

CARAM ASIA

ANNUAL REPORT

2010

The Caram Asia Secretariat

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The CARAM Asia Vision

All people have the right to stay or move and live and work in dignity with equal rights in a society, where their quality of life is ensured.

CARAM Asia Annual Report

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1. Regional Co-ordinators Report

The year 2010 was a year filled with challenges and growing expectations as Caram continued to weather the expectation and challenges and continues to grow in its programs and membership.

The year 2010 is also a year of significant movement in terms of advocacy on migrant rights at the regional and international level. The civil society and organizations begin to join hand to embark on setting significant events and milestones were set in terms on Asean and at the ILO level.

These developments at the international and regional level will also have impacts at the national level, migrant workers need to be aware of the current mechanisms and instruments that protect their human rights.

At the Asean level, we witness the growing advocacy in terms of strengthening and gendering the the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Since 2009, the progress of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers has been slow and faced struggles from the different perspectives and positions of sending and receiving countries. The Malaysian government opposed the stance taken by its three ACMW partners (Thailand, Indonesia and Philippines) to include provisions to protect the rights of all migrant workers and their families. Receiving countries including Malaysia are also against a legally binding instrument for the protection and promotion of the rights of migrant workers.

CARAM Asia representing 38 civil society members covering 18 countries in Asia and the Middle East, together with the Task Force on ASEAN Migrant Workers, TENAGANITA and Suara Rakyat Malaysia (SUARAM) called on the AICHR on its recommendation to the ASEAN Committee for Migrant Workers.

CARAM and the partners have called on for key protection mechanism as to include provisions for the protection of all migrant workers regardless of documentation status and sector of work and to ensure that the all migrant workers and their families should be covered by the forthcoming Instrument

We made comments that the exclusion of both the above provisions from the Framework Instrument goes against ASEAN government's commitments under the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) that all member nations of ASEAN have ratified and acceded to.

CARAM continued to advocate its objectives and have organised activities and workshops along the line to achieve the objective of strengthening the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

The other major development that were recorded for the year 2010 is on the development of ILO's proposal for a new Domestic Workers Convention. Caram Asia welcomes The ILO proposal for a new Domestic Worker Convention & Recommendation. It sets the precedence as the only international standard specifically for domestic workers who are predominantly women.

As early as August 2002, CARAM Asia with the support of many UN agencies, regional organisations and migrant organisations organised a multilateral regional summit on Foreign Domestic Workers in Colombo, Sri Lanka.

The summit culminated in the adoption of the Colombo Declaration outlining the assertion of the rights of foreign domestic workers by the 132 participants from 24 countries which included migrants, government representatives, NGOs and UN representatives.

FDWs are housebound workers. It is a daunting task to organise FDWs. Therefore, taking into consideration all these complexities, CARAM Asia decided

to embark on a public campaign for the recognition of domestic work starting with the demand for a paid day off a week for FDWs.

At the same time, CARAM Asia also kick started its campaign “One paid day off a week” under the overarching goal of “Recognise Domestic Work as Work” for FDWs at national level with coordinated multi-stakeholder activities held during Labour Day or International Migrants Days across countries in Middle East, North, South and South East Asia. Most of these activities held had the presence of trade unions, in fact, our member in Sri Lanka, Migrant Services Centre is the migrant workers service centre of the National Workers Congress (NWC).

The campaign “one paid day off a week” is the prime mover of the push for the recognition of the campaign for recognition of domestic workers. This campaign is critical because without a day off, it is not possible to organize domestic workers and organizing is an essential tactic in empowering and capacity building. It is due to the lack of a day off in a week that hinders DWs from joining trade unions.

The network based in Malaysia forged close ties with the Malaysian Trade Union Congress(MTUC). The MTUC played an active role internationally. The Secretary General, Mr. G. Rajasekaran is the President of the International Trade Union Confederation (ITUC) Asia Pacific. CARAM Asia together with MTUC and TENAGANITA developed a joint reply on the ILO DW Convention and circulated it internationally to influence the position taken by other TUs and NGOs as we had a different position taken compared to some of the model answers given to TUs.

Although Caram Asia is not an ILO member, CARAM Asia found ways to intervene in the Domestic Workers standard setting process since the last 2 years and we will continue to advocacy until this historic standard is voted in by 2011.

The major challenges that Caram faced in the light of the current development took notice of the growing concerns on the migration related issues and rights in

the Middle East. Caram on the said development have extended its work to focus more of its work in the Middle East.

Many of the estimated twenty million migrant workers in the Middle East and North Africa (MENA) are from poor countries whose leaders have long failed to put in place mechanisms to protect their nationals from abuse, inhumane working conditions, trafficking and a means for repatriation during times of crisis.

For those migrant workers in the Middle East, the redress mechanism of thier human rights violations remains in shambles as there is no where to go and most of the embassies are not equipped enough to take care of their nationals.

The Middle East countries also failed to provide better representation in labour protection in their own countries while most labour sending countries are only looking at the remittances and not the working and living conditions of their citizens. The governments are not listening to their nationals and to rectify this problem they need to establish relationships with community leaders.

Beside the traditional rights violation of these migrant workers, The Middle East also continue to record growing concern on racism, xenophobia and with an alarming concern on migrant workers in death penalty.

CARAM Asia views the current development in Middle East as a concern as not only in terms of the violations but also the lack of advocacy and documentation of cases from the said region. CARAM takes this development as a major challenge and takes confident over the election of our new Chairperson from Bahrain as an opportunity to create better focus and advocacy in the said region.

CARAM express confidence in the growing advocacy by its members in the cross regional advocacy and solidarity to be of an asset to address the major challenges faced by CARAM as a network and the growing concerns on migrant rights violations in the Asia region.

2. MIGRANT WORKERS RIGHTS TASK FORCE REPORT

The Migrant Workers Rights evolved from the previous CARAM Asia Foreign Domestic Workers (FDW) Task Force. At the 2009 CARAM Asia General Assembly, the task force decided to continue its focus on FDW as well as expanding its work in other areas.

The Migrant Workers Rights Programme seeks to remedy the extreme situations of a lack of legal protection, rights to redress and access to justice for migrant workers. The abuse, exploitation and discrimination faced by migrant workers are rooted in the absence of a comprehensive legal protection for migrant workers who are often treated as temporary cheap commodity to meet development needs.

The situation is made worse when the costs of migration had also pushed many poor migrant workers to become undocumented migrant workers. Some exploitative employers also refused to renew work permits and defaulted in paying wages, hence forcing migrant workers to become undocumented too. However, CARAM Asia viewed the lack of documentation as an administrative issue which should not deny undocumented migrant workers their human rights. Through advocacy with various stakeholders, CARAM Asia lobby for a comprehensive legal protection for all migrant workers regardless of immigration status.

Historic ILO DW Convention Process at the Global Levels

CARAM Asia's reputation as a long term advocate for domestic workers had gained rare opportunity to be advisors to the Malaysian Delegation to the International Labour Conference (ILC). CARAM Asia made direct intervention during the ILC debates that crafted the draft new ILO DW Convention and a Recommendation. Besides that, we met with various labour officials present at the Conference such as Sri Lankan, Indonesian, American and Malaysian

government delegates. We also jointly distributed materials to create greater awareness on the issues and our recommendations to its content.

Everyday CARAM Asia programme officer gave live update to its network members as well as the regional coalition members from the United for Foreign Domestic Workers' Rights (UFDWRs), a coalition with other regional network. The live reporting generated great excitement among FDWs and their advocates. It translated the technical diplomatic debates at the ILC into important battles for the birth of a new bill of rights for domestic workers. The reporting allows those who are not able to be present at the ILC to gauge governments' positions on various issues through the nuances of the debates.

Together with other regional and international domestic workers groups who were present for the ILC debates, we also join street protest actions in the town area of Geneva, holding our UFDWR poster & recommendation. A blogger also reported the protest on this website, with CARAM Asia t-shirt and our demands featured.

Since 2008, CARAM Asia initiated a coalition of 5 regional NGOs sharing the same vision named the United for Foreign Domestic Workers' Rights (UFDWRs). The UFDWRs brought together the strength and resources of 4 other regional networks, namely the Asia Pacific Forum on Women, Law and Development (APWLD), Asia Pacific Mission for Migrants (APMM), Mekong Migration Network (MMN) and the Global Alliance Against Trafficking in Women (GAATW). In 2010, the UFDWRs printed a poster cum statement endorsed by 118 organisations to influence the ILO debate for the new DW new labour standard at the June 2010 ILC.

After the ILC, the ILO sent out draft content for the ILO DW Convention and Recommendation which was revised based on the June ILC debates. The

UFDWRs also developed an analysis and recommendations for the content for the draft ILO Convention and Recommendation and submitted to ILO.

The programs Recorded for the year 2010 are as follows:

Regional Conference towards Adoption of an ILO Convention on Domestic Workers

On 7th of October, Major domestic workers organizations, regional networks and trade unions decided to join effort to organize a regional conference in Jakarta.

The Conference is jointly conducted by the ILO, Global Network, International Domestic Workers Network, in collaboration with the three main trade union confederations in Indonesia (KSPSI, KSBSI, KSPI), Jala PRT (National Advocacy Network on Domestic Workers), JAKERLA PRT (Indonesia Advocacy Network for DW Convention) and co-organizer MFA (Migrants Forum Asia).

Regional groups funded themselves for the meeting while national groups who are members of the Global Network, International Domestic Workers Network (IDWN) and MFA were funded by their respective networks. Actually, MFA only funded 1 migrant DW from overseas to participant and they were staying in another hotel with the MFA secretariat members. The conference brought together about 120 participants with over 85% Indonesian local participants.

The Conference was opened by the Minister of Manpower and Transmigration, HE Muhaimin Iskandar, Chairperson of the Global Network, Elizabeth Tang, and Director of the ILO in Indonesia, Peter van Rooij.

The objective of the conference is to bring together trade union centres, domestic workers groups and unions and stake holders to develop and adopt a concrete

plan, with strategies and actions to campaign for the adoption of a convention on domestic workers at the ILC 2011. This includes

- To discuss the ILO Third Report, identify critical issues and examine some of the best practices with a view to establish joint positions for future campaigns.
- To discuss on the strategy to strengthen domestic workers' participation in the ILO process, including capacity building and organizing of domestic workers in the campaign, inclusion of domestic workers in the trade union delegations at the next ILC.
- To discuss actions and activities at the national, regional and international levels with an implementation timeline for each one of them

The other stated objective of the conference is to facilitate exchanges and learning of concrete experiences and best practices of domestic workers organizations and trade unions in past campaign activities.

CARAM Asia Programme Officer was one of the facilitators for the group work for developing common positions for the content of the ILO for the content of the ILO DW Convention and recommendations. She also joined discussions to highlight the issue of coverage for undocumented migrant workers in the plenary session which was respond by ILO. ILO rep agreed that the issue is especially important for migrant DW. He said that the preamble for the text mentioned other ILO conventions for migration which included protection to all migrant workers regardless of documentation status. However, ILO rep responded that the ILO DW Convention text can be strengthen on the protection for undocumented migrant.

She also presented on CARAM Asia's work: the capacity building with migrant domestic workers and other grass root NGOs on the ILO DW Convention, the national level capacity building on the ASEAN Framework Instrument to protect

the rights of migrant women workers, research on FDW Employers' attitude and the Colombo process engagement.

Engaging FDWs into the ILO DW Convention Process

The ILO constituents comprised of Trade Unions, Employers Associations and governments. NGOs and grass root MDWs do not have voting rights in this process. Traditionally, MDWs are excluded from the recognised formal trade union movement as MDWs are not in the formal economy.

The tripartite arrangement of ILO has excluded majority of migrant domestic workers (MDW) to be in the process of drafting the convention, but it is significantly important to educate them about the ILO convention, its benefits and their role to ensure the Convention is passed. CARAM Asia decided to support migrant domestic workers self mobilization towards the recognition of domestic work(DW) as work by introducing the international standard setting process of the ILO to them.

Caram Asia organised 2 capacity building and strategising workshops respectively in Hong Kong, SAR of China and Indonesia in March and May 2010. CARAM Asia together with the member the Association of Indonesian Migrant Workers (ATKI), conducted the two capacity building sessions. The workshops created an occasion for migrant domestic workers to realize the need to reclaim their rights through coming together to form stronger organizations and develop strategies towards self mobilization.

Post ILC Regional Conference

Major domestic workers organizations, regional networks and trade unions have been campaigning for an ILO Convention for domestic workers in the last two

years. Since December 2009, CARAM Asia had agreed to join all other networks" effort to organize a regional conference in October 2010.

The regional conference popularly known as the regional post ILC conference was held from 7-8 Oct, 2010 in Indonesia. CARAM Asia"s programme officer was one of the facilitators for the group work for developing common positions for the content of the ILO for the content of the ILO DW Convention and recommendations. The conference gathered a consolidated position on the proposed ILO DW Convention & recommendation text to the International Trade Union Congress (ITUC) and the ILO. As the ITUC secretariat present at this meeting is also the secretary at the ILC debates last year, she promised to submit this recommendations to the trade union team at next year"s International Labour Conference (ILC).

The ITUC will also issue a circular to guide its trade union members in their tripartite meetings with governments at the national level before governments submit their replies to ILO by 18 Nov, 2010.

Comparative Analysis of Employers" Perceptions and Attitudes Towards FDWs

In 2010, CARAM Asia conducted a comparative analysis of employers" perceptions and attitudes towards FDWs. The research is founded on the lack of legal protection in Malaysia and the relatively more protection in Hong Kong, SAR of China. The research outcome established evidence that greater legislative provision of labour rights in Hong Kong, SAR of China formed a better protective environment where employers acknowledge that they have to respect the rights of FDWs. On the contrary, the lack of legal protection for FDWs in Malaysia, foster an environment of abuse and exploitations by agents and employers who act with impunity.

Although there were already numerous publications available regarding the treatment and protections for FDWs but no other report had such a significant survey sampling to prove the need for legislative change. Also, none had such detailed enumerations of the laws and policies relating to FDWs. Publications from the International Labour Organisation (ILO) only list out labour laws and rights, while other NGOs only state the problems but did not have a complete listing of laws applicable and none did such a survey sampling with employers.

On the occasion of the International Migrants Day, CARAM Asia and Tenaganita launched a research report on Malaysian and Hong Kong, SAR of China Employers' Perception and Attitudes towards foreign domestic workers. The report analyzed the opinion of over 260 employers of foreign domestic workers (FDWs) respectively in Hong Kong, SAR of China and Malaysia regarding their understanding about regulations, perceptions and attitudes towards FDWs, new regulations for FDWs and employers attitudes towards punitive measures against exploitative practices.

The survey with FDW employers revealed significant opposites between the attitudes of Hong Kong, SAR of China and Malaysian employers towards FDWs. It was found that the average Hong Kong, SAR of China employer viewed and treated their FDWs as employees, while Malaysians were more likely to view them as „servants/ maids“ which denotes a lower class of workers.

The survey also revealed that more than half of Malaysian employers (51.2%) disagreed that the government should punish employers who made their FDWs work for more than eight hours without rest in a day (currently FDWs work 14 hours per day without rest days).

On the contrary, in Hong Kong, SAR of China, employment laws that are applicable to local employees are also applicable to foreign domestic workers. The regulatory framework and procedures in Hong Kong, SAR of China afford them better protection and more avenues to seek assistance, legal redress, or means to escape abuse. Two main

important conditions are the fact that in Hong Kong, SAR of China, FDWs are given weekly day off, annual & maternity leaves. They hold on to their travel documents such as their passports and employers face prosecution if found to withhold workers passport.

The authorities of both Hong Kong, SAR of China and Malaysia have stated goals to reduce dependence on foreign domestic workers yet appeared to have taken different strategies to achieve them. The authorities in Hong Kong, SAR of China adopted measures which raised the threshold on FDWs rights and imposed regulations that were more in line with its own labour laws alongside effective enforcement. Meanwhile Malaysian media had more frequent and severe reported cases of abuse with minimal labour protection.

Therefore, we recommend that:

1. Malaysia should amend the existing Employment Act to change the term of “servant” to “domestic worker” in order to recognise domestic work as work. The government ensure that FDWs are no longer excluded from the rights given to all other category of workers such as weekly day offs, holidays, annual leave entitlements and all other labour rights.
2. Due to the specific nature of domestic work and conditions for FDWs, there is a need to have a legally enforceable standard contract for all FDWs regardless of their nationality. Hong Kong, SAR of China has such a standard contract in place but not for Malaysia. In order to ensure the terms stipulated in such standard contracts are enforceable by law, such contract should be attached as an appendix to the Employment Act which is the current legal framework in South Africa. The contract should stipulate their scope of work, the place of the FDW’s employment, duration of the contract with date of commencement, basic monthly salary, working hours with rest periods, rest days and other terms.

3. As the survey reveal disturbing insights on possible Malaysian employers who flaunt regulations, the labour department should intensify enforcement with random checks on employers. For example, 43% disagreed that it was wrong to ask an FDW to perform work other than what they were originally hired for. It is likely that FDWs were asked to work on commercial premises or in homes of the employer's relatives.

4. Malaysia should strictly enforce the Passport Act that prohibits any persons to hold on to the passports of another person.

New General Recommendations on Migrant Domestic Workers

The Committee on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW) has developed a draft General Recommendation (GR) on Migrant Domestic Workers (MDWs) in 2010. CARAM Asia had also given our feedback to the draft content to the United Nations Development Fund for Women (UNIFEM). UNIFEM will then consolidate feedbacks from all NGOs working on this issue and submit them to the secretariat for the ICRMW.

Media Campaigns

From 10 December, 2009, until January 2010 the task force blasted an online media campaign across Asia for employers to sign petitions to give a weekly paid day off for foreign domestic workers. The media outlets that carried our campaign advertisement include Al Jazeera, Malaysiakini (founded in Malaysia), The Standard (Hong Kong, SAR of China based), Prachatai (Thailand) and Online Citizen (Singapore).

After a month long online advertisement campaign launched in the above five different media outlets in Asia, by January 2010, two videos was blasted out in cyberspace through personal emails to individuals with links to the online petition created since December 2009.

After watching the videos, viewers are encouraged to sign a petition to grant a basic fundamental right to one of the most vulnerable groups of human beings.

This petition can be found here;

<http://www.petitiononline.com/adayoff/petition.html>

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The following month, CARAM Asia also issued a joint statement with its member in Bahrain on the high suicide rates among migrant workers in that country.

Subsequently in 2010 the network also issued media statements on the occasion of the 100th year anniversary of International Women's Day, the 1st May International Workers Day, the International Day of Solidarity with Foreign Domestic Workers and the International Migrants Day.

The International Day of Solidarity with FDW day statement was reported in malaysiakini.com.

Strengthening Documentation System on Violations of Migrant Workers Rights

CARAM Asia made an initial step for strengthening and developing documentation systems on violations of migrant workers rights in 2010. The regional secretariat did an assessment of its member's existing case documentation systems. The purpose of the assessment was to know the existing process and methods of gathering and documenting information on the violation of migrant worker's rights in different countries. The assessment helped in identifying complexities and opportunities around documentation.

As a result, four new data collection tools for destination countries, origin countries, regional data collection tool and a tool for situation monitoring by collecting data from newspapers were developed. The Database is comprised of following core issues:

- 1- **Violation of Labour Rights** - No written contract on Terms & Conditions, Violation of contract if any, Unpaid wages, Low wages, Wrong full deduction of wages, Long hours of work, No work at workplace, No day off, Sub-contracting, Unlawful dismissal from job and Forced labour.
- 2- **Violation of Health Rights** - Accidents at work place, Hazardous working conditions, Work accident not reported, Poor living conditions, Overcrowded accommodation, Not allowed to seek treatment, Insufficient and unhygienic food, No access to health information, Medical expenses paid by worker, Not allowed for medical leave, Not paid for medical leave.
- 3- **Assault, abuse, violence** - Physical torture, Harassment, Exploitation/ Threat, Verbal abuse, Emotional abuse, Sexual violence, Rape, Sodomy, Burn case, Murder, Victim of Trafficking.
- 4- **Cheating by middlemen and Recruitment agency** - Over charging in State of Origin, Over charging in State of Employment, Fake contract, Non-existence of company where MW employed, Non-employment visa, Fake travel documents.
- 5- **Restriction on Freedom** - Confined by the employer, Withholding of passport, Not allowed going out, Not allowed to join unions, No access to communicate with family.

Subsequent to the development of database, pretesting has done by entering case information in couple of countries and encountered problems are resolved.

Now members in 6 countries are feeding the data in coordination with the Secretariat which supports and provides technical information and constantly engaged with staff of member organizations in guiding them on the use of database system. Some members are unable to do the task because of lack of human resource.

Capacity Building Trainings on Documentation for Members

A capacity building workshop on “Situation Monitoring and Documentation of Migrant Worker“s Cases” was organized on 7th & 8th September. All 6 member organizations involved in the 1st phase of this project that already have an existing documentation system attended. They consist of three destination countries members (Thailand, Malaysia and Singapore) and three from origin countries (Pakistan, India and Indonesia). In addition two member organizations, one from member from Nepal and one from Bangladesh also participated in the workshop as observers.

The training was useful in bringing members together and explaining objectives of database, core issues to be monitored, data tools/forms, introducing online data, conducting practical sessions to key-in information, getting data reports from the system. Resultantly the members learnt about the system and majority of participants made commitment to enter cases into the database.

Subsequent to the completion of preparation phase in 2010, CARAM Asia Secretariat and members are committed to mobilize resources for the initial development and strengthening of computerized documentation systems to gather data for future advocacy. After development and standardization of database system the members are ready to contribute for the continuation of data gathering which will help them in executing more effective evidence based advocacy on the basis of collected facts and figures as well as to continue the project in the future.

Engendering the ASEAN Framework Instrument on Protection and Promotion of the Rights of Migrant Workers

The ASEAN Committee for the Implementation of the ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers (ACMW) has been drafting an Instrument on the protection and promotion of the rights of migrant workers. This instrument will define the rights of migrant workers and outline the obligations of labour sending and labour receiving states to hold governments accountable. However, there is a lack of clarity, consultative process and a scarcity in information sharing with relevant stakeholders, including migrant workers. Some states oppose to cover migrant workers families, undocumented migrant workers and for a legally binding clause of the draft. The final instrument if watered down will have significantly negative impact on migrant workers.

Other ASEAN bodies, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), will also include the human rights of migrant workers within their remit and may provide a vehicle to advance the rights of women migrant workers.

CARAM Asia and APWLD collaborate to organise national level workshops & follow-up national advocacy for Engendering the ASEAN Framework Instrument on Protection and Promotion of the Rights of Migrant Workers. The national level activities were implemented from September to November, 2010 in Cambodia, Indonesia, Malaysia, Philippines and Thailand.

The national level workshop and follow-up advocacy activities developed recommendations to promote and protect the rights of women migrant workers to the various ASEAN mechanism and advocate for their protection. CARAM Asia together with APWLD also wrote and compiled a “Women”s Proposal for the

ASEAN Framework Instrument on Protection and Promotion of the Rights of Migrant Workers” extracting the outcome from the five national level workshops.

National Consultation Workshop on ASEAN

On Feb 8, 2010 in Malaysia, a workshop was conducted in Malaysia as a national level workshop to give recommendations for the Rules and procedures for the AICHR and on the ASEAN Declaration on Human Rights.

This workshop aimed to address various pertinent issues surrounding several important bodies in the promotion and protection of human rights at the regional and national levels. This includes the “Engagement with the ASEAN Inter-government Commission on Human Rights (AICHR), other human rights bodies and ongoing ASEAN process”.

As there has been much development since the fourth consultation meeting with Malaysian civil society on ASEAN human rights body, held in February 2009, this consultation is held to update partner organisations on developments relating to ASEAN and:

1. To update on civil society’s process of engagement with ASEAN Inter-government Commission on Human Rights (AICHR), the upcoming establishment of ASEAN Commission on Women and Children (ACWC) and ASEAN Commission on Migrant Workers (ACWM);
2. To introduce the ASEAN Human Rights Declaration, AICHR’s rule of procedure and its work plan to Malaysian civil society and collate Malaysian civil society’s input to these documents; and
3. To develop strategies and action plan on engagement process with Malaysia representative to AICHR at the national level and with SAPA Task Force on ASEAN and Human Rights at the regional level, on matters related to human rights and ASEAN.

CARAM Asia Regional Coordinator presented the updates on the ASEAN processes linked to migrant workers rights. Programme Officer proposed for AICHR to make proactive recommendation to states when a regional policy that affects human rights are developed and gave other inputs to make public AICHR's calendar of activities and reports.

3rd ASEAN Forum on Migrant Labour Enhancing Awareness and Information Services to Protect the Rights of Migrant Workers

The 3rd ASEAN Forum on Migrant Labour was held on 19-20 July 2010 in Ha Noi, Viet Nam. There were more the 100 participants including representatives from the government, workers' and employers' organizations, and civil society organizations of nine ASEAN Member States, the ASEAN Secretariat, the International Labour Organization (ILO), the International Organization for Migration (IOM), the Task Force for ASEAN Migrant Workers (TF-AMW) and UNIFEM.

The purpose of the Forum was to provide an open platform for discussion and the exchange of views and ideas among stakeholders on labour migration issues, with specific attention to the theme of enhancing awareness and ensuring access to information for the protection of the rights of migrant workers.

To promote the implementation of the Declaration, the ASEAN Labour Ministers' decided to institutionalize the Forum as an annual meeting. The active participation of workers' and employers' organizations, recruitment agencies and civil society organizations is important to the establishment of a people-oriented ASEAN that reaches to all corners of society. The ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers outlines sending and receiving countries' obligations, and joint obligations of ASEAN countries.

Further to the Joint Communiqué of the 21st ASEAN Labour Ministers' Meeting on 24 May 2010, the 3rd ASEAN Forum on Migrant Labour put forward the following recommendations are in support of the Implementation of the Declaration on the Protection and the Promotion of the Rights of Migrant Workers, and the ASEAN Labour Ministers' Work Program (2010-2015).

- **PROMOTION AND PROTECTION OF THE RIGHTS OF MIGRANT WORKERS**

Strengthen information and services to better protect women and men migrant workers and ensure decent and productive work in conditions of freedom, equity, security and human dignity. Provide opportunities for migrants to realize their labour rights in line with legislation of the ASEAN Member States, the ILO Fundamental Principles and Rights at Work, and their basic human rights protected by the UN and international conventions, particularly CEDAW and CRC, and in the spirit of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

- **INFORMATION AND SERVICES**

To ensure that information services are more accessible to women and men migrants and reflect their specific and diverse needs. Pursue the use of varied delivery channels for pre-employment, pre-departure and on-site information, including schools and training institutions, migrant community representatives, the media and public information campaigns. Continually assess the quality and reach of information services for migrant workers and the capacity of service providers to meet these needs.

To provide accessible channels for women and men migrant workers to report and seek redress for violations of rights and terms and conditions of

employment, and promote the implementation of the national legislation and international commitments.

- **THE ROLE OF SENDING COUNTRY REPRESENTATIVES IN RECEIVING COUNTRIES**

To strengthen and raise the visibility of labour attachés and consular staff in collecting and providing information, and responding to rights violations against women and men migrant workers. This should be achieved through close engagement with the migrant community and employers, and in cooperation with authorities of the host countries.

- **BROAD STAKEHOLDER COOPERATION**

To actively engage and consult stakeholders from government, employers' and workers' organizations, and civil society organizations in developing and implementing information campaigns and services for women and men migrant workers at all stages of the migration cycle.

- **PARTNERSHIPS OF ASEAN, STAKEHOLDERS AND INTERNATIONAL ORGANIZATIONS**

The ASEAN Secretariat, national and regional stakeholders and international organizations should facilitate the sharing of good practices in the provision of information and services, promote the development and use of user-friendly information materials between and among ASEAN states and increase migrant workers' ease of access to and understanding of publicly available information on laws, guidelines and other information materials produced by governments of sending and receiving states. The ASEAN Member States, the ASEAN Secretariat, stakeholders, the UN and international organizations should continue to cooperate in providing

opportunities for capacity building and confidence building of stakeholders at national and regional levels.

National Workshop on Engendering the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

A national workshop was conducted on 15-17 September 2010 at Cambodiana Hotel, Phnom Penh, Kingdom of Cambodia. There were 31 participants from local NGOs working on labor migration, health, women and children and human rights; UN bodies and government institutions. The workshop was presided over by Her Excellency SAN Arun, Secretary of State, Ministry of Women Affairs, Mr. Nhem Kim Hoy, Chief of Office, Manpower Department, Ministry of Labor and Vocational Training (MoLVT), Mr. ROS Va, National Coordinator, UNIFEM (UN Women) Cambodia, Ms. Vivian Chong, Program Officer, CARAM Asia, HOUNG Tran, Program Officer, APLWD and Mr. Navuth YA, Executive Director, CARAM Cambodia.

The objectives of the workshop are as follows:

- To enable civil society organizations (migrants, labor and women's groups), trade unions and other government stakeholders in ASEAN countries to enhance their knowledge on the ASEAN structures and processes;
- To provide an update on recent developments with regard to development of the ASEAN Framework Instrument on Protection and Promotion of Rights of Migrant Workers and identify barriers for women;
- To build the capacity of these groups to utilize and engage with ACMW in their efforts to advance the rights of migrant workers;

- To develop a women’s proposal on the ASEAN framework instrument on migrant workers; and
- To empower civil society organizations in each country to develop and implement an advocacy strategy to protect the rights of women migrant workers.

After the workshop, a joint action plan was developed by all participants and facilitated by CARAM Cambodia for integration into their intervention existing program, especially participants will use the advocacy strategies developed during the workshop to engage AICHR, ACWC and ACMW. In addition, a joint statement identifying problem encountered by women migrant workers with specific recommendation was issued and sent to national media, Cambodian government and ASEAN government during APF VI in Hanoi, Viet Nam. Besides that, the workshop was covered by local and international media such as Radio Free Asia (RFA), Radio FM 102 and Radio FM 106.5, indicating Cambodian women migrant workers’ issues faced in destination countries.

ASEAN Migrant Workers Book Launch and Public Forum

In March 2010, Caram Asia together with MTUC, Tenaganita and Aliran launched a book and conducted a Forum on the **Civil Society Proposal on ASEAN Framework on the Protection and Promotion of the Rights of Migrant Workers**.

The book was part of the Civil Society contribution to promote awareness on the “ACMW drafting process on the ASEAN Framework Instrument on the protection and promotion of the rights of migrant workers”. The overall objective is to contribute to a legally-binding ASEAN Framework Instrument that is fair and just for all migrant workers and their families. A new deal of decent jobs and living conditions for all migrant workers, where their rights are respected, with labour

laws and policies harmonized with international labour standards.

The 127-page book on the comprehensive civil society Framework Instruments contains 192 articles covering all aspects of migration for the consideration, adoption of language, and reference for the ACMW Drafting Team of the ASEAN Framework Instrument on the protection and promotion of the rights of the migrant workers. The civil society proposed recommendations covers: Obligations of receiving states; Obligations of sending states; Joint obligations of receiving and sending states; and Commitments by ASEAN. The book includes inputs from eight national consultations and seven regional consultations and numerous informal sessions to craft a comprehensive proposal to ASEAN.

The Colombo Process

The „Fourth Ministerial Consultation for Asian Labour Sending Countries“ hosted by the government of Bangladesh was initially planned to be in October, 2010 but was later postponed to 2011. The Colombo Process platform was initiated with the primary objective of facilitating greater regional dialogue and cooperation on the management of labour migration amongst the major labour sending countries. However it has expanded its collaboration with destination countries as witnessed through the successful meeting of the Abu Dhabi Dialogue in January 2008, and the Asia - EU Dialogue later the same year. Since South Asian countries have yet to establish mechanism to address migrant workers rights, unlike the ASEAN region, the Colombo process which is to be held in the South Asian region is an important platform to raise the issues faced by migrant workers from this region. CARAM Asia planned to organise a consultation prior to the Ministerial consultation. The programme officer drafted recommendations for this consultation in 2010 to be finalised by participants at the CARAM Asia consultation.

3. Migration, Health and HIV (MHH) TASK FORCE

CARAM Asia developed the Migration, Health and HIV (MHH) programme by combining the previous Task force for the empowerment of migrants Living with HIV and Spouses (TFEM) and the State of Health (SoH) programme to focus on migrant workers health rights including the issue of HIV and AIDS. The objective of MHH is to promote equity health care for migrant workers so that their access to health services and HIV prevention, care and support is facilitated.

This programme will also pay special attention on the health and well-being of undocumented migrant workers, with special focus on those going through detention and deportation. Sexual and reproductive health and rights, empowerment of migrants living with HIV and their spouses to be meaningfully involved in the development, implementation, monitoring and evaluation of programmes and policies addressing HIV & AIDS and migration issues are an integral part of MHH Task Force.

The programs Recorded for the year 2010 are as follows:

Submission to AICHR to Abolish Mandatory HIV Testing

In September 2010, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was requested by one of the ASEAN sectoral bodies to provide an advisory opinion on “mandatory HIV testing of migrant workers”. Abolishing mandatory HIV testing for migrant workers is an issue that CARAM Asia had lobbied for years. Therefore, we were able to submit our recommendations to AICHR easily with strong supportive evidence as we already have a research report on this issue.

On 19 September, 2010, CARAM Asia and the Solidarity for Asian Peoples” Advocacy (SAPA) Task Force on ASEAN and Human Rights, made a

submission to the AICHR on the issue of mandatory HIV testing on migrant workers.

Recommendations:

1. to include provisions for the protection of all migrant workers regardless of documentation status and sector of work (i.e. informal work and domestic work)
2. ensure that the all migrant workers and their families should be covered by the forthcoming Instrument
3. include suggestions by civil society actors across ASEAN states made in the ASEAN civil society Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers that was formally proposed to the ASEAN Senior Labor Officials Meeting in Vientiane, Laos, in May 2009. (the document is attached)
4. ensure that the ASEAN Framework instrument on the Protection and Promotion of the Rights of Migrant Workers will be legally-binding.

Regional Dialogue in Preparation for the Colombo Process

CARAM Asia participated in the “**Regional Dialogue on Health Challenges for Asian Labour Migrants**” 13-14 July, in Bangkok. The dialogue was co-organized by IOM, ILO, UNAIDS, WHO and the UNDP. CARAM Asia was invited as part of the Joint Initiative on Mobility and HIV/AIDS (JUNIMA). The only other NGO representative was from APN+. There were representatives from the various INGOs that sponsored the event, mostly regional level with some from country missions and a couple of experts from Geneva. The main participants were government representatives from the majority of origin / sending countries from the Asia region, reflecting the membership of the Colombo Process.

Members of the Foreign Ministry, Ministry of Health and Ministry of Labour (or the equivalent Ministries) were present from the countries of: Bangladesh, Cambodia, P.R. China, India, Indonesia, Lao PDR, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam.

On the first day the program consisted of presentations by INGOs and the governments of Thailand, Philippines and Sri Lanka. The focus of these was initiatives to promote the health of Asian migrants which is organized into two sections - session (1) setting the scene – health challenges for Asian labour migrants and session (2) health challenges and responses from the region (sharing of experiences and models). CARAM Asia members provided a brief intervention after these. The second day consisted of thematic discussions and break-out group work to come up with a set of recommendations for National and Regional platforms to improve migrants' health.

The main focus of many of these recommendations was to align health examinations to provide a health benefit and to be more rights-oriented. Although the recommendations were non-binding and have not been sent out yet, they will contribute to raising the issue of migrants' health rights at the Colombo process and at the GFMD – both of which are events in 2010.

The draft Joint Recommendations developed from the various presentations and discussions formed the basis for an interactive session to finalize the text. The text included specific and targeted action points at different levels (national, regional and international), involving multiple stakeholders such as government, civil society organizations, international organizations, etc.

The final text reflected a clear statement of commitment and action at all levels and recommended that there be a review and follow-up meeting in 2011 on the issue of health challenges of Asian migrant workers. (The final text follows under Session 5).

4. Migration, Development and Globalisation (MDG) TASK

FORCE Report

Migration is global in nature and is heavily affected by neo liberal policies and structures which impacts migrant workers health outcomes and well-being. This programme aims at linking and filling the gaps in the current migration and development discourses by adequately addressing the impact of migrant workers

health in the context of globalisation. Activities will include strengthening the analysis, perspectives, and awareness on globalisation/ World Trade Organisation (WTO) / International Financial Institutions (IFIs) policies on migration and health; the impact and implication of migrant workers health through the privatisation of healthcare and developing global action on debt and poverty to reduce all vulnerabilities in migration.

The programs Recorded for the year 2010 are as follows:

Report: Remittances: Impact on Migrant Workers Quality of Life

Caram Asia on October 2010 launched a report on the effect of Remittances on the Quality of life of migrants. The report as also produced with an executive summary for distribution. The report was part of a joint research conducted by Caram together with the partners.

The aim of the research was to ascertain whether the improvement in the material aspects of the lives of migrants and their families that purportedly comes from remittances, compensated for the deterioration of other aspects in their quality of life, including the social and human costs of migration that is often hidden or ignored within the larger migration debate.

The four research objectives include:

- To challenge the current migration discourse which promotes remittances as a tool for development within the context of neo-liberal globalisation policies and structures
- To define and highlight non-monetary indicators and dimensions of the quality of life of migrants and their families.

- To provide migrant community perspectives on remittances as a tool for development and identify the reality of conditions of work and burden of debt incurred by migrants and the social costs of the unwavering reliance on remittances as a tool for development.
- To address dependencies on remittances and its role in inducing forced re-migration and neglecting genuine sustainable economic development.

The scope of the research included a three pronged strategy looking at migration and remittances from the source country, the destination country, and identifying gender issues in the process. The research aimed to look beyond locality and explore trends and issues in the regional context.

The research was undertaken by research partners who were members of the CARAM Asia network and had significant links, contacts, and experience working in the area of advocacy for migrant worker rights in the Asia region.

A steering committee was formed under the CARAM Asia Migration, Health, and Globalisation Taskforce with representatives from ten organisations, to oversee the research. Members on the taskforce who were research partners included the following organisations:

- **AMI (Arunodhaya Migrant Initiatives), India**
- CARAM-CAMBODIA
- **DAWN (Development Action for Women Network), Philippines**
- **HDO – Human Development Organization, Sri Lanka**
- **LHRLA (Lawyers for Human Rights & Legal Aid), Pakistan**
- **MAP (Migrant Assistance Program), Thailand**
- **NIDS (Nepal Institute of Development Studies), Nepal**
- **OKUP – Ovibashi Karmi Unnayan Program, Bangladesh**
- **Solidaritas Perempuan, Indonesia**

- **Tenaganita, Malaysia**

The report was then officially launched by our regional co-ordinator Harun Al Rashid in Mexico during the GFMD conference and distributed to the attendees. The executive summary of the report is attached as Annex A.

People's Global Action On Migration, Development and Human Rights 2010

In November 2010, CARAM participated in the People's Global Action on Migration, Development and Human Rights in Mexico from the 2nd – 5th of November. The gathering was the fourth time since 2007 and CARAM's participation was significant as to be able to participate and contribute the rights base approach from the regional perspective.

CARAM during the said event made a presentation during the plenary session with the title „**Remittances and the Quality of life of migrants**“. The presentation was made base on the published report on the remittances and copies of the reports were distributed to the participants and observers.

CARAM for the first time shared its views on the myth of Remittances in improving the lives of migrant workers in a GFMD event and made significant contribution in highlighting the reality of life of migrant workers in the migration process. The forum also heard of the examples and the case studies conducted by CARAM that went on to highlight and establish the rights base view point shared by CARAM Asia and its members.

A total of about 500 CDs and 100 Booklets were distributed during the entire event.

Third International Assembly of Migrants and refugees (IAMR3)

CARAM also made a similar presentation during the Third International Assembly of Migrants and Refugees (IAMR3) in Mexico during its sessions in Mexico from Nov 6 – 10. The Remittances presentations were presented during a workshop titled Health and Social Services: Problems and Impact on Sending & Host Countries.

CARAM also made a critic on the ILO Domestic Workers convention during another workshop titled „The struggle for recognition of Domestic work as formal Labor: Issues and Challenges“. The critic analyzed the various articles with specific commentaries were made on the key articles.

Among the major critics were on the lack of minimum age of domestic workers and the lack of recommendations as well as the non recognition of part time domestic workers in the said convention. The other key points raised in the critic was on the importance of job contracts and the right to possess the travel documents and identity documents and the right to participate in a trade union and collective bargaining.

The presentation also highlighted CARAM’s toolkit for the domestic workers and called on the need to work with trade unions on the advocacy of the Convention.

The critic was later sent to ILO and ITUC for reference.

5. Financial Report

Financial Reports and Analysis

Source of Income

In 2010, grant received was RM257,004. Caram Asia’s sources of fund were from Open Society Institute & United Nations Development Programme (UNDP).

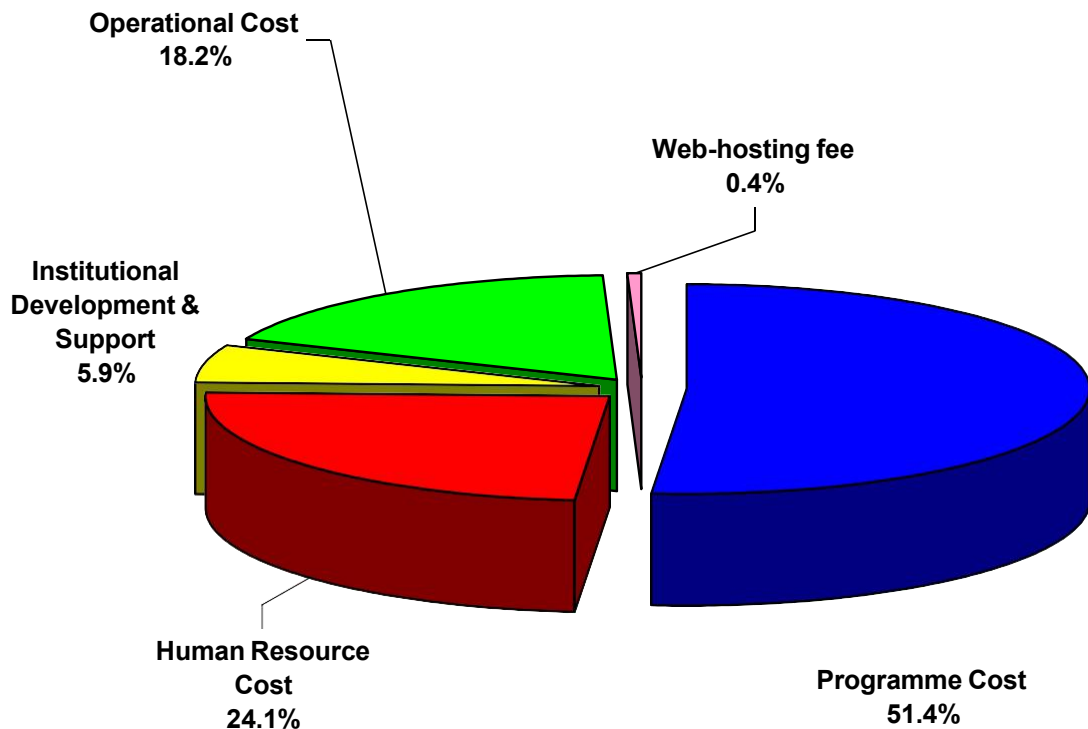
Expenditure

In 2009, Caram Asia’s total expenditure amounted to RM630,095:

Programme Cost	- RM
323,689	
Human Resource Cost	- RM
151,864	
Institutional Development & Support cost	- RM
37,168	
Operational Cost	- RM
114,747	
Web-hosting fee	- RM 2,627

There was a 67% decrease in the overall expenditure as compared to year 2009.

Caram Asia's Expenditure breakdown



6. Annex A

Remittances: Impact on Migrant Workers Quality of Life

October 2010

The findings of CARAM Asia research undertaken from 2008 to 2010 show that the much applauded remittance-led development in the Asia region over the last decade is built on the backs of migrant workers and their families, who continue to experience severe and ongoing labour and human rights violations at all levels of the migration process – with limited long term benefits from remittances for their families and communities. The study includes analysis of migration policy

and practice within three destination countries: the United Arab Emirates, Malaysia and Thailand. Families and migrants workers from nine source countries were interviewed along with policy analysis of labour export policies from Pakistan, India, Philippines, Sri-Lanka, Cambodia, Nepal, Bangladesh, Indonesia and Burma.

KEY FINDINGS

One of the key themes found within contemporary migration discourse is the preconception that remittances from migrant workers can be used by developing countries of origin as a policy of sustainable development. This theme has been heavily promoted by global financial institutions such as the International Monetary Fund (IMF), the World Bank and other representatives from the private sector that seek to push for corporate globalisation and deregulation of state government controls on migration policies. Advocates of the remittances and development approach highlight the ever-increasing remittance inflows to source country economies and their potential to sustain developing nation's economies through increasing the Gross Development Product (GDP), reducing deficits and by extension reducing the dependence on borrowing from foreign states. Such a mentality has inevitably resulted in the commoditisation of migrant workers where developing countries are placed in a situation where they are forced to compete with one another in order to maximise their citizen's potential for overseas employment. In the subsequent drive for a bigger stake in the market of remittances, countries of origin find themselves undercutting their own citizens' standard of employment and labour rights in order to increase their own viability overseas. As such, this approach continues to produce cheap labour for developed countries while simultaneously trapping developing countries in a state of interdependence instead of improving the rights and well being of migrant workers. Within this paradigm there is limited analysis of exactly how these remittances are being used to further develop infrastructure and economic stability within source country economies or in fact lead to improvements in the quality of life of migrants and their families.

Policy Findings

Analysis of national government migration policy shows a strong reliance on labour export policies in sending countries in Asia, aimed at capitalising on the growing international demand for cheap unskilled foreign labour. These policies however fail to protect migrant workers and despite a comprehensive framework of regional MOU and international labour and human rights conventions signed by governments in the study, there are high levels of exploitation of the migrant workforce within the region. In all countries in the study there is inadequate commitment to the effective development, implementation and monitoring of migration policy aimed at protecting migrant worker rights and a lack of resources available for effective protection of migrants and their families both at home and abroad.

Sending countries commonly fail to monitor and regulate migration pre-departure processes, leading to high levels of corruption and over-charging from both state and private sector recruitment agencies. Gender based discrimination is also common to many sending country governments in the study who restrict the migration of women whilst failing to protect their labour and human rights in destination countries and failing to challenge the overall feminisation of migration within the region. Another common failure for all sending country governments is the lack of effective repatriation, compensation and reintegration services for returning migrant workers and their families.

Destination country governments have failed to ensure basic labour protections for migrant workers - including minimum wages, occupational health and safety protections and the right to organise. They commonly fail to implement existing protections outlined in MOU with sending countries which leads to rampant contract violations by employers in destination countries, who exploit, abuse and violate both the human and labour rights of migrant workers with impunity. Access to the justice system for migrant workers in destination countries is minimal with multiple barriers and minimal resourcing of emergency repatriation and support programmes from sending country governments.

Quality of Life for Migrants in Destination Countries

Migrant workers in destination countries are routinely trapped by this oppressive migration system which limits their rights and basic freedom at every step. The migrant workers interviewed, commonly experienced widespread contract violation, exploitation and for many - debt bondage to employers or recruitment agents. They face high levels

of abuse, maltreatment and violence perpetrated by employers, police, migration officials and recruiting agents, including documented cases of rape, assault and deaths of migrant workers. They live and work in a general climate of racism, discrimination and xenophobia, in over-crowded and substandard housing, and sometimes with inadequate food and sanitation. Restriction of movement is common with employers withholding documentation and there is limited access to health care, emergency or otherwise for most workers.

Gender based violence at the hands of authorities, agents and employers, is common for female migrant workers. Female domestic workers commonly live and work in slave like conditions, are confined to their place of work with limited external communication and face high levels of violence with limited opportunity for redress. Domestic workers along with workers in the sex industry are excluded from national labour law protection. Both male and female migrant workers have poor access to reproductive or sexual health services both prior and during migration. Issues specific to male migrant workers include substandard living and working conditions in male labour camps in the Middle East as well as a lack of emergency shelter support for male migrants escaping exploitation and abuse. Both male and female workers experience high levels of distress and anxiety as well as sometimes debilitating levels of homesickness and concern for their spouses, parents and children at home.

Remittances and Family Survival

Migrant workers in the study showed variable capacity for sending remittances home – with some able to send regular monthly amounts, others bringing home a lump sum amount at the end of migration, whilst many were unable to earn any remittance money at all. The research shows strong patterns of short-term remittance use by families at home – mainly being used for daily household survival, with minimal longer term benefits in terms of household savings, community level investment or long term improvements to family economic survival. High levels of debt burden was a common experience for migrants and their families, incurred through the corruption, abuse and exploitation of workers by recruitment agents, migration officials, and employers in both source and destination countries. Very few families from sending countries in the study had

any significant level of savings as a result of the migration experience. Additionally there was no evidence that remittances were being used to develop communities, improve the status of women or were in anyway sustainable despite the fact that countries are increasingly receiving billions of dollars in foreign exchange through this process.

There was an overwhelmingly negative response from participants regarding the capacity of remittances to promote long term improvements in their family's economic security and quality of life. The burden of debt incurred in the departure process severely affects the benefits of remittances for many families and commonly leads to the need for further migration. The high costs of pre-departure processes force migrant workers and other family members including spouses, parents and grandparents to incur heavy debts. Families often invest their hard earned savings and limited household assets to cover the initial migration costs, which can take between 6 months to 5 years to repay, with many families being unable to pay off the debt at all. This situation leads to increased economic stress on the families of migrants who were not only depending on the remittance income for daily survival but also had commonly mortgaged significant family assets, such as land and housing in order to finance the migration costs. These outcomes are directly related to the experience of contract violation and recruitment agency corruption which result in higher than expected debts incurred through the departure and recruitment process and corresponding lower than expected wages in the destination countries. These issues related to the burden of debt are central to the question of remittance-sponsored development due to the impact on both migrants and their families.

POLICY ADVOCACY _ CONCLUSIONS

Clearly there are significant concerns regarding the quality of life for migrant workers and their families arising from this research. The severe exploitation, violence and abuse, the daily struggle and overwhelming isolation and loneliness for migrants working overseas,

coupled with severe, unrestrained labour rights violations that continue with impunity - begs the question – is it worth it?

Families in home countries, have scraped, saved and sold their lands and livestock to send their family member abroad in the hope of increased income to feed their children, to fix their houses, and pay for school-books. Parents, children and spouses also suffer the deep loneliness, increased poverty and insecurity of struggling to survive whilst awaiting the promised remittances – often to find that the remittances are in fact inadequate. The added burden of debt, the shame and the increased poverty as a result of migration leaves one to wonder – is it worth it?

Migrant workers and their families had different opinions on the risks and gamble of migration. Whilst many of the workers in the research noted that they would not again choose migration as a way to support their families, others noted that they had no choice but to re-migrate to cover their living costs and debts, whilst still others noted they would be pleased to migrate should they have the chance again. Whilst for many the outcomes for migration are clearly not worth their while – however each day thousands of workers in the region will continue to leave with the promise of a dream – the chance for employment, the chance to improve their lives, travel and support their families. For these workers there needs to be something better.

-Both sending and receiving countries must immediately sign and ratify the International

RECOMMENDATIONS

Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)

-States that host female migrant workers must adhere to existing rights as laid out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). All governments in the region should implement the immediate recognition of domestic work as work with protection in domestic legislation.

- Migrant workers must be protected by core Labour Rights and Decent Work Standards set out in the ILO conventions and related human rights instruments

All states should consult with trade unions and other stakeholders to ensure that all workers are entitled to and receive living wages that are structured around skills, not based on nationality or legal status.

Source and destination countries must honour their obligation to ensure social security for migrants and their families and work towards developing portable social security systems within the context of international migration.

ASEAN governments must amend the ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers and their Families, to ensure all documented or undocumented migrants are entitled to fundamental human rights including the right to health, equal access to justice, freedom of movement, freedom of association and to freedom from abuse and exploitation including torture and cruel, inhuman and degrading treatment.

Governments should ensure that adequate and informed pre-departure orientation is given to all migrant workers including health and rights awareness.

States must implement regulating and monitoring processes for recruitment industry to ensure labour and human rights of migrant workers and ensure that migrant workers are not charged exorbitant fees.

States must stop the propaganda the myth of remittances as tool for development and start to work on fundamental , lasting political, economic and social reforms needed in countries including infrastructure for sustainable development by creating employment opportunities , universal healthcare, education and security of life at home while protecting and promoting the rights and well being of migrant workers.

Human rights and social justice should be core standards for development with comprehensive - work for balance of social, cultural, political and economic progress and in line with the definition and framework as stated in the UN Declaration on the Right to Development (1986). Alternative development should place the human person at the centre of development and be aimed at improving the quality of life and dignity of all people and their environment.

Research on Malaysian and Hong Kong, SAR of China Employers' Perception and Attitudes Towards Foreign Domestic Workers

EXECUTIVE SUMMARY

Introduction

This report covers the analysis and discussion of the findings of surveys carried out on behalf of CARAM Asia. The surveys represent a structured process to canvass opinions of Malaysian and Hong Kong, SAR of China employers of foreign domestic workers (FDW) regarding their understanding about regulations and treatment of FDWs.

Methodology

The Malaysian component of the survey was carried out between 12th March and 11th April 2010 by Merdeka Center on 283 randomly selected employers across Peninsular Malaysia and East Malaysia. The survey was conducted by telephone interviews.

The Hong Kong, SAR of China component of the survey was carried out by the Social Sciences Research Centre of The University of Hong Kong, SAR of China (HKU) between 17th March and 8th April 2010. By using random digit dialing and Computer Assisted Telephone Interview (CATI), the implementer, the Social Sciences Research Centre of HKU contacted and interviewed the opinions of 262 employers across Hong Kong, SAR of China.

Respondents' Profile

A majority (63.6%) of the Malaysian employers responding to the survey were female and the rest (36.4%) were male. In terms of geographic distribution, 55% were from the central region of Kuala Lumpur and Selangor while 35% were from the rest of the country. Another 10% of respondents were from East Malaysia. In Hong Kong, SAR of China, a large majority of respondents were female (74.4%) and 25.6% were male.

Summary of the Findings

Attitudes towards FDWs

A majority of the Malaysian (77.4%) and Hong Kong, SAR of China (82.8%) employers reported that they were satisfied with the overall performance and attitude of their FDWs. While a majority of employers cited work-based performance as basis of their satisfaction, a small but significant number of Malaysian employers also reported satisfaction on the workers ability to “not go out and mix with others”.

With respect to infractions on the rights of FDWs, a plurality (31.4%) of Malaysian employers confirmed NGO reports which noted that long working hours is the most common form of abuse followed by verbal abuse (24.0%) and physical abuse (20.8%).

Reported Treatment of FDWs

Verbal reprimand or scolding was the preferred form of disciplining FDWs in Malaysia but in Hong Kong, SAR of China, the percentage for verbally reprimanding FDWs is lower and there are also a significant number of employers who prefer verbally reminding workers instead of punishment. When asked how strongly government should take actions against

employers who verbally abuse their worker everyday and use vulgar words that put people down, 42.1% of Malaysian employers strongly disagree with punitive measures against such verbal abuse by employers.

Interestingly it was found that as the severity of the perceived infraction by FDWs increases, Malaysian employers prefer to refer the matter to third parties, either the employment agency or the police. In the case of Hong Kong, SAR of China, employers were found more likely to terminate if an FDW behaved in an abusive manner towards those under their care.

The reasons for termination are also a subject that could also derive assumptions on employers' treatment towards FDW. For example, a significant number of Malaysian employers, 15.2% reported that they would terminate their employees if the FDWs left the employers' home without permission. This form of action seems to portray employers' possessive attitude towards FDWs.

Awareness and Knowledge of the Law

68.2% of Malaysian employers perceived that FDWs were sufficiently protected under Malaysian laws but a significant minority 22.6% felt that they were not. In Hong Kong, SAR of China however, 92% of employers agreed that FDWs are sufficiently protected under Hong Kong, SAR of China labour laws as currently enforced.

Despite claiming otherwise, it was found that the vast majority of Malaysian employers were not familiar with laws and regulations that affect the employment of FDWs. Only 6.3% were able to partially name the particular law concerning FDWs. On the other hand, 47% of Hong Kong, SAR of China employers showed awareness of the laws.

The employment agencies were the primary source of information about laws on FDW both for Malaysian and Hong Kong, SAR of China employers, followed by the media and immigration department or labour department (in the case of Hong Kong, SAR of China).

Attitude towards Law Enforcement and Compliance

The survey found that Hong Kong, SAR of China employers generally accepted the regulations currently enforced. However the survey discovered that Malaysian employers were only acceptable to minimum regulations that relate to the employment of FDWs but were less accommodating towards rules which recognize them as ordinary workers. In fact a majority of employers accepted that FDWs should work for the purpose they were hired, be provided with accommodation, be covered by insurance and provided a copy of the work contract in their language. However a majority of Malaysian employers did not

agree to giving workers a day-off work each week nor pay allowances if workers were made to work more than 14 hours each day.

A significant minority of Malaysians (and sometimes a majority) disagreed that the government should take actions against certain forms of negative behaviour of employers. Therefore these Malaysian employers have a tendency to shun punitive measures against exploitative employers. They appeared ready to condone behaviour that deny FDWs their basic rights.

The survey reveals significant differences between the attitudes of Hong Kong, SAR of China and Malaysian employers in their attitude towards FDWs. It was found that the average Hong Kong, SAR of China employer viewed and treated their FDWs as workers, Malaysians were more likely to view them as „servants“. It is important to note that proper laws, recognition through regulations and effective enforcement of laws tend to bring positive perceptions and understanding of FDWs as seen in the Hong Kong, SAR of China employers“ feedback. In the Malaysian case, employers preferred to maintain status quo that has benefited them. This view pervaded in their attitudes towards treatment of the FDWs and also likely influenced their reservations about accepting proposals towards regulations that afford better protection of the rights of FDWs.

The authorities of both Hong Kong, SAR of China and Malaysia have stated goals to reduce dependence on foreign domestic workers yet appeared to have taken different strategies to achieve them. The authorities in Hong Kong, SAR of China adopted measures which raised the threshold on FDWs rights and imposed more stringent regulations that were more in line with its own labour laws alongside implementing procedures that eased immigration processes while the authorities in Malaysia seem to take into consideration some issues raised by NGOs and countries of origin like Indonesia but none of the proposals have been translated into regulations and amendments to the labour laws. Is this a consequence of objections raised by employers and employment agencies? The net effect of these strategies appear to be higher acceptance of Hong Kong, SAR of China employers towards laws that protect the FDWs but at the same time afforded them protection by freeing access to hire FDWs.

The higher compliance obligations and “perhaps better public education” of Hong Kong, SAR of China employers is attributed to the fact that 47% of Hong Kong, SAR of China employers had some knowledge of employment laws.

The alarmingly low number of Malaysian employers – 6% - with knowledge of the law indicated that employers were not adequately informed of FDWs legal rights and employers“ responsibilities. Despite their lack of knowledge of the law, around one in five Malaysian employers believed that their national laws protected FDWs, while 53% believed that both employers and FDWs were (presumably equally) protected. Another “disturbing insight” was the finding that more than half of Malaysian employers

disagreed that the government should punish employers who made their FDWs work for more than eight hours without rest in a day (currently FDWs work 14 hours per day without rest days). These views correspond with the “public outcry” against a CARAM-Asia led campaign for one rest day per week in Malaysia since 2007.

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