Council, *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda*, 20 February 2006, Para 30, available at: <http://www.arabhumanrights.org/publications/countries/lebanon/rapporteurs/e-cn4-2006-add3-06e.pdf>.

46 See above, note 40, Para 33.

47 See above, note 45, Paras 28-36.

48 Anti-Slavery International, *Trafficking in Women, Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*, pp. 28-32.

49 Office of the High Commissioner of Human Rights, "United Arab Emirates: UN Expert urges further action to protect victims of trafficking", 17 April 2012.

50 Organization for Security and Co-operation in Europe, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, 2010, p. 37.

51 See US Department of State, *Trafficking in Persons Report 2012*, above note 3, p. 194, in which a recent case from Israel is described as follows: "In a precedential case in February 2012, the government convicted two individuals for forced labor of a Filipina domestic worker under the trafficking statute. While there was no evidence of physical violence inflicted upon the victim, the court recognized this case as an offense of 'holding a person under conditions of slavery' and withholding of a passport; the sentence was pending at the end of the reporting period and the victim had been referred to a trafficking shelter".

52 US Department of State, "California Woman Sentenced to Five Years Imprisonment For Forced Labor of Domestic Servant", 15 April 2010; and Metropolitan News Enterprise, "Court Upholds \$760,000 Damage Award in Human Trafficking Case", October 2010.

53 The Star Online, "Mother and two daughters charged with trafficking maid", 23 March 2012; Borneo Post, "10 years' jail for couple in maid exploitation appeal case", 7 July 2012; and Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Maid Agency Owner Gets Six Years For Trafficking Two Filipino Women", 30 March 2012.

54 Ministry of Manpower, *Work Permit (Foreign Domestic Worker) – Before you apply: Foreign Domestic Worker Requirements*, available at: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/basic-requirements-of-a-foreign-domestic-worker.aspx>.

55 See US Department of State, *Trafficking in Persons Report 2012*, above note 3, pp. 308-311.

56 See, for example, Asis, M.M.B., “Human Trafficking in East and South East Asia: Searching for Structural Factors”, in Cameron, S. and Newman, E. (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, United Nations University, 2008, p. 190.

57 ILO Indicators, above note 17.

58 The ILO Indicators provide a method, or calculation, by which the presence of each dimension of the trafficking definition can be assessed. All of the indicators under each dimension, eg. deception, coercion and exploitation, are identified as either strong, medium or weak indicators of that dimension. The method states that “for each potential victim, each of the dimensions of the trafficking definition is assessed independently from the others. The result of the assessment is positive if the dimension is present for the potential victim, negative if not. In order to be assessed as positive, a dimension must include: (i) two strong indicators; or (ii) one strong indicator and one medium or weak indicator; or (iii) three medium indicators; or (iv) two medium indicators and one weak indicator. After an assessment is done for each dimension, the final analysis involves combining the different elements to identify the victims of trafficking”. See the ILO Indicators, *Ibid.*, p. 3.

59 Given that at the time when the HOME FDW Study was carried out, there was no mandatory weekly rest day for FDWs in Singapore, the assessment of whether each interviewee had been subjected to excessive working days was made in accordance with the ILO Domestic Worker Convention requirement for weekly rest of at least 24 consecutive hours. According to this standard, not only did 146 of the 151 women work an excessive number of days, but 137 women were granted no rest days for certain periods of their employment.

60 Whilst there is no legal provision in Singapore setting out a minimum or maximum number of hours which an FDW should work in any day, week or month, the assessment of whether each interviewee had been subjected to excessive working hours was made in accordance with the working hour provisions set out in Section 38 of the Employment Act (which does not apply to FDWs, but which provides an appropriate comparator) which provides that no employee should work for more than (i) six hours without a period of leisure; (ii) eight hours in a day; and (iii) 44 hours in a week. Further, any employees who do work more than 8 hours in a day should be paid an overtime rate of no less than 1.5 times their hourly rate of pay, and no employee should work more than 72 hours of overtime in any one month. The minimum hours worked by any of the interviewees was 14 hours per day, and the maximum reported was a regular 20 hours per day (worked by six women). The average hours worked was 17.33 hours per day.

61 This issue of window cleaning has recently been proven as a particularly hazardous activity, especially given the number of deaths of FDWs resulting from falls from high-storey apartment windows in 2012 alone and the Ministry of Manpower’s decision to place restrictions on this practice. For further information, see The Jakarta Globe, “Spate of Maid Deaths in Singapore Prompts Indonesia to Call for Ban on Window Cleaning”, 8 May 2012; The Jakarta Globe, “Singapore Curbs Window Cleaning Amid Maid Deaths”, 5 June 2012.

62 Penal Code, sections 319-326 and 375-376.

63 *Ibid.*, sections 340 and 342.

64 Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Parts I and II.

65 See US Department of State, *Trafficking in Persons Report 2012*, above note 3, p. 309.

66 United Nations Office on Drugs and Crime, above note 17.

67 The Equal Rights Trust, *Declaration of Principles on Equality*, London 2008, Principle 18, p. 12.

68 Inter-Agency Taskforce on Trafficking in Persons, *National Plan of Action Against Trafficking in Persons 2012-2015*, Initiative 6, available at: [http://www.mom.gov.sg/Documents/tip/tipbooklet\\_080812.pdf](http://www.mom.gov.sg/Documents/tip/tipbooklet_080812.pdf).

69 *Ibid.*, Initiative 16.

70 US Department of Homeland Security, *Human Trafficking Indicators*, 2010.

71 Giammarinaro, M., “Opening Address”, at OSCE, *Alliance against Trafficking in Human Beings – An Agenda for Prevention of Human Trafficking: Non-Discrimination and Empowerment*, October 2012, available at: <http://www.osce.org/cthb/97272>.

72 See above, note 30, p. 55.

73 *Ibid.*, p. 67.

74 *Ibid.*

75 Lenarčič, J., “Opening Address”, at OSCE, *Alliance against Trafficking in Human Beings – An Agenda for*

*Prevention of Human Trafficking: Non-Discrimination and Empowerment*, October 2012, available at: <http://www.osce.org/cthb/97268>.

76 See above, note 67, Principle 11, p. 10.

77 Constitution of the Republic of Singapore 1965.

78 Committee on the Elimination of Discrimination Against Women, Concluding Observations on Singapore, CEDAW/C/SGP/CO/4/Rev.1, 16 January 2012, Para 9.

79 Lopez, D., "Panel 2: Exploring Non-Discrimination, Empowerment and the Law", at OSCE, *Alliance against Trafficking in Human Beings – An Agenda for Prevention of Human Trafficking: Non-Discrimination and Empowerment*, October 2012, available at: <http://www.osce.org/cthb/97283>.

80 Case No. 02-CV-0085-CVE-FHM, October 2006.

81 See above, note 79.

82 Employment Act, Section 2.

83 Employment of Foreign Manpower Act [30/2007].

84 See above, note 64.

85 See above, note 83, Part IV, Article 9.

86 *Ibid.*, Part IV, Article 5.

87 Ministry of Manpower, "Work Permit (Foreign Domestic Worker) - Before you apply", available at: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/default.aspx>.

88 For further criticism of the mandatory weekly rest day policy, see Human Rights Watch, "Singapore: Domestic Workers to Get Weekly Day of Rest", 6 March 2012.

89 Mantouvalou, V., "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labour", *Comparative Labor Law and Policy Journal* (Forthcoming), p. 1, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2115016](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2115016).

90 *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, 17 September 2003, Inter-AmCtHR (Ser A) No 18 (2003).

91 See above, note 89, p. 17.

92 See above, note 67.

93 Ministry of Manpower, *Changes to the Employment Agency Regulatory Framework*, February 2011, p. 4.

94 Employment Agencies Act, Section 14.

95 Employment Agencies Rules 2011, Rule 12.

96 *Ibid.*, Rule 12(2).

97 Ministry of Manpower, "Work Permit – Before you apply: Security Bond", available at: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fw/before-you-apply/Pages/security-bond.aspx>.

98 Ministry of Manpower, "Work Permit (Foreign Domestic Worker) – Before you apply", available at: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/default.aspx#levy>.

99 Employment of Foreign Manpower (Work Passes) Regulations, Paragraphs 20 and 21 of Part I of Fourth Schedule.