



Asian Parliamentarians' Forum on Migrant Domestic Workers Manila, Philippines - 24-27 May 2011

Summary

Migrant Forum in Asia, Center for Migrant Advocacy and the Committee on Overseas Workers Affairs (House of Representatives, Philippine Congress), with the support of the Philippines office of Friedrich-Ebert-Stiftung welcomed six parliamentarians from four Asian countries to Manila. These guest parliamentarians represented key States of origin in Asia – Bangladesh, Cambodia, Indonesia, and Sri Lanka. They were brought together to engage with each other, with members of the House of Representatives of the Philippine Congress, and with CSO representatives on the issue of migrant domestic workers as part of the lead-up to deliberations at the 100th International Labour Conference (ILC) of the International Labour Organization (ILO), that would lead to the adoption of an International Convention on Domestic Workers on June 16th, 2011.

This forum was organized as an offshoot of a continuing series of informal dialogues that began in 2007. These programs took place in Manila (2007), Singapore (2008), Thailand (2009), and Vietnam (2010), and the 2011 program will be held in Cambodia. These workshops are held as parallel events to the annual ASEAN Inter-Parliamentary Assembly (AIPA), and are designed as non-partisan, informal activities to encourage learning and reflection on the role of ASEAN parliamentarians in the protection and promotion of the rights of migrant workers in ASEAN.

This Parliamentarian's Program was modeled after the AIPA parallel events. MFA, CMA, and FES recognized that, with the pending meeting of the ILC to debate on the ILO Convention on Decent Work for Domestic Workers, this was precisely the time to bring together MPs from across Asia. The program's focus was specifically on migrant domestic workers employed in the Gulf region. MPs from major states of origin across Asia were invited to participate.

The gathering allowed for reflection and discussion on the common interests of states of origin, and the importance of the oversight functions of parliamentarians in encouraging governments to collaborate on migrant protection policies. This program provided a space for parliamentarians to exchange ideas on their countries' support for the ILO Convention on Decent Work for Domestic Workers.

Asian Domestic Workers in the Gulf

As discussed throughout the program, there are many complex problems faced by migrant workers, particularly migrant domestic workers, from South and Southeast Asia who are working in the countries of the Gulf Cooperation Council (GCC)¹. These problems give rise to multiple complex policy challenges for states of origin. Migrant domestic workers are often subject to abuse and

¹ GCC Countries include: The United Arab Emirates, The Kingdom of Bahrain, The Kingdom of Saudi Arabia, The Sultanate of Oman, Qatar, and Kuwait

discrimination, compounded by attitudes of employers and recruiters, and exacerbated by legislative and social systems of states of employment that do not cover migrant domestic workers.

Program participants agreed that a large part of the problem is inaction on the part of states of employment in response to the gross violations of labour rights and human rights that are consistently reported in the media, and brought to public attention by CSOs, trade unions, individual migrant rights advocates, and states of origin. These issues are even acknowledged by government representatives of states of employment, yet decisive action is not taken to address these serious concerns.

The global neoliberal economic paradigm sets the context for reliance on migrant labour. While domestic work is a very old profession, the current economic system has created a vast market for the import of migrant domestic workers to industrialized countries from countries in South and Southeast Asia, and other parts of the developing world. This market suffers from a lack of regulation and renders migrant domestic workers vulnerable to abuse and exploitation (as in the case of the L.A. Eleven – see below).

Because of the significant contributions of remittances to many national economies of the developing world, there is intense competition among sending states to secure spaces in the labour markets of states of employment for their nationals. This situation presents an opportunity for receiving states to adopt what Congressman Walden Bello (Philippines) referred to as a “divide and rule mentality.”

Ellene Sana (Center for Migrant Advocacy, Philippines) highlighted an example of this phenomenon: When the Philippine government put Saudi Arabia under close scrutiny for concrete guarantees of protection for migrants, the KSA embassy in Manila issued an advisory to recruiters that it would no longer issue visas for domestic workers from the Philippines². Shortly thereafter, an agreement was brokered between the KSA and the Government of Bangladesh that would see 10,000+ domestic workers recruited for work in Saudi Arabia over the next year. The ability of States of employment to ‘shop around’ for their sources of migrant labour undermines the attempts of states of origin to secure more favourable conditions for their workers abroad.

Challenges of this kind were echoed by all of the parliamentarians present. The issues affecting migrant workers and migrant domestic workers, and the concerns of public officials with respect to these problems, are strikingly similar across Asian states of origin. Mistreatment and abuse of migrant women were among the primary concerns cited by the MPs, in addition to the non-payment of wages, the misleading practices of recruitment agencies and the ineffective regulation of that industry, undocumented migration, and the ability of states of employment to set the terms were central themes in all discussions.

In light of these challenges, the parliamentarians agreed that it is necessary to create a strong alliance among states of origin in Asia, and to move towards a coordinated negotiating position. As Congressman Walden Bello (Philippines) stated in his privileged speech to Congress³: “Not only will the alliance [of parliamentarians] destroy the notion of competition among labor-sending countries, this will provide us greater leverage against receiving countries, employers and recruiters and help in setting fairer, more decent living conditions and compensation packages for our migrant domestic workers.”

² The Labor Ministry of Saudi Arabia announced that it would stop hiring domestic workers from Indonesia and the Philippines effective July 1, 2011.

³ 25 May 2011, Philippine House of Representatives, Manila

Highlights from the Congressional Session of the Philippine House Committee on Overseas Foreign Workers' Affairs, 25 May 2011

The guest parliamentarians were invited to Congress by the Committee on Overseas Workers' Affairs (COWA) to observe the workings of the committee's weekly meeting, and to meet and engage with their Filipino counterparts who are concerned about protection of migrant domestic workers. These discussions provided insights into the process that the Philippine Congress has adopted in its attempt to ensure safe migration for its labour migrants. Informal comments from the MPs revealed that similar committees are not in place within their parliamentary structures, and that this is something that should potentially be explored.

Republic Act 8402, Section 4 as amended by RA10022 Section 3

The discussion on the implementation of this piece of legislation centred on the criteria for deployment of OFWs. Under Section 3, the Philippine government will deploy only to countries that have guarantees of protection for migrant workers either in the form of national laws, international instruments or bilateral agreements with the Philippines. A certification or decertification to this effect will be issued by the Department of Foreign Affairs and submit to POEA which in turn will allow for the deployment or non-deployment whichever is the case. To date, the DFA has certified only 76 countries as clear for deployment. The POEA recently sent a list of decertified countries back to the DFA for clarification, citing "political reasons," explained as possible negative consequences for those OFWs currently working in those countries with certifications that are being revoked (among them, the Kingdom of Saudi Arabia). A discussion ensued on how compliance is assessed, and whether or not the criteria set out for this certification/decertification process should be reassessed.

The L.A. Eleven – Trafficked OFWs in the US

COWA has been investigating the handling of a case of 11 OFWs who were the victims of labour trafficking to the US. The eleven workers were recruited by an agency under false pretenses. Having paid their recruiter \$7,100 each, they expected to work as hotel cleaners in Virginia, but were relocated on arrival to a different hotel in Mississippi. They were paid \$4.75/room (their initial agreement was \$7.50/hr), with the expectation that they would clean 14-16 rooms per day (they were only able to clean, on average and without breaks, 10-12 rooms per day). They were told that any attempt to escape would result in a lawsuit and deportation. Deciding to escape, they fled to the Philippine Consulate in Los Angeles. The Labour Attaché, in an email communication, gave the OFWs the option of returning to Mississippi or to the Philippines. This suggestion caused resentment among the workers who felt that their government was failing to provide them with adequate protection or consideration. Other details of the case were also discussed.

Acknowledgement of Guest Parliamentarians

COWA's Chair, Congressman Walden Bello, acknowledged the observer parliamentarians, inviting them to provide brief interventions about their experiences and to provide feedback on their observations of the COWA proceedings. Filipino MPs likewise expressed their appreciation of the need for solidarity with other Asian MPs, particularly in relation to the issue of migrant domestic workers.

MP Eva Kusuma Sundari, Indonesia: Ms. Sundari emphasized that each sending country has its own set of problems, but coming together is possible. The MPs present must capitalize on this meeting and formalize the results by establishing an alliance of sending countries to the Gulf. The AIPA meeting in September is another good opportunity to bring these issues forward. She insisted that MPs should pressure governments to ratify conventions that protect decent work.

MP Son Chhay, Cambodia: Mr. Son spoke about the agents and companies who employ Cambodian workers likening these employment relationships to "slavery in modern society." He pointed out that MPs are in the position of being able to learn and give suggestions. At the coming AIPA meeting in Cambodia, MPs should work towards new ways to cooperate on many important issues, like those facing migrant workers.

MP Md. Israfil Alam, Bangladesh: Mr. Alam indicated that he felt encouraged by the debates taking place in the Committee session. He said that as a sending country, Bangladesh must be very careful when deploying workers, taking into consideration their lives, welfare, and protection especially when deployed to the Gulf. He reminded the Committee that last year, Bangladesh decided to ratify the Migrant Workers' Convention, and hosted the Colombo Process in April – a meeting of sending states. He expressed a willingness to work together to achieve social justice and decent work for migrants all over the world.

MP Shehan Semasinghe, Sri Lanka: Mr. Semasinghe reaffirmed the need for cooperation among sending states, indicating that Sri Lanka experiences similar problems, especially with respect to migrant domestic workers, many of whom are young women. He expressed a willingness to pursue common goals with the other MPs present.

Global Overview of Migrant Domestic Worker Issues

Ellene Sana, Center for Migrant Advocacy (Philippines) presented some key figures on international labour migration to contextualize the issues of migrant labour, and migrant domestic labour in Asia. She highlighted the challenges of globalization and the need for adequate legal protections for these workers.

Women make up a significant proportion of Asian labour migrants. They migrate independently, mostly working as domestic workers in the private households of their employers. They often work without contracts, or with contracts that are unofficial/unrecognized, and are at risk of abuse and mistreatment at every stage of the migration process.

Statistical Overview of International Labour Migration

- 214 million migrants worldwide
 - 70 million in Europe
 - 62 million in Asia
 - 50 million in North America
- The USA has the highest total number of migrants, followed by Russia, Germany, KSA, Canada, France, UK, Spain
- The Gulf Countries have the highest percentages of migrants to total population, with Qatar, UAE, Kuwait, and Jordan topping the list
- All regions of Asia, with the exception of West Asia, fall into the category of 'sending regions,' as these regions have significantly more emigrants than immigrants

The phenomenon of labour migration is widespread, and is likely to continue given the current global economic paradigm. As stated by ILO's Director General, Juan Somavia, at the 99th Session of the ILC, "The present form of Globalization has not produced enough jobs for all those who seek them or in places where they are most needed."

Insights from Fact-Finding Missions to Saudi Arabia

Both the Philippine and Indonesian governments have recently sent fact-finding missions to Saudi Arabia in order to assess the situation of the migrant workers deployed there. Many similarities are to be found in the testimonies and reports of the delegates who took part in these missions that have led to a series of recommendations to the governments of both states. Cong. Walden Bello (Philippines) and MP Eva Kusuma Sundari (Indonesia) presented insights from these fact-finding missions (see appendix for full reports).

A challenge for civil society is to come up with a collective way to move forward when it comes to the case of destination countries like the KSA. If there is no multilateral approach taken among sending states, receiving states can operate with impunity. For domestic workers migrating to these countries, regardless of the training they receive in their pre-departure orientations, they will still be seen as 'the other'—those who are unwelcome, and who are mistreated because the country's nationals are socialized to see this kind of treatment as legitimate. Their otherness marginalizes them and opens them up to abuse. Pre-departure orientations alone are not the answer; strong legislation is needed for their protection and measures to address the socialization process in these countries also need to be considered.

Highlights from Reports on Saudi Arabia

Overseas workers charged with crimes/imprisoned

The legal system in KSA differs significantly from the legal systems in many sending countries. The peculiarities of the Saudi system are reinforced by the socialization of Saudi citizens who understand the workings of the laws and know how to live within these expectations. When workers migrate to Saudi, what Cong. Bello referred to as a “clash of cultures” can result in the branding as criminal the activities of migrant workers that would otherwise be seen as ‘normal’ in their countries of origin. This is particularly prominent when it comes to activities that fall under ‘immorality laws,’ particularly as these pertain to interpersonal relationships between men and women. Cong. Bello reinforced his point, arguing: “To tell people who have been socialized [in different contexts] that they have no choice but to obey is almost guaranteed to promote disobedience.”

The legal system in Saudi Arabia is based on very different legal and cultural principles than the legal systems of most countries of origin. This has resulted in the charging and imprisonment of a number of migrant workers from across South and Southeast Asia on charges that are unfamiliar to most migrant workers. There are many challenges faced by states in intervening in these cases, particularly when the crime with which the migrant worker is charged would not be seen as illegal under the laws of his/her country of origin. The charges are often viewed by migrant workers and their country representatives as excessive and disproportionate to the offense.

Treatment of women

The most common workers’ complaints from KSA are of the mistreatment of female workers. This includes sexual abuse and rape, and instances of physical and emotional cruelty (hot irons pressed on them, deliberate starvation, tremendous overwork, beatings by male and female employers, etc). Such cases are often brought forward, but according to the Philippine fact-finding team, there are very likely many cases that go unreported, particularly cases of sexual assault, due to the stigma attached to such crimes and the fact that it puts the victim at risk of being charged herself with a crime of immorality. Mistreatment leads many domestic workers to flee from their employers, often without their passports, which makes it difficult for them to change employers or to obtain an exit visa, placing them in increasingly vulnerable situations. Domestic workers are particularly vulnerable, as their workplaces (the homes of their employers) are not subject to any kind of labour inspections, and because of the restrictive rules imposed on women (e.g. they cannot drive, they cannot walk alone, etc.); in essence, they become prisoners in their workplaces.

Children born to migrant workers

Children born in KSA to non-nationals are not considered to be Saudis. Within the Filipino migrant community, it is estimated that there are between 3,000 and 5,000 children in this situation. Because of immorality laws, some of these children have been born in unsafe conditions, as women are afraid to go to hospitals. These children are rendered stateless within KSA.

Visa overstays

Some migrant workers become undocumented through visa overstays. Within the Indonesian migrant community, 70% of overstayers have fled from their employers and 28% have entered on Umrah visas for the Hajj pilgrimage. Those who overstay are vulnerable to abuse and exploitation, as many are reluctant to inform authorities of abuses for fear of arrest and/or deportation. Some migrants choose to live in Saudi Arabia as undocumented workers because, despite the lack of legal protections, they are convinced that they will be able to earn more working on the black market than they would otherwise. Others become undocumented when they flee without their documents from employers who mistreat them.

Withholding of wages

A common complaint among migrant workers is the withholding of wages. Workers who pressure their employers for unpaid wages are often threatened with violence and/or deportation. The Indonesian fact-finding mission reported the case of two victims who did not receive any salary for 14 years.

Problems with recruitment agencies

Recruitment agents contribute to the problems that migrants face once in KSA. In the case of Indonesia, the government requires that agents provide pre-departure orientations for those who want to migrate, but for the sake of profit, these are generally only 2-3 days long rather than the required 3 months. There is no orientation on culture, language, or rights. Workers are not generally given information about their work contracts, and are not given the skills they need to protect themselves from exploitation and abuse. Regulations are very weak in this industry.

Two worlds for migrant workers

In Saudi Arabia there are two realities: one for highly skilled professionals, who experience minimal abuse, earn high wages, and generally have positive experiences; and one for low-skilled workers, who often have “miserable” experiences. Many working in the highly-skilled category are unsympathetic to their co-nationals in the lower-skilled jobs and are seemingly

In response, Cong. Bello (Philippines) suggested that perhaps it is necessary to include cultural provisions in the text of bilateral/multilateral agreements. Because law is evolving, including provisions to reconcile the cultural expectations of different peoples (e.g. on gender equality) in a territory might eventually lead to better protections for migrant workers.

Suggestions on how to move forward

During the open forum for discussion, the following suggestions were made and reaffirmed:

- (1) States of origin to adopt a collective/multilateral approach
As per the theme of the entire workshop, the idea that States of origin must take on a collective negotiating strategy in dealing with destination states. Cong. Walden Bello (Philippines) stated: “I don’t want to speak in neoliberal terms but one has to gain leverage in negotiations by being able to wield one’s most effective weapon, which is the ability of labour sending countries to be able to come together and arrive at a common position that is presented to receiving countries.” Governments can press for bilateral agreements, but multilateral agreements can have the power to combat the ‘divide and conquer’ approach of receiving states.
- (2) Support for the democratic revolutions in the Middle East
The democratic revolutions, or Arab Spring, gripping the Middle East may, in the long run, work in favour of migrant workers, as democracy is the best situation under which their rights will be incorporated into law and protected. So long as feudal monarchies and autocracies are in place, it will be difficult to achieve respect for migrant workers. However, short-term problems for migrant workers can also persist (e.g. problems with repatriations, the nationalization of Middle Eastern workforces, etc). Nonetheless, it is important to support this movement.
- (3) Appeal to the Organization of the Islamic Council (OIC)
With the investigations into the situation of the KSA, it might be good to send an appeal to the OIC, as they also have representatives to the UN Human Rights Council, with respect to the implementation of Sharia Law as the law of the land in many Gulf countries. This is a serious issue that contributes to the violations suffered by migrant workers and migrant domestic workers.
- (4) Pressure States of employment to adopt standard work contracts
Minimum standards should be enshrined in standard work contracts in order to protect the rights and welfare of migrant domestic workers. There should be only one standard work contract enforceable in the States of origin and States of employment. The same strategy should be adopted in South and Southeast Asia in order to avoid inter-regional competition.

The Need for an ILO Convention: Challenge for Asia

Assistant Secretary Teresa Soriano (Department of Labor and Employment) gave a presentation on the ways to strengthen the mandate to provide legal protections to domestic workers, in light of the upcoming deliberations at the ILO for the adoption of a Domestic Workers’ Convention. According to ASec Soriano, the Convention stands to benefit approximately 4 million domestic workers in Asia, and another 1.5 million outside the region.

The need for an ILO instrument to protect domestic workers is clear: this profession, dominated by

women and increasingly filled by migrant workers, remains undervalued, invisible, and poorly regulated. These workers suffer from poor working conditions, non-payment of wages, long working hours, limited/no social protection, and are vulnerable to abuse and exploitation. In spite of all of these hardships, they make important contributions to national and global economies, and merit respect and recognition.

There is increasing momentum for decent work for domestic workers. More countries are taking on legislative and policy initiatives in this respect. There are increasing requests for technical assistance from the ILO to enhance capacity for policy and program measures to address the needs of domestic workers. UN bodies are calling for action to better protect domestic workers. The Philippine Government supported an ILO Convention supplemented by a Recommendation at the 99th session of the ILC last year. The Convention would be legally binding and lay down basic principles to be implemented by ratifying countries, while its related Recommendation would supplement the Convention by providing more detailed guidelines on its application.

Rights for domestic workers exist within other international conventions, but the nature of their employment demands a specific convention to address their particular needs. The increasing mobility of this workforce points to the urgent need to establish minimum standards that would ensure that their exposure to risk is minimized, and that their rights and welfare are protected. Domestic work is decent work, and should be recognized as such.

Strategies for Moving Forward / Action Plan

Two-Track Approach to Engagement within AIPA

The next opportunity for a meeting of Parliamentarians will be for the ASEAN Inter-Parliamentary Assembly in Cambodia, September 2011.

Within AIPA, there are currently ad hoc committees on a variety of issues. It was agreed in 2007, and reiterated at this program, that there should also be an ad-hoc committee to deal with issues of migrant labour, particularly in light of proposals to establish an ASEAN Community by 2015.

In order to include migrant workers on the agenda of this year's AIPA, a formal resolution must be brought forward to the Secretary General – it may be too late to take this step, as there is a specific timeframe in which this needs to be submitted.

A two-track approach was agreed upon:

- (1) MPs to lobby their colleagues who will be participating in the AIPA meeting to bring up the issues of migrant workers and to push for the formation of a committee within AIPA
- (2) Continue meetings of the Asian Parliamentarians' Caucus, operating outside of AIPA and

Current Ad Hoc Committees within AIPA

- Common Legislation on Narcotics, Drug Abuse & Rehabilitation
- Feasibility of Establishing ASEAN Legislative Committee
- Human Rights
- Environment and Wildlife Protection
- Marine and Coastal Resources
- Enhancement of the AIPA Permanent Secretariat
- ASEAN Laws Related to or Having an Impact on the Implementation of AFTA
- ASEAN Laws Related to Tourism and Human Resources Development
- Role of ASEAN Legislative Bodies in the Face of the Regional Economic and Financial Crisis
- ASEAN Cooperation on Public Health

including MPs from outside of ASEAN, as a platform for enhanced regional cooperation

Follow-up Actions

Immediate Actions to be taken by Parliamentarians:

- Send statement from this workshop to the delegates who are to attend the ILC session in Geneva to inform them of the strategies shared and to pressure them to take a lead in the discussions in support of a strong Convention and Recommendation for Domestic Workers.
- Move to set up a caucus/committee (or strengthen existing committees) of MPs at the national level (similar to the Philippine Committee on Overseas Workers Affairs) to mobilize parliamentarians on issues of migrant workers and migrant domestic workers. Such committees can look to MFA members in their respective countries for technical expertise. MFA members be called upon to facilitate a general discussion among interested MPs on these issues in order to raise awareness.
- Identify official delegates to the AIPA, lobby them directly to bring up the issue of migrant workers, and ask them to pursue the creation of an ad hoc committee within AIPA
- Online repository for information related to the Parliamentarians' Caucus to be set up for information-sharing purposes (password protected)
 - Copies of model legislation (drafts and enacted legislation)
 - Aggregated reports of Parliamentary visits to KSA and sharing of the reports of other fact-finding visits
 - Reports from previous Parliamentarians' Programs
- Come together again in Cambodia prior to the AIPA meeting in September 2011

Long-Term Actions:

- Lobby for the adoption and ratification of both the Migrant Workers Convention and the Domestic Workers Convention, and initial brainstorming for the campaign strategy.
- Put forward proposals to harmonize domestic legislation with the provisions of the Migrant Workers Convention and the Domestic Workers Convention. To support this effort, MFA will assist in the gathering of sample legislation (both passed and in draft form) from sending countries in Asia for reference.