

MTUC CONFERENCE ON MIGRANT WORKERS

April 18-19, 2005 Petaling Jaya Malaysia

Concluding Resolution

Overview and concerns

The MTUC recognizes the positive contributions of migrant workers in the development of the country and its economy, the principle that all workers should be treated with fairness, dignity and equality without distinction whether they are migrant or local. While the laws of Malaysia do not discriminate against migrant workers, in practice, the rights of migrant workers are not fully protected.

The right of migrant workers to join a trade union is guaranteed under the Trade Union Act of 1959. However, administrative practices and unscrupulous employers often discourage migrant workers from joining trade unions.

A series of actions will have to be initiated by the MTUC to realize an effective mechanism that will give adequate protection to the 1.5 million documented migrant workers who are working legally in the country. The MTUC supports State action to manage migration flows. The presence of undocumented workers in large numbers has a profound effect on wage rates and terms of employment for documented migrants as well as for local workers. The undocumented migrant workers are often forced to work more for less and without the other basic facilities such as housing, medical care, overtime payment and so forth. The MTUC expects that employers of undocumented workers are severely punished, and that undocumented workers themselves are humanely treated.

A number of emerging concerns in Malaysia should be addressed by the MTUC:

The government has an ad hoc policy on management of migration. Frequent policy changes by the state lead to lack of clarity, abuse by different stakeholders and increase the vulnerability of migrant workers.

The work permit issued to migrant workers only allows the migrant worker to be employed by one employer. This policy may create a form of bonded contract where the worker is unable to move to another job and thus is open to abuse and exploitation.

Contract substitution upon employment in Malaysia changes drastically the work conditions and lowers wages. It has been often observed that the contract presented to the worker upon arrival in Malaysia is considerably less favourable than the contract to which the worker agreed before departure .

When a worker seeks redress for unpaid wages or raises other forms of labour dispute or abuse, the employer often retaliates by canceling the work permit. As a result the migrant worker loses his or her status in the country and his or her right to stay. Without a visa, the worker is unable to continue his or her case through the courts. To enable the worker to pursue his or her case, the Immigration Department only gives the worker a 3 month special pass at RM100 per month. The worker is not allowed to work under this pass.

There are various policies and laws that are discriminatory and thus remove certain rights of the migrant worker and make him or her unequal compared to the national worker.

Mandatory testing with deportation on the grounds of having contracted 15 diseases, including pregnancy tests and HIV/AIDS tests threaten job security, and increase discrimination and stigmatization.

The Immigration Act (especially Section 6) provides for penalties including whipping and imprisonment. It criminalizes migrant workers for an administrative problem. Migrant workers have difficulty in accessing legal representation and due process.

Basic rights

We recognize that migrant workers are workers with equal rights and dignity. These rights must be protected in laws and policies. Such laws and policies must be effectively and justly enforced by the various agencies. Key principles for migration policy should include non-discrimination and equal treatment of workers – nationals and migrants alike, respect for basic human rights and labour rights of migrant workers, protection of migrant workers in both regular status and irregular situations and regular consultations among government, employers, workers, NGOs and other representatives of civil society. The

MTUC should actively promote the ratification of the Migration for Employment (Revised) Convention, 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and support the ILO Plan of Action for Migrant Workers.

3 MTUC actions

Based on the above the MTUC resolves to:

Undertake actions to give the migrant workers all the necessary protection of their rights and dignity.

Organize migrant workers.

Provide the relevant knowledge to migrant workers to make their tenure in Malaysia as comfortable, peaceful and productive as possible, e.g. introduction to local unions, religious customs, taboos, work ethics, etc.

Provide opportunities for skills enhancement so that they may not only be able to have a better working environment and benefits but also be better trained and skilled when they eventually return home.

Monitor the real manpower needs of every sector and to work closely with the Government to ensure that there is no excess supply of labour in any sector.

Identify errant and problematic employers and encourage the authorities to take all the available punitive action against them.

Work closely with embassies and national trade unions of sending countries.

Set up a special committee with the Bar Council and NGOs to review all the laws that discriminate against migrant workers, that denies them fundamental labor rights and work towards areas for legal reform and the development of a comprehensive labour migration and management policy.

Review, together with other national trade union centers from the sending countries, all MOU's and contracts.

Work out a standard model MOU and contract for recruitment and employment of migrant workers.

Advocate with the relevant government agencies, for the issuance of a T-S visa (Temporary Stay) for all workers who have cases of labor dispute or abuse to enable the workers to stay and work in the country until the case is settled.

Give special focus on domestic workers. Propose changes to the Employment Act to recognize domestic work as work; to develop standardized contracts; and to organize domestic workers into unions.

Make the changes in order to make sure that the State does not discriminate.

Review repatriation – the manner in which this occurs is of concern.

Protect refugees and undocumented workers who find themselves in an irregular situation. Root causes must be addressed.

Establish social security mechanisms with contributions from employees and employers.

Advocate the principle that payment of any levy should be borne by the employer.

Establish a Tripartite Council to review the policy on labour migration and management.

Strengthen labour inspection services to enforce legal conditions of work for migrant workers.

Reintroduce the EPF for migrant workers without discrimination vis-à-vis local workers.

Abolish corporal punishment such as whipping and caning.

Enhance the social image of migrant workers.

Address the specific risks for all migrant workers, men and women, in certain occupations and sectors with particular emphasis on dirty, demeaning and dangerous jobs, and on women in domestic service and the informal economy.

4 Action by trade unions in sending countries:

Trade Unions in sending countries resolve to:

Encourage their Governments to ratify ILO Conventions protecting the rights of migrant workers.

Encourage Governments to negotiate bilateral agreements on recruitment, including the elimination of recruitment agents.

Encourage migrant workers to join existing unions in the host countries.

Government, NGOs and other stakeholders should work in close collaboration and cooperation to further the rights of migrant workers.

Advocate a regulatory framework based on ILO Conventions and the UN Convention to respond to the issue of migration.

Encourage monitoring recruiting and employment agencies in both sending and receiving countries to reduce fraud, malpractice and harassment of migrant workers.

Conduct rights-based and community-based pre-departure training.

Work with the MTUC to prepare pre-departure modules. Conditions of service under the Malaysian Employment Act should be translated into languages of migrant workers.

Develop a system for networking and information exchange between sending and receiving country trade unions.

Encourage governments to establish “Pillars” or principles of sending countries which govern diplomatic relations.