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

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## **CARAM Asia Submission to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families for the Development of a General Comment on Migrant Domestic Workers**

**Preamble:** (Excerpt from CARAM Asia COLOMBO DECLARATION adopted at the REGIONAL SUMMIT on Foreign Migrant Domestic Workers on 28 August, 2002 in Colombo, Sri Lanka)

The experiences of foreign domestic workers in the migration process reveal that domestic work is yet to be recognised as a socio-economic activity and given value accordingly. This has led to a serious lack of protection, vulnerability and exploitation.

Multiple discriminations based on gender, race and class within the family, the community and nations and the isolated and individualised conditions of work, the lack of protection and appropriate services and information increases their vulnerabilities to exploitation and violence. It further compromises their health and human security.

The different stakeholders (recruiters, employers, agencies, states, societies and economies) work together in benefiting from foreign migrant domestic workers' social and economic contribution.

Testimonies and voices of foreign migrant domestic workers and other stakeholders at the Regional Summit on Foreign Domestic Workers on 28 August, 2002 in Colombo, Sri Lanka, indicates it was apparent that the isolation and unequal dependency on the employer for the fulfillment of the foreign domestic workers' basic human needs, and the withholding of documents, restricted mobility and captivity within the household makes them, especially women, vulnerable. We have heard accounts of foreign migrant domestic workers being further victimised, accused, blamed and punished as consequences of sexual abuse, assault and exploitation which even ended in death.

A lack of access to free and fair trial, appeal, judicial and immigration procedures and decisions, gender biased policies, regulations and practices further increase risks to their human security and rights.

It is only when socio-economic value and contribution and due respect are given to domestic work, dignity, justice and rights of foreign migrant domestic workers will be guaranteed. Legal recognition and protection of their rights, including fair and decent wage, freedom of expression, association, unionisation, religion, privacy, rest and recreation and right to vote should be ensured. Free access to

health care services, social security systems, communication and information, services including training, legal aid and counseling, socio-economic benefits to the foreign migrant domestic workers and their families are also essential components for a successful and safe migration process. This should empower and improve the quality of lives of foreign migrant domestic workers and their families as well as enhancing the quality of life of the societies where they live and work.

Protecting the rights of foreign domestic workers necessitates the inclusion of domestic work in national labour legislation in accordance with international labour standards and human rights principles and practices including gender justice. We also need to define domestic work in the context of human rights principles especially for developing and implementing work contracts.

### **Topics for Submissions**

#### **Measures taken to effectively supervise recruitment agencies**

Recommendation:

- 1) Cut down the number of multilateral recruitment agencies' charges to the same worker.

There are multiple agents, sub agents and sponsors involved in the recruitment process of a worker, from the rural village a worker stays until to the capital city of the origin country and then to the agents in destination country. All these multiple agents/ sponsors had charged and double charge workers for similar costs and resulted in high recruitment fees.

Best Practise:

The Hong Kong Employment Agency Administration had a policy that limit the legal amount of agency fees to be not more than 10% of one month's salary. However, due to lack of monitoring, many agencies over charges workers.

Similarly in Singapore, the Employment Agencies Act state that agencies are not allowed to charge more than 10% of a worker's first month salary. However, many employment agencies disguise the fees they charge to workers as 'loans' between the worker and the agency. The government does not take any action against agencies engaging in such practices, citing such 'loans' as private arrangements between consenting parties.

Philippines government, has a policy for no placement fees charges on domestic workers. Agents are only allowed to charge employers. However, domestic workers do have to pay various administrative fees to the Philippines government.

- 2) All recruitment agents must be registered, monitored and regulated by the state with punitive measures carried out for offenders. State parties should closely monitor recruitment agencies and prosecute them for acts of violence, coercion, deception or exploitation<sup>ii</sup>

3) Bilateral and multilateral agreements and arrangements between the origin and destination countries should be established to protect the rights of migrants including migrant domestic workers. The agreements should reflect accountability and transparency in regulating recruiting and employment agencies. They must be accompanied by implementing guidelines and action plans. The agreements should also include the definition and clear enunciation of terms of contracts for upholding international labour standards.<sup>i</sup>

### **Information campaigns to make migrant domestic workers aware of their rights**

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

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

FDWs are housebound workers. Their inaccessibility and total dependency on their employer make them almost unreachable. It is a daunting task to organise FDWs. Taking into consideration all the complexities mentioned above, CARAM Asia decided to embark on a public campaign for the recognition of domestic work starting with the demand for a paid day off a week for FDWs.

An elaborate campaign toolkit was produced. The toolkit is intended to serve as a living document that guides FDWs and activists in their organizing and mobilizing. Additionally, the toolkit is designed with action tools that are deemed important to FDWs. This toolkit reflects the concerns and suggestions of FDWs as former FDWs were a part of the toolkit production team.

Most FDWs do not know the English language, thus it is essential to have the Campaign Toolkit translated into their national languages. To ensure wider outreach and usage of the toolkit, the CARAM Asia network translated the toolkit into 7 different native languages of domestic workers. The languages are Sinhalese, Nepalese, Thai, Indonesian, Urdu, Burmese and Tamil. A copy of the English version is available at [http://www.caramasia.org/index.php?option=com\\_content&task=view&id=537&Itemid=347](http://www.caramasia.org/index.php?option=com_content&task=view&id=537&Itemid=347)

CARAM Asia members in various countries in the Asia Pacific region had also conducted various capacity building sessions with migrant domestic workers by utilising the toolkit.

### **Bilateral, regional and international instruments of cooperation affecting migrant domestic workers**

The CEDAW General Comment 26 on Women Migrant Workers had recognised the specific human rights concerns relating to women migrant workers, including domestic workers. Its recommendations to States parties is the most relevant pertaining the vulnerabilities faced by migrant domestic workers who are predominantly women migrant workers.

However the CARAM Asia Campaign Toolkit also detailed other Bilateral, regional and international instruments of cooperation affecting migrant domestic workers which is available at:

[http://www.caramasia.org/toolkits/FDWCT/FDWCT-Section\\_3-Rights\\_Policies.pdf](http://www.caramasia.org/toolkits/FDWCT/FDWCT-Section_3-Rights_Policies.pdf)

### **Vulnerability of certain groups of migrant domestic workers, e.g. children, women and victims of trafficking**

Recommendation:

1. In cases of serious human rights violations or serious injuries such as death, arbitrary detention, crimes, unfair trials, sexual violence and abuse, States must undertake full and transparent investigation and ensure that those responsible are held accountable.<sup>i</sup>
2. The ban and restriction on female migration and all types of migrants should be removed to uphold core human rights principles.<sup>i</sup>
3. Programs should be put in place to effectively address trafficking and smuggling that may occur during the process of migration.<sup>i</sup>
4. Origin countries should ensure that overseas employment opportunities are not achieved at the expense of compromising the protection and welfare of migrants especially migrant domestic workers.<sup>i</sup>
5. Migrant domestic worker should be recognised as a migrant and as a worker.<sup>i</sup>
6. Documented and undocumented migrant domestic workers should be treated as per existing international labour and human rights standards.<sup>i</sup>
7. Migrant domestic workers should be able to enjoy physical and mental health, reproductive health and sexual health rights at all stages of migration, including the right to marry, bear children and enjoy family life.<sup>i</sup>
8. They should not be subjected to mandatory HIV or pregnancy testing and not be deported when contracted HIV or become pregnant.

Women migrant workers may face sex- and gender-based discrimination, including compulsory HIV and AIDS testing for women returnees, moral “rehabilitation” for young women returnees and increased personal and social costs compared to men, without adequate gender-responsive services. For example, men may return to a stable family situation, whereas women may find disintegration of the family upon their return, with their absence from home

regarded as the cause of such disintegration. There may also be a lack of protection against reprisals from exploitative recruiting agents.<sup>ii</sup>

Women migrant workers may face a variety of human rights concerns when transiting through foreign countries. When travelling with an agent or escort, women migrants may be abandoned if the agent encounters problems in transit or upon arrival in the country of destination. Women are also vulnerable to sexual and physical abuse by agents and escorts when travelling in countries of transit.<sup>ii</sup>

Once they reach their destinations, women migrant workers may encounter multiple forms of de jure and de facto discrimination. There are countries whose

Governments sometimes impose restrictions or bans on women's employment in particular sectors. Whatever the situation women migrant workers face additional hazards compared to men because of gender-insensitive environments that do not allow mobility for women, and that give them little access to relevant information about their rights and entitlements.<sup>ii</sup>

### **Entitlements of migrant domestic workers to social security schemes and benefits**

Recommendation:

- 1) They should be given the same range of labour rights including social security schemes entitled by any other categories of workers in accordance to ILO standards.
- 2) They must be provided with access to such social security schemes, including health care services without fear of termination of contract by employer or deportation, once they are found to be ill. Therefore, health care and social protections should be coupled with freedom of mobility on their weekly rest days.

Best Practise/ case study:

Although countries like Malaysia and Singapore instituted compulsory medical insurance coverage for migrant domestic workers, there is lack of monitoring on the implementations. There is lack of punishment taken against employers who had failed to comply. In Singapore, domestic workers are not covered by the Work Injury Compensation Act, unlike other employees. Even though all employers are required to purchase a personal accident insurance of S\$40,000 per worker, the benefits and protection given by the insurance is not as comprehensive as the coverage of the Work Injury Compensation Act. Domestic workers should be entitled to the same kinds of benefits as other employees covered by the Act.

In Bahrain, for example, domestic workers are entitled to be treated in the health centre closest to their place of work, and medical services are free for nationals, while foreign nationals pay a symbolic sum of only \$2.60. Yet the majority of domestic workers interviewed as part of an ILO case study in Bahrain did not receive the health care they needed.<sup>iii</sup>

## **Measures taken to effectively monitor the conditions of work of migrant domestic workers**

Recommendation:

1) Implement a standard contract for all migrant domestic workers irrespective of nationality. With a standard contract in place, it will ease the work of enforcement agencies that only need to monitor if the standard terms are met. It will save time in verifying which contract signed is authentic and enforceable. There should be a minimum wage with minimum annual leaves that can be increased based on the skill of the worker and commensurate with the years of employment.

2) Labour officers together with consulates/ diplomatic missions must be given permissions to make unannounced visits to the working place of the worker although it might be private homes of employers.

3) There should be work place and living quarter (for live in domestic workers) inspections to ensure occupational health and safety and domestic workers are not put to sleep in cramp conditions.

Best Practice:

The South African law has comprehensive legal protections for domestic workers. It included a standard contract with guidelines that is enforceable just like any other laws.

These guidelines below are developed with reference of the South African law by CARAM Asia after consolidating the discussions at consultations with NGOs, trade unions and the legal fraternity in Malaysia in 2009:

### **1. Employment contract**

When employing a domestic worker, the employer must give the domestic worker a written contract. Where the domestic worker is illiterate or does not understand the terms of the contract, the employer must obtain the services of a qualified interpreter from the local High Commission/Embassy of the country from which the employee is a citizen and the interpreter must interpret the terms of the contract and attest a certificate that such interpretation has been done and the employee understands the terms of the contract.

### **2. Job Description**

The worker can work on either 1 or a combination of two out of these three broad categories of work, but not working on all the categories listed here:

- Child care
- Care for the elderly
- Household chores

### **3. Hours of work**

#### **3.1 Normal hours (excluding overtime)**

A domestic worker may not be made to:

- work more than 45 hours a week;
- work more than nine hours per day for a five day work week;
- work more than eight hours a day for a six day work week

#### **3.2 Overtime**

A domestic worker may not work more than 15 hours overtime per week but may not work more than 12 hours on any day, including overtime.

Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

#### **3.3 Daily and weekly rest periods**

3.3.1 A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed.

3.3.2 The daily rest period may by agreement be reduced to 10 hours for an employee who lives on the premises

### **4. Meal intervals**

A domestic worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. When a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes. If required or permitted to work during this period, remuneration must be paid.

### **5. Wage/Remuneration/Payment**

There is a prescribed minimum rate of remuneration as stated in the contract. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 5.2 of the contract.

### **6. Bonuses, increases**

There should be bonuses/ increases as a form of appreciation for the good work done and motivation for the worker. The amount can be negotiated between the both party.

## **7. Rest Day**

The employer must give the employee one rest day which is to be agreed upon by the parties. If the employee works on this Rest Day then he/she shall be paid double the daily wage. The employee may agree to work on the stipulated Rest Day and replace it with another day which he/she ordinarily works.

If the employee ordinarily works on a Rest Day and there is no replacement for this Rest Day then he/she shall be paid one and one-half time the wage for every hour worked.

## **8. Public Holidays**

Work on a public holiday is entirely voluntary and a domestic worker may not be forced to work on such public holiday.

The official public holidays are:

These days can be exchanged for any other day by agreement.

If the employee works on a public holiday he/she shall be paid double the normal days wage.

## **9. Annual Leave**

The employee is entitled to \_\_\_\_\_ days paid leave after every 12 months of continuous service.

The leave must be granted after completion of the period of 12 consecutive months of employment.

## **10. Sick leave**

During the first twelve months of employment the employee is entitled to 12 days sick leave

## **11. Maternity leave**

The employee is entitled to at least two consecutive months' maternity leave. The employer is not obliged to pay the domestic worker for the period for which she is off work due to her pregnancy. However the parties may agree that the domestic worker will receive part of or her entire salary/wage for the time that she is off due to pregnancy.

## **13. Deduction from the remuneration**

The Employer is prohibited from deducting any monies from the workers wages without his/her written permission.



#### **14. Prohibition of Employment**

The Employer is prohibited from employing any person under the age of 21 and it is therefore important for an employer to verify the age of the domestic worker by requesting a copy of the identity document or birth certificate.

#### **Measures taken to prevent migrant domestic workers' dependence on their employer**

Recommendation:

- 1) Travel documents: States parties should ensure that women have equal and independent access to travel documents.<sup>ii</sup>
- 2) Migrant Domestic Workers should be given a minimum 1 paid day off a week and be able to reach out to their own social networks and seek help whenever necessary.
- 3) They should be allowed to change employer in cases of abuse and exploitation without the need to give early notices.

#### **Best Practise**

Bahrain had a new law, Decree (79) in 2009 "allows foreign workers to switch jobs without the consent of their employer." On 1st August 2009, Bahrain has started the implementation of scrapping the sponsorship system.<sup>iv</sup>

#### **Access to effective remedies for violations of migrant domestic workers' rights**

- 1) They must be given at least 1 paid day off a week with freedom of mobility to be able to lodge complaints and access health care services etc.
- 2) They must have the freedom of mobility after working hours and on rest days with the freedom to possess personal mobile phones to be able to seek assistance independently without interference by employers.
- 3) Mechanism needs to be established at national and regional levels for effective development, independent monitoring and implementation of support services for foreign migrant domestic workers. Rights of access to consular services should be guaranteed. The consular services should be further strengthened and made effective especially in providing legal and health services.<sup>i</sup>

#### **Assistance provided by consular and diplomatic authorities of the country of origin**

Recommendation:

- 1) There should be a department in each offices of diplomatic missions of major origin countries of migrant domestic workers that specifically handled migrant domestic workers complains and cases. These consular and diplomatic authorities should receive training on gender sensitivity, legal and counselling skills.

## **Assistance provided by authorities and civil society in the country of employment;**

Recommendation:

1) enforcement agencies and police should establish help lines and special task forces to investigate and rescue cases of violations and exploitations of migrant domestic workers.

## **Rights of migrant domestic workers in case of early termination of their employment**

Recommendation:

1) Both employers and workers must give a notice of termination/ resignation 4 weeks in advance if the worker had worked for over 6 months. The employee must be paid their salary based on the number of days and months worked in full. Employers who dismisses worker must give valid reasons for such early termination. Such valid reasons must be in accordance with the same reasons allowable under labour legislation for all other categories of workers.

2) In the event that the worker had worked less than 6 months, either party is not satisfactory of the employment relationship, there must be a choice by both party to change employer/ worker without additional charges. Recruitment agencies should allow change of employer /worker by employers without additional charges.

3) The employer should be required to provide accommodation for the domestic worker who resides in the employer's residence, for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.

4) All monies due to the domestic worker for any wages, allowance or other payments that have not been paid, paid time-off not taken and pro-rata leave must be paid by the employer.

5) Immigration laws should allow a minimum period of 2 months stay in the destination country in the event that worker's work permit is cancelled by employers. The length of stay should be extended if the worker had a pending labour or other court cases to attend to.

Example:

In Malaysia, employers can lodge a police report and cancel a migrant workers' work permit within one day without a thorough investigation on the reasons.

Best Practise

It is worth mentioning that in South Africa after six months of work domestic workers are subject to a notice period of four weeks, while other categories of workers are subject to this notice period after a year of employment or more.<sup>v</sup>

*CARAM Asia is NGO in Special Consultative Status with the Economic and Social Council of the United Nations . It is an open network of NGOs and CBOs, consisting of 29 members covering 17 countries in Asia and the Middle East. Visit [www.caramasia.org](http://www.caramasia.org) for more information on CARAM Asia.*

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<sup>i</sup> CARAM Asia. (2002, August 28). Colombo Declaration . *Regional Summit on Foreign Migrant Domestic Workers* . Prosidings of the regional summit is available at:  
[http://www.caramasia.org/index.php?option=com\\_content&task=view&id=148&Itemid=347](http://www.caramasia.org/index.php?option=com_content&task=view&id=148&Itemid=347)

<sup>ii</sup> CEDAW General Comment 26

<sup>iii</sup> ILO: *Gender and migration in Arab states: The case of domestic workers* (Beirut, June 2004), p. 32.

<sup>iv</sup> Minister of Labour, national news paper, UAE, 5 May 2009  
South Africa, lex cit., 1997a, Section 37(1)(c).

<sup>v</sup> South Africa, lex cit., 1997a, Section 37(1)(c).