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*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

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## **CARAM ASIA STATEMENT TO THE CIVIL SOCIETY DAYS OF THE GFMD ON SAFE, ORDERLY AND REGULAR MIGRATION BERLIN, GERMANY 29<sup>TH</sup> JUNE – 1<sup>ST</sup> JULY 2017**

CARAM Asia is a regional network of 42 members in twenty origin and destination countries spanning across Asia and the Middle East. CARAM Asia is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. It has been working for promotion and protection of migrants' labour and health rights with focus on HIV and AIDS issues since its establishment in 1997 with the secretariat based in Kuala Lumpur, Malaysia.

### **The Conflict between Migration Policies and Migrants Rights**

Migration is an important means for migrants and their families to improve life conditions, but many do so without guarantee of their human rights. Human rights are inalienable entitlements of every human being, wherever they are and whatever their status. Unfortunately, migrants are often excluded from rights protections. Migrant workers suffer difficult, dangerous and dirty conditions in their work, and face significant challenges in earning sufficient wages to support themselves and their families back in their country of origin. The growing challenge today is creating an environment that respects, protects, promotes and defends the rights and dignity of all migrant workers, everywhere.

It is globally recognized that migrant workers contribute enormously to the development of our societies and nations - both source and destination countries. The obligation of protecting migrant workers' rights, therefore, rests equally upon both source and destination countries. Unfortunately, governments commonly treat migrant workers as commodities. South Asia and Southeast Asia are comprised of many heavily populous, low-income and developing countries, which aim to export manpower to ease unemployment at home and earn foreign exchange in the form of remittances. Many destination countries' policies and laws regulating in-migration are built on the concept of a short-term remedy for labour shortage problems and neglect or violate migrants' health rights.

These conditions contribute to migrants being exposed to exploitative working conditions and occupational hazards. They may also face social exclusion and discrimination, substandard living conditions, and encounter language barriers and interpersonal challenges - all of which can affect their health and the ability to access services. This is compounded by separation from spouses and families, and unfamiliar social and cultural norms. The resulting isolation and stress may lead migrant workers to engage in risky behaviours which can increase chance of HIV infection among other negative health outcomes.

**Recommendations:**

- MOUs must provide greater accountability for migrants' rights by stipulating protection and monitoring mechanisms in greater detail.
- Any bi-lateral or multi-lateral agreement on migration must take into consideration international rights standards.

**The Imbalance between Remittances and Social Protections for Migrant Workers**

Labour export policies have become integral to the development frameworks of many developing countries in Asia. In this way, remittances from migrants are being used as a financial tool to provide sustainable financial reserves to bolster economies, and currently outstrip Official Development Assistance in many sending countries. In some of these countries, remittances also exceed inflows of Foreign Direct Investment. (World Bank, Migration Factbook, 2012).

Remittances are contributing to development goals by helping to reduce poverty through the direct provision of income to migrants' families. At the same time, the export of surplus labour helps to control national unemployment levels, contributing to national stability.

However, it is glaring to note that the number and size of welfare and compensation payments given to aggrieved migrants and their families are relatively small compared to the financial benefits reaped from remittances by these governments. These gaps leave migrants and their families to not only shoulder the risks related to migration, but to bear the brunt of the consequences. While migrant welfare and insurance schemes are primarily financed by fees paid by migrants, these funds are commonly treated as "managed financial portfolios" rather than welfare funds.

In other words, an underlying conflict in the promotion of the "remittances for development" framework is the segregation of the financial benefits of remittances from the well-being of the migrant workers who generate this capital. Without proper social protections in place, these policies are essentially promoting the commodification of migrants, and thus should be re-evaluated.

An underlying concern posed by critics is that the inability to protect migrants' rights is the result of an inherent conflict of interest – where government agencies serve dual-functions with opposing purposes. On one hand, these agencies are directed to promote the export of their nationals to foreign labour markets; on the other hand, they are also charged with protecting their nationals' rights. The conflict arises because source country governments compete to have host countries provide higher quotas for their nationals, and do so by promoting them as compliant but hardy workers who are willing to accept low-wages for low or semi-skilled and demanding jobs.

In light of the considerable economic benefits that migrant workers provide their home countries and families through remittances – from foreign exchange reserves to reducing poverty and stimulating the economy – they and their families receive disproportionately little in the way of labour protections or welfare. This is reflected in the disproportionately small budgets that agencies related to providing services to labour migrants and their families receive. In source countries, government agencies responsible for protection and welfare of migrant workers should receive considerably increased funding – possibly through mechanisms that draw on the financial benefits of foreign exchange from remittances. Most budgets are not even 1 percent of national budgets.

### **Recommendations:**

- Fund migrant protection services and increase accessibility of welfare payments to migrants and their families. Budgets should significantly exceed current levels, and should show an increase over time commensurate with numbers of migrants going abroad.
- In order to benefit migrants more fully from social protections and group funds, there should be migrant representation on the committees that manage these funds and decide how they are used, and migrants should be able to more easily access welfare payments.
- Governments need to recognise and embrace civil society organisations as partners in the promotion and protection of migrant workers and their families' rights and welfare.

### **Xenophobia and Migrants**

Destination countries often need migrant workers but shun them as undesirable. Migrant workers take up jobs that locals refuse, while employers see migrants from poor countries as being desperate and dispensable. Migrants from poor countries are portrayed as uneducated with inferior cultural values or religion. Migrants speak a different language and practise a different culture, which the locals are not accustomed to. There is also a racial dimension, specifically skin colour. This dehumanization enables employers to subject migrant workers to

long hours of work without rest, deprivation, and may even lead to atrocious acts of violence and abuse.

The mainstream media are in part responsible for fanning xenophobia as they have placed much emphasis on the distinction between differentiating locals and migrants. Such categorisations influence the attitude of citizens who perceive migrants as a threat, portraying them as invaders who disrupt the habits of the local population, are an economic burden as well as taking away jobs... Not surprisingly, migrant workers are also commonly blamed for social problems and crime, although skewed and misrepresentative statistics are commonly used.

**Recommendations:**

- Governments ratify the International Convention on the Protection of Rights of all Migrants and Members of their Families.
- Ensure that migrant workers are not treated differently from local workers.
- Urgently strengthen efforts to combat xenophobia and discrimination in part through campaigns portraying migrants in a positive light.

**Governments, International Rights Standards and Guaranteeing Migrants' Rights Protections**

In 1975, the ILO adopted Convention 143 which lays down safeguards in the interest of migrant workers. But up to now 41 years later only 23 countries have ratified and it should be emphasised that even many of those countries are not abiding by the convention.

According to the UN Treaty Collection Report, globally only 49 countries have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Asian countries which send their citizens out to various parts of the world to Asia and Middle East to work have not ratified these important conventions. These countries' reluctance demonstrates a serious lack of commitment and the need to act with a sense of urgency to secure protection for their citizens going out to work. It is clear that the objectives of the labour sending countries is to earn foreign remittances at any cost and for the labour receiving countries it is to get work done with reduced wages in violation of international labour standards. This needs to be rectified.

**Recommendations:**

- All countries must ratify ILO Convention 143 concerning Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.
- Increase migrant workers' access to migrant-friendly redress mechanisms and justice all along the migration continuum
- Labour trafficking and forms of slavery are stopped, and perpetrators up to the highest levels are brought to justice.

## **Protections for Migrant Domestic Workers**

In June 2011, ILO Domestic Workers Convention 189 on Decent Work for Domestic Workers and Recommendation 201 was adopted. It was an important agenda as domestic workers form one of the largest and growing but unprotected segments of the labour force. The Convention was direly needed to ensure global minimum standards, and, at the very least, to facilitate bridging gaps in protection. Though the Convention has been in force for the last six years, few governments have ratified the convention or have adopted the changes into national laws and policies to provide protection to women migrant domestic workers in line with the Convention. In particular, in the Asian region, where 90% of domestic workers are women, only the Philippines has ratified Convention 189.

Domestic workers provide important services and contribute to the economy of the host countries, while supporting their families back home. However, exclusion from key protections in national labour laws, deceptive recruitment practices, and immigration policies that gives employers inordinate control over workers, and isolation in private homes, places domestic workers at serious risk of exploitation and abuse. It is of grave concern that countries which economically benefit from having domestic workers are unwilling to provide them with basic labour protections.

### **Recommendations:**

- Governments must demonstrate their commitment to protecting all workers' rights by ratifying Convention 189 immediately to ensure better protection, decent work and decent life for all migrant domestic workers.
- The private recruiting industry should be regulated and ethical practices followed in the interest of migrant workers;

## **Migrants' Health Rights, and Prevention and Treatment of HIV and other Manageable Conditions**

Commonly, interventions on HIV prevention or sexual and reproductive health for migrants are based on denial. Migrants are supposed to go for work, and are expected to repress their desires. Origin countries provide little in the way of knowledge on health promotion or HIV prevention. Issues of intimacy and sexuality are dealt with simply by policies which are comprised of Single Entry, No Family, No Sex, No Pregnancy, No Marriage and No Children. Those who violate these rules and become pregnant, or infected with HIV, or suffer other treatable health conditions such as Tuberculosis, can be deported. In most countries, health testing including HIV is mandatory for migrants, but standards of consent, counseling, and confidentiality are disregarded.

Migrants are not included in prevention programs. Additionally, the cost to obtain health services for migrants is much higher than locals in many countries, or else only limited services are available. Many would return home to countries with poor health systems and challenging infrastructure, making commutes from rural homes to central urban areas cumbersome.

Although they contribute to the economy of host countries, they are denied access to meaningful health services. In effect, they are treated as dispensable commodities. Nowhere else is it as obvious as when it comes to health policies for migrants. There is an urgent need to develop migrant-friendly policies to reduce migrants' vulnerabilities to HIV and to uphold their health rights.

**Recommendations:**

- Host countries halt deportation/ repatriation of migrant workers who are HIV positive or who have other treatable health conditions, and eliminate all mandatory HIV testing of migrant workers as criteria for employment or visa status.
- Allow HIV positive migrants or migrants with any treatable condition, to stay and work, and provide them with necessary access to services and treatment.
- Increase migrants' access to public health services by increasing accessibility to health insurance, eliminating discrimination in the form of high costs compared to nationals, and by reforming policies which restrict access to health services in the form of limitations on mobility and arrest of undocumented migrants or harassment of documented ones (including withholding of documents by employers).
- Both sending and receiving countries which are engaged in labour migration should invest sufficient funds to provide migrant workers' communities HIV education and awareness and referral to services all along the migration continuum - from contemplating migration, to pre-departure, on-site and reintegration.

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