

Advocating for the Rights of Migrant Workers A Capacity Building Program – Module 4

2-5 December 2017, Kuala Lumpur, Malaysia

REPORT

SUMMARY

Module four of the capacity building program for civil society “*Advocating for the Rights of Migrant Workers in Malaysia*” was held from 2-5 December 2017 in Kuala Lumpur.

This module built on previous modules held in Malaysia. It had a focus on CEDAW and on building lobbying and engagements skills, on engagement with diplomatic missions, and continuing to build knowledge on how to apply international standards to prevent and stop the abuses that the participants have identified, and how these might help to provide avenues for redress.

This special national level program is designed to build knowledge, skills and networks to enhance and support civil society advocacy for the promotion and protection of migrant workers’ rights in Malaysia. The program brings together Malaysian advocates with advocates from countries of origin, including Nepal, Bangladesh, Philippines, Cambodia and Indonesia to build links and networks and to develop shared advocacy strategies for greater impact in Malaysia and countries of origin. It is organised and facilitated as a partnership between the Bar Council Migrants, Refugees and Immigration Affairs Committee (MRIAC), North South Initiative (NSI), Migration Working Group (MWG) Migrant Forum in Asia (MFA) Diplomacy Training Program (DTP).

Over 30 participants representing NGOs, faith based groups, trade unions, migrant community and lawyer’s networks in Malaysia came together for this module. Representatives from Nepal, Thailand and Bangladesh civil society organizations working for migrant workers also participated.

The focus of the module was on civil society engagement with UN Treaty Bodies focusing on CEDAW – one of the human rights conventions relevant to MWs ratified by Malaysia. The module also had a focus on engagement with diplomatic missions to provide an opportunity for participants to educate and inform the diplomatic missions about the issues and concerns of MWs in Malaysia. Participants visited the European Delegation and Australian High Commission to meet with diplomats. Participants also engaged with diplomats from the Embassy of Nepal and Indonesia. The sessions with diplomatic missions facilitated an exchange of information between advocates and missions, and help build skills in strategic advocacy.

The module had further focus on the ASEAN Consensus on the rights of MWs adopted in November 2017 and on the Global Compact on Safe Migration. Participants discussed in groups to explore and analyse how the instrument can be used by civil society in their advocacy.

The following report gives some more detail about the content of Module 4. The module was positively evaluated by participants and these evaluations are available on request.

PROGRAM CONTENT

Module 1, 2 and 3 Recap, and Introduction and Overview of Module-4

The program started off with opening remarks from Patrick Earle, Executive Director of DTP, and Sumitha Shaanthinni Kishna from the Malaysia Bar Council. There was a recap on modules 1, 2 and 3 to refresh learnings of the previous modules. The content and objectives of module 4 were introduced.

Participants shared updates from their work between module 3 and 4. Some highlights were – participants attending international conference on domestic workers in Manila, engagement with local trade unions, case referrals and case management of MWs, and faith based organizations’ work on palm oil plantation learning center for stateless children and workers.

DTP also introduced to the participants the new ‘Law *Lookup Tool*’ - a pilot project of an online application tool developed by DTP Law interns for MWs advocates. The online application helps advocates, lawyers, and others to find applicable international law relevant to some specific human rights issues faced by migrant workers.

ASEAN Consensus on Rights of Migrant Workers

The [ASEAN Consensus](#) on the Protection and Promotion of the Rights of Migrant Workers was signed by the Heads of States/Governments in the 31st ASEAN Summit. The signing of this ASEAN Consensus was a milestone as 2017 marked the 50th anniversary of ASEAN - and the tenth year since the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, known as the Cebu Declaration.

The ASEAN Consensus stipulates the general principles, fundamental rights of migrant workers and members of their families, specific rights of migrant workers, obligations and commitments of ASEAN Member States. It aims to establish a framework for closer cooperation among member states on addressing migrant workers’ issues in the region.

Civil Society Organizations (CSOs) have welcomed the adoption of the instrument with reservations. They have highlighted that the document should be legally-binding in order to address the lack of comprehensive legislative protection of migrant workers in many ASEAN countries. They recommend that the instrument should protect undocumented migrant workers, cover migrant workers’ families, and include migrant workers not from ASEAN countries. ASEAN operates by consensus –this can lead to weak standards and lack of enforcement mechanisms – as the lowest common denominator generally prevails.

In 2018, the member states will work on developing the instrument into a concrete and practical action plan that would be acceptable to both labor-sending and labor-receiving countries within ASEAN. CSOs in the region recommend that employers’ organisation, trade unions and NGOs should be part of the discussion, and the action plan should be open for consultation and inputs from stakeholders.

As a practical exercise, participants were divided into groups to explore and analyze the document on how it can be used by civil society in their advocacy, what are positives and negatives, and how can it facilitate collaboration between sending and receiving countries.

Presentations from International Participants

Thailand – Preeda Tongchumnum, Program Manager, Solidarity Center – As a program a manager at Solidarity Center Preeda supports the implementation of the project activities, provides legal technical support, supports advocacy work, and works closely with migrant workers network.

One of the major issues of MWS in Thailand is that the number of undocumented migrants are higher than the documented workers. Preeda highlighted that the Government of Thailand recently launched a program to register the undocumented migrants to prove their nationalities. The MWS who registered were able to apply for travel documents which facilitated their freedom of movement. However, the legislation in Thailand is confusing, and policies are changing over time. For example, Thailand has social protection law that helps workers access health care insurance, but they have to pay for it. It's contradictory to the law of social protection. Undocumented migrant workers have no access to social protections, including labour rights.

Bangladesh – *Prabir Biswas, Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA)* –BOMSA started to work for the migrant women with the aim to unite and protect the welfare of the migrant women workers of Bangladesh. BOMSA has been working with internal and external women migrants since 1998 to ensure the protection of migrant's rights. Prabir provided a background on Bangladesh's migration sector. In 2017, there were 7 million Bangladeshis working overseas, and 93% of them went to ten countries. Bangladesh ranks seventh in the list of the world's top remittance-receiving nations accounting for almost 9% of the country's GDP. One of the persistent challenges is that more than half the migrant workers from Bangladesh are classified as less-skilled, and only 10% of the migrant workers use the formal channels of migration.

The UN Human Rights System – An Introduction to Human Rights and Treaty Reporting & NGO Advocacy

International Human Rights mechanisms developed along two pathways – UN Charter based and Treaty Based. Human rights in the UN Charter – provides the mandate for the Human Rights Council, Special Procedures and the Universal Periodic Review.

There are nine core human rights treaties – and countries that adopt them agree to implement their provisions – including to review and amend their laws and to protect and promote the rights in the treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. The human rights treaty bodies are committees of independent experts that monitor implementation of the [core international human rights treaties](#).

International human rights Treaties are legally binding (unlike Declarations). Treaty obligations are not optional – once agreed to, they must be implemented in law and in practice. To implement the treaty states must allocate resources and promote the rights in the treaty.

The UN HR Treaty Bodies

Treaty monitoring bodies are committee of independent experts, receive and examine state reports, issue concluding observations, adopt general comments, and conduct country visits. There are nine human rights treaty bodies composed of independent experts. The individuals are voted on and must be free from the influence of the government. The Committees adopt general comments/recommendations about particular rights or issues e.g. rights of domestic workers. These General Comments are important sources of advice and interpretation and are soft law.

The reporting cycle under the HR Systems

- 1) State parties (governments) submit initial and periodic reports to the committees – documenting progress in implementation of the treaty and challenges. NGOs submit shadow/ alternative reports highlighting issues of concern.

- 2) The treaty body presents the state party with list of issues and questions based on concerns raised by the report (and the NGO shadow reports)
- 3) The State party may submit written replies to list of issues and questions. CSOs meet members of the committee – it could be formal or non-formal to raise questions, issues and recommendations with the State party. Some committees hold pre-sessions, others make time during the formal sessions
- 4) Constructive dialogue between the Committee and the state party delegation takes place during the session
- 5) Treaty body issues its concluding observations to the government, including recommendations
- 6) Follow-up on implementation of treaty body recommendations (some Treaty Bodies have formal follow-up processes).

CEDAW, Women's Rights and Migrant Workers

Ivy Josiah, a women's rights activist in Malaysia, led the sessions on The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Ivy is the former Executive Director of WAO who led the organisation for over 15 years, and which put domestic violence on the national agenda in Malaysia, using CEDAW as part of their strategies.

CEDAW provides the framework for advocating for women's human rights. The Malaysian government ratified CEDAW in 1995. Malaysia made reservations with respect to and does not consider itself bound by provisions of certain articles, which included the rights of women relating to marriage and family relations.

Under CEDAW, rights for women are based on 3 fundamental principles.¹ They are,

- *Principle of Substantive Equality* - Substantive equality means equal opportunity, equal access and equal results and outcomes for women and men.
- *Principle of Non-discrimination* - CEDAW defines discrimination as "any act that has the effect or purpose of denying the exercise and enjoyment of all rights".
- *Principle of State Obligation* - Under the terms of CEDAW, state parties must submit a national report within one year of acceding to the Convention and within every four-year period thereafter.

The Convention calls for national legislation to ban discrimination, recommends temporary special measures to speed equality in fact between men and women and action to modify social and cultural patterns that perpetuate discrimination. The governments that have ratified CEDAW are required to submit a report to the CEDAW Committee within a year of becoming State parties and thereafter, submit a report every 4 years. Other key provisions of the Convention are –

- It is legally binding
- Provides a broad definition of discrimination against women (article 1): *“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis*

¹[http://www.wao.org.my/Convention+on+the+Elimination+of+All+Forms+of+Discrimination+Against+Women+\(CEDAW\)_52_5_1.htm#cedaw2](http://www.wao.org.my/Convention+on+the+Elimination+of+All+Forms+of+Discrimination+Against+Women+(CEDAW)_52_5_1.htm#cedaw2)

of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”

- Bridges divisions between civil and political and socio-economic rights and covers a range of rights
- Regulates the actions of the State, but also private organisations, enterprises and individuals
- Creates a monitoring mechanism
- General Recommendations - e.g on on VAW (19), on marriage (21), on migrant women (26) on political life (23), on health (24)
- Optional Protocol - communications and inquiry procedures

CEDAW: How can you use it?

CSOs can play a crucial role in alerting States to their obligations, collaborating with States on their programmes where CSOs are better placed to forge links with communities and households, developing alternative models to State models of intervention, and monitoring State activities and their impact.

CSOs can submit their Shadow Reports to the Committee and make their own recommendations – which the Committee will find useful and might adopt.

CSOs can publicize State reports and the concluding comments of the CEDAW Committee to a wider national audience, where States may avoid doing so. At the local level, discussions around concepts and practice of women's rights can provide a very sound basis for influencing policy and creating spaces for change.

NGOs are also able to influence the creation of general recommendations (GR). NGOs can lobby the Committee and as part of their recommendations suggest the Committee develop a GR that deals with their issue/context. CSOs can obtain a space and opportunity to influence the substantive text of any GR.

Lobbying for Rights

The objectives of session on lobbying was to share knowledge and tips on lobbying and on effective dialogue before the sessions with diplomatic missions.

Lobbying is a process to inform, negotiate with and convince those in power or those who can influence on an issue. Lobbying is about influencing change through direct personal communication – it can be formal/informal – planned/opportunistic. It is a process - often long term, and requires developing relationships. For effective lobbying,

- know your objectives
- create maps of influence – who to lobby
- have a timetable
- be ready for opportunities

Following steps should be considered before an effective Lobbying Meetings

- Preparation
 - Know the people who you're meeting.
 - Clear objectives, know your interests. What are the particular changes you'd like to have?
 - Anticipate questions/objections and prepare responses

- Allocate roles to delegations – who will lead-introduce/who will present on which issues/who will take notes
- Prepare materials
- Consider dress code.
- If raising issues and cases, don't be too confrontational, ask missions/embassies of how we should address the issue. The engagement should create channels of cooperation.
- During the Meeting
 - Introduce delegation & purpose
 - Check if it's ok to take notes – explain
 - Make your requests clear – keep the discussion focused on objectives
 - Maintain positive atmosphere
 - Active listening – respond to opportunities
 - Be confident – interrupt and ask questions
 - Be flexible
 - Agree outcomes and next steps at conclusion
- After the meeting
 - Meet and review
 - Follow-up letter of thanks, record of conclusions, agreed next steps

As a practical session, participants were divided into groups and were asked to prepare for the dialogue with diplomatic missions. This was followed by a role-play exercise.

Engagement with Diplomatic Missions – Dialogue on Human Rights Concerns

Engagement with missions was organized to provide an opportunity for participants to educate and inform the diplomatic missions about the issues and concerns of migrant workers, and also to help build participants' skills in strategic advocacy and engagement. The sessions provided opportunity for exchange of information between advocates and missions.

Some countries (e.g. most EU countries, Canada, Swiss, Australia) have explicit human rights policies – and part of the work of diplomats is to promote human rights and offer support to human rights defenders – including through small grants. These diplomats can raise issues with their host governments, send reports back to their capital, suggest support for UPR recommendations etc. They can therefore be useful contacts, and sometimes allies. Some governments for example will always make representations to try to prevent executions.

The engagement with missions was organized into two phases – the first involved preparation and a role play followed by an outreach activity by participants involving visiting Australian High Commission and the European Delegation.

Participants were divided into two groups for the visit to the Australian and European missions to prepare – what they would say, what issues would be raised, what their objectives were and who would play what role on the delegation.

Participants presented to the mission representatives about the key concerns of migrant workers in Malaysia, and the challenges faced by CSOs to protect the rights of MWs. They also briefed the representatives about the different initiatives taken up by CSOs for the protection and promotion of the rights of MWs. Mission representatives found the session very useful, and also provided feedback to the participants on their presentation of the issues. The Australian mission offered advice about possible funding support/opportunities.

Engagement with Diplomatic Missions – Countries of Origin

A dialogue with Indonesian and Nepalese diplomatic missions was also organized as a facilitated panel discussion – with presentations, followed by discussion. Participants learnt about the role of mission and labour attaches for protecting the rights of their migrant workers, and the challenges faced by missions. The session was also useful to identify points of collaboration between CSOs and the missions – and to share about issues, approaches and lessons between the missions. There were opportunities for more private discussions, relationship building, and swapping of cards over tea and coffee. It was a lively session and there was very positive feedback.

NEXT STEPS

In the final sessions of the fourth module, participants reflected on the group work and identified some next steps for the continuation of the assignments in-between module 4 and 5. Participants agreed to work on the following –

- **Case Submission to UN Working Group on Business and Human Rights (UNWG), UN Special Procedures and AICHR** - Case submission to UNWG on B&HR - cases/issues discussed and presented in module-3 will be further developed and sent as communications to the UNWG (Irene will follow-up on these cases). Further information is needed to submit cases to AICHR (Samantha as focal point for submission of cases to AICHR). Other group members will meet and discuss the cases - collaboration of data, evidences, material, consent from people involved in the cases, etc.
- **Dialogue with SUHAKAM and RSPO** – some participants agreed to engage with SUHAKAM and RSPO. The meetings will be organized in 2018. Sumitha will facilitate the organizing of the meetings.
- **Collaboration on GCM** – Adrian and other group members will continue to collate information and develop strategy to influence the Malaysian government for the negotiation phase of the GCM process. MFA will provide regular updates and information on the outcomes of the stocktaking phase.

In plenary, participants suggested content and expectations for the next module. They identified the following issues to be considered for inclusion in module 5: *Recruitment reform initiatives; more on CEDAW; updates on GCM and other regional processes; UN SDGs – migration on SDG; human trafficking; racism and xenophobia*. Participants were also asked to reflect on the experience and usefulness of the modules so far. Some of the notable outcomes of the program so far, as reflected by the participants were –

- Networking and collaboration of CSOs in Malaysia, and from countries of origin
- Knowledge and experience sharing with other countries
- Practical application of human rights systems
- Negotiations skills and lobbying skills
- Confidence building
- Updates on global migration trends
- Knowledge and skills to work with UN conventions and human rights system
- To think strategically on how human rights work in Malaysia can be improved

Module-4 concluded with the completion of evaluation forms, and sharing of reflections. The feedback on the module was positive; highlight of the module was engagement with diplomatic missions.