

6th ASEAN Forum on Migrant Labour
TRADE UNION PERSPECTIVE: MIGRANT WORKERS AND ACCESS TO THE
JUDICIAL SYSTEM AND COMPLAINTS MECHANISM

Abuses of migrant workers may come mainly from three parties. Namely, the government of the sending country, private recruiters, and the principals or employers.

Government abuse of its own migrant workers may be occasioned by inadequate protective and remedial legislations, leaving the workers on their own against exploiters whose greed and avarice are not be tempered or moderated by fear of the penalties imposed by law and enforced by courts or administrative agencies. The ASEAN TRADE UNION COUNCIL (ATUC), realizing that Governments may by themselves be the abusers of their own migrant workers, declared in its seminal call entitled "TRADE UNION STATEMENT TO THE ASEAN FORUM ON MIGRANT FORUM" approved on 8 July 2011 in Manila, thus:

"That despite the existence of ASEAN decisions such as the ASEAN Declaration and the ASEAN Charter, on strengthening of migrant workers rights within the region, a big number of migrant workers continue to be victims of abuse, exploitation and conflict within the region not to mention the challenges faced by 'irregular' or 'undocumented' workers which does not bode well with the ASEAN's vision of 'caring and sharing community.' And

"That the lack of regional standards and clear rules extending uniform protection to migrant workers has become the formula for a 'race to the bottom' increases the vulnerability of migrants, is a bad basis for economic integration. As it veers away from ASEAN's program of community building, has a destabilizing effect on the prevailing industrial relations and economic system, job security and union stability and collective bargaining in ASEAN Member States."

The ATUC urges therefore, the ASEAN adopt a binding ASEAN Instrument which shall contain the minimum protective Legislations, and ratification by all ASEAN Member States of the UN Declaration on Human Rights, UN Convention on the Elimination of Discrimination Against Women and the Union Convention on the Rights of the Child. Likewise, the ATUC calls for the ratification and faithful observance by the ASEAN governments of the ILO conventions dealing specifically with migrant workers' rights, i.e., ILO Convention Nos. 97 - Migration for Employment Convention, 1949 and 143 - Migrant Workers (Supplementary) Convention, 1975.

Alongside ATUC's call for the enactment by ASEAN Member States of the effective and protective legislated shield against abuses of migrant workers, it also expressed its ardent desire to fully participate in the five year project which is funded by CIDA, known as the ASEAN TRIANGLE. The project aims at significantly

reducing the "exploitation of labor migrants through increased legal and safe migration and improved labor protection. The project will promote both bilateral and regional approaches to deal with shared concerns, make regionalism more effective, and enhance the capacity of institutions in ASEAN. The project has three (3) objectives that are in line with the strategic priorities of the ASEAN Labor Ministers Work Programme (2010 - 2015)."

The objectives are:

1. A stronger regional and policy framework to more effectively govern labour migration and protect the rights of women and men migrant workers, in a gender responsive manner;
2. Enhance the capacity of governments to oversee the enforcement of labour migration laws and regulations, in a gender responsive manner; and
3. Enhance the capacity of social partners to influence labour migration policy and protect the rights of women and migrant workers.

With much difficulty and frustration, the migrant workers access the judicial system and complaint mechanism.

Protection of migrant workers does not end with elaborate, comprehensive, and effective laws and regulations defining the rights of the workers, the obligations and duties of the employers and the prescriptions and proscriptions applicable to the private recruiters. Laws are only as good as their enforcements. Rights become real only when they are exercised and the violations thereof effectively redressed.

Let us examine the difficulties that are encountered by a migrant worker whose rights have been transgressed by his/her employer in a country where his/her national laws do not apply. First, the migrant worker may be totally ignorant of the laws and legal processes in the country that received him as a contract worker; Second, he does not know with whom he should lodge his complaint; third, he does not know the language and the customs of the country where he was sent; fourth, in cases where he is accused of a criminal offense by his employer, he is forthwith arrested and brought to jail; fifth, he cannot easily hire a lawyer to advise him of his rights and assist him in preparing his defense; sixth, if he is lucky enough to escape from an abusive employer, the only place he could run to and seek help is his own country's embassy or welfare centers operated by his own government or by helpful NGOs. Then to put an end to his sufferings in a foreign land, he is repatriated to his homeland with his dreams of a better life for his family gone. Of course until he finds another contractual work in another or in the same country.

Where then and how would he be able to redress the wrongs committed against him in the host country? We know that recourse to the judicial tribunals or even

administrative bodies in any civilized country entail the observance of due process which in turn takes a long time to finish. We know, as well that the worker, for many reasons, cannot stay any given length of time in the host country in order to be afforded adequate remedies for the transgression of his rights by his employer. So to abbreviate a long story, the worker's rights become meaningless to him and the abusive employer goes unpunished, the employer's freedom assured and his wealth undiminished. The employer can again get another migrant worker. And we can retell the same story with the same ending.

Repatriated to his homeland, the migrant worker tries to redress his grievances against his recruiter. But in many instances, the recruiter can only be held accountable if he has violated the country's laws and regulations on recruitment for overseas work, like, exacting excessive fees, deception, and other frauds and misrepresentations. Certainly, the recruiter cannot be held responsible for the abuses of his principal. The act of the agent binds the principal but not vice versa.

In the Philippines, to my mind, the laws and regulations governing recruitment and placement of migrant workers are sufficient and the POEA enforces them with full zeal and vigor. I leave this topic, however, to the able representative of the POEA in attendance in this Forum.

But allow me to return to the plight of the migrant worker whose rights were transgressed in the host country. What then can we suggest under these circumstances?

The ATUC proposes that its affiliates in migrant workers receiving countries adopt a program designed to assist a brother or sister worker in distress. The affiliates should identify focal persons and to put up migrant workers desks. ATUC in collaboration with the ILO will undertake capacity building programs for affiliates focal point on migrant workers. Initially, training will include focal persons of unions in at least two (non-ATUC) destination countries (e.g. Hong Kong, Golf Countries, etc).

The Council urges its affiliates to enter into bi-lateral or multilateral agreements with unions or labor centers in destination countries (e.g., Japan, Korea, Hong Kong, China) to assist workers in distress or take migrant workers into their protection. ATUC will support these initiatives and will draw up implementation and follow-up mechanisms for monitoring as well as document good practices for replication.

ATUC realizes that there are migrant workers in receiving countries where the unions are weak or even non-existent. One proposal being advanced for discussion is the networking of lawyers, para-legal workers and well-meaning NGOs to render immediate assistance to migrant workers encountering work-related problems. The assistance may include the following: immediate legal advice,

preparation of complaints, memoranda, actual representation in courts of law or administrative bodies, dwelling and subsistence allowances while the worker litigates his claim. The activities of the lawyers, para-legal workers and NGOs will be supervised and monitored by a migrant workers legal assistance desk set up in the host country. In turn, if every migrant worker sending country succeeded in organizing their own migrant workers legal assistance desks, they can be organized into a consortium or association which can share experience, information and other relevant data for more effective, expeditious and just resolution of migrant workers complaints and grievances.

The workers, with the invaluable help of organizations like, the ILO, and other international humanitarian organizations, must rely on their strength made real by their own organizations - the trade unions. Workers, irrespective of nationality, race, sex or creed must share the burdens of their brothers and sisters, particularly those who seek a better life by taking that courageous move to be a MIGRANT WORKER!

Thank you.

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