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# Migrant Forum in Asia and the 92nd Session of the International Labour Conference:

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## *“Building Alliances and Lobbying for Migrants’ Human Rights”*

*The 92nd Session of the International Labour Conference (ILC)  
was held at the Palais des Nations and the headquarters of the  
International Labour Office (ILO),  
in Geneva, Switzerland from the 1st–17th of June 2004.*



MIGRANT FORUM IN ASIA

This report is the outcome of the participation of the Migrant Forum in Asia in the General Discussion on migration at the International Labour Conference in June 2004.

It contains key statements and advocacy issues that were raised, and highlights the process of Non-Governmental Organizations (NGOs) participation in collaboration with the social partners (workers, employers and governments) of the ILO.

We wish to thank the Institute of International Education Indonesia for supporting our participation at the ILC.

Through this report, we hope that the learning and engaging process will be strengthened in ensuring “a fair deal for migrant workers in the global economy”.

**MIGRANT FORUM IN ASIA**

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## Background to the 92<sup>nd</sup> Session of the International Labour Conference

The International Labour Organization (ILO) began its 92<sup>nd</sup> Session of the International Labour Conference (ILC) on June 1, 2004, with migrant workers as a key agenda item. The grave situation of migrant workers worldwide was among the factors that prompted the ILO's Governing Body to decide at its 283<sup>rd</sup> Session in March 2002 to place migrant workers on the 2004 ILC agenda.

The role of the ILC is to adopt and oversee compliance with international labour standards, establish the budget for the Organization and elect members of the Governing Body. This year, 3,000 delegates attended the ILC, including heads of States, labour ministers and leaders of workers' and employers' organizations from most of the ILO's 177 member states.



The Migrant Forum in Asia (MFA) had identified the ILC as a crucial forum that would set the tone for international migration policy in the coming years, and hence, one that needed to be monitored by its advocates and network members. MFA is a regional network that has been engaged in regional and international advocacy among governments and policy-makers for the past decade on the need to uphold the human and labour rights of migrant workers in Asia. Furthermore, it has also been actively spearheading the unionization of migrant workers in Asia.

As with MFA's participation in previous UN processes (such as the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the UN Commission for Human Rights), the network worked together with Migrants Rights International (MRI) in its preparations and participation in the ILC. The collaborative effort led to the MFA/MRI delegation forming the migration caucus group of NGO's accredited to the ILC on Agenda Item VI on Migrant Workers (NGO Migration Caucus).

The MFA Secretariat had applied for accreditation to the ILC in the month of February 2004, but the ILO Bureau for External Relations and Partnerships only informed it in mid-May that the application was accepted. The preparatory phase

was vital to the workings of the MFA and MRI during the ILC.

### **ILC Agenda**

The ILC 2004 had a seven-point agenda set to be discussed during the conference. These included a set of standing items, which are taken up at every ILC, and items placed on the agenda as decided by the Governing Body.

#### ***Standing Items***

- I. (a) Reports of the Chairperson of the Governing Body and the Director General;  
(b) Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.
- II. Programme and Budget and other questions.
- III. Information and reports on the application of Conventions and Recommendations.

#### ***Items placed on the agenda by the Conference or the Governing Body***

- IV. Human resources development and training—Revision of the Human Resources Development Recommendation, 1975 (No.150) (standard setting, second discussion).
- V. Work in the fishing sector—A discussion with a view to the adoption of a comprehensive standard (a Convention supplemented by a Recommendation) (standard setting, first discussion).
- VI. Migrant workers (general discussion based on an integrated approach)
- VII. Withdrawal of 16 Recommendations.

The MFA and MRI delegation had planned to strive for optimum participation in three out of these seven agenda items of the ILC process and dynamic:

1. The Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Agenda Item Ib) that was discussed by a Special Sitting of the ILC;
2. Information and reports on the application of Conventions and



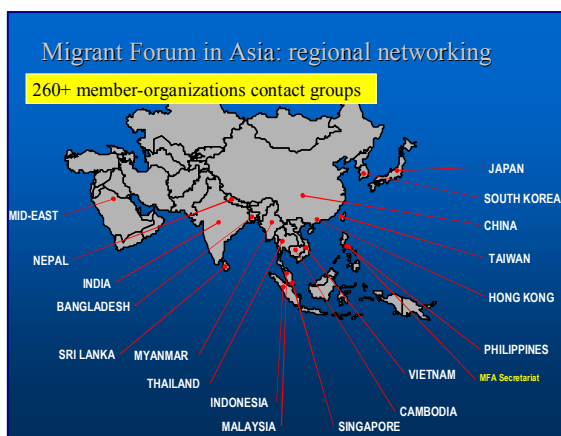
Recommendations (Agenda Item III), which the Committee on the Application of Standards-CAS discussed.

3. Migrant Workers - that was discussed by the Committee on Migrant Workers-CMW (Agenda Item VI).

These items were selected by MFA because they directly and indirectly touch upon the issues of migrant workers. Out of the three agenda items that the delegation chose to follow, the CMW was prioritized as it focused exclusively on migrants' issues and was expected to produce a plan of action for the ILO's future policy direction and activities addressing migrant workers.

### The Migrant Forum in Asia

The Migrant Forum in Asia (MFA) is a regional network of non-government organizations (NGOs), associations and trade unions of migrant workers, and individual advocates in Asia that are committed to protect and promote the rights and welfare of migrant workers. Conceived in 1990 in a meeting of migrant workers' advocates in Hong Kong, MFA was formally organized in 1994 in a second forum, "Living and Working Together with Migrants in Asia", held in Taiwan.



MFA is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equity for migrant workers. MFA acts as a facilitator, a regional communication and coordination point between member-organizations and advocates, forging concerted action to address discriminatory laws and policies, violence against women migrants, unjust living conditions, unemployment in the homeland and other issues affecting migrant workers.

The General Forum, composed of all members, is the highest decision and policy-making body of MFA. It convenes at least every two years in a General Assembly. The Executive Committee (EC) is composed of two representatives from each sub-region, one each from regional organizations and the Secretariat. Representatives

to the EC are elected by their respective sub-regions in the General Assembly and are confirmed by the General Forum.

The EC acts as a central executive body of the organization and oversees the operation of the Secretariat. A Supervisory Group, composed of representatives of MFA member organizations in the country where the Secretariat is located, provides logistical and other assistance to the Secretariat. The MFA Secretariat is currently located in Quezon City in the Philippines.

Membership is open to various migrant workers' organizations, support groups, unions, migrant savings groups, churches, national networks, regional organizations, non-government organizations and other similar institutions based in Asia that address migrant workers' issues, and adhere to MFA principles and terms of reference. Migrant-oriented groups based outside Asia maybe considered as "working partners". Application for membership is coursed through the Secretariat.

### ***MFA key programmes and activities***

#### **1. Advocacy**

Region-wide actions at the national and international levels are vital creating a policy and legislative environment in the sending and receiving countries that is pro-migrant worker. Annually, MFA observes and/or launches campaigns on International Women's Day (March 8), Labour Day (May 1) and Migrant Workers' Day (December 18). Presently, it is a member of the Steering Committee for the global campaign for ratification of the UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **2. Networking**

MFA is the regional partner of the Migrants Rights International (MRI) for ratification campaign and monitoring migrants' rights violations in Asia.

#### **3. Publication**

MFA co-produces the Asian Migrant Yearbook (AMY) with the Asian Migrant Centre (AMC). The AMY is a compendium of migration facts, issues and analyses of the events collected from MFA members and other migration concerned organizations. MFA also cooperates with the Asia Pacific Bureau for Adult Education (ASPBAE) on research with regard to educational programs for migrant workers. MFA also produces a quarterly newsletter about the

activities of the Secretariat and the network.

#### 4. Information Exchange and Dissemination

MFA is moderator of the MFA-network mailing list that serves as venue for information exchange and to solicit quick response to migrant issues.

### **MFA Delegation and its Objectives to the ILC**

A nine-member delegation of MFA members and contact groups from different countries in the region and with varied experience in lobbying, advocacy, networking, negotiating, and policy formulation, participated at the ILC. Though MFA's work at the ILC represented its entire membership of over 200 organizations, the organizations present from the network included the: Asian Migrant Centre (AMC Hong Kong-Regional), Centre for Education and Communications (CEC-India), Centre for Migration Advocacy (CMA-Philippines), Coalition for Migrants' Rights (CMR-Hong Kong), Friends of Women Workers (FWW-Jordan), Indonesian Migrant Workers Union (IMWU-Hong Kong), Think Centre (Singapore), Welfare Association of Repatriated Bangladeshi Employees (WARBE-Bangladesh), and the Regional Secretariat of MFA. Some delegation members were additionally part of other delegations of unions and support groups of migrant workers that attended the ILC.



#### ***The key objectives of the MFA / MRI delegation was to:***

- 1) Monitor policy debates and ensure that human and labour rights standards are not compromised in the ILC discussions, and that these along with the multiple issues intersecting with migration (labour, trade, development and gender) remain the focal point of the 'general discussion' on 'Migration in the Era of Globalization'.
- 2) Monitor government compliance with international standards and lobby governments to live up to their obligations in defending the rights of migrant workers.

- 3) Strengthen existing partnerships and forge new partnerships between labour/trade unions and NGOs, including collaborating with unions in developing a common lobby strategy and key language formulations to identify and highlight implications of the general discussion trend.
- 4) Situate the network's participation in the ILC as an on-going advocacy and capacity building programme for MFA's member organizations and NGOs, so that advocates are better equipped to engaged in ongoing international lobbying work, and new insights are gathered for MFA's advocacy, empowerment and capacity-building programmes.

### **MFA Advocacy Process**

Prior to the ILC, the MFA-MRI delegation conducted a one-day strategy meeting to level off on expectations and plan delegation activities. Tasks and responsibilities throughout the lobbying process were identified and assigned to teams of delegation members. A common framework of analysis and action to guide the delegation's advocacy at the ILC was also adopted and meeting places were designated for the delegation to check into at regular intervals for debriefing.



As NGOs only have observer status within the tripartite structure of the ILO, MFA needed to work out a strategy on how to channel its positions into the formal deliberations of the Conference, particularly the CMW. MFA decided to focus on building links with the Workers Group, and with “friendly” governments.

#### ***MFA's Advocacy Strategy with Workers Group***

The most critical intervention point for MFA and MRI was to ally and identify common positions with the Workers Group of the Committee on migrant workers' (CMW). In the lead up to the ILC, the MRI and MFA Secretariats had already initiated discussions with key office bearers of the International Confederation of Free Trade Unions (ICFTU) and the office of the International Migration Branch of the ILO in Geneva.



At the beginning of the ILC itself, MFA and MRI met Workers' Group representatives of the CMW to discuss how NGO interventions/inputs could be best channelled to the Group. The strategy worked out between the Workers' Group and MFA-MRI included the formation of a liaison of three individuals from the Workers and NGO's Groups respectively. The role of the liaison persons was to keep the lines of communication and exchange of information open between the two sectors on the development of the 'general discussion' on migrant workers, and to support and/or negotiate positions when lobbying with certain governments.

At the first NGO Caucus Meeting, organized by MFA and MRI, where all NGOs attending the ILC were invited to attend, the liaison arrangement with the Workers Group was explained to NGOs. As NGOs outside of the MFA-MRI network did not come forward to take on the liaison role with the Workers Group, MFA and MRI took the lead.

In the initial discussion between the NGO representatives and the Workers Group, it was agreed that they would operate around a common frame of action. Understanding that the ILC dynamic is one of debate, negotiation, and compromise, both sides agreed that in the course of the discussion on migration, the bottom line, non-negotiable elements of the discourse was the rights-based approach and the need for a multi-lateral framework on labour migration. MFA strongly believes that an effective rights-based management of migration within a multilateral framework is crucial for the protection of migrant workers. The importance of managing migration must go beyond coordinating restrictive national security policies among states but should rest on the larger framework of human security. Human security, as defined, compliments state security, enhances human rights and strengthens development. Inherent dignity and human rights of all migrant workers and members of their families should be ensure based on the universal principles of equality of treatment and discrimination.

The partnership of MFA-MRI with the Workers Group worked well and was particularly significant during the second week when full-scale lobbying and advocacy work had to be undertaken during the amendment stage of the draft conclusions of the CMW.

### ***MFA's Advocacy Strategy with Governments***

MFA delegation members also identified key Asian governments within the CMW

that were more “friendly” and sympathetic towards the migrant workers’ issues. Though governments from the Asia Group (these excluded Japan and Korea, who came under the group of industrialized country governments) were not highly vocal during the deliberations, they nonetheless highlighted and maintained certain positions, coinciding with MFA’s positions. MFA worked primarily with the Philippines government delegate on common concerns, such as language formulation to promote the migrants’ human rights framework and on rights protection. MFA also approached other Asian sending governments such as Bangladesh, Indonesia, Sri Lanka, Hong Kong/China and India.

### THE ILC Sessions

#### **1. *Special Sitting on the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work—Agenda Item I(b)***

At the ILC’s 86<sup>th</sup> (1998) Session, the ILO’s Director-General was called on to issue an annual reports on the implementation of one of the four categories of fundamental principles and rights.

At this year’s ILC, the Global Report, *Organizing for Social Justice*<sup>1</sup>, focused on the freedom of association and effective recognition of the right to collective bargaining, in all member States regardless of whether they have ratified the relevant fundamental ILO Conventions on the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No.98). This Report was the first in the second cycle of Global Reports under follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. The discussions at this special sitting focused on the problems workers faced in organizing with particular attention being drawn towards the informal sector.

NGOs wishing to contribute to the discussion were requested to register in advance and to limit their oral interventions to a maximum of five minutes.

In order to take full advantage of the allocated time for NGOs, the MFA-MRI

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<sup>1</sup> Report I (B), *Organizing for Social Justice: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 92<sup>nd</sup> Session 2004, International Labour Office, Geneva.

delegation decided to make two separate oral interventions focusing on the Report's theme. It was decided that the MRI intervention would focus on the right to organize and highlight good practices in the case of migrant workers drawing particular attention to the situation of undocumented migrants as well.

**The MRI intervention read:**



*Mr. Chairman:*

*It is with honour that I am addressing this plenary committee on behalf of Migrants Rights International (MRI), which is an international federation of migrant workers unions and associations, church-based groups, legal organizations, and non-governmental organizations promoting the human rights of all migrants.*

*This year's discussion of the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work focusing on **freedom of association and collective bargaining** is but a timely and urgent response to the reality that migrant workers all over the world are faced with.*

*The report speaks of "the fundamental principle of freedom and association and the right to collective bargaining as a reflection of human dignity. It guarantees the ability of workers and employers to join and act together to defend not only their economic interests but also of civil liberties such as the right to life, security, integrity, and personal and collective freedom. It guarantees protection against discrimination, interference and harassment."*

*Mr. Chairman:*

*These same rights that are promoted through freedom of association and collective bargaining are basic human and labour rights that should be guaranteed to every worker, without discrimination of any kind. Unfortunately however, in the case of migrant workers, the realities they face are different. Migrant workers are generally deprived of this right to freedom of association and collective bargaining, thereby contributing to their vulnerability as workers*

*in a State of which they are not nationals. This issue has been clearly identified in the Global Report confirming migrant workers as one of the groups often denied the right to organize either in law or in practice. The report also mentions domestic workers, including women migrant domestic workers and agricultural workers, as belonging to this category of workers facing barriers to freedom of association and collective bargaining. Moreover, the situation of irregular or undocumented migrant workers and their exclusion in society is of particular concern.*

*Mr. Chairman:*

*Migrants Rights International strongly believes that ensuring migrant workers' right to freedom of association is a fundamental step towards the realization of their basic human and labour rights. Through organization and representation, migrant workers are able to bring out their concerns, identify violations, access channels for grievances and redress, and promote better protection.*

*This right is guaranteed under ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) and the ILO Convention No. 98 on the Right to Organize and Collective Bargaining (1949). Complementing these ILO Conventions is the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides for the right of migrant workers and members of their families, including those who are undocumented or in an irregular situation, to freely join and participate in the activities of trade unions and other associations.*

*Furthermore, we also note in the Global Report some of the identified best practices among trade unions in extending membership and representation to migrant workers, including those in irregular situation. This is an encouraging reflection of the strong commitment by trade unions to fighting racism and racial discrimination at work. We hope that this best practice could be widely promoted and implemented.*

*Therefore, Mr. Chairman:*

*In view of today's discussion, we call this tripartite body, the States and the social partners, to give serious consideration to the findings and recommendations of the Global Report, in particular, on the right of migrant workers to representation, organization, and unionizing and to work together to remove these restriction, in both policy and practice, towards the achievement of this right.*



A drafting team within the MFA delegation formulated an intervention that would further the discourse by examining new forms of organization for social justice in a world driven by economic globalization, and where migrant labour flows are increasing in numbers. In order to bring out the significance of the discussion within the purview of the informal sector, and given migrant domestic workers' particular vulnerabilities and limitations in self-organizing, MFA decided to focus its intervention on promoting migrant women domestic workers' right to organize and collective bargaining.

### **The MFA intervention read:**

*Mr. Chairperson:*

*This intervention is being made on behalf of the **Migrant Forum in Asia (MFA)**, a network of over 200 migrant workers associations and trade unions and migrant support groups based in 22 Asian countries.*

*The Global Report on Organizing for Social Justice highlights the growing socio-economic role of the domestic work sector in the current labour market. Moreover, as cited in footnote no. 57 of the Report, "...it is symptomatic that all of the Global Reports dealing with the four categories of fundamental rights have singled out domestic workers as one of the groups of workers which are significantly affected by a rights deficit." With this in mind, and in consideration of a multilateral framework on the management of migration from a rights-based perspective, it is imperative that the ILO works effectively to bring domestic work out from the "twilight zone" it currently occupies between market and non-market relations.*

*The increasing feminization of migration evident in the domestic work sector, while freeing other women to enter into the formal economy often serves to only further institute the gendered discrimination of labour in the global economy.*

*We note with deep concern that in many countries, domestic work has yet to be recognized as work. The implications of this include non-coverage of domestic work under national labour legislation, human and labour rights violations, and most importantly, denial of the fundamental right of domestic workers is a key tool in combating the violations of all the fundamental principles and rights at work, including in respect of freedom from forced labour and non-discrimination.*

*Furthermore, the Report draws attention to the fact that, "In sectors where workers are well unionized and labour standards on working hours, health and*

*safety, wage and employment contracts are set and properly enforced, there is virtually no demand for forced and trafficked labour.”*

*Migrant women domestic workers are perhaps the most vulnerable sector of workers due to the multiple forms of discrimination they face – based on social identities of class, gender, race and citizenship – the confinement of domestic work to private households, and the “invisibility” and isolation of domestic workers. Migrant women domestic workers are often subject to the denial of decent work and living conditions, such as no rest-days, long and unregulated work hours, physical and sexual harassment and abuse, and denial of reproductive health rights. Such conditions pose additional obstacles to their self-representation and reinforce difficulties in organizing and engaging in collective bargaining.*

*The challenge the Report puts before us today is to recognize that “organizing domestic workers requires innovative strategies and approaches.” We are happy to note the Report’s citation of examples where migrant domestic workers have successfully organized, such as the Indonesian Migrant Workers Union (IMWU) in Hong Kong SAR, China – established in 1999 as the first grassroots-based union of Indonesian migrant women domestic workers. As Hong Kong labour legislation provides women domestic workers with equality of treatment, including the right to unionize, Indonesian migrant workers in Hong Kong enjoy the structural conditions necessary for their self-organization and representation. IMWU members not only engage in policy dialogue with the Hong Kong government, but they have been invited by the Indonesian parliament to debate on the formulation of national migration legislation. They have been thereby recognized as partners in policy formulation.*

*Mr. Chairperson:*

*We reiterate the Report’s statement that “the fundamental principle of freedom of association and the right to collective bargaining is a reflection of human dignity.” While recognizing their positive social and economic contributions to society, we urge the ILO and its social partners to promote the following measures and principles to ensure that migrant women*



*domestic workers are provided with decent living and working conditions:*

- 1) To adhere to the ILO Programme of Decent Work.*
- 2) The right to an immigration status that recognizes domestic work in private households as proper work.*
- 3) The right to full and non-discriminatory employment rights set out by a legally enforceable contract of employment, including minimum wages, rest days and holidays, decent hours of work, clear identification of responsibilities, privacy and social welfare benefits. These measures should be based on national labour and migration legislation consistent with the international labour standards.*
- 4) For States to promote the ratification and effective implementation of ILO Conventions No. 87 on Freedom of Association, No. 98 on the Right to Organize and Collective Bargaining, No. 97 on Migration for Employment, No. 143 Migrant Worker Supplementary Provisions, and the UN Migrant Workers Convention that calls for the protection of all migrant workers and members of their families.*
- 5) And finally Mr. Chairperson, to establish and implement best practices in recruitment, including the “joint and solidary liability” of employment and recruitment agencies.*

*Thank you Mr. Chairperson.*

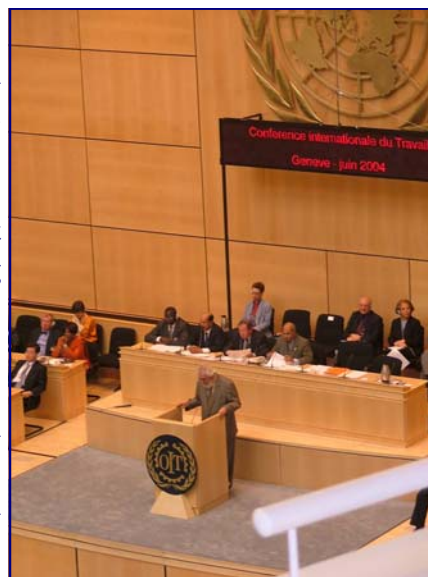
The MFA intervention was well accepted, and a number of delegates present at the discussion, including some government members, later approached the MFA delegation to acknowledge that urgent steps need to be taken to address the urgent needs and problems of domestic workers. To build momentum towards this kind of commitment is critical to the current debates on organizing in the informal sector where women workers constitute a significant number.

## **2. Committee on the Application of Standards (CAS): Information and Reports on the Application Conventions and Recommendations—Agenda Item III**

The Committee on the Application of Standards (CAS) meets every year at the ILC to examine issues concerning the ratification and general implementation of ILO Conventions. A primary focus of the CAS is the review of the annual report

submitted to the ILC by the Committee of Experts<sup>2</sup>, which has the responsibility to examine information and reports from member states submitted through various mechanisms (Articles 19, 22, and 35 of the Constitution) on the application of Conventions. When analyzing this report, the CAS draws up a list of country situations for in-depth discussion during its session.

This year, the Committee discussed 24 country-specific cases, including a case on the Indonesian government's compliance with Convention No. 29 on Forced Labour (1930, ratified by Indonesia in 1950), which was actively monitored by MFA.



In July 2003, MFA and its members the Indonesian Migrant Workers Union (IMWU) and Asian Migrant Centre (AMC) in Hong Kong had begun to strategize on how they could use the ILC supervisory system to raise IMWU's national advocacy on Indonesian migrants at the international level. We were concerned with the compulsory use of recruitment agencies for Indonesian migrants and the lack of rights-based migration legislation in Indonesia, which has created conditions of exploitation and forced labour for Indonesian migrant workers. In partnership with Antislavery International, MFA, IMWU and AMC decided to submit information in August 2003 on the Indonesian government's compliance with Convention No. 29 on Forced Labour to the ICFTU (See Appendix II for information submitted). The ICFTU in turn forwarded this information to the Committee of Experts, which subsequently issued an Observation on the issue as part of its annual report<sup>3</sup>, an abstract of which pertains to migrant workers reads as follows:

### **INDONESIA**

#### ***Convention No. 29: Forced Labour, 1930 (ratification: 1950)***

<sup>2</sup> Report on the Committee of Experts Report on the Application of Conventions and Recommendations (Report III (IA), International Labour Conference 92<sup>nd</sup> Session, 2004.

<sup>3</sup> To view the Observations concerning Indonesia on Convention No. 29, please see Report III (Part 1 A): *Application of International Labour Standards 2004 (1): Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference 92<sup>nd</sup> Session, 2004.



The Committee notes the Government's report. It also takes note of the comments of June 2003 by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention, a copy of which was sent to the Government on 5 September 2003, and of the Government's response thereto.

Trafficking in persons. In its comments, the ICFTU indicates that trafficking in persons, including for the purpose of forced prostitution, is widespread in Indonesia and that many migrants should be considered as victims of trafficking. According to the ICFTU, some sources suggest that as many as 20 per cent of the 5 million Indonesian migrant workers have fallen victim to this trafficking.

In reply, the Government states that the elimination of trafficking is not an easy task because it relates to cross-border crime. Among other measures to combat trafficking in persons, the Government mentions the formulation of bills on trafficking-related crimes. Furthermore, 200 special centres for combating trafficking and 19 integrated services needs to be further improved. The Government also indicates that since January 2003, the police has taken a number of measures to combat trafficking: development of cooperation with the ministries concerned; operations in prostitution areas; development of cooperation in combating child prostitution and return of the victims to their places of origin; settlement of numerous cases of trafficking. The Government expresses the hope that in view of the above information, the ICFTU will treat the issue of Indonesian migrant workers in a balanced manner by providing information on improper practices that may occur in the receiving countries.

The Committee takes due note of the measures already taken by the Government of combat trafficking in persons. It further notes that a National Action Plan was adopted on 3 December 2002 to abolish trafficking in women and children (Presidential Instruction No. 88/2002). The objectives of the above-mentioned plan are:

- 1) Legal norms and actions against traffickers of women and children;
- 2) Legally guaranteed rehabilitation and reintegration of the victims of trafficking;
- 3) Prevention of all forms of woman and child trafficking in the family and society;
- 4) Cooperation and coordination in the abolition of woman and child trafficking between institutions at the national and international levels.

The Committee also notes that the approval of laws on the abolition of woman and child trafficking, witness and victim protection, and migrant worker protection constitute one of the many targets of the plan. It requires the Government to provide information on the adoption of the draft legislation on crimes and trafficking to which the Government referred in its report, and on any other texts that may have been adopted to meet the objectives of the National Action Plan for abolishing woman and child trafficking. The Committee would also be grateful if the Government would provide information on any other measures taken under the plan, on the results obtained in combating trafficking in persons in general, and not only the trafficking in women and children (the sole target of the National Action Plan), and on any prosecutions brought for trafficking in persons for the purpose of labour exploitation with a view to punishing the offenders. The Committee recalls in this connection that, according to Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and any Member ratifying the Convention is required to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Though the CAS, in practice, had allowed unions outside of the official Workers Group to make oral interventions in exceptional circumstances, IMWU's request to intervene directly was not approved, which meant that it had to channel all inputs through the Workers Group. Led by IMWU, the MFA delegation worked hard to mobilize allies in the Committee to address this issue strongly and found active support from the Workers Group representative (from the FNV/ICFTU) leading the case, the Korean Confederation of Trade Unions (KCTU) and the Confederation of Indonesian Prosperity Trade Unions (Serikat Buruh Sejahtera Indonesia-SBSI).



The Indonesia case was discussed by the CAS on June 9, 2004. Following the Indonesian government's presentation on the case, the floor was opened to workers' and employers' organizations and governments for questions. While the KCTU representative cited examples of the severe abuses inflicted on Indonesian migrants by agencies that send migrants to Korea, SBSI highlighted how agencies often deceived migrants and suggested that the government adopt comprehensive

legislation based on international standards for the protection of migrant workers.

During its concluding comments, the Indonesian government representative failed to respond to most questions raised by the debate. The Workers Group representative for the case expressed disappointment that the government was not able to contest the observations of the Committee of Experts' Report. He cited information from IMWU on exorbitant fees charged by agencies, and stated that the government was co-responsible for the malpractices.



In its conclusions, the Committee expressed concern on the grave situation of migrant workers under forced labour conditions by recruitment agencies. It expressed hope that new legislation would be adopted by the Indonesian government in agreement with social actors, trade unions and organizations of migrant workers. It also requested the government to provide detailed information in its next report on the conditions of work of migrant workers imposed by recruitment agencies and on recently-concluded bilateral agreements.<sup>4</sup> (For an extract of the of the record on the Committee of Applications on *Convention No. 29: Forced Labour, 1930*, see Appendix III. Detailed version see 92<sup>nd</sup> Session ILC in ILO.org, Provisional Record 24 Part 2).

Though advocacy at the regional and national level must continue to follow up on these conclusions and bring real change in the Indonesian government policy on migration, this case has been seen as a success by MFA and IMWU for several reasons.

For one, MFA was able to successfully mobilize the understanding and support of the Workers Group on the problems of Indonesian migrant workers. Secondly, IMWU was recognized, in the interventions of the Workers Group, as a union. Third, the Committee stated that the Indonesian government should adopt new legislation in agreement with organizations of migrant workers. Fourth, this was

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<sup>4</sup> A full report of the proceedings on the discussion of the Committee on the Application of Standards on the Indonesia case on Convention 29 can be found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-24p2.pdf>

the first time that an all-migrant domestic worker, grassroots union had followed a national advocacy issue all the way from both the grassroots level (in Hong Kong SAR and Indonesia), through the ILO supervisory system, and to the Committee on the Application of Standards at the ILC.

And lastly, though IMWU had received much support from MFA, the ICFTU and Antislavery International, IMWU's self-advocacy through this process proves that it is possible for migrant workers themselves to access the ILO system, as long as they are able to access the necessary training/capacity-building and logistical support.

### ***3. Committee on Migrant Workers (MWC)—Agenda Item VI: General discussion based on an integrated approach***

The Governing Body of the ILO decided at its 283<sup>rd</sup> Session in March 2002 to place on the agenda of the 92<sup>nd</sup> Session (2004) of the ILC a general discussion on migrant workers based on an 'integrated approach,' covering issues on labour migration in an era of globalization; policies and structures for more orderly migration for employment; and improving migrant workers' protection through standard-setting.

To set the tone for the discussion, the International Labour Office had prepared a report entitled 'Towards a Fair Deal for Migrant Workers in the Global Economy'.<sup>5</sup> The report analyzed the challenges and dominant features of labour migration, the conditions and treatment of migrant workers, the impact and consequences of migration, the impact of international standards on conditions of migrants and the role of tripartism and social dialogue for governance and labour migration policy.



The Committee on Migrant Workers met for its first sitting on June 1, 2004 and

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<sup>5</sup> Report VI: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference, 92<sup>nd</sup> Session 2004, International Labour Office, Geneva.



held 15 sittings in all. It elected its officers as follows: Mr Y. De (Government member, Senegal) as Chairperson; Mr. J.de Regil (Employer member Mexico) and Ms S. Burrow (worker member, Australia) as Vice-Chairpersons; and, Mr. N. Kebbon (Government member, Sweden) as Reporter.

At its seventh sitting the Committee appointed a Drafting Group to draw up a draft resolution and draft conclusions based on views expressed during the plenary discussions, for consideration by the Committee. The Committee's work ends after the adoption of the draft report, which is published in the Provisional Record and then submitted to the Conference in plenary for adoption.

### ***3.1. Week 1: Discussion of the Office Report & Setting the Debate***

The Committee's discussion of the first week focused on the Report prepared by the International Labour Office around the following issues:<sup>6</sup>

First of all, the report highlights the fact that migration for employment is a growing global phenomenon. The committee was asked to discuss their opinions on this. If they agreed with this, they were asked to pinpoint dimensions that should be of particular concern for the ILO and its constituents.

The report mentioned that under certain conditions the cross-border movement of workers can be mutually beneficial for countries of employment and origin, and to the migrants themselves. However, according to the report, substantial numbers of women and men migrants are under exploitative conditions, deprived of their basic rights, and are often effectively excluded from social protection. The group discussed the policies needed to improve their conditions as well as ideas on what the ILO should do in terms of international regulation to fill the gaps in protection and how it should develop and employ its various means of action that would enhance their complementarity and impact.

The key to effective protection of migrant' rights is the effective rights based management of migration. The report explained that to achieve this, one needed coherent, transparent, and comprehensive national policies that enjoy broad public support, as well as greater cooperation between and among origin and host States. The committee also discussed what, apart from normative action, the ILO

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<sup>6</sup> A full report of the proceedings along the line of the four issues for discussion can be found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>

can do to promote such policies and best practices in the overall management of labour migration.

The group also discussed other action the ILO should consider in order to facilitate a regular international exchange of information and views on international migration and to contribute to the development of good governance of international migration.



NGOs were informed that they would be given one hour to speak after the Governments, Employers, and Workers had expressed their views. However, as the 'general discussion' of the social partners extended, the speaking time available to NGOs was reduced to a mere ten minutes.

Envisioning this might happen, MFA and MRI decided to make a joint declaration based on their ***Core Elements for an International Labour Conference Plan of Action on Migrant Workers***. The delegation focused its intervention on the need to promote an overall framework for labour migration that had human rights at its core. It highlighted the continuation of exploitative, discriminatory and xenophobic treatment received by many migrants due to class, gender, nationality, racial factors and position in the international power relations. The intervention also made specific calls to the ILO's social partners on: the application of norms and standards, promoting rights-based regular channels of labour migration, promoting equality of treatment of migrant workers and addressing racial discrimination, human rights approach to security considerations, gender dimension of labour migration, irregular migrants, freedom of association, temporary work and the GATS Mode 4, migration and development, and on the need to address the root causes of forced migration.

The intervention read as follows:

#### **The Overall Framework**

*The basic starting point for the discussion on the rights of migrant workers rests on the*

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universal principle that all human beings are born free and equal in dignity and rights.<sup>7</sup> All migrant workers are entitled to respect of this inherent dignity as human beings and as such to respect for their fundamental human rights. Therefore, in all policy considerations and recommendations for government, trade union and employers' action in the treatment of migrant workers, we affirm that the principles of equality and non-discrimination should prevail. We urge the ILO and its social partners to adopt a framework for action that promotes a policy environment with the necessary and enabling labour and social welfare policies to ensure that mobile people can migrate with rights and for their social, economic and cultural empowerment.



### **The Overall Context of Labour Migration**

Migration and the many social, economic and human rights issues that surround it are now part of critical global discourse. We note with deep concern that the exploitative, discriminatory and xenophobic treatment received by many migrant workers are often structural in character, reflected in legislation, policies and social attitudes and practices, and based on class, gender, race, ethnicity, nationality and position in the international power relations.<sup>8</sup> While there is still a lack of legal, transparent and rights-based channels for labour migration that are equally open to migrants, in many instances, migrant workers resort to desperate and dangerous ways of migration, including clandestine movements. These issues, combined with the continued erosion of minimal international standards pose serious challenges currently posed to the international community.

### **Migration and Globalization**

Indeed, globalization has widened economic inequalities within and between countries, further impoverishing masses of people, especially women, and placing them at risk to the demand for labour that is often low-paid and unprotected in labour-importing countries. In the pursuit for profit, the movement of capital across national borders is promoted and facilitated, but that of labour is restricted and controlled. The belief that migrant workers

<sup>7</sup> Universal Declaration of Human Rights.

<sup>8</sup> Declaration on Racism, Discrimination, Xenophobia and Related Intolerance Against Migrants and Trafficked Persons, adopted by the Asia-Pacific NGO Meeting for the Asia-Pacific Governmental Meeting of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Tehran, Iran, 18 February, 2001.

*are economically necessary but socially undesirable puts premium to economic gains while migrants' human and labour rights tend to be compromised and violated.<sup>9</sup> Not all migration for employment is undertaken as a result of the migrant's free choice. Poverty and insecurity often force migrants to unwillingly look for any work in order to survive.<sup>10</sup>*

MRI-MFA Calls and Recommendations:

### **On the Application of International Norms and Standards**

*All States should sign and ratify or accede to, and fully implement the principal international and regional instruments that protect the human rights of migrant workers and members of their families, including the ILO Convention No. 97 on Migration for Employment (Revised) (1949), the ILO Convention No. 143 also known as the Migrant Workers (Supplementary Provisions) Convention, 1975<sup>11</sup> and most especially, we call on all States to ratify and implement the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These international instruments, together with the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up, comprise a rights-based approach that must be inherent in the management of labour migration. Towards the universal ratification and full implementation of these standards, we urge the ILO and its social partners to launch campaigns to promote States' ratification and compliance with these Conventions.*

### **On Promoting Rights-based Regular Channels of Labour Migration**

*We stress the need for States to make regular, rights-based migration the main mode of labour migration. Towards this end, international standards must be translated into practice and reflected in national, multilateral and bilateral measures, such as bilateral agreements on labour migration, national migration and labour legislation, and standard employment contracts for migrant workers.*

### **On Promoting Equality of Treatment of Migrant Workers & Addressing Racism, Racial Discrimination, and Xenophobia**

*We urge States, Trade Unions and Employers to take concrete measures that would promote the equality of treatment of migrant workers and eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace. Migrant workers must be ensured their full equality before the law, including labour law. States must eliminate barriers to:*

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<sup>9</sup> NGO Declaration on Racism, Tehran, 2001.

<sup>10</sup> ILO, Facts on Migrant Labour, March 2004.

<sup>11</sup> Recommendation No. 86 on Migration for Employment (Revised) (1949), and the Migrant Workers Recommendation, No. 151 (1975).



*participation in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions.<sup>12</sup>*

### **On Human Rights Approach to Security Considerations**

*The implementation of national security measures in the treatment of migration, including labour migration, should have as their primary consideration the safety and human rights protection of all individuals. On this, the ILO could embark on a rights-based campaign on labour migration, promoting social dialogue and ensuring that human and labour rights take precedence over security considerations.*

### **On Gender Dimension of Labour Migration**

*We acknowledge that the patriarchal and sexist ideology framing the current international division of labour intensifies women's subordination, undervalues women's work and contributes to the feminization of poverty, labour migration and trafficking, perpetuates gender stereotypes and restricts women to reproductive work, work in the entertainment industry, and jobs that require "feminine" attributes in labour-importing countries. These factors place migrant women at greater risk than men to exploitative and discriminatory treatment. The current "feminization of migration" is characterized by the increasing number of women migrant workers as well as the increased participation of women in the labour economy. Currently, almost half of the total international migrants are women and they account for several billions of dollars of remittances received by developing countries annually. Yet women migrant workers are among the most vulnerable group of migrants, particularly those in irregular situation. Women migrant domestic workers are highly vulnerable to human rights abuses and labour exploitation.*

*The integration of the gender dimension is crucial when dealing with the issue of labour migration. States should therefore take special measures to address the human and labour rights situation of women migrant domestic workers, including coverage of domestic work within the scope of national labour and other laws, and the implementation of labour standards in dealing with domestic work.*

### **On Irregular or Undocumented Migrants**

*Based on the universal principles of human rights, States have the obligation to protect and promote the basic human rights of all persons subject to their jurisdiction, without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other*

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<sup>12</sup> Par. 29, Programme of Action of the world Conference Against Racism, Durban, September 2001.

opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.<sup>13</sup> Undocumented migrants, due to the absence of a secure legal status, are particularly vulnerable to exploitative labour practices, arbitrary detention and expulsion, physical, sexual, and other serious abuses of their human rights, which are further exacerbated by the lack of access to redress. States should therefore pay special attention to the protection of the human rights of irregular or undocumented migrants. States should also



provide for opportunities for the regularization of irregular migrant workers; and avoid migration management policies and procedures that further victimize irregular migrants.

For example, harsh crackdown measures of forcibly deporting irregular or undocumented migrant workers have only highlighted the desperate situation of migrant workers who have in some cases resorted to committing suicide. Cases like these are only a reflection of the extreme poverty, lack of job generation, and unscrupulous practice by some recruitment and placement agencies leading to indebtedness which further aggravates the desperate situation of the migrant workers.

### **On the Freedom of Association for Migrant Workers**

The right to freedom of association of migrant workers is a fundamental step towards the realization of the effective recognition of their right to collective bargaining.<sup>14</sup> This right should therefore be recognized, guaranteed and effectively implemented by States. The ILO Convention No. 87 on Freedom of Association and Protection of Migrant Workers and the ILO Convention No. 98 on the Right to Organize and Collective Bargaining establish and promote this right. The UN Migrant Workers Convention (Art. 26) provides for the right of migrant workers and members of their families, including those who are undocumented or in an irregular situation, to join trade unions and other associations, with a view to protecting their economic, social, cultural, and other interests. Furthermore, as a reflection of the strong commitment to fighting racism and racial discrimination at work,<sup>15</sup> trade unions have the responsibility to support this right to freedom of association by migrant workers –

<sup>13</sup> Art. 2, UDHR; Art. 1 CERD; Art. 7, UN Migrant Workers Convention, entry into force July 2003.

<sup>14</sup> "Organizing for Social Justice", Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2004.

<sup>15</sup> See ICFTU Report on the World Conference Against Racism, Durban, 2001.

*irrespective of their status – and to offer membership and active participation for them in trade union activities.*

#### **On Temporary Work, including GATS Mode 4**

*In the elaboration of multilateral, regional, and bilateral trade and labour agreements, including in the GATS Mode 4 at the WTO, the ILO should take the leadership in ensuring that international labour norms and standards are applied and taken into account in all these agreements. The multilateral framework for governance that is embodied by the UN and its specialized agencies such as the ILO – especially those with respect to human rights and sustainable development -- should take precedence and provide the parameters within which such trade agreements should take place and be implemented. The individual human rights of the worker, including access to legal rights and social security, should be guaranteed. By no means should these discussions treat the worker like a mere commodity to be traded.*

#### **On Migration and Development**

*The positive social, cultural, and economic role and contribution that migrants bring to their host countries and countries of origin as an important aspect of international migration should be recognized and valued by both home and host states. In 2002 alone, migrant workers sent home at least US\$88 billion through formal remittance channels, making remittances the second largest source of external finance for developing countries, next to foreign direct investment (FDI).*



*However, while it is true that remittances have brought about prosperity and have some impacts on poverty alleviation, in many cases these have come at a cost of great sacrifice, pain and even death. One needs only to monitor the number of dead bodies of migrant workers being repatriated to their home countries everyday.*

*Therefore, policies geared at harnessing the developmental impacts of remittances should give primary consideration to the welfare of the migrant workers and members of their families, as well as on medium to long term impacts on poverty alleviation, reintegration, social investment, macro-economic stability, and economic growth.<sup>16</sup> Towards this, the*

<sup>16</sup> International Conference on OFW Savings, Remittances and Economic Potential: A Challenge to Governance, Partnership and Development, October 28-30, 2003, Tagbilaran, Bohol, Philippines.

*collaboration and support of the governments, civil society organizations including the migrants themselves, and the private sector are indispensable.*

### **Addressing Root Causes of Forced Migration**

*While working towards the fundamental protection and promotion of migrant workers' rights, it is equally important to address the root causes of forced migration such as those linked to human rights violations, failed economic and fiscal policies, unfair trade relations, lack of good governance, corruption, and unsustainable development. While it is imperative to safeguard protection and standards for migrant workers in the host countries, including facilitating their integration to society, it is equally necessary to ensure the full responsibility of sending countries in protecting their workers abroad, improving the national economy, as well as providing incentives for savings and other facilities for the return and reintegration of the migrant workers.*



Discussions on the third day focused on the first two issues of the ILO report (the dimensions of labour migration and exploitation of women migrant workers). Halfway through the day, the MFA-MRI delegation was informed that there would be space to make another intervention. Following up with the first intervention and in response to the ongoing discussion, the delegation decided it was necessary to raise the issue of the feminization of migration. There is growing evidence in Asia on the adverse effects of this phenomenon, which has consequently created a need to look more closely at the social costs of migration. Highlighting these problems, while also recognizing the positive dimensions of migration on women's labour force, the intervention reflected how the positive dimensions of female migrant labour could be further enriched and brought to bear more constructively in the labour market and society. In particular, the intervention focused on the urgent need to recognize the dignity of domestic work, and it called on the CMW to take specific steps to protect the labour and human rights of domestic workers, including the right to a legally enforceable employment contract that is based on national labour and migration legislations.

Again, given the understanding that time would be of the essence here, the MFA-MRI delegation agreed to come up with a single statement. The statement read:



### ***Dignity and Respect for the Human Rights of Women Migrant Domestic Workers***

*Mr Chairman,*

*This Committee has aptly emphasized the feminization of migration. A large percentage of migrant women workers are in the service and entertainment sector. The need for a multilateral framework that upholds the application of standards is crucial to the debate of this Committee.*

*To put this in perspective, we note with deep concern that migrant women domestic workers in some host countries do not enjoy equality of treatment either with nationals or even among themselves. It is important for the ILO to recognize and promote the recognition of domestic work as work, and that national legislation be introduced which upholds labour standards emphasizing decent work conditions and the recognition of the dignity of domestic work.*

*The UN Special Rapporteur on the Human Rights of Migrants has aptly elaborated on this situation in her report to the 60<sup>th</sup> Session of the UN Commission of Human Rights highlighting the human and labour rights situation of women migrant domestic workers.*

*In reference to equality of treatment, Mr. Chairman, we call the attention of the Committee to our concern that the wages of migrant domestic workers are often negotiated according to one's country of origin and ethnicity. Ironically, these negotiations are tolerated at a bilateral level between sending and host countries. Currently, we are seeing a race to the bottom of the barrel in the wages of migrant domestic workers, which is a gross violation of the equality of treatment that this tripartite institution seeks to uphold.*

*Therefore Mr. Chairman, recognizing not only the vulnerabilities they face, but also their positive economic and social contribution to society, we call on all States to take the necessary steps to protect the rights of migrant domestic workers, particularly those of the undocumented.*

*In this light, we recommend to the Committee the following:*

- 1) Promotion of the ratification of ILO Conventions 97, 143, and the 1990 UN Migrant Workers' Convention that calls for the protection of all migrant workers and members of their families.*
- 2) The right to an immigration status that recognizes domestic work in private households as proper work.*
- 3) For states to consider legislation that ensures that migrant domestic workers' immigration status does not depend directly on their employment relationship with a given employer and that under certain circumstances workers may change*



employers.

- 4) *For states to take initiative to avoid indebtedness of migrant domestic workers,' including arrangement to have the recruitment costs covered by either the employers or recruitment agencies.*
- 5) *For states to ensure that recruitment agencies observe specific criteria in relating to migrant domestic workers' rights through the issuance of renewable licenses and establish watchdog arrangements.*
- 6) *The right to full and non-discriminatory employment rights including minimum wage, sickness and maternity pay, and pension rights.*
- 7) *The right to a legally enforceable contract of employment, setting out minimum wages, maximum hours of work and a clear identification of responsibilities. These contracts should be based on national labour and migration legislations.*
- 8) *The right to work free from fear of physical, sexual, or psychological abuse.*
- 9) *The right to recognition of qualification, trainings, and experience obtained in the home country.*
- 10) *The right to personal leisure time and a day off.*
- 11) *Finally, to encourage migrant domestic workers to unionize and organize among themselves, and build alliances with civil society organizations in promoting and defending their human and labour rights. On this, we call for ratification and effective implementation of ILO Convention Number 87 on Freedom of Association and Protection of Migrant Workers and ILO convention Number 98 on the Right to Organize and to Collective Bargaining.*

*Thank you Mr. Chairman.*

By the end of the first week, the discussion in the MWC was well underway, and there was a strong consensus among the social partners in the Committee that a global migration framework was imperative in order to respond to the current dynamic of international migration. What was still not clear at this stage, however, was how this framework would be undertaken.



Differences of opinion surfaced among some governments on the one side, and

among the workers and employers on the other. One issue raised was related to the overlapping of mandates between the International Organization for Migration (IOM) and the ILO. Similar initiatives being undertaken such as the Berne Initiative, the Geneva Group on International Migration, and the Global Commission on International Migration (GCIM), were also referred to. Some host country governments expressed their preference to wait and see how these initiatives played out rather than to have the ILO overstep itself in trying to manage labour migration. Some even stated that it was not within the mandate of the ILO to be managing migration.

As the discussion intensified, other concerns, such as national sovereignty and security, become focal points of the debate as each of the social partners either raised the issue or tried to alleviate the fears of those who raised it. Irregular migration and the question of how to curb it was carried through considerably in the debate at this stage.

None of the social partners however called for the formulation of new ILO standards on international migration. In fact, it was pointed out that the two existing standards, Convention Nos. 97 and 143, needed to be updated, revised and made more responsive to the current situation of international migration. It was also pointed out that the two ILO Conventions could be seen as complementary to the 1990 UN Convention on the Protection of All Migrant Workers and Member of Their Families.



Many governments from host countries were reluctant to look at any multi-lateral framework that would be binding, even though they recognized the need for policy formulation and standard setting at the international level, and compliance at the national level. Some even opposed calling for promotion of the ratification of the ILO Conventions on migration on the basis of them being out-dated. However, the Workers Group emphatically stated that the ILO Standards on migration were standards nonetheless, and that they provided for a minimum level of protection for the rights of the migrant worker. Furthermore, the fundamental conventions of the ILO are applicable even to the situation of the migrant worker and countries should take note of this in providing them a fair deal.

Knowing that this would be the last opportunity for NGOs to make an intervention before the CMW went into the drafting stage, the MFA-MRI delegation strategized on what they would like to see highlighted in their last intervention. For one, the delegation was concerned that although the ILO was unique in its tripartite structure among all the UN bodies, migrant support NGOs and migrants' organizations and unions continue to feel that there is limited space for NGO interaction with the ILO and its social partners. Hence, the MFA-MRI delegation decided to focus its intervention on the ILO as an institution and its social partners.

The MFA-MRI intervention emphasized the need for a rights-based multilateral framework, in which each of the social partners would have a specific role to play in collaboration with migrants and the migrant-support NGO community. The intervention also stressed that any framework to manage migration should promote human security, not just national security, and it should be credible to migrants and society. Recommendations included the need to establish and implement national migration legislation that is in harmony with other national policies (such as labour and health policies), and the need establish programmes that seek to transform negative social attitudes towards migrants.

The MFA-MRI statement read:

***A Call for a Rights-based Multilateral Framework  
on Labour Migration***

*In view of the current debates, we strongly believe that an effective rights-based management of migration within a multilateral framework is crucial for the protection of migrant workers. However, we are concerned that the current mode of migration management emphasizes strongly on national security and border control, which are found to be ineffective and only result to further exploitation, migrants' deaths, and contributes to the rise of racist and xenophobic sentiments. Any regime of migration management to be effective, not only must be credible to states, but it must be credible to migrants and society as well. The importance of managing migration must go beyond coordinating restrictive national*



*security policies among states but should rest on the larger framework of human security. Human security, as defined, compliments state security, enhances human rights and strengthens development.*

*In view of this, we believe that the ILO should take the leadership in the rights-based management of labour migration, which ensures the inherent dignity and human rights of all migrant workers and members of their families, based on the universal principles of equality of treatment and non-discrimination.*



*In this light, we make the following recommendations to the social partners of this tripartite institution:*

***For States parties:***

- 1) To establish and implement comprehensive national migration policies that protect migrants and their families in the entire migration process, which are consistent with universally-accepted human rights norms and principles. These policies should be coherent with policies on labour, foreign relations, health and social security, among others;*
- 2) To share and exchange information on the application of best practices already being implemented by some States;*
- 3) To promote and engage in dialogue between appropriate stakeholders, ministries and other relevant agencies of sending and host countries towards better protection of migrant workers;*
- 4) To recognize domestic work as work and to identify mechanisms for the regularization of irregular migrants,*
- 5) To accept the primary responsibility in responding to cases of violations, and providing access to urgent relief services, redress mechanisms and corrective measures;*
- 6) To establish and implement policies that promote the unionization of migrant workers, and remove obstacles to their self-organization and representation.*

***For Trade Unions:***

- 1) To engage in productive partnerships with migrant workers, NGOs and advocates in combating racism and discrimination and protecting the rights of migrants and their*



*families;*

- 2) *To encourage and support the organization and unionization of migrant workers themselves, including the implementation of measures to ensure their full and active participation and empowerment as workers and as social partners; these measures should take into account the restrictions to organizing faced by migrants, and also the situation of particularly vulnerable migrants, such as domestic workers and undocumented workers;*
- 3) *To launch campaigns for the ratification and effective implementation of ILO Conventions 97 (Migration for Employment), 143 (Migrant Workers- Supplementary Provisions), 87 (Freedom of Association) and 98 (Collective Bargaining), and the 1990 UN Migrant Workers Convention.*

**For Employers:**

- 1) *To adhere to the ILO Program on Decent Work;*
- 2) *To work with States in ensuring the application of human rights norms and principles and labour standards in the conduct of their enterprise, recruitment and treatment of workers, including observation of codes of recruitment practice, licenses and established monitoring arrangements,*
- 3) *To establish and implement best practices in recruitment, including the “joint and solidary liability” of employers and recruitment agencies,*

**For all ILO social partners:**

- 1) *To establish and implement programs that promote awareness among policy-makers and the general public on the phenomenon of labour migration and its consequences, and the positive economic, social and cultural roles and contributions of migrants and their families in the host and home countries. These are urgently required in order to transform social attitudes and public opinions, including the negative image often associated with migrants.*
- 2) *To provide accessible measures that allow for the integration of migrant communities within the host country while also providing for the economic and social reintegration of migrants in the home countries.*





While the debate continued inside the Committee, the MFA delegation continued to establish its links with more “friendly” governments during informal meetings and meals outside of the conference room. Unlike the group of industrialized country governments, the Africa Group, the Group of Gulf Cooperation Council (GCC) governments and GRULAC (the Latin American and Caribbean governments), the Asian governments did not meet as a group in the first week. It was important for MFA to touch base with our governments to get a sense of where they saw the discussions heading, and also to see if a friendly Asian government could be nominated for the Drafting Group.

MFA members also used this opportunity to touch base with their governments on ongoing national advocacies, and the need to promote policies, legislation and practices back home that were consistent with international standards.

### **3.2. Week 2—Drafting Phase**

In the first two days of the second week, the CMW did not convene as the designated Drafting Group sat in a closed meeting to draft the conclusions and recommendations. As expected, the government members of the Group consisted of one representative from each geographic region: the Philippines (Asia), Nigeria (Africa), Ireland (European Union), Mexico (GRULAC) and the United States.



### **3.3. Week 2—Discussion & Adoption of Draft Conclusions**

In the second week of the Conference, the draft document of conclusions and recommendations emanating from the ‘general discussion’ of the first week was presented to the MWC. Overnight, the social partners drafted and submitted amendments to the Committee Secretariat. Many governments, especially the European Union, USA, Canada, Australia, New Zealand and Japan, had submitted amendments to weaken the language even further, and there was a fear that there might be a complete breakdown in talks as these governments expressed resistance to the idea of having a rights-based multilateral framework.

During this period, a lot of time was spent meeting with governments and trying

to lobby with them in supporting the draft conclusions and recommendations. Ironically, however, a number of the government representatives of active sending countries have appeared to be inactive at this point. This compounded the fact that there were very few meetings of the Asian governments as a region compared to the other regions and groupings of states. Governments from the Northern region and industrialized countries largely dominated the debate in this second week.



The draft contained 36 paragraphs and from the very first sitting at the amendment stage, it was contested mainly by government representatives from the industrialized host countries, mainly the USA, Australia, Canada and the European Union. A number of times, the sittings were delayed because the Committee Chairs were caught up in trying to move the proceedings forward. It soon became clear to all that there were just too many amendments and that they could not all be tackled in debate given the allocated time frame. Compromises would have to be made if the process was to move ahead. The governments from the African region played a very constructive role through their interventions in the debate.

What was useful for the NGOs at this stage was to be able to monitor the debate, to look at the perspective that each amendment posed, where it was coming from, and how it was either accepted, withdrawn, negotiated, or rejected.

The outcome of the Migrant Workers Committee was seen as a victory for many within the ILO in advancing the cause of migrant workers, as it reaffirmed the need for the ILO to serve as the international, multi-lateral body to regulate labour migration. There is no doubt that the success can justifiably be attributed to the strong leadership of the Worker's Group Vice-Chairperson and the team that she was working with.

### **MFA Achievements at ILC and Beyond**

While the outcome of the Migrant Workers Committee was seen by the ILO itself and many of its social partners as a significant achievement, the participation of the MFA delegation in this Committee and in the overall ILC process also resulted in certain achievements for the network.

#### ***Alliances Built with the Workers Group, the ICFTU and Trade Unions***

At this ILC, MFA was able to effectively build alliances with the Workers Group, particularly the ICFTU, and with many trade unions. Both the Workers and NGOs were able to overcome obstacles that have traditionally prevented cooperation between the two sectors, e.g. the traditional reservations held by trade unions against NGOs, and the recognition among many migrant support NGOs and migrants organizations of the limitations of many trade union confederations in effectively advocating on migrants' cause. Several factors had contributed to this visible achievement: MFA and MRI had begun discussions with the ICFTU in advance of the ILC; MFA has members that are trade unions of migrant workers; MFA already had some experience in using the ILO supervisory system; and MFA members had interfaced with ILO's trade unions at previous Asia regional meetings of the ILO.

The set-up of the NGO-Workers Group Liaison with the MFA-MRI delegation was also an important factor that facilitated effective communication, sharing of ideas and lobby strategy between the two sectors. This interfacing/process enabled NGOs, on the one hand, to learn more about the complexities and challenges of working with unions within a tripartite structure and for trade unions on the other hand to learn more about the realities of migrants' situation on the ground, and how NGOs and migrants' organizations and unions respond to these.

MFA hopes to build on its experiences at this ILC and the alliances fostered with trade unions to further strengthen our partnership between MFA members (NGOs, unions, migrants' organizations) and national trade union confederations that are part of the ILO. Through continued dialogue, information exchange and possible partnerships in campaigns promoting migrants' rights and the ratification of ILO standards on migration between MFA and unions, the ILO's mandate for addressing all workers', including migrants, can be strengthened.

MFA is currently planning a conference in the South Asia region as part of the network's follow-up to the ILC. Among the agenda items for the conference will be a discussion of the ILC outcome and its implications for advocacy work in South Asia with unions and governments. As a sub-region South Asia has been traditionally slow to respond comprehensively to labour migration. MFA recognizes that the conclusions and recommendations issued by the ILC's Migrant Workers Committee need to be actively promoted within the sub-region. The planned conference would also hope to develop and activate advocacy agenda in the sub-region, based on both MFA's ongoing Programme of Action and the ILC's outcome.

***Development of MFA's Critique on Labour Migration and the ILO, and the Issuance of MFA Statements/Positions***

This was the first time MFA had attended the ILC and attempted to develop a systematic and comprehensive analysis on the ILO as an institution as a whole. Though some network members had limited experience in using the ILO's supervisory system, the participation of a nine-person delegation provided the network with an inside view of how the ILO functioned, its roles, limitations and potentials. The process forced MFA to develop a critique on the ILO and its ongoing debate on labour migration. The delegation found that there was a tendency for much of the discussion to remain in the realm of discourse on standards, general trends, situation and so forth, and it was slow to address specific actions that needed to be undertaken to respond to problems.

The MFA delegation also found there is a definite weakness in how the ILO operates with its slow, bureaucratic machinery, which cannot be expected to respond to specific and urgent cases of abuse. For example, even though the Committee on the Application of Standards issues recommendations that governments must respond to, advocates must wait until the following year at the earliest for stronger sanctions/recommendations to be imposed on the government.



Despite these limitations, however, MFA found that the ILO's tripartite structure



gives the institution a definite advantage over other UN and international agencies in that there is more space for the participation and voice of the migrant worker. If migrants and their unions are able to affiliate themselves under national confederations, and if they are given the necessary means for capacity-building and resources, there is much potential for their participation within this international body. In this respect, MFA feels that ILO can have a potentially larger impact on international labour migration policy than other UN bodies.

### ***Advocacy on Migrant Workers' Issues at the National, Regional & International Levels***

The participation of MFA members in the ILC served to elevate national advocacies to the international level. The 'Information and Reports on the Application of Conventions and Recommendations' is a standing committee of the ILC and it would be helpful given the capacity building resources for migrant worker NGOs to feed the Committee of Experts information on the abuses or non-compliance with ILO standards in the case of migrant workers. Competences can be built in the NGO community to gather and channel information that would bring out abuses, violations, and non-compliance against particular instruments under review or the fundamental ILO Conventions themselves.



After its participation in the ILC, IMWU will continue to actively follow up on the recommendations made by the committee of experts and the compliance of the Indonesian government with regard to those recommendations.

Connections established in Geneva with government representatives, often from the Ministry of Labour, can be later followed up. Advocates can use the conclusions outlined by the CMW, especially those in the plan of action, to pressure their governments to live up to their international commitments. For those governments, such as the Philippines and Hong Kong SAR, who were encouraged by MFA to share their "good practices" on labour migration, this lobbying process should hopefully serve to build better relationship with governments so that they can more effectively respond to migrants' problems at the national level.



With regard to advocacy on migrants' issues at the international level, MFA will be using the conclusions of the MWC for its monitoring and advocacy work in processes such as the Global Commission on Migration (GCIM), the ASEM Summit that will be held in Hanoi, Vietnam in September 2004, and the 5<sup>th</sup> Ministerial Conference of the WTO that will be held in Hong Kong SAR in September 2005.

### ***Capacity-building on International Lobbying***

Since the MFA delegation found its experience at the ILC useful in developing its analysis on labour migration, promoting its international advocacy on migrant workers, and building linkages with trade unions, it will be important for the network to popularize the outcome of the ILC, so that network members, including migrant workers themselves have an understanding of the ILO and the outcome of ILC 2004. MFA members need to be aware of these issues if they are going to advocate effectively. Only if active advocacy on the implementation of the MWC's recommendations is promoted at the national level by unions, MFA members and other NGOs will governments be obliged in taking responsive action for the promotion of migrant workers' rights.

MFA also plans to develop a more comprehensive programme to build the capacity of its members to understand the ILO, its standards, how to access its supervisory system, and how to develop effective participation in future ILCs. The MFA Regional Secretariat and key network members are currently developing a capacity-building programme on these issues, and it is also extending its ongoing education work on trade union development for migrants to include how to access the ILO.

Through its participation in the ILC, MFA was able to see the need to continue building alliances with unions; to continue to work with the ILO in emphasizing and monitoring human and labour rights standards; to be able to strengthen the network's advocacy at the regional and international levels; and, to use the UN mechanisms to further protect and promote the rights and welfare of migrant workers.

After much debate then the Committee on agenda item VI came up with the following conclusion and recommendations:

**International Labour Conference**  
**Ninety-second Session, Geneva, 2004**  
**22 Provisional Records**

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**Conclusions on a fair deal for migrant workers in a global economy**

**Issues and challenges**

5. The preparatory report for the present general discussion *Towards a fair deal for migrant workers in the global economy*, the rich and multifaceted discussion held in the Conference Committee as well as the report of the World Commission on the Social Dimension of Globalization reflect a clear consensus on the fact that international migration is increasingly important in the global economy of today. Nearly all countries today are affected by international migration, either as origin, transit or destination countries – and in many cases all these capacities. The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration and can work towards eliminating identifiable detriments of labour migration in collaboration with other international organizations.
6. Although migration has been a permanent phenomenon throughout history, international migration in the globalized economy is a growing and increasingly complex phenomenon. A very large part of contemporary migration is directly or indirectly related to the world of work. Of the 175 million people thought to be residing outside their countries of birth or citizenship, some 86 million are estimated to be economically active. Of these, 34 million are thought to be in developing regions. Women continue to constitute about half of all migrants, but most are now migrating on their own as primary income earners. Many people choose to migrate to improve their living standards and may migrate due to a lack of decent work opportunities at home; however, other factors contributing to migration include poverty, wars, famine and repression as well as population pressures and income inequalities. There are also instances of forced migration for work that should be eliminated.
7. Regional economic integration processes today provide opportunities for facilitating more productive use of labour within larger market spaces. Economic effects of

migration for employment are mainly beneficial, allowing for non-inflationary economic expansion, job creation and rejuvenation of populations. Perceptions of adverse immigration impacts are often unfounded or exaggerated, although particular sectors have experienced declines in wages and conditions. Effects of labour migration on countries of origin, particularly less developed countries, are more complex.

8. It is recognized that among many of the beneficial elements of labour migration are noninflationary economic expansion, job creation, growth and cross-fertilization of skills, technology exchange, rejuvenation of populations and stimulation of development through remittance flows. The ambition and the drive that motivate people to migrate generally help them to find jobs in many countries, work hard, and benefit both themselves and host country nationals. Demographic trends in some regions suggest that immigration will in some instances be an important component of a long-term solution to the anticipated problems raised by ageing. The ILO's Global Employment Agenda supports policies for economic growth and employment.
9. Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between migrant and national workers. In a significant number of cases unemployment rates, job security and wages differ between regular migrant workers and national workers.
10. The number of migrants in an irregular situation is rising, fuelled by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs ("3D-jobs") and lack of opportunities for regular labour migration. The absence of formal management for migration and national policies in some countries contributes to the increasing number of irregular migrants. The increase in trafficking, especially of women and children, poses a particular threat to human rights protections and creates new challenges for governments and the international community. Victims of trafficking face abusive and exploitative situations, often without effective access to legal protection. In some countries, some irregular migrant workers face similar situations, including sexual and physical harassment, debt bondage, retention of identity documents and threats of denunciation to the authorities, without effective access to legal protection. Private fee charging recruitment agencies are increasingly involved in international migration and despite efforts both at the national and international levels to regulate this market, some engage in unethical practices which may contribute to irregular migration, causing hardship to migrant workers.
11. Temporary workers and migrant domestic workers often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages.
12. The complex relationship between migration and development is another issue that is

attracting increasing attention. While the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent loss of critically skilled workers in many developing countries is nonetheless an increasing issue of concern. This involves the loss of scarce national economic resources that have been invested in education and training. There is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development in developing countries. Health-care capacity of a number of countries has been particularly affected by the departure of trained doctors and nurses. In addition to the economic costs, there are often social costs to the families of migrant workers, including family dislocation, children growing up without parents, disrupted schooling, and the spread of HIV/AIDS.

13. While returning migrant workers bring back skills, capital, experience and knowledge, these benefits from labour migration can be enhanced by appropriate and equitable conditions to support the return of migrants. Remittance flows represent the second largest source of external funding for developing countries after foreign direct investment; they are transfers of private individual earnings, and usually go towards improved housing, nutrition, schooling and health care. Many of these activities have a significant multiplier effect, with the potential to reduce poverty and expand decent work. Increased remittance flows should not substitute for sound macroeconomic policy, investment in public services and official development assistance (ODA). Improved policies and effective and targeted ODA are also required to reduce poverty in developing countries and to promote decent work as a central objective of national and international economic policies.

### **Policy approaches**

14. Acknowledging the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards or, as appropriate, guidelines, play an important role to make policies coherent, effective and fair. In that context, coherent, comprehensive, consistent and transparent policies are required to effectively manage migration. National policies and their administration must also be viable, adaptable, dynamic and flexible. All relevant ministries, and in particular labour ministries, merit a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account. Effective administration of labour migration requires structures and mechanisms with necessary competencies and capacities within these ministries. Structures and regular mechanisms for social dialogue on migration policy are necessary for meaningful involvement of representative employers' and workers' organizations. Mechanisms for consultation with civil society and migrant groups are also needed.
15. To be effective, credible and enforceable, national policy and practice regarding labour

migration and the protection of migrant workers require a sound legal foundation based on the rule of national and international law. A broad array of international labour standards contains principles and rights to guide national law and policy on managing labour migration and the protection of migrant workers. The Migration for Employment Convention, 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, in particular, call for cooperation among States, and measures to facilitate and control migration movements. They contain the underlying principle of equality of treatment between nationals and regular migrant workers, minimum standards of protection for all migrant workers, and provisions for participation of social partners in national policy formulation.

16. All migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status. The ILO Declaration makes specific reference to groups with special needs, specifically including migrant workers. Other ILO standards in areas such as employment, labour inspection, social security, maternity protection, wages, occupational safety and health, and private recruitment agencies as well as in such sectors as agriculture, construction and hotels and restaurants which traditionally employ a large number of migrant workers, also provide necessary guidance for national law and policy to ensure protection of migrant workers.
17. Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted. Important measures may include: entering into bilateral or multilateral agreements to provide social security coverage and benefits to regular migrant workers and, as appropriate, to migrant workers in irregular situations, in conformity with relevant international standards and practices; reflecting the differences in conditions facing men and women migrants through measures to improve conditions and reduce specific vulnerabilities faced by female migrants; promoting access to health care for migrant workers and their families, including promoting HIV/AIDS prevention; explicitly addressing discrimination and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban 2001); and facilitating economic, social and cultural integration of regular migrant workers and family members into host societies.
18. Employers confront numerous policy and practical challenges in employment of foreign workers, including: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic



workplaces; and assuring proper training and workplace protection in multilingual contexts.

19. For workers' organizations, labour migration poses particular concerns, notably: reaching migrant workers and organizing them into trade unions; ensuring solidarity between foreign and national workers, cooperating with employers to integrate migrants in multicultural workplaces; and obtaining access to policy forums to ensure that the views of men and women migrant workers are taken into account. Workers' organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights in destination countries.
20. Measures to combat trafficking in persons should be strengthened. These measures should include provisions for the prosecution of persons engaged in trafficking, protection of and assistance to victims, coordination between domestic and international investigations, as well as efforts to address the root causes of the problem in countries of origin, including access to regular labour migration channels and to decent work and social protection alternatives in origin countries. Countries can also contribute to these measures by developing policies to combat and prevent irregular migration.
21. Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration. Among urgent required components are measures to reduce the costs of remittance transfers as well as developing incentives to promote productive investment of remittances. Equitable measures need to be explored to mitigate the loss of critically skilled workers, particularly in the public sectors of developing countries. Consideration may be given to allocating development assistance to projects and programmes generating or increasing employment in decent conditions. Facilitating training and return of migrants, transfer of capital and technology by migrants, and migrant transnational business initiatives are other options that could be promoted.
22. While recognizing the sovereignty of States in determining their own migration policy, the need for international cooperation on migration, and in particular labour migration, among government and other stakeholders is manifested by the emergence of intergovernmental dialogue on migration policy in nearly every region of the world. This is evidenced by the current time-bound activities of the Berne Initiative and the Global Commission on International Migration, as well as ongoing policy dialogue activities under the auspices of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the ILO.
23. The ILO has for many years been actively engaged in many areas of labour migration policy, ranging from elaborating policy approaches on protecting departing migrant workers to offering advice on how to address problems of irregular migration. It manages technical cooperation projects, provides training for policy-makers and

administrators, and renders advisory services on policy development, legislation, and organizational development.

### **An ILO plan of action for migrant workers**

24. A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own migration policies, including determining entry into their territory and under which conditions migrants may remain. As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from: (i) promoting policies that give priority to economic growth and employment; and (ii) encouraging regular labour migration. It is recognized that this goal requires a commitment to adopt national policies aimed at equal treatment of migrant workers with nationals in respect of national labour laws and access to applicable social protections, combating the exploitation often associated with migrants in irregular status, and the promotion of basic human rights for all migrants. It is clear that closer cooperation among sovereign States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems. Many countries have requested technical assistance in improving their policies and legislation. In order to advance this agenda, the ILO and its constituents will carry out a plan of action in partnership with other relevant international organizations. The Office shall keep the ILO Governing Body and any other relevant ILO Committees informed of the progress of its implementation.

25. This plan of action shall include:

- Development of a non-binding multilateral framework for a rights-based approach to labour migration, which takes account of labour market, needs, proposing guidelines and principles for policies based on best practices and international standards;
- Identification of relevant action to be taken for a wider application of international labour standards and other relevant instruments;
- Support for implementation of the ILO Global Employment Agenda at national level;
- Capacity building, awareness raising and technical assistance;
- Strengthening social dialogue;
- Improving the information and knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their rights;
- Mechanisms to ensure ILO Governing Body follow-up of the plan of action and ILO

participation in relevant international initiatives concerning migration.

26. A high priority should be given to capacity building and technical assistance, in line with this plan of action.

### **A non-binding multilateral framework for migrant workers in a global economy**

27. In order to assist member States to develop more effective labour migration policies, the tripartite constituents have agreed to develop a non-binding multilateral framework for a rights-based approach to labour migration which takes account of national labour market needs. Such a framework will be drawn from, and based on, available information on policy and best practices in countries engaged in international migration, existing proposals to enhance the economic benefits of migration, relevant international labour standards, the 1998 Declaration on Fundamental Principles and Rights at Work and its follow-up, and other relevant international instruments. This framework should be of particular interest to countries emerging either as origin, destination or transit countries.

28. This framework will comprise international guidelines on best practices on areas including, but not limited to, the following:

- Having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration;
- Promoting managed migration for employment purposes, including bilateral and multilateral agreements between host countries and countries of origin addressing different aspects of migration such as admission procedures, flows, social security, family reunification possibilities, integration policy and return;
- Promoting managed migration to address the impact of an ageing population on national economies, where appropriate;
- Licensing and supervision of recruitment and contracting agencies for migrant workers in accordance with ILO Convention No. 181 and Recommendation No. 188, with the provision of clear and enforceable contracts by those agencies;
- Promoting decent work for migrant workers;
- Preventing abusive practices, migrant smuggling and trafficking in persons; Protecting and promoting the human rights of all migrant workers;
- Promoting measures to ensure that all migrant workers benefit from the Provisions of all relevant international labour standards;
- Promoting awareness of migrant workers' rights;
- Preventing and combating irregular labour migration;
- Improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation;

- Measures to reduce the cost of remittance transfers;
- Incentives to promote productive investment of remittances;
- Measures to ensure that all migrant workers are covered by national labour legislation and applicable social laws;
- Policies to encourage return migration, reintegration into the country of origin and transfer of capital and technology by migrants;
- Promoting guidelines for ethical recruitment of migrant workers and exploring mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both sending and receiving countries, including through bilateral and multilateral agreements;
- Addressing 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;
- Promoting social integration and inclusion, reducing discrimination against migrant workers and measures to combat racism and xenophobia;
- Facilitating the portability of social security entitlements and other relevant entitlements through bilateral, regional or multilateral agreements in relation to regular migrants;
- Promoting the recognition and accreditation of migrant workers' skills and qualifications, as appropriate, in order to enhance their employability.

29. The ILO, in consultation with Government members, the social partners and relevant experts will develop the guidelines contained in this non-binding multilateral framework for consideration by the ILO Governing Body in November 2005.

30. Recognizing the importance of work currently being carried out in the existing international forums in the area of migration, an ILO forum may be established in partnership with other relevant international organizations to provide a platform for increased tripartite dialogue on labour migration and increased policy coherence on this subject.

#### **International labour standards and other relevant instruments**

31. ILO Convention No. 97 has been ratified by 42 countries and Convention No. 143 has been ratified by 18 countries. The Office shall undertake to identify the impediments to the ratification of these Conventions, taking into account that labour migration has evolved since their inception, and other relevant instruments have been developed at national, regional and international levels, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of



Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000) and its two associated Protocols. The ILO may take appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and the application of the principles they contain pertaining to the protection of migrant workers. This initiative should also encompass other particularly relevant standards for migrant workers, including the fundamental ILO Conventions and ILO standards concerning private employment agencies, social security, protection of wages, labour inspection, and occupational safety and health.

32. Consistent with effective management of migration, due consideration should be given to the particular problems faced by irregular migrant workers and the vulnerability of such workers to abuse. It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily. Due consideration should also be given to the gender dimension in the application of relevant international labour standards, as well as to the various categories of temporary migrant workers, including seasonal workers.
33. Further research should be carried out on how to address some of the lacunae that have been identified in ILO standards on migrant workers, for example, through additional measures and guidelines for national legislation, policy and practice. Participants endorsed the conclusions of the 1997 Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration and called on the ILO to promote the implementation of the conclusions on migrant workers in time-bound activities.
34. The ILO shall periodically prepare and widely disseminate a report on the implementation of international labour standards relevant to migrant workers.

#### **Capacity building and technical assistance**

35. Considering the needs expressed by many member States for technical assistance in many areas of labour migration policy and administration, expanded advisory services and technical cooperation should be a key priority for the ILO to help governments and social partners formulate and give effect to national and regional policies and practices concerning labour migration. Such capacity building and technical assistance should, inter alia, further the following activities:
  - Support the development of gender-sensitive national migration policies;
  - Support member States in reviewing and updating laws and regulations, undertaking;
  - Practical measures on labour migration, and improving the functioning of administrative arrangements and enforcement mechanisms;

- Support member States in mitigating the circumstances driving migration through the generation of decent work opportunities in countries, including through the implementation of the ILO Global Employment Agenda at the national level;
- Help build capacity for monitoring labour migration at the national level;
- Support member States in capacity building for developing national databases concerning migrant workers;
- Strengthen the capacity of workers' and employers' organizations to participate in the formulation and implementation of labour migration and integration policies, and promote equal treatment of migrant workers;
- Promote awareness and better understanding of the ILO standards relevant to migrant workers and assist member States in conforming national labour migration policies and programmes to these standards;
- Develop and promote measures and activities to combat racism, discrimination and xenophobia;
- Promote awareness of labour rights;
- Strengthen labour legislation so as to ensure that it provides labour protection for migrant workers and protects labour principles and rights identified in relevant ILO Conventions and instruments;
- Strengthen the capacity of authorities, including labour inspection services and labour tribunals, to secure compliance with labour laws, with a particular focus on the situation of migrant workers, by building transparency, knowledge and professionalism, and by sharing best practices.

36. The ILO International Training Centre in Turin should be involved in the development and carrying out of these capacity-building activities and technical assistance projects.

#### **Development of a global knowledge base**

37. Together with its constituents and, as appropriate, in conjunction with other international organizations, the ILO should continue building a global knowledge base on international labour migration, focusing its research and strengthening its knowledge management tools in the following areas:

- Continued qualitative and quantitative research in areas of migration for employment, including on the gender dimensions of migration;
- Develop models for future information exchange on job openings and skills needs for foreign workers;
- Collection and dissemination of information and profiles of “best practices” in relevant categories of labour migration management and in integration policies;
- Specific assistance to constituents to improve and build capacity to collect and

analyse sex-disaggregated data;

- Cooperation and exchange among countries to improve migration statistics, particularly by expansion of the ILO's International Labour Migration Database;
- Studies of long-term labour market developments that are relevant to future migration flows, and adjustment policies to maximize mutual benefits.

### **Social dialogue**

38. ILO support is required to assist its member States and employers' and workers' organizations in establishing national mechanisms of social dialogue on migration, facilitating participation of social partners in relevant international forums, preparing educational materials, providing services to migrants, conducting anti-discrimination and integration activity, and addressing other concerns.

### **Follow-up**

39. The ILO Governing Body, as appropriate, shall periodically review the progress made in implementing these conclusions and plan of action. For this purpose, consideration may be given to the need to establish a Permanent Committee on Migration of the ILO Governing Body.
40. The ILO is expected to participate actively in relevant international forums and to enhance cooperation with other relevant international organizations for the furtherance of this plan of action.

## APPENDIX 1

### **Intervention made by Mr. Rekson Silaban, Union representative from SBSI, Indonesia:**

*Thank you chair,*

*My trade union SBSI hailed the government acknowledge regarding some difficulties they are facing in relation to migrant workers and trafficking issue, even though the government has introduced Presidential degree no 88/2000 and some other measures. But as data shown, the result of eradication still far from expectation due to many obstacles that links to another problem. Let's me explain what the information we got as a result of our recent visit to three regions lately in relation to migrant workers and trafficking issue. We visited three cities in Sumatera island that is; Jambi, Batam and Tanjung Balai. These cities situated as neighbored to Malaysia and Singapore, only 45 minutes away by boat to reach the border.*

*Through interviewed to some people such as; local government, recruitment agency, union and workers, we found that things make difficulties to combat trafficking because there is a connection between trafficking with some recruitment agencies which send many migrant workers with fake document. From the interviewed we made when visiting a training house of agency, we found that many of them have no identity cards. The agency often provided them fake identity with contrary with their situation such as; age, name, address, and marital status. As the consequence of this, many of them have to send through illegal way in order to avoid government and police border control and also to minimize some the departure cost. From city of Tanjung Balai it self there is at least 1 boat leave illegally every week with 10 to 20 passengers to Malaysia and Singapore. We are not mention what is practice in other borders.*

*Besides upon arrival in their country destination, they fear work in formal sector instead of some of them fell work as prostitution, because they have no idea where they have to work. This practice become phenomenon in this country given the fact as an island country Indonesia has thousand transit boarder island which difficult to monitor combined with continuation massive un-employment. Thanks to the government who had revoked licenses of some agencies that against the law, even though still many more agencies which continue to do illegal work without get punishment.*

*Other problem is related to lack capacity of local government to deal with problem particularly regards to lack of cross coordination between government it self. For instance, law enforcement on practice of fake identity card can be abolished but as long as effectiveness police border control remain weak, it will impossible to stop trafficking.*

*Refer to recent measures which have been taken by government by providing national action plan to combat trafficking we are very much happy if government can included the related union to participate in the action. From doing this we can have opportunity to have access to involve to eradicate the problem and more importantly we will know exactly what measures*



*has been done such as; how many cases came up since the committee being set up and how many persons has been punished and what is the road map which being prepare to tackling the problem.*

*Other things we insist the government to do all necessary effort to speedy up of passing the draft of law regard to replacement of migrant workers in abroad which had submitted to parliament one year ago. Due to problem have broader link to many sectors, we think the present of presidential degree no. 88/2000 will not sufficient to cover up all the potential problem that raised up in near future, it should protected by a comprehensive national legislation base on international UN standard which protected all migrant workers. That is why I will associate my self as well to support the all recommendation made by Indonesia migrant workers union which they had submitted to the ILO.*

*Thank you Mr. President!*

## APPENDIX II

### **Information submitted to ICFTU in August 2003 by Migrant Forum in Asia, Asian Migrant Centre, Indonesian Migrant Workers Union, and Antislavery International**

#### **Information on Indonesia:**

#### **Compliance with ILO Convention No. 29 on Forced Labour (ratified in 1950)**

Since the early 1980s, poverty, high unemployment and lack of educational opportunities have been driving Indonesian migrants abroad in search of work, and by the late 1990s, they were among the fastest-growing migrant population in Asia. By mid-2001, over 70 per cent of Indonesian migrants were women, and 43 per cent worked in the informal employment sector as domestic workers, factory workers or construction workers.<sup>17</sup>

Most Indonesians wishing to work abroad in jobs perceived as “low-status” or “unskilled” are officially required to go through over 400 government-sanctioned recruitment agencies, which seek to profit from the migrant trade. These agencies charge huge and often extortionate training, processing and placement fees, which make migrant workers severely indebted before they even start working abroad.

The compulsory requirement to sign contracts with recruitment agencies means that migrants have little or no power to negotiate the terms of their agreement and employment contract, including agency fees. Many migrants end up accepting whatever work they are offered, even if it is different to the work they were promised. Such conditions make them vulnerable to abuse and severe exploitation such as violence, being forced to work long hours and not being paid minimum wages. Through the combination of factors involved in this process, many migrants become bonded labourers.

The Indonesian Government's requirement for migrants to use the agency system, and its failure to provide adequate rights and legal protection makes them even more vulnerable to exploitation, abuse and forced labour, as defined in Article 2 of ILO Convention No. 29.<sup>18</sup>

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<sup>17</sup> Indonesia Country Report, *Asian Migrant Yearbook 2000*, The Asian Migrant Centre (AMC), November 2001, Hong Kong SAR.

<sup>18</sup> *Recommendations to the Indonesian Government for Improving Policy on Indonesian Migrant Workers*, Indonesian Migrant Workers Union, 16 August 2002, Jakarta, Indonesia.

## Forced Labour and Exploitation in the Migration Process

- **Pre-migration**

The agencies require prospective migrant workers to live in training camps for one to 14 months, where they are often forced to work for the agency staff as well as carry out other tasks such as cleaning, shopping and cooking. Though the Indonesian labour department has set minimal standards to regulate certain practices within these camps, these are rarely enforced. Restrictions are placed on migrants' freedom of movement, and conditions in the camps are poor, often leading to health problems for which there is little medical care. According to research conducted by the Centre for Indonesian Migrant Workers (CIMW) on conditions inside 100 such training camps, 68 per cent of girls/women interviewed were not provided with mattresses to sleep on; 62 per cent stated they received insufficient food; and nine per cent received no food at all. Though many training camps provided one toilet per 50 women, one training camp had 200 persons sharing a single toilet. Physical and sexual abuse were reported among 17 per cent of interviewees.<sup>19</sup>

The research also found that almost all workers interviewed had signed a contract in a foreign language (without translation) and were prevented from reading the contract. 41 per cent had been forced by agents to use false ages and addresses and three per cent had provided false names. 78 per cent of women interviewed had paid illegal fees to brokers of Rupiah (Rp) 100,000 (US\$12) to Rp seven million (US\$855). Despite enduring such risks and violations, there is no guarantee that all migrants would actually end up with a legitimate job abroad.

### **Case Study—Adek**

Adek's experience exemplifies what many migrant domestics have to go through at the hands of Indonesian recruitment agencies. Adek had contacted a broker in her hometown to help her go to Hong Kong, because she had heard from a relative that she could get a better job there and earn more money. The broker had taken her to an employment agency in Surabaya, East Java, where she had to pay Rp 390,000 (US \$44) for a medical test, a uniform, and Cantonese language books and cookery books.

Adek was sent to a training camp in Surabaya. There were around 1,000 women in this camp, many women in the camp came down with illnesses due to inadequate food and unsanitary water. One woman died through lack of medical care. Adek and the other women were forced to carry out tasks for the agency staff, cleaning duties, and undertake

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<sup>19</sup> *Training Camps for Potential Indonesian Migrant Women Workers: Study on the Conditions Inside Training Camps for Indonesian Migrant Workers in Jakarta*, Centre for Indonesian Migrant Worker, September 1999, Jakarta, Indonesia.

long hours of language tuition. During her four months in the camp, Adek was not allowed to leave, and her family was only allowed a few hours to visit her every two weeks. There were no telephones for Adek to contact her family, and letters were censored or taken away. Adek signed contract papers without these being explained to her.

Adek was taken to Hong Kong where she worked for five months without pay as this money went to repay the agency fees she “owed”. Adek also faced routine verbal abuse, was not allowed to leave the apartment and had only one rest day in nine months of employment.<sup>20</sup>

- **Onsite**

Agencies generate huge profits as migrants' exploitation continues after departing to host countries. Here they are in a situation of debt bondage and forced labour for the first one to 14 months. Migrants must pay off agency fees, which are usually extortionate, even though a legal maximum for such fees is set by the Indonesian Government. Migrants going to the Gulf must pay official fees of Rp 400,000 (US\$49) with a two to three months salary deduction. Those going to Taiwan must pay NT\$82,653 (US\$2,430) with a 21 month salary deduction in addition to brokers fees of NT\$60,000 (US\$1,760). Those going to Hong Kong must pay Rp 17,845,000 (US\$2,179), however, more than 50 per cent of migrants in Hong Kong pay excessive placement fees of up to HK\$21,000 (US\$2,699) with a four to seven month salary deduction.<sup>21</sup> Hence, even if Indonesian migrants are mistreated and forced to work long hours under harsh conditions, they cannot leave because of the contract they have signed and the money “owed” to agencies. Migrants who have had their rights violated, especially those who have signed contracts using false names, find it difficult to receive information and assistance from the Indonesian consulate authorities on how to pursue redress mechanisms.

According to baseline research, 48 per cent of Indonesian migrant workers are paid below the legal minimum wage, 61 per cent do not receive their weekly rest days, and 24 per cent have undergone physical and verbal abuse.<sup>22</sup>

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<sup>20</sup> It should be noted that, according to the research carried out by Asian Migrant Centre and Coalition for Migrants Rights, the majority of Indonesian migrants in Hong Kong receive two rest days per month.

<sup>21</sup> Indonesia Country Report, *Asian Migrant Yearbook 2001*, The Asian Migrant Centre (AMC), April 2002, Hong Kong SAR; and AMY 2000.

<sup>22</sup> *Baseline Research on Racial Discrimination Against Foreign Domestic Helpers*, Asian Migrant Centre and Coalition for Migrants Rights, February 2002, Hong Kong SAR.

<sup>23</sup> *Campaign for Fair Treatment of Indonesian Domestic Helpers in Hong Kong by Agencies Approved by the Hong Kong Labour Department*, Asian Migrant Centre, Amal Indonesia Direct and Coalition for Indonesian Migrant Workers Associations (KOTKIHO), 30 March 2001, Hong Kong SAR.



Migrants must also pay excessive agency fees in order to renew their employment contract. According to a survey conducted in Hong Kong, 89 per cent of respondents were charged fees higher than the legal maximum of HK\$367 (US\$47) set by the Hong Kong Government. The average fee paid by respondents was HK\$5,655 (US\$727), and 5% of respondents had even paid HK\$10,000 (US\$1,285).<sup>23</sup>

Article 66 of the Indonesian Government's Ministerial Decree No.104A/2002 has only served to worsen the situation by requiring low-status migrant workers to return to Indonesia to renew their contracts. This means they have to leave their jobs for two weeks and pay for their airfare and agency fees again rather than having their contract validated by the Indonesian Consulate in the host country.

- **Return**

Migrants continue to be exploited and discriminated against even as they return home. All returning migrants must return through the specially-designated Terminal 3 of Soekarno Hatta International Airport, where there have been reports of migrants experiencing rape and physical abuse and having to pay bribes in order to obtain basic information and services. Migrants are also required to be met upon arrival by their family members. If not, they must return home by transportation offered by agencies, which again involves paying fees ten times higher than public transportation.

### **Conclusions and Recommendations**

The compulsory use of recruitment agencies and the lack of rights-based legislation regulating the Indonesian migration process are facilitating the exploitation of Indonesian migrant workers. The forced use of agencies, payment of both legal and extortionate fees and signing of contracts with little or no ability to negotiate leads to a situation of debt bondage and compels many Indonesian migrants to work as *de facto* forced labourers, enduring exploitative conditions with little or no enjoyment of rights-based labour protections.

Some agencies are also using coercion and deception in recruiting and transporting migrants for work abroad where they can then exploit them. These agencies would therefore also come under the definition of traffickers as defined in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000 and should face the kind of punishments outlined in the Protocol.

There is currently no comprehensive law against trafficking and no specific national legislation for the protection of migrant workers in Indonesia. Furthermore, there does

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<sup>23</sup> *Campaign for Fair Treatment of Indonesian Domestic Helpers in Hong Kong by Agencies Approved by the Hong Kong Labour Department*, Asian Migrant Centre, Amal Indonesia Direct and Coalition for Indonesian Migrant Workers Associations (KOTKIHO), 30 March 2001, Hong Kong SAR.

not appear to be adequate and strictly enforced penalties against those perpetrating the use of forced labour, as required under Article 25 of the Convention.

In view of the above we urge the Indonesian Government to:

- a. Conduct a strategic review on the role of agencies in the recruitment process and their impact on migrant worker's rights; prosecute abusive agencies and traffickers; and make the necessary regulatory and policy changes to ensure the full protection of migrant workers in the deployment process, including removal of the Indonesian Government Policy 104A on Migration and the creation of new regulations for deployment consistent with international human rights standards.
- b. Ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families (1990), ILO Convention No. 97 concerning Migration for Employment (Revised 1949) and Convention No.181 concerning Private Employment Agencies (1997) and introduce comprehensive national legislation to protect all migrant workers in line with these Conventions and other appropriate international human rights standards. This national migration legislation should ensure:
  - (a) The creation of a National Commission on Migrant Workers' Rights with representation from migrant workers' organisations and unions and NGOs, and with specific responsibility for protecting migrants during the whole of the migration process, including recruitment, monitoring rights violations and abuses, and facilitating migrants' redress actions and reintegration.
  - (b) The funding and implementation of a compulsory programme of information and public education in conjunction with migrant workers' organisations and unions, national trade unions and NGOs in both sending and receiving countries for prospective and returning migrant workers and their families. This programme should be based on international human rights standards and include information on the realities of labour migration, migration processes and procedures, migrant workers rights, policies and laws in Indonesia and host countries, how to obtain assistance abroad and how to access economic alternatives to migration upon return.
3. Ratify the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000 and introduce domestic legislation to prohibit trafficking in all its forms and to provide support and protection to trafficked persons in line with articles 6, 7 and 8 of the Protocol.

### APPENDIX III

#### INDONESIA (ratification: 1950)

Turning to the issue of trafficking in persons, the Government representative stated that the problem could not be separated from the issue of the placement of Indonesian migrant workers abroad. The Minister's Decision No. 104 A/Men/2002 provided a legal basis for the sending of Indonesian workers abroad which allowed both the Government and the private sector to undertake the sending of those workers. The provision, among others, stated that only after fulfilling certain criteria could private companies obtain an official permit (SIUP) to be involved in the sending of workers abroad. In order to further ensure compliance to existing regulations, the Government had reviewed their activities and imposed sanctions on those violating the rules. So far, 61 labour-sending companies (PJTKI) had been sanctioned and some 53 permits (SIUPs) had been withdrawn. Reasons for the withdrawal included substandard labour training houses and the use of fake vocational training certificates. The Ministry of Manpower and Transmigration, in cooperation with the national and provincial police, had also raided several migrant workers' training accommodation after receiving information from the public. Further, the Government was still in the process of implementing the Indonesian National Plan of Action for Human Rights of 2004-09, which included the programme to improve the integrated efforts for child protection from trafficking and sexual exploitation. The Indonesian national police had expanded some of its facilities to be able to deal with the crime of human trafficking in women and children. The Indonesian Government had also conducted some training programmes for labour inspectors, aimed at increasing their awareness of the issue of trafficking in persons. The Government was also working to strengthen data collection on trafficking cases, and was in the process of harmonizing national laws, in particular the Criminal Code and the Law on Immigration, which, among others, would also address the issue of trafficking in persons. Furthermore, the Government had concluded agreements with some receiving countries, and had also provided programmes to improve migrant workers' technical skills. The recruitment process also had to include psychological tests.

The Government also joined efforts with the international community in addressing the issue of trafficking. The Government had launched a regional initiative in cooperation with the Australian Government and co-hosted the Regional Ministerial Conference on People Smuggling and Trafficking in Persons in 2002 and 2003 with a view to enhancing regional cooperation and establishing a regional mechanism in combating trafficking in persons. Realizing the need for an improved protection of Indonesian migrant workers, the Government had prepared a draft law on the placement and protection of Indonesian migrant workers which included, inter alia, increasing the minimum age for working abroad and putting stricter requirements for permit applications. In order to combat trafficking in persons more effectively, the Government was in the process of finalizing a draft law on the eradication of people trading and trafficking in persons. In conclusion, he

reiterated the commitment of the Government to eradicate forced labour and asked the international community, including the ILO, to continue to extend their assistance and cooperation.

With regard to trafficking of persons, the Worker members noted that a National Plan of Action for Human Rights had been established. They requested what the services established under the Plan had done so far and what results they had in fighting trafficking of persons. They also pointed out that prosecution of perpetrators was essential. They noted that the Indonesian police should be effective in dealing with those responsible for trafficking, given the efficiency with which they had arrested and locked up large numbers of alleged trade union troublemakers throughout the period of the Soeharto regime. Finally, they noted that the Memoranda of Understanding the Government had concluded with receiving countries of migrant workers did not contain clauses protecting workers' rights, as for example the very recent arrangement with Malaysia. The Memoranda of Understanding also excluded household workers. The lack of social protection in these agreements invited the exploitation of workers. With regard to abuses in the practice of recruiting migrant workers, the Worker members noted that the Government had apparently not reacted in its report to the Committee of Experts to the allegations or provided additional information on this matter. It appeared that migrant workers were required to pass through recruiting agencies before being sent abroad, which often charged exorbitant fees up to thousands of US dollars, as revealed by the Indonesian Migrant Workers' Union and other organizations representing the interests of migrant workers. They asked if the fees were subject to legislation, and if there was a maximum legal fee. They observed that it appeared that the Government was co responsible for the widespread malpractices as they required migrant workers to go through these agencies while failing to regulate or control their activities. The Government should review their legislation relevant to migrant workers and involve, in this process, not only employers' organizations and trade unions, but also migrant workers' unions and other organizations representing the interests of migrant workers. They should seek technical assistance of the ILO, including advice of the ILO on the possible ratification of the most important Migrant Workers' Conventions of the ILO and on the relevance of Convention No. 181 for the regulation of private employment agencies.

With regard to trafficking of persons, the Employer member noted that up to 25 per cent of migrant workers were concerned. According to the Government, the elimination of trafficking was not an easy task because it related to transnational crimes. Moreover, the professional competency of the officers responsible for combating trafficking needed to be improved. In this respect, the Employer members noted the National Plan of Action adopted in 2002 to combat trafficking in persons. They wondered whether the measures indicated therein were right and whether the measures would be taken in the right order. Therefore, they associated themselves with the Committee of Experts which had requested the Government to provide information on the measures taken under the plan and on their results. The Employer members recalled that the provisions under the penal code needed to be adopted, because the Convention expressly provided that the illegal exaction

of forced or compulsory labour was punishable as a penal offence. Turning to ICFTU allegations concerning the requirement for migrant workers to go through recruitment agencies and the exploitation of migrant workers due to the absence of legislation laying down rights and regulating the labour migration process, the Employer members noted that the Committee of Experts had not expressed its position, but it had requested the Government to supply its response. However, the Government representative had not supplied substantial information on this matter. Therefore, the Government should provide this information in a detailed report which would constitute the basis for the assessment whether there was progress and which further measures needed to be taken in this respect.

**The Worker member of the Republic of Korea** noted that, according to a series of interviews with Indonesian migrant workers in the Republic of Korea conducted by the Korean Confederation of Trade Unions, there were eight recruitment agencies that sent workers to the Republic of Korea. In order to become an industrial trainee in the Republic of Korea, Indonesians were required to sign contracts with these recruitment agencies and spend three to 12 months in training camps. As the Committee of Experts noted and as the interviews confirmed, these agencies charged extortionist amounts of training and processing fees. In the training camps, prospective migrant workers were forced to endure harsh, semimilitary training such as marches or runs in the compound and repeated lifting of logs, among other practices. There were reportedly instances where those who were late for training sessions had been physically beaten. In comparison to such training courses, it was found that these agencies were in most cases unfit to provide education courses that would substantially help those migrant workers during their stay in the Republic of Korea, such as language or cultural education or training on the rights of industrial trainees in the Republic of Korea. According to the interviews, recruitment agencies required prospective migrant workers headed for the Republic of Korea to pay US\$3,000 when they signed their contracts. Of this fee, US\$750 to US\$1,000 was received as a deposit, and was used to guarantee that prospective migrant workers were unable to leave their host country. If a migrant worker indeed left the company, the deposit was not returned. Unfortunately, around 50 per cent of all industrial trainees left their host country because of low wages, bad working conditions and discriminatory, sometimes abusive treatment in the Republic of Korea. This indicated a situation where migrants were trapped in a dilemma between enduring harsh and unjust conditions and losing their deposit in the hope of finding a better job elsewhere as undocumented workers. In either case, agencies profited at the expense of prospective migrant workers, which was the reason why many agencies deceived workers when describing the conditions of industrial trainees in the Republic of Korea. Moreover, some of the agencies forced prospective migrant workers to sign blank contracts just before departure. Most workers signed them because they had no negotiating power to insist upon the terms or conditions of their employment. The Indonesian Government required that migrants used the services of recruitment agencies although these agencies did not provide the necessary -C. 29 24 Part 2/9 education to prospective migrant workers in the Republic of Korea and exposed them to abuse, exploitation and forced labour. While these interviews were not conclusive, they



pointed to a strong need for a comprehensive survey and review of migration processes for Indonesians from the perspective of labour and human rights. The speaker urged the regulation and monitoring of recruitment agencies and training camps in order for measures to be taken to rectify such practices.

**The Worker member of Indonesia** noted that difficulties remained with respect to migrant workers and trafficking in persons in Indonesia, even though the Government introduced Presidential Decree No. 88/2000 along with other measures. Yet the facts demonstrated that eradication of these problems was still far from attained and many obstacles remained. His union, the SBSI recently visited three cities in Sumatra to investigate the issue of migrant workers and trafficking in persons. Through interviews with local government officials, recruitment agencies, unions and workers, the SBSI found that it was difficult to combat trafficking because some recruitment agencies sent migrant workers abroad with fake documentation. In fact, many workers did not have identity cards. One agency, for example, even falsified the age, name, address and marital status of the workers. As a result, many workers were transported by illegal means in order to avoid government and police border controls and to minimize travel costs. In the city of Tanjung Balai, at least one boat left illegally every week with 10-20 passengers headed for Malaysia and Singapore. Upon arrival in the host country, workers feared taking jobs in the formal sector and some fell into prostitution because they did not know where to find work. This was a particular problem in Indonesia because there were numerous transit border islands and massive unemployment. The speaker thanked the Government for revoking the licenses of some illegal agencies, even though many more agencies continued to operate with impunity. Another obstacle was the inability of local governments to address the problem because of a lack of coordination between them. For instance, even if the authorities could abolish the production of fraudulent identity cards, it would nonetheless be impossible to stop trafficking if police border controls remained weak. With respect to the Government's recent action plan to combat trafficking in persons, he requested that unions be consulted. This would give them the opportunity to contribute to eradicating the problem and more importantly would allow them to keep track of the number of cases that had been dealt with, how many persons had been punished and the proposed plan for tackling the problem. The Government should make every effort to hasten the adoption of the draft law on the placement of migrant workers abroad, which was submitted, to Parliament one year ago. Because this was a multifaceted issue, Presidential Decree No. 88/2000 was not sufficient to address all the potential problems that would arise in the future. He suggested that the Government should adopt comprehensive national legislation based on international standards for the protection of migrant workers. In conclusion, he supported the recommendations submitted to the ILO by the Indonesian Migrant Workers' Union.

**The Committee noted the information provided by the Government representative and the debate that followed. The Committee noted with concern that the issues raised by the Committee of C. 29 24 Part 2/10 Experts related to grave situations of the trafficking in persons, forced labour by children on fishing platforms and the**

exploitation of migrant workers under forced labour conditions by recruitment agencies. The Committee also noted with concern that the Act on the trafficking in persons had not yet been adopted. Taking into account the magnitude of the phenomenon, which concerned women and children in particular, and the need to punish the persons who were responsible for such trafficking, the Committee expressed the hope that the new legislation would be adopted in agreement with the social actors, trade unions and organizations of migrant workers, and with ILO technical assistance, and that the Government would also be in a position to provide information on its application in practice. The Committee urged the Government to take strong measures, proportional to the magnitude and gravity of the problems examined, particularly to impose sanctions on those responsible for practices of forced labour. The Committee expressed the hope that the Government would provide detailed information in its next report, especially on the conditions of work of migrant workers, placed by recruitment agencies and on the bilateral agreements concluded, which needed to protect the rights of migrant workers.