

Migrant Forum in Asia
Submission to the Committee on Migrant Workers
Day of General Discussion on Undocumented
Migrant Workers

MIGRANT FORUM



in ASIA

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I. Introduction

Migrant Forum in Asia (MFA) appreciates that the Committee on Migrant Workers is organizing a Day of General Discussion on the rights of undocumented migrant workers.

MFA is regional membership organization of migrant organizations, grassroots organizations, faith based organizations and individuals committed to protect and promote the rights of migrant workers. Since the organization's inception, MFA has campaigned for the global ratification and implementation of the UN 1990 Convention on the Protection of the Rights of Migrant Workers and Members of their Families. The MFA is also a member of the Global Steering Committee for the Campaign for the Migrants Rights Convention.

The MFA submission to the Committee of Migrant Workers is compilation of statements and articles of MFA members and partners working on the rights of migrant workers. The first part of the report includes articles from MFA members in Taiwan and Japan who are working with undocumented migrant workers. It also includes case studies and articles on undocumented articles submitted by MFA members to the UN Special Rapporteur on the rights of Migrant Workers.

The second part of the submission includes a statement the MFA regional Conference on migration under the theme: Current Initiatives and Strategies in Addressing Irregular Migration.

The third part of the submission includes articles and reports from workshops on undocumented migrant workers as well as situations of migrants in detention. The workshops were conducted at various global and regional CSO activities.

II. Situation of Undocumented Migrant Workers

Report on migrant workers in an irregular situation in Taiwan, August 2011

Prepared by: Hope Workers Center Taiwan and the Hsinchu Catholic Diocese Migrant and Immigrants Services Center Taiwan

Strict Foreign Labor Policies

In regards to migrant workers Taiwan's Foreign Labor Policies are very strict and blue collar workers are exempted from obtaining permanent residency. They only can be hired for certain types of employment and a contract period of maximum three years. Contracts can be renewed twice but the worker has to leave the country and usually pays the high placement fee again. Changing employer is extremely difficult for a migrant worker and only certain circumstances allow doing so.

High Recruitment Fees leading to indebtedness

Except a very little number all migrant workers are recruited by employment agencies. These agencies demand high fees – from US\$ 1800 up to 7000 US\$ (depending on the country of origin)- leaving the worker indebted. Loans have to be repaid either by installments or the money is directly deducted from the salary. This is especially true for Indonesian domestic workers. For the first months their wages are close to zero. The recruitment fee is often higher than the gross income of one year.

Policies

Penalty, detention and repatriation

Undocumented migrants that are caught by police or surrender need to pay a penalty of US\$ 350. They are brought to one of Taiwan's detention centers, where they have to wait for their papers to be processed before they are repatriated. This can take up to two months and longer if the person has no money for the plane ticket, penalty or if the passport is invalid or lost. Until the beginning of this year the immigration police was in charge of cases of detained undocumented migrants. In 2011 the detention centers themselves took over the handling of the cases. This change was said to improve and speed up the processing of cases as there were numerous complaints about police officers reluctant in dealing with cases, resulting in extended detention periods of migrants; sometimes up to 12 months.

In January 2011 the National Immigration Agency implemented a new policy: undocumented workers with a valid passport and enough money to pay the penalty and the plane ticket and no pending criminal charges are not detained but can leave the country directly. However, the numbers of undocumented workers are still on a rise.

Currently there are almost 30,000 undocumented persons that entered Taiwan legally as migrant workers. Beside that there is an unknown number of migrants that entered Taiwan by other ways (smuggled, fraudulent marriage, tourist visa). According to government estimates there are yearly around 1500 to 2000 persons from the PRC irregularly entering Taiwan.

Rewards for Reporting Undocumented migrants

For each undocumented migrant reported to the police a reward of NTD 5000 (US\$ 180) is paid. By May 2011 the Council of Labor Affairs introduced a reward scheme for the reporting of employers and brokers of undocumented workers.

Crack down on undocumented migrant workers

In 2010, September 30 six undocumented Indonesian migrant workers died in an accident on a public construction site. This incident was used by the government to start a crackdown on undocumented workers.

Criminalization of undocumented migrant workers

Undocumented migrants are treated like criminals. For transfers to and from the detention center they are hand and foot-cuffed. Incidents became publically known of police using brutal methods to investigate if a migrant was undocumented.

The National Immigration Agency publishes a monthly report about the number of undocumented workers and their country of origin (since 2010 excluding gender and not mentioning the sector of legal employment).

In the official discussion undocumented migrant workers are described as mainly male. In a research of the Council of Labor Affairs, cited by the Taipei Times, 06 October 2010, it was found that according to the explanations of employers most workers “were incited by companions to change employers”, “their contracts will expire soon” and “they wished to change jobs for higher pay”. Migrant workers themselves were not interviewed for this study.

Although the government is clear about some of the main reasons for workers to become undocumented (e.g. high placement fees) others it does not mention. According to the experience of NGOs there are mainly two groups of undocumented workers: Domestic workers and Vietnamese factory workers. Domestic workers mostly run away because of their exploitative working conditions (12 h plus per day, no day off, duties not mentioned in the contract), bad treatment and very low income. Around 2/3 of the undocumented migrant workers are female and their number had been on a rise in accordance with the growing number of domestic workers.

Vietnamese factory workers pay the highest placement fee (up to 7000 US\$). In many cases the workers cannot manage to pay off their loans in their legal contract period or they were not able to earn the expected amount of money and decide to overstay their visa to earn more money.

The Situation of Undocumented Migrant Workers in Japan

Prepared by: The Solidarity Network with Migrants Japan

Overview

The number of migrant workers started to increase in Japan since 1970's, especially in the last half of 1980's, mainly from other Asian countries. Among them overstayed their period of stay, living undocumented for more than 20 years, yet supporting Japanese economy and industries even having paid taxes.

According to the Immigration Bureau of the Ministry of Justice in Japan, overstay foreigners have decreased in number after the peak of 1993's 296,000, recording 78,488 in January 2011. Behind this decrease, many of them and their families have been in peril of their lives facing the strict policy by the government to crackdown on migrants in an irregular situation because they were not allowed to stay in Japan under the country's Immigration Control and Refugee Recognition Act (Immigration Act) and Alien Registration Law-- the only legal documents concerning migrants, whose purpose is to control immigration. Many human rights have been in fact violated in undertaking these acts.

The Japanese government has also taken tighter legal measures by revising the Immigration Act in 2009. A tighter control with severer punishment make migrants in an irregular situation and their families invisible and even hidden, structurally excluding them, ignoring their existence, and depriving them of the access to basic human rights stipulated in the ICPMW (Part III).

Irregular migrants, who are victims of accepting countries' unrealistic immigration policy, as that of Japan, have not committed any criminal offense while they are criminalized based on their violation of the immigration laws of accepting countries, which often are administrative laws. As an NGO in one of the major accepting countries of migrant workers in Asia, SMJ would like to recommend the Committee on the Protection of the Rights of All Migrant Workers consider following obligation of State Parties, and it hopes to assist the Committee in developing a General Comment on migrant workers in an irregular situation and members of their families.

1. Access to public services by irregular migrants (Article 28)

States should make sure migrants regardless of their resident status have access to essential health care services and emergency medical services, as well as government-sponsored maternal health care services. Providing these essential public services should not be questioned nor terminated because of the change in country's immigration policy at a time, no matter where these migrants live within the country.

2. Deportation and Detention (Article 16 and 22)

State should establish clear criteria to limit detention to cases where it is strictly necessary. It also should set a maximum period of detention pending deportation, and, under no circumstances, detention should be indefinite. Detention of sick persons,

minors or parents of minors should not be accepted. In this regards, independent experts that monitor the situation of the detention is necessary, given appropriate resources and authority. Further, in decision-making process relating to deportation of migrants and their family, the best interest of the child should be ensured. A government body that issues a deportation order should be separated from one that receive an objection to such an order. A single government body should not undertake all the decision making process regarding residence status of migrants, arrest of them, their detention, and their deportation.

3. Migrant children (Article 30 and 44)

State should ensure that the principle of the best interests of the child binds judicial and administrative decision concerning irregular migrants and their families. It should also guarantee the right to compulsory education and access to higher education. Right to education should equally be ensured regardless of school administration, in many cases city and other regional units, where migrant children live in. State should guide local school administrations to ensure the right to education for all children. School that accepted migrant children should not be required to report legal status of the children and their family to an immigration authority.

4. Migrant women

Considering migrant women's vulnerability to become undocumented because of two-fold discrimination as women and migrants, State should make sure migrant women who are married to nationals need not to depend on their husbands in acquiring or renewing their legal status like a spouse visa. State's judiciary should recognize and guarantee the equal rights of foreign and national with regard to child custody. In the case migrant woman is a victim of domestic violence, her right should be upheld accordingly.

5. Migrant workers (Article 25 and 27)

State should make sure irregular migrants and their families are not deprived of right to decent work conditions including safe and healthy environment. State should not allow covering up by employers of industrial accidents, so prevalent in the case of migrant workers in an irregular situation. In this regard, public labor office that receives reports of industrial accidents should not be required to report migrants' legal status to an immigration authority. Similarly, State should not require an employer to report migrants' nationality and legal status to public offices such as labor and immigration authorities.

“The Impact of The Criminalization of Migration on The Protection and Enjoyment of Human Rights”

Submitted to the UN Special Rapporteur on the Rights of Migrant Workers

Submitted by Migrant Forum in Asia

A. The impact of the criminalization of migration on the enjoyment of human rights

1. The human rights impact of criminalizing migration

(Discussion, inter alia, on the disproportionate number of migrants in criminal detentions and the type of offenses for which migrants are detained --massive deportations without differentiating between asylum-seekers/irregular migrants and victims of trafficking and contemporary forms of slavery; increase of xenophobia, and related intolerance, etc)

Asia is home to more than 60 million migrant workers. The current labour migration systems in Asia began to change in the 1960's due to the rapid growth of the oil producing countries in West Asia. Rapid economic growth among developing countries and demographic changes also contributed to the demand for foreign labor in countries such as Japan, Korea, Malaysia and Singapore.

Labour migration in the region is often temporary and contractual. Permanent migration is not encouraged by most countries and permanent residency status is only provided for highly skilled workers. A big number of labour migrants in the region are unskilled or semi skilled working as construction workers, foreign domestic workers and factory workers.

On 12 July 2010 the Migrant Forum in Asia (MFA) received a communication from the office of the Special Rapporteur (SR) on the Human Rights of Migrants requesting for contributions for the SR's report on: “The Impact of the Criminalization of Migration on the Protection and Enjoyment of Human Rights”. MFA an Asian regional membership organization of migrants' groups, migrants' human rights advocates trade unions, grassroots organizations and faith based organizations coming from 16 countries requested for contributions from its members. The report below is the result of contributions of MFA members and partners from Japan, Malaysia, Taiwan and Singapore.

Malaysia

In 2005, Malaysian legislated for the involvement of civilian groups (Malaysian Volunteer Corps, *Ikatan Relawan Rakyat*, RELA) to participate in immigration operations. The raids conducted have resulted in serious injuries to migrants¹ as well as their deaths².

¹ Médecins Sans Frontières (MSF) reported that 291 patients sought medical care for trauma and wounds at MSF's urban clinics during 2006. Some were incurred when people fled from raids conducted by the police

Since 2006, over a three-year period, 408,979 detainees have been held in 13 Immigration Detention Depots in Malaysia, an average of 102,244 detainees a year³. In 2009 alone, there were 81,396 foreign prisoners in Malaysia's prisons, a daily average of 13,392 individuals. Poor conditions in Immigration Detention Depots can be attributed to overcrowding, inadequate facilities, lack of access to medical care, breaches of basic standards of hygiene, insufficient food and water, and ill-treatment. Between 2006 and September 2009, there have been 70 deaths in Immigration Detention Depots⁴. This figure excludes detainees who died in medical centers.

Mass raids and arrests of migrants have led to the arrest and detention of vulnerable groups including children, refugees, asylum seekers, stateless persons and victims of trafficking. From 2004 to 2008, a total of 3675 children were detained at Immigration Detention Depots despite Malaysia ratifying the Convention of the Rights of the Child (CRC)⁵. Children are not separated from adults in Immigration Detention Depots. Refugees are not recognized in Malaysia and are not differentiated by law from undocumented migrants. As such, they are subject to arrest, detention and the risk of deportation. Victims of trafficking, especially men, are often held in Immigration Detention Depots while investigation and court proceedings of their cases are ongoing as there is a severe lack of shelters for trafficked victims.

Between 2002 and 2008, after amendments were made to the Immigration Act to include whipping for immigration offences, 47,914 migrants were convicted under this Act, with 34,923 of them whipped. Of those whipped, 60.2% were from Indonesia, 14.1% from the Philippines, 13.9% from Burma, 3.6% from Bangladesh, 2.8% from Thailand, and 5.4% from other countries⁶.

Japan

More than 175,000 undocumented migrants live in Japan (about 150,000 overstaying their visas and about 25,000 people entering illegally in Japan, as of January 1, 2008).

This number includes populations whose period of stay in Japan has extended over a long time; as a result, it has become difficult for some of them to re-settle in their home countries. However, the Japanese government keeps it as a principle to deport all the

and RELA (MSF, 2007. "'We are worth nothing' – Refugee and asylum seeker community in Malaysia', available on www.msf.org/source/countries/asia/malaysia/2007/MSFbriefingpaper.pdf, accessed 25 March 2008.

² BBC, 2006. 'Malaysia's mystery migrant deaths', Feb 16.

³ Bernama (2009) RM171 Juta Tanggung Belanja Tahanan Warga Asing Tahun Lalu, Mar 23, available on http://mstar.com.my/berita/cerita.asp?file=/2010/3/23/mstar_berita/20100323174131&sec=mstar_berita, accessed 13 July 2010.

⁴ Dewan Rakyat (2009) "Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat, 9 Nov, Soalan No. 27, Rujukan 2098".

⁵ Dewan Rakyat (2009) "Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat, 17 Jul, Soalan No. 294, Rujukan 1934".

⁶ Dewan Rakyat (2009) "Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat, Soalan No. 109, 16 Jun, Rujukan 1786".

undocumented migrants from the country. The only exception is those with special permission from the Ministry of Justice, in which they are exempted from forced deportation and are given a regular permission to stay, being permitted to continuously reside in Japan lawfully.

However, according to the government, whether or not such a special permission to stay should be permitted is remitted to a broad discretion by the Ministry of Justice, being given no criteria to such permission. In addition, the government maintains that special permission to stay is a privilege, not remedial system.

- *Obligation to Carry Alien Registration Permits at all times for all Foreign Nationals in Japan*

In responding the observation, the Japanese government and the Diet reformed the Alien Registration Law in 1999, which included changes regarding the obligation to carry the alien registration certificate at all times. The reforms were as the followings:

(1) For special permanent residents who failed to carry the alien registration certificate, a penalty changed from a (criminal) “fine not exceeding two hundred thousand yen” (around 2,000 dollars) to an (administrative) “fine not exceeding one hundred thousand yen (about 1,000 dollars) (Alien Registration Law, Article 18-2, paragraph 4 and Article 19). As a result, special permanent residents who do not carry the registration certificate at all times became not a subject of arrests by police or of prosecution under the court system.

(2) However, special permanent residents who refused to present the alien registration certificate to police and immigration officers will be “punished with penal servitude or imprisonment for a period not exceeding one year or be punished with a fine not 14 exceeding two hundred thousand yen” (Alien Registration Law, Article 18, paragraph 9), a condition which has not changed since the HRC’s last observation. This constitutes criminal punishment, under which the special permanent residents can still be held in custody or prosecuted. (3) For permanent residents, condition has not been changed even after the 1999 reforms. “Permanent resident” is also one of the statuses of resident different from “special permanent residents,” and its number is growing in recent years: the number of special permanent residents were 430,000 and that of permanent residents were 440,000 in the end of 2007.

In March 2008, the Japanese government and the ruling Liberal Democratic Party published several frameworks that abolish the Alien Registration Law and introduce a “new alien resident control system,” under which foreigners are again required to carry a “resident card” at all times and to present it to public officers if asked.

Taiwan

Taiwan has a strict managed migration policy whereby migrant workers have to pay exorbitant amounts of placement fees to placement agencies and Taiwan brokers in order to buy a job in Taiwan.

Vietnamese migrant workers are paying the highest placement fee at US\$7,000. They are lured by the brokers with false promises of many hours of overtime pay with corresponding high salaries. However, this is not always the case. If migrant workers are not given overtime work they cannot afford to pay back their debts and the high interest on their debts. Therefore, they have to take the risk to leave their regular employment and become irregular.

Many migrant workers, in particular female caretakers and domestic workers, are vulnerable to all forms of abuse in the workplace. In order to escape these abuses many leave their regular employment and become irregular.

When they become irregular migrant workers are prey to the illegal brokers and illegal employers. Eventually they will be arrested by the police. Taiwan police are very diligent in arresting irregular migrants. After being arrested they are detained in local police stations or larger detention centers. They need to pay a penalty of NT\$10,000 (US\$310) and the cost of a ticket home (US\$250). They are left languishing in detention centers until they can pay this money. Some migrant workers have the money but are left waiting in detention centers until their arresting officer decides to send them to the airport.

When a legal employer hears the irregular migrant worker has been arrested by the police some of them take revenge by suing the migrant worker for stealing something from the employer's house. The migrant worker is left languishing in a detention center for as long as one year until the case is finished.

Some of the irregular migrant workers become victims of sex trafficking and labor trafficking. When they are rescued by the police they may be detained in detention centers for as long as 4 months until the prosecutor decides whether they are victims of trafficking or not. If they are victims of trafficking the local authorities will ask NGOs to shelter the victims.

On June 1, 2009 the Taiwan Human Trafficking Prevention Act came into force. From that day trafficked persons can apply for a 6 month temporary working visa. It takes 2 weeks to get the visa. They can then apply for a work permit which takes another 2 weeks. With the work permit they can apply for a job.

Singapore

Singapore has clearly defined policies that determine its overall approach to migration. It is concerned that its birth rate is below replacement level, and seeks both to promote a

higher rate and to attract foreigners with desirable skills, subject to demographic considerations and domestic political considerations. It does not want the immigration of people who are unskilled or semi-skilled, regarding them as a potential burden on the economy, but as it needs their labour, it has created a legal framework to ensure a pattern of circular migration for them. This is meant to ensure that as soon as they cease to be employed, they are returned to their country of origin.

People who do not have desired skills or wealth are not allowed to settle; anyone who asks to stay because of having refugee status is refused and official policy is to either send them back to their last stop before arriving in Singapore or, if it is unsafe, to a country where their lives will not be in danger that will take them.

A person may be present in Singapore in violation of Singapore law if s/he:

i). Enters the country illegally. This is not easy to do, as Singapore is an island state and it polices the surrounding waters. Nevertheless, some people do enter the country by either being brought part way from Malaysia by boat and being told to swim or by swimming all the way across. New arrivals are regularly caught. Some get through. A brief glimpse of their situation was given by an incident in 2005, outlined below in a press release for a memorial meeting arranged by the migrant rights and wellbeing organisations, Transient Workers Count Too (TWC2) and Humanitarian Organisation for Migration Economics (HOME):

Background

The body of a construction worker from Myanmar was found in a multi-storey car park at Sengkang on Monday, 9th May. It was soon discovered that he did not die at that spot, but that he had been carried there and left after being killed in a fall on a nearby worksite. He was an illegal worker, and so were a number of his workmates. It appears that his employer had the man's body moved and dumped in the car park in an attempt to avert the probability that his use of illegal workers would be revealed. He had a name by which his family and his friends at home knew him. To those with whom he worked in Singapore, he was an individual with his own personality, qualities and faults - and a name. Nevertheless, it proved difficult to identify him because those who knew him as a workmate in Singapore felt unable or unwilling to volunteer such basic information about him out of fear of the possible consequences of having broken our laws in order to earn money for their families back home.

The New Paper has made an identification of this worker (Soe Thein, more commonly known by his nickname, Ah Nya*) which appears credible to us. However, we await full confirmation of this identification by the police. In any case, we feel that the difficulty there has been in establishing his name confirms us in our initial responses to his treatment and the attempt to render him anonymous. Known to us by name or not, this worker was a human being, deserving of respect as such, even in death. The Humanitarian Organisation for Migration Economics (HOME) and Transient Workers

Count Too (TWC2) are holding a memorial gathering for him. We urge the public to join us for this event.

Some workers who attended the event privately told the organisers that they had made their way from Myanmar and paid someone in Malaysia to help them get to Singapore. He took them to strait between the two states at night and pointed across to the other side. He told them to swim across. once in Singapore, they were employed by a small private contractor. They had to work on terms very advantageous to him, as they feared that they would face caning, imprisonment and repatriation if they complained to the authorities, including about the safety conditions, which they knew to be poor.

ii). Enters Singapore on a tourist visa and then illegally takes on paid work.

It is possible to come to Singapore on a tourist visa, apply for a job and be issued with a work permit legally; many domestic workers do it to avoid having to bear the charges made by agencies in their home countries. Those who work illegally are often employed in kinds of work that themselves involve activities at or beyond the fringes of legality. This includes quite a number of women who engage in sex work, particularly Chinese and Vietnamese women. They usually enter Singapore and leave before their tourist visa expires, so that they are less likely to draw attention to themselves as being present in violation of Singapore's immigration laws.

iii). Enters Singapore and is issued a work permit, but subsequently leaves the designated employer without the employer's agreement.

The Employment of Foreign Manpower Act sets out terms for employers to hire foreign workers. Work permits are issued under this act. The usual procedure is for an employer to apply for permission to take on a foreign worker(s). In Principle Approvals will be issued if the Ministry of Manpower is satisfied that the employer has made a valid case and complies with conditions in force, such as those on approved countries of origin and not exceeding a quota level for the employer's workforce. After the arrival of a worker, a work permit is issued. The work permit stipulates who the employer of the worker is; a domestic worker's permit stipulates her workplace, which is also the place where she must live: she is not allowed to 'live out'.

A worker may find the conditions of employment or accommodation very objectionable, but fears to lose his/her job, especially if money is owed for placement costs. The employer is legally permitted to send the worker home, without the worker's consent, whenever s/he chooses and without offering any reason or any compensation. This acts as a very considerable inducement to stay with the employer and do as the employer wishes. A discontented worker (this would mostly be true of domestic workers) may ask an employer to be released so that she may go to work elsewhere; usually, this means going back to her agency. She needs a letter of release from the employer; without it, she cannot be taken on by another employer and, once the employer cancels her work permit, she must return home within seven days.

Faced by this situation, a worker's situation will become one of illegality if she leaves her employer's address and stays in Singapore after her work permit has been cancelled, whether or not she takes on another job; if she does find employment elsewhere, her employer will have committed an offence. She is liable to be imprisoned and then sent home. Her situation as a person working illegally may be quite a vulnerable one.

Some male workers in the construction and shipyard sectors leave their designated employers and take work illegally with other employers because they offer them more pay. Once in this position, they may wish to stay as long as possible. When caught, they will be imprisoned and caned as overstayers and then sent home at the end of their prison sentence. Many men who overstay after finding better paid employment take the attitude that these penalties are just another part of the price they have to pay in order to earn money for their families.

'Overstayers' and other workers who are illegally present in Singapore run a number of risks. Those who have left someone who was issued with a work permit for them may find that the employer hires a repatriation company to look for them. The employers of such companies search for workers and forcibly detain them; migrant rights NGOs argue that this is illegal under Singapore's Penal Code, as it constitutes a form of Unlawful Confinement. All employers of migrant workers are meant to post a bond of \$5000 which they are liable to forfeit if the worker is not returned home at the end of the period stipulated in the work permit (normally two years, unless renewed) or within seven days of the cancellation of the work permit. Fear of losing the bond is often cited by domestic worker employers as an argument for not giving them any days off (half domestic workers in Singapore get no days off). Employers may appeal against forfeiture of the bond if they manage to find a worker who left them without their consent and send them home - hence the role of repatriation companies, which are also hired to escort dismissed workers to their point of departure.

Of course, the police also look out for workers who are illegally present, patrolling places where migrant workers tend to congregate and checking places where they sleep. Enforcement is not very vigorous, but workers still feel the need to be vigilant. Those who are detained generally have few complaints about police behaviour, especially in contrast to the police in their countries of origin; some may speak brusquely, but they don't beat workers, don't extort bribes and prison conditions often compare favourably with the daily living conditions of a worker who is present illegally. Sometimes they sleep on the pavement, in car parks or other sheltered spaces, which saves on rent; some band together and rent accommodation which is consequently very full and often insanitary and unsafe. Locals who rent to illegally present workers or who accommodate them are breaking the law and risk being fined.

iv. It should be noted that work permit conditions bar workers from marrying locals without special permission

Media reports that cast more light on these situations can be found at:

<http://migrantworkerssingapore.blogspot.com/>

and at www.twc2.org.sg, particularly in the 'In the News' section.

Current work permit conditions may be checked at the Ministry of Manpower's own website, www.mom.gov.sg

10th Regional Conference on Migration:
Current Perspectives and Strategies in Addressing “Irregular” Migration
Organized by MFA and SNTUC, 6-7 November 2006, Singapore

SINGAPORE DECLARATION

We are 107 participants from 21 countries/territories representing migrants’ organizations, trade unions, women and other civil society organizations, academia and UN agencies to deliberate on current perspectives and strategies on “irregular” migration.

We thank the Singapore National Trades Union Congress for hosting and co-organising the 10th Regional Conference on Migration (RCM). We acknowledge the support of the Ministry of Manpower of Singapore.

At the Migrant Forum in Asia’s 10th RCM, we have come together as the largest Asian regional gathering of civil society groups and networks dealing with migration, human rights, gender, trade, and development in order to analyse and address irregular migration, and dialogue with key stakeholders, within a rights-based framework.

WE AFFIRM THAT NO HUMAN BEING IS ILLEGAL.

We reiterate the universality of human rights for all, including migrants, refugees, asylum-seekers and other people on the move. Migrants with irregular status have inherent, inalienable human rights regardless of immigration and nationality status.

We view irregular migration in a holistic and comprehensive manner encompassing economic, social, humanitarian, political and cultural dimensions.

There is no international consensus on what constitutes ‘irregular migration’. Definitions currently in use are varied and based on individual governments’ perspectives of controlling mobility, restricting rights, and criminalizing ‘irregular’ migrants and those providing them support.

The current framework on “irregular” migration places the interest of states at the centre, rather than the human rights of migrants; it puts an unacceptable premium on national security rather than human security.

The current model of neoliberal globalisation is based on new structures of international production chains and labour segmentation. These interlink a variety of firms including transnational corporations, with a mass of casualised and informalised jobs, often performed by migrant workers.

The high demand for cheap, flexible and controllable labour in these economies/places where there also exist restrictive immigration, nationality and temporary work permit regimes, coupled with the loss of livelihoods and jobs, create the conditions for mass labour migration, and migrants ending up in vulnerable and irregular situations.

Neoliberal globalisation has also led to the privatisation of public services that have jeopardized the provision of care everywhere. The demand for domestic workers, care givers, etc., most of whom are women, has contributed to the feminisation of labour migration and is a manifestation of a global care-chain crisis.

Migration intersects with forms of discrimination based on gender, class, race, ethnicity, religion, nationality, sexual orientation and other forms that increase migrants' vulnerability.

Irregular status exacerbates marginalisation, discrimination, and oppression, resulting in the worst forms of abuse, violence and exploitation of migrants. Irregular status also results in direct denial and systematic violation of the rights of migrants.

Many policy measures pertaining to migrants in irregular situations are not rights-based. Those that are rights-based are inadequate, or are not enforced in part due to lack of political will. Current administrative and regulatory frameworks emphasize criminalisation, punitive actions, national security, and complement the anti-terror agenda of the State.

The recognition and understanding of the existence of migrants in various irregular situations, and the complex of reasons and causes that give rise to irregular situations, are essential in developing rights-based approaches.

Perspectives, strategies and actions addressing migrants in irregular situations must be based on human rights, with particular emphasis on labour rights, social justice, respect for diversity, and sustainable development frameworks. We reiterate that all perspectives and strategies must be gender-responsive.

Therefore, the 10th RCM recommends the following:

I. GOVERNMENT PRACTICES, PROCEDURES, MECHANISMS, POLICIES & LAWS

- 1. With regard to the lack of safe, just, transparent and realistic mechanisms for regular migration, we recommend governments to:**
 - a) Monitor multilateral, regional, bilateral agreements on services liberalization in order to make sure these do not impinge on migrants' rights; and
 - b) Refer to and use the ILO Multilateral Framework on Labour Migration, particularly Guideline 5 and its corresponding guidelines/measures.
- 2. In view of the lack of comprehensive and balanced legal frameworks for the protection of migrants' rights, we urge governments to:**

- a) Create and implement systems to recognize the skills and qualifications of migrants;
- b) Ensure that local and national laws are in consistent with international human and labor rights standards, and that these laws promote and enforce gender-sensitivity, non-discrimination and equal treatment among local and foreign workers, and workers in all job categories, including domestic workers;
- c) Ratify international conventions and instruments relevant to migrants, particularly ILO Convention 143, 181, 97, the UN Convention for the Protection of Migrant Workers and Members of Their Families, Convention for the Elimination of Discrimination Against Women (CEDAW), and the five (5) other core human rights instruments; and the eight (8) fundamental conventions of the ILO
- d) Use Guideline 9.8 of the ILO Multilateral Framework on Labour Migration, which gives particular attention to domestic workers, trainees, temporary migrant workers, and women migrant workers.

3. Concerning the poor enforcement and monitoring of existing laws and policies that protect migrants' rights, we recommend governments to:

- a) Introduce effective and efficient complaint mechanisms for the redress of migrants' rights violations, including provisions for irregular migrants to access these mechanisms while keeping their identity and legal status confidential;
- b) Monitor and improve the implementation of existing mechanisms to deter agencies that malpractice and/or circumvent the law, including imposing penalties and disclosing errant companies, and provide incentives to promote good practices among agencies;
- c) Commit more resources towards the enforcement of migrants' rights protection regimes, including providing awareness-raising and capacity-building to government officials to develop their sensitivity on migrants' rights issues and understanding on how to more effectively implement corresponding laws and policies; and
- d) Use Guidelines 10.1, 10.2, and 10.3 of the *ILO Multilateral Framework on Labour Migration*.

4. Regarding the prevalence of inconsistent and/or conflicting governmental policies on irregular migrants, we urge governments to:

- a) Conduct the repatriation of migrants with due process, rather than relying by default on mass deportation measures;
- b) Examine existing policies and practices to identify inconsistencies between different governmental policies and their corresponding departments (e.g. homeland security/ internal affairs ministry, immigration, labor, health/social welfare, and other departments);

- c) Create a transparent inter-agency steering committee on migration that facilitates the implementation of a coordinated national, rights-based migration strategy and protection regime; and
 - d) Create and publicize a transparent, rights-based national migration strategy and policy regime in consultation with relevant stakeholders, including civil society organizations, especially migrants' organizations and migrant-support groups.
- 5. Concerning the lack of recognition of the existence of different types of irregular migrants, of the underlying factors that give rise to forced migration (e.g. political repression, armed and ethnic conflict, forced mass relocation/displacement, religious persecution, and the lack of sustainable employment opportunities in sending countries) and the lack of mechanisms to protect their rights, particularly for the most vulnerable irregular migrants, we recommend that governments:**
- a) Introduce and enforce mechanisms to recognize, protect and assist the most vulnerable migrants, including asylum seekers, refugees and trafficked persons;
 - b) Create and implement specific measures within an overall migrants' protection regime to effectively meet the particular needs of asylum seekers, refugees, trafficked persons and other types of forced migrants, thereby recognizing the complexity of the situation and responding in a socially just and humane manner.
 - c) For ASEAN governments: continue dialogue with Burma and effectively resolve human rights abuses there;
 - d) Raise issues related to the human rights situation in Burma, that give rise to the forced migration of people from Burma, to international levels;
 - e) Undertake inter-governmental cooperation and agreements to deal with forced migrants; and
 - f) Ratify the 1951 Refugee Convention and the Trafficking and Smuggling Protocol.
- 6. Considering that certain sending countries (e.g. Burma) do not recognize the status of their own citizens and refuse to accept them back when they are deported from receiving countries, we strongly:**
- a) Regional bodies such as ASEAN to address the root causes of migration from Burma, namely the repressive regime that forces them to migrate; and
 - b) Receiving countries to provide temporary residency and work permits and visas, which allow migrants from Burma to access social services.
- 7. In light of the criminalization of irregular migrant workers, the punitive approaches taken to address irregular migration, including the advertising of migrants as criminals, the use of civilian 'special forces' in rounding up irregular migrants, the provision of financial incentives for such groups, laws**

that criminalize migrants who run away from abusive employers, and the tendency to focus interventions on migrants themselves rather than on the principal actors and structural factors that contribute towards their exploitation, we stress that governments should:

- a) Draw up bilateral agreements that build on international standards for the protection of the rights of all migrant workers and that there be strict monitoring and implementation of the same
- b) Streamline the recruitment and deployment process
- c) Not treat migrant workers as criminals or commodities, but as human beings
- d) Regional cooperation at the economic level be fundamentally aligned to human rights principles
- e) Draw up policies and mechanisms for social integration, inclusion and enforce non-discrimination policies
- f) Amnesty and regularization programmes to be adopted as good practice
- g) Governments should recognize that there may be refugees/asylum-seekers among irregular migrant population, and that these are people with special needs.

8. Regarding practices of arrest, detention and deportation that are often not well regulated and that lead to human rights abuses (such as exploitation, extortion, violence against migrants, deaths, poor and abusive conditions of detention, arbitrary and indefinite detention), we strongly urge governments to:

- a) Review procedure of arrest and detention
- b) Sending countries should monitor and provide support for reintegration of those arrested and / or deported
- c) At the international level sending countries should have their embassies providing services for all migrant workers, including legal support.

9. In light of irregular migrants' lack of, or poor, access to justice, whereby migrants often do not have due process and are summarily detained and/or deported, or even where there are redress channels, there is poor enforcement due to language difficulties, high expenses, lack of legal assistance, and other factors, we recommend governments to:

- a) Strengthen specialized agencies to provide access to redress mechanisms and due process of law
- b) Offer free legal aid for all migrant workers.
- c) Ensure the efficient provision of interpreters during arrest, trials and other legal proceedings
- d) set up safe houses/ shelter for migrants during the period of legal proceedings

10. Regarding the reality of insufficient service provision to irregular migrants, whereby migrants are explicitly denied services and placed at the mercy of civil society groups, we believe that governments must:

- a) Provide assistance to on-site workers including quick response in emergency situations and for governments to advertise this service
- b) provide guidance for the movement of people, a comprehensive policy integrating sustainable development and reintegration
- c) provide safe channels for all migrants
- d) provide favorable investment environment for returning migrants

11. Concerning the lack of accountability of sending governments to their migrants in taking responsibility for the abuses that stem from irregular migration, and their insufficient monitoring and regulation of recruiters and agents or their accreditation of recruiters without sufficient monitoring and regulation, leading to migrant workers abuse and exploitation, we urge governments to:

- a) Develop a comprehensive law to regulate and monitor recruitment agencies, including a complaint mechanism that can be utilized by any person. The liable party must be a person and not a company for accountability and liability purposes. Information on those violating the law must be made public.
- b) Remove policies that give authority to employers and recruiters to control the mobility of migrants including exit from country and the withholding of travel documents;
- c) Facilitate the process of direct employment; and
- d) Create a timely complaint mechanism and legal redress system for workers on the issues of withholding documents and entitlements.

12. Considering the labor export policies of sending governments, where export targets are set and trade negotiation frameworks are used by governments to maximize labor market access, due to the lack of viable employment options, as well as services in the sending countries for migrants, that leads to their over-staying in receiving countries, we urge governments to immediately:

- a) End migration policies that are premised upon labor export and economic profit;
- b) Provide realistic and sustainable livelihood options to enable migrants to return home;
- c) Set up sustainable reintegration programs in sending countries; and
- d) Facilitate return programs in receiving countries in collaboration with host country resource provision

13. In light of the tendency for receiving countries to keep migrant labor a temporary phenomenon, with no or limited options for permanent residency, we recommend:

- a) That governments respect the rights of family reunification as stated in the 1990 UN Convention on the protection of the rights of all migrant workers and member of their families
- b) Respect the right of the children of migrant workers in line with Convention on the Rights of the Child

14. In view of the general lack of recognition of the contribution of irregular migrants to social, economic and political aspects of sending and receiving countries, we urge governments to:

- a) To commission independent research at the regional level (ASEAN, SAARC) with concrete recommendations and solutions.
- b) To commission participatory research involving all stakeholders (migrants and migrant families, governments and migrant employers) on the contributions of irregular migrants to the economic, social, political and cultural aspects of both countries of destination and origin.

15. As the children and spouses of irregular migrants are not recognized by States, leading to the non-registration of marriages and the birth of migrant children, hence the statelessness of migrant children and non-acceptance by the country of origin of their parents, we urge governments to:

- a) Map the gaps in policies addressing the issue as a way of leading to dialogue between sending and receiving countries;
- b) Provide registration mechanisms, especially birth certifications and marriage registration to the children and spouses of irregular migrants.

16. Regarding the lack of information and research on irregular migrants, we recommend governments to:

- a) Conduct dialogue between the respective responsible ministries / departments at the highest level of sending and receiving countries, including representation of civil society groups in such dialogues for a holistic and deeper understanding of irregular migration, with the objective of addressing causes and response to situations of irregular migration
- b) The outcome of these dialogues feed into the making of public policy that is socially just and based on a human rights protection framework.

II. PRIVATE SECTOR

17. As irregular migrants are not allowed to have bank accounts, and they face difficulties in sending remittances back home safely,

- a) We recommend private institutions to provide migrants with favorable consideration so that they can access financial services (bank accounts, remittances, simplify access to loans, and other necessary services) easily.

18. In light of the reality that employers hold the labor of irregular migrants in high demand, as employers need to only offer them cheap wages and poor or no labor and social protections; and that recruiters charge irregular migrants higher costs, hence reaping huge profits for agents, but resulting in debt bondage for the migrants, we urgently recommend:

Governments to:

- a) Develop joint and solidary/several liability of employers and recruiters;
- b) Blacklist and track down errant recruiters;
- c) Devise and implement clear policies and mechanisms to regularize irregular migrants;
- d) Institute and implement policies such as a ‘welfare fund’ for migrant workers with clear provisions for irregular migrants in both sending and receiving countries;
- e) Amend and/or repeal discriminatory policies (for example, those that maintain temporary migration, such as the New Conditions of Stay—NCS--, and the six-year restriction on migrant workers’ work permit renewal in Taiwan); and
- f) Ratify the ILO C181.

Civil society organizations to:

- a) Start an Agency-Employer Watch or a Multi-Sectoral Monitoring Committee;
- b) Develop multilateral responses in monitoring implementation of practice among recruitment/placement agencies
- c) Enjoin trade unions to include irregular migration issues in their advocacy and organizing efforts
- d) Sensitize and mobilize the media regarding irregular migration issues; and
- e) Expose exploitative practices through the media (e.g. revoke/cancel licenses).

III. CIVIL SOCIETY

19. Considering that CSOs have limited resources, cannot provide for all the needs of migrant workers, and are focused in capital cities with lack of or limited NGOs working in border zones and transit areas we recommend the following:

- a) Capacitate NGOs to fund raise and access resources

- b) Strengthen the capacity of NGOs working on providing services to migrants in remote areas
- c) Share information on donor agencies
- d) Strengthen and broaden advocacy networks including pooling of resources, improved sharing of information, cooperation on advocacy

20. Considering that initiatives of civil society organizations and governments to address issues are not mapped we recommend the following:

- a) To map out information on services provided by governments and NGOs
- b) NGOs and government agencies to work together in providing services for migrant workers

21. Considering that best practices in advocacy and services are not shared we recommend the following:

- a) Document best practices
- b) Hold forums and workshops to share best practices
- c) Improve networking among NGOs working on migration issues in particular in countries where there is no political space for migrant workers to act on their own behalf

22. In light that migrant defenders/civil society groups are also criminalized and monitored we recommend the following:

- a) To engage and strengthen cooperation with diverse stakeholders including National Human Rights Commissions and trade unions (national, regional and international)
- b) Report violations of migrants human rights utilizing existing channels/mechanisms at the national, regional and international levels (including UN Special Rap on MWs, UN treaty bodies, ILO committee of experts, others.)
- c) Develop more comprehensive reporting mechanisms.

23. Considering that there is no political space to raise human rights issues, including migrant rights that there is restriction on civil society groups to raise awareness on issues we recommend the following:

- a) Strengthen advocacy for the right of all workers to organize and unionise, including urging national trade union confederations to reach out to, and enlist migrants in their membership/provide services to migrants, including irregular migrants.
- b) Improve research and data collection on the needs, problems and issues of irregular migrants, and of their positive contributions to national economies and the well-being of host and home country societies.

24. Considering that civil society groups are not consulted/represented in policy-making and that there is lack of access to policy-makers we recommend the following:

- a) Strengthen engagements with policy makers, governments and various stakeholders including national human rights commissions
- b) Organize forums, dialogues and workshops involving policy makers and various stakeholders in the government

25. Concerning the lack of Engagement with the ASEAN and regional/sub-regional bodies we recommend the following:

- a) Engage with ASEAN process on the elaboration of an instrument for the protection of migrant workers in the ASEAN and engage with the SAARC process

26. In light that Civil Society groups are not monitoring the implementation of international conventions (e.g. CEDAW, CRC, etc) we recommend the following:

- a) Monitor and intervene in international migration related human rights processes (e.g. human rights treaty bodies, UN & ILO core conventions, UNHRC, ILO Multilateral Framework, UNHLD, and others)
- b) Strengthen and broaden campaigns to urge governments to ratify the key UN and ILO conventions related to migration

27. In view of the fact that Civil society groups tend to adopt nation-state discourses uncritically

- a) There is a need to re-examine our assumptions, concepts, discourses through the critical lens of the globalization discourse

28. Considering that a big number of migrant workers don't know about their legal entitlements we recommend the following:

- a) Conduct information education on the rights of migrant workers
- b) Use all forms of media (including alternative, community radio, local TV, others) as a tool for advocacy and for information education

29. Considering that there is poor information flow to the public and lack of information on the plight of irregular migrants, distortion by the media we recommend the following:

- a) Conduct broad-based awareness-raising campaigns on the positive economic, social and cultural contributions of irregular migrants to home and host countries.

- b) Use all forms of media (including alternative, community radio, local TV, others) as a tool for advocacy.
- c) Develop media advocates on migrants rights
- d) Invite/involve media in trainings of migrants human rights

LIST OF PARTICIPATING ORGANIZATIONS

- Action Network for Migrant Workers (ACTFORM)
- aidha
- Ain o Salish Kendra (ASK)
- All Nepal Women's Association (ANWA)Asian Migrant Center (AMC)
- Asia and Pacific Regional Organization of Union Network International (UNI-APRO)
- Asia Research Institute, National University of Singapore Asian Forum on Human Rights and Development (FORUM-ASIA)
- Association for Community Development (ACD)
- Atikha Overseas Workers and Communities Initiative
- Batis Center for Women
- Centre for Asia Pacific Social Transformation Studies (CAPSTRANS)
- Center for Human Rights and Development (CHRD)
- Center for Indian Migrants Studies (CIMS)
- Center for Indonesian Migrant Workers (CIMW)
- Center for Migrants Advocacy – Philippines (CMA-Phils)
- Coalition for Migrants Rights (CMR)
- CWPD
- Federation of Trade Unions – Burma (FTUB)
- Filipino Domestic Helper General Union (FDHGU)
- Galilea Migrant Center
- Hope Workers' Center (HWC)
- Humanitarian Organization for Migration Economics (HOME)
- Immigration Advisory Service
- Incheon Migrant Workers' Center
- Indonesian Migrant Workers Union (IMWU)
- Institute for Global Justice (IGJ)
- International Development Research Centre (South East and East Asia Regional Office)
- International Gender and Trade Network – Asia (IGTN-Asia)
- International Labour Office (ILO)
- International Movement Against All Forms of Discrimination and Racism (IMADR)
- International Network of Alternative Financial Institutions (INAFI) Asia and Bangladesh
- International Network of Alternative Financial Institutions – Philippines (INAFI-Phils)
- International Organization for Migration (IOM)
- Jarnas Pekabumi (The National Network of Economic Development Indonesian Migrant Workers and Member Families)
- Joint Committee for Migrant Workers in Korea (JCMK)
- Kanlungan Center Foundation, Inc.
- Korean Minjok Leadership Academy
- Labour Union of Migrant Workers
- Migrants Assistance Program (MAP) Foundation / Action Network Migrants
- Messrs. Charles Hector
- Migrant Forum in Asia (MFA)
- Migrant Forum India (mfi)
- Migrant Services Centre (MSC)
- Migrants – MND PCLU
- Migration Working Group
- Ministry of Manpower
- Monitoring Sustainability of Globalisation
- National Centre for Labour
- National University of Singapore (NUS)
- Osaka University for Foreign Studies
- Pacific Studies and College of Asia Pacific Studies, Ritsumeikan Asia Pacific University
- PICUM – Platform for International Cooperation on Undocumented Migrants
- Public Services International
- Refugee and Migratory Movement Research Unit (RMMRU)
- Southeast Asia Regional Cooperation in Human Development (SEARCH)
- Serikat Buruh Migran Indonesia (SBMI)
- Singapore National Trades Union Congress
- South East Asian Committee for Advocacy (SEACA)
- Southeast Asian Studies, The University of Sydney
- St. Francis of Assisi Workers Centre (SFWC)
- Ta'amneh Law Firm
- Transient Workers Count Too (TWC2)
- Tenaganita Women's Force
- The Australian National University
- The Women and Media Collective (WMC)
- Unlad Kabayan Migrant Services Foundation, Inc.
- United Nations High Commissioner for Refugees
- Welfare Association of Repatriated Bangladeshi Employees (WARBE)
- Women's Rehabilitation Center (WOREC)
- Working Group for an ASEAN Human Rights Mechanism
- Zentoitsu (All United) Werkers Union

The Global Economy and Strategies for Advancing the Rights of Undocumented Migrant Workers
Workshop organized at the CSO parallel event for the UN High Level Dialogue on Migration and Development

Facilitator: Rebecca Smith, National Employment Law Project (NELP), USA

Panel Discussants:

- Ai-Jen Po, *Domestic Workers United, USA*
- Michele LeVoy, *Platform for International Cooperation on Undocumented Migrants (PICUM), Belgium/Europe*
- Pablo Asa, *Centro de Estudio Legales y Sociales (CELS)/Servicio Ecumenico de Apoyo y Orientacio a Migrantes y Refugiados (CAREF), Argentina*
- Cathleen Caro, *Global Workers Justice Alliance, US, Mexico & Guatemala*
- Kim Misun, *Joint Committee for Migrant Workers Korea (JCMK)/Migrant Forum in Asia (MFA), Korea*

Organized by: NELP, PICUM & Global Workers Justice Alliance

This workshop aimed to present strategies for advancing the rights of undocumented migrant workers, who labor at the most difficult, dirty and dangerous jobs in the economies of receiving countries, often in situations of wage exploitation and abuse of human rights. Speakers were requested to share their strategies and experiences in dealing with undocumented migrant workers.

The first speaker was Michelle Levoy of PICUM and she shared on the strategies used by PICUM in addressing the issues of undocumented migrants. PICUM developed the 10 ways to address the issues of undocumented migrants and these include the following:

- **Engaging public support through events and consumer campaigns** – this means acknowledging the socio-economic contributions of migrants in the community in particular the host country.
- **Collecting data** - Policies in the fields of migration, employment, and social inclusion are often developed in the absence of concrete data about undocumented workers. As a result, many of these policies lose their effectiveness. Collecting both qualitative and quantitative data on undocumented workers is thus of utmost importance.
- **Informing undocumented workers about their rights** –undocumented migrants have rights but most are unaware of this and it is vital for them to be informed about this.
- **Building capacities through empowerment** – In order to prevent and stop exploitation and abuse, undocumented workers must be able to effectively exercise their rights. Empowering and developing undocumented workers' leadership

capacities counteracts a system of dependency. Instead, workers are able to defend themselves and even engage in and influence the decision-making affecting their lives.

- **Unionizing undocumented workers** – the right to form unions and associations is a given right to all migrants including undocumented migrants. Unionizing will provide undocumented migrants with a support system and puts them in a stronger position.
- **Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labor standards** -One way to prevent violations of undocumented workers' workplace rights is to work with employers. There are several successful examples of organizations that invite – and sometimes pressure – employers to respect well-defined minimum standards of employment.
- **Challenging exploitation and abuse through mediation and collective actions** - Other ways of asserting undocumented workers' rights are by engaging in mediation and collective actions -Asserting undocumented workers' rights in the legal system - When other means of protecting undocumented workers' rights turn out to be unsuccessful in resolving labor disputes, undocumented workers can resort to filing an official claim through legal channels. This can be a difficult and challenging task, as there are numerous obstacles involved in making a claim: the fear of being deported, high legal fees, and the need to prove the employment relation. Such barriers deter many undocumented workers from using the legal system.
- **Working with governmental agencies to promote undocumented workers' rights** - undocumented workers tend to be reluctant to approach governmental agencies. Nevertheless, many governmental agencies, including the entity responsible for labor inspection, do not let a worker's irregular legal status impede their main task, namely to uphold fair working conditions and to sanction exploitative and abusive employers.
- **Asserting undocumented workers' rights in the legal system** - When other means of protecting undocumented workers' rights turn out to be unsuccessful in resolving labor disputes, undocumented workers can resort to filing an official claim through legal channels. This can be a difficult and challenging task, as there are numerous obstacles involved in making a claim: the fear of being deported, high legal fees, and the need to prove the employment relation. Such barriers deter many undocumented workers from using the legal system.
- **Advocating for legal status of undocumented workers** - Undocumented workers tend to be reluctant to approach governmental agencies. Nevertheless, many governmental agencies, including the entity responsible for labor inspection, do not let a worker's irregular legal status impede their main task, namely to uphold fair working conditions and to sanction exploitative and abusive employers.

Michelle also presented case studies they handled in PICUM in applying the 10 ways to protect undocumented migrant workers. Among those she cited is the unionizing of migrants in Europe and she cited the RESPECT network in the Netherlands as an example. Unions are usually hesitant to work with migrants but one of the unions in Netherlands works with RESPECT, an organization helping undocumented migrant workers, particularly undocumented Foreign Domestic Workers (FDWs). It's a strong partnership for workers

The second speaker was Kim Misun of JCMK, Korea. She explained that Korea is divided into 2 countries, the North and South. They are however united by one language. She explained that Korean society is a "closed" society thus, there is a lot of discrimination and xenophobia against undocumented migrant workers.

Korea has a growing economy that needs a big number of industrial workers. However, the local population cannot cope with the growing demand for labour. In order to cope with the labour shortage, the government allowed foreign workers in Korea. The trainee system was later adopted wherein workers come to Korea as "trainees" for the purpose of technology and skills training. Trainees do the work of regular workers but are not given the same benefits. The trainee system further has a forced savings scheme wherein migrants are required to put a certain percentage of their income to savings that migrants can only access after they finish their work contract. In most cases, these savings are not given to the migrants but are kept by employers. The JCMK has been protesting the trainee system for several years.

Currently, a new system is in place the Employment Permit System (EPS), which provides certain protection for migrant workers. The trainee system will be abolished by the end of 2006.

Ms. Misun also shared that in Korea there is an ongoing crackdown against undocumented migrant workers. One of the cases handled by JCMK was of an Indonesian migrant worker who died while fleeing from Korean authorities during a raid on a migrant dormitory. Undocumented migrant workers in Korea are criminalized and JCMK has staged numerous protests against this.

Ms. Misun also explained that the Korean government has a different law for migrant workers who are ethnic Koreans. These workers are mostly Korean Chinese and a specific VISA category was created for them.

Ms. Misun also shared the strategies they employed in Korea in dealing with the issues of undocumented migrant workers among them:

- **Information Education Campaign** – Is among the strategies used to change the attitude of Korean society and migrant workers. Both Koreans and migrant workers need to be informed that undocumented migrant workers have rights.
- **Provision for health care and health services** – Undocumented migrant workers in Korea cannot access the health scheme (health insurance). The Medical Mutual Aid

Union for Migrant Workers in Korea (MUMK) was created to provide access to health care for undocumented workers. Some of the medication and services are provided for free while some are given at low cost.

- **Policy advocacy** – JCMK has been lobbying for years for policies that will help protect the rights of undocumented migrant workers including their children.

The next speaker was Mr. Pablo Asa from CAREF/CELS. He explained that Argentina is a country of migrants and that the phenomenon dates back to colonialism. He explained that in Argentina there are 2 major migrant populations: the Ultramar: Spaniards, Italians, any one from an Arab nation and the those that come from neighboring countries in Latin America.

Migration he said was used as a strategy by the government to populate the country. There was a time when the indigenous population in the country was diminishing and the government invited for immigrants from France, England, Italy to migrate to Argentina.

He further added that the basic problems of migrants are the same in other countries with a slight difference. In Argentina there exists a system for public services that are free for everyone including migrants. However due to economic crisis this system had to stop. The government now only provides services for the local population and immigrants. Migrants workers or foreign workers can no longer access free healthcare and other public services. This new law has created problems as a most migrant workers have difficulty accessing health care and services.

He then proceeded to explain their work in CELS. It is an organization for human rights that started in 1979. Among their strategies:

- Provide legal assistance to undocumented migrants;
- Provide health care for migrants workers;
- Free jurisdiction service to immigrants/migrants who need this;
- Lobbying and policy advocacy;
- Capacity building/workshops and
- Awareness raising in the community and also through the media

The next speaker was Ms. Aijen Po of the Domestic Workers United, an organization based in New York. She explained that New York has a big number of undocumented Foreign Domestic Workers (FDWs). They are among the lowest paid with 40% coming from Latin America 30 from Asians, the rest Africans Americans. There have been rampant cases of abuse among undocumented workers and Domestic Workers United adopted the strategy of organizing as a means to deal with the issues of undocumented migrant workers.

Ms. Po said that a big number of migrant workers are needed to impact change and create change in society. Once organized the workers are have a support system and are empowered through collective action. In organizing they conduct the following activities:

- **Membership base building** – membership is needed to create strong organization
- **Leadership development** – leaders are also developed among the members and they conduct trainings among migrant leaders.
- **Campaign work** – they conduct specific campaigns for domestic workers. This can include policy advocacy or picketing the homes of abusive employers as part of raising awareness on the issues of FDWs.
- **Lobbying** – for legislation that help protect FDWs.
- **Alliance building** with different organizations who work with domestic workers
- **Capacity building for the members**

The next speaker was Ms. Kathleen Caro of the Global Workers Justice Alliance. Her organization provides legal assistance to migrant workers including undocumented migrant workers. They do a lot of case facilitation for migrants who are abused by employers. She said that there are a lot of challenges in their work as the migrants themselves are not aware of their rights and are afraid to seek legal assistance. In most cases the migrant would rather go home than continue processing a case.

She also mentioned a few case studies they have handled. She stressed that one of the difficulties they face is when a migrant decides to leave for home in the middle of processing a case.

Borders, Detentions, Deportations: The International Regime of Migration Policy Enforcement

Workshop organized at the Peoples Global Action on Migration and Development and Human Rights, a CSO parallel event on the 2nd Global Forum on Migration and Development

Migration policies that criminalize and target migrants are becoming more universal, while governments act with impunity and create humanitarian crises at the expense of desperate migrant communities. The forum sought to provide updates on critical policies enacted by governments in various regions, the impacts these have had on those regions, and the emerging trends in these. Sharing in the discussion were representatives from various organizations from Asia, Central and Latin America and Europe.

Key Issues

US Experience

Arnold Garcia of NNIRR provided a summary of conditions in the U.S. and how these conditions collectively contribute to the intense human rights crisis among US immigrant communities. In the US the “normal” anti-migrant movement congress is passing laws against civil liberties targeting those that are foreign-born.

This includes:

“*Operation End Game*,” which entails doubling the number of border patrol agents, tripling the number of interior agents policing the migrants, and the construction of industrialized prisons. It is now in its fifth year and there have been three major laws in three years. The policy is that they want to deport all immigrants that can be deported - “catch and release”- instead of being cited, being arrested. This is a new level of criminalization. The US is streamlining the process from Texas to Arizona. Now in the interior there are whole new categories of ways to deport people. It is an epidemic of police collaboration with immigration control.

Immigration and Custom Enforcement (ICE) has stepped up workplace raids with helicopters and full body armour. All workers are detained and all that are not “white” get detained; racial and religious profiling is a prominent factor. These raids are actually a small fraction of the deportations, but they are huge political tools to instill fear into the public. In rural areas where there are no people of color, we see minorities disappearing. The local authorities will hold these people, regardless of whether or not they have done anything illegal or are immigrants, until ICE comes to investigate.

There has been no public outcry. Every day two people are found dead on the border and for every one or two that is found there are said to be 10 that are not found. “*Operation Blockade*” in El Paso is composed of a border patrol vehicle every 1,000 meters. There is also a double wall, which is constructed so that the first wall is of iron and the second is covered with razor blades. The wall is built through the mountains funneling migrants

through the most dangerous of areas to cross. The majority of the migrants stay in the Southwest unless they have family elsewhere.

Congress is strengthening neo-liberal policies through the privatization of services. This then ensures that migrants are unable to get free services. Model states for this are California and Arizona. In Arizona, they claimed, “public services were going down because of immigrants,” (*Prop. 200*). In Georgia, there is a double tax on remittances for undocumented migrants. There are 1400 neo-liberalist laws across the country. The only two places in the United States that are progressive are New Haven, Connecticut and San Francisco, California.

NNIRR’s mission involves the “4 Ds”: Decriminalization of immigration, Demilitarization of the border, Delink from politics and national security, and Development – the right to a place.

Nunu Kidane from Eritrea/USA added that the US judicial system has been perfected to criminalize African-Americans and now it is being used to criminalize everyone else. This can be seen through the private militarization all over the world, with Iraq as a perfect example. There is so much money and waste of young peoples lives through “coyotes” in getting to the US.

Malaysia

Alice Nah, from the Migration Working Group (MWG) in Malaysia, described the criminalization and mass deportations of Burmese, Indonesians and many other refugees and migrant workers.

Malaysia is a receiving country of migrants coming from Thailand, Burma/Myanmar, and other Southeast Asian countries. Malaysia is trying to combat irregular migration through arrests, detentions, and deportations just as the US is doing.

There have also been wide powers that have been given to immigration officials. They are allowed to arrest anyone if they are even suspected to be undocumented migrants. Their powers include the ability to stop anyone, anywhere without a warrant. They can demand papers and if you do not have the papers, you will be immediately detained.

Prisons are overflowing. There are unaccompanied minors, abuses, and bad food. Monitoring of these abuses is difficult because they only learn what is happening by talking to those who have been imprisoned. There is supposed to be monitoring of the prisons, but it is sporadic.

Myanmar/Burmese and Thai migrants are deported in groups of 100-150 back to Thailand. Since the Burmese are not able to return to Burma, they are then handed over to smugglers and then trafficked. This has been “investigated and there are no bases for

founding the claims.”

Malaysia is coming up for review for human rights violations and MWG is lobbying governments to put pressure on Malaysia. There is some talk as well of a regional human rights body.

Italy

Manfred Bergman of CADI (Comitato Antirazzista Durban Italia) discussed the targeting of African migrants in Italian borders as well as the Italian government's brutal treatments of migrants.

Within the Mediterranean, people are coming from Turkey to Italy. This used to be the main flow of migration, but now that the flow has moved through Africa, which is much more risky coming from Morocco, with the dangers of crossing the ocean.

The death toll is perceived to be similar to that of the US/Mexico border. There are also a large number of “*illegal*” migrants coming in on the eastern border, with many from Bangladesh. These migrants can choose which route to take, either Asia or Africa. CADI has no reliable data which route these migrants take.

FRONTEX is aiming to stop flows without thinking about people who are coming from Africa and who are refugees, which is against all human rights laws. The word refugee is never mentioned in any report, only “*clandestine desperate*”.

Conditions of detention centers are terrible where people are badly beaten. Migrants will delete their own fingerprints because of the treaty that decides on the status of refugees, which dictates that whichever country you come through, you have to stay in that country until you are judged. Since many do not want to stay in Italy and travel North, they think that if they delete their prints then they will have a better chance of not being detained or being tracked from their origin.

The only work that migrants can get is seasonal work and they are underpaid. The main work is tomato collecting where an Italian would receive 40-50 euros/day and a migrant receives only 5-15 euros/day. Recently, 107 people from Ukraine and Poland disappeared from fields because of protests. In Italy, no one ever heard about this news, it was completely eliminated. There was one NGO that tried to block EU funding for tomatoes, but it was only on the quality of the tomatoes and has nothing to do with the slavery that is taking place.

Dominican Republic

William Charpentier from the Dominican Republic shared the racism and inhumane treatment faced by Haitians in the Dominican Republic.

There is no natural border between Haiti and the Dominican Republic. Dominican

Republic is more developed compared to Haiti, which is why a lot of people are migrating to the Dominican Republic.

The first people who came to the Dominican Republic worked as sugar cane workers on government contracts. This lasted from 1919 to the 1990s. It was a privatized workflow that created communities of Batelles. The Batelles do not enjoy the same services that the state gives to everyone else. They are kept at the minimum subsistence level while work is being done.

Since 1919, people from Haiti have been moving to Dominican Republic. However, the legal situation is much more precarious because the primary mode of work is not worker contracts, but instead individual agriculture, street work, etc. Also, there is a lot of need to create multilingual skills as there is the feminization of migration flows, there is an increasingly higher level of education of people leaving Haiti, and there have been changes in the levels of documentation. There is the increase of unaccompanied minors and the trafficking of women and children. We see a rise in the pattern of boys and girls being trafficked to beg in the streets for money. There is also an increase of domestic and sex work, which has led to a series of consequences for kids growing up in the Dominican Republic. There are 600,000 to 700,000 children born in the Dominican Republic of Haitian decent and are denied citizenship. They are not given their birth certificates because of the immigration status of their parents, which is a violation of all international norms and American norms.

Patrick Cherubin also from the Dominican Republic further added that Batelles have become militarized. Migrant labour used to be restricted to certain areas but now it is not the case and Dominican nationalists see this as an invasion. Apart from working, more and more Haitians go to the Dominican Republic to study in the university but they are charged very high tuition fees.

There is systematic militarization along the border on Fridays when people are out to have fun. Everyone is stopped even if they are carrying documents, however, if they do not pay the bribe to the officer, they are detained or may disappear.

Ecuador

Pablo de la Vega from Ecuador discussed new propositions to promote better migration policies globally. Pablo suggested the following:

Increasing subordination of policy to security officials. US military bases to monitor migration, increasing anti-terror syndrome and the impact of 11 March in Spain
Issues for circular migration, with special attention to the EU directive
The intertwining of all these with free trade. We need to devise a strategy with countries of origin, destination, and transit.

Mali

Ousmane Diarra from Mali discussed his organization's work with Malian deportees. Ousmane shared that there are more dead people than deported people, which is attributed to the petitions signed by Europe FRONTEX, Spain and Morocco, and an agreement between the EU and African countries, where many have been recruited to be like policemen on the border. People are deported by these police forces, but as mentioned, more come back dead if they do come back at all.

Recently, the EU gave 10 million euros to the Malian government to build detention centers throughout the country. The French government is trying to put pressure on the Malian government to sign against this because this is a form of collaboration with the police to deport migrants. The last attempt was at a summit to negotiate with Mali and France, where civil society kept convincing Mali not to take the money. Eventually it will be signed because Tunisia, Gabon, and others have already signed. It is very dangerous for neighboring countries to sign because people get deported to other countries.

In addition to this, Mamadou Goita told the group that Malian people are independently asked to come to work, but they do not get any rights and are stopped while they are there. Resources are being taken which prompted people to go where there are jobs available. Police are coming from Spain to Dakar to police the borders and the coast.

Europeans have taken the job of sorting out the African migrants and sending them back to Mali because they have no idea where these people actually came from. The big issue is not about the migrants in Europe, but the fact that they are all sent back to Mali even if they are not Malian.

Singapore

A receiving country has the right to say that it cannot keep having people come. The challenge now is for CSOs to talk to their people and their governments. In Malaysia for example, there is a need to stop the caning of people in detentions. In Burma, they simply leave the people in a tire with a water bottle and told to swim across the three-kilometer river. Many die in this journey. If they do make it and are then caught, they are sent back to Burma.

Philippines

Irynn Abano of the Center for Migrant Advocacy shared that in the Philippines, about 200,000 to 500,000 migrants are deported back to the Philippines from Sabah/Malaysia. Between the two countries, there is a joint body set up to talk about managing the migration flows. They realize that migration is not going to stop, so they arrange a border pass. The CSOs are recommending it to other countries as well.

Mexico

Camilo Perez-Bustillo from Mexico shared this assessment about the Migrant Workers Convention (MWC). Apparently, there is not enough of a human rights framework

written in it. It is too weak and the UN is not positive about this. He suggested rethinking the ideological framework in order to diversify and enhance ways of adding rights.

