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No one is illegal.
Declaration of Unity of the International Conference of Migrant Service Providers on Undocumented Migrants and the Current Global Economic Crisis in Seoul, South Korea on July 16-17, 2010

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About this Issue
The Asia Pacific Mission for Migrants held the International Conference of Migrant Service Providers on Undocumented Migrants and the Current Global Economic Crisis in Seoul, South Korea last July 16-17, 2011.

The international consultation discussed at length the practices by which many service providers and migrants’ rights advocates assist and render services specifically to undocumented migrants.

The issue of undocumented migrants remains a volatile yet very urgent concern especially with the worsening of the global economic crisis. Migrant workers are the first to suffer in host countries and many of them add to the already ballooning yet undetermined number of undocumented migrants.

The conference provided the platform for a rich discussion on the issues and concerns of undocumented migrants and the development of a campaign to uphold and defend the rights of undocumented migrants and their families.

About Migrant Monitor
The Migrant Monitor is the official magazine of the Asia Pacific Mission for Migrants that collates and publishes papers and articles of various individuals and organizations on a specific concern or issue of migration.

It aims to provide the reader a comprehensive view on the issue, this time on the role service providers play in supporting undocumented migrants.
Declaration of Unity

of the International Conference of Migrants Service Providers on Undocumented Migrants and the Current Global Economic Crisis in Seoul, South Korea on July 16-17, 2010

We, grassroots migrant organizations and unions, migrants’ rights advocates and service providers gather together in Seoul, South Korea this July 16-17, 2010 for the International Conference of Migrants Service Providers on Undocumented Migrants and the Current Global Economic Crisis.

This conference we hold is a continuation of the regional conference held in Malaysia last 2003 where we shared experiences and united on analyses and strategies in dealing with the phenomenon of undocumented migrants.

We gather this time with the aims of knowing the current situation of undocumented migrants, sharing experiences in providing services to them and discerning the direction of our common tasks and strengthening our solidarity with one another and with all migrants.

As participants to this Conference, we hereby declare:

Whereas, the phenomenon of undocumented migrants is caused by the failure of governments of both labor-sending and labor-importing countries to uphold the rights and welfare of migrants;

Whereas, these governments have enforced exploitative and oppressive immigration and labor policies on migrants to maximize profits out of cheap labor;

Whereas, refugees and other migrants become easy prey of labor exploitation at the borders, especially those coming from countries of conflict;

Whereas, programs and services given by service providers have afforded avenues to undocumented migrants for redress of grievances through legal and supra-legal assistance, counseling services, shelter for those out of job, victimized and sick, labor education, communication, research and advocacy for human rights and recognition as productive inhabitants of society and other humanitarian services necessary for their well-being;

Whereas, these programs and services initiated are borne out of the deep commitment for social justice and the respect of human rights enshrined in the Universal Declaration of Human Rights of which these governments are signatories and specifically the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

RESOLVED AS IT IS HEREBY RESOLVED that we participants take on the challenge to advance the campaign against the unabated discrimination, abuse and exploitation, arrest, detention and summary deportation of undocumented migrants through the following actions and resolutions:

1) Launch campaigns against government crackdowns, ADD (arrest, detention and deportation) and all forms of attacks and violations of undocumented migrants. We shall release statements and urgent appeals, hold actions whether individually or jointly and conduct other activities possible. In concrete, hold a protest against the Thai government who is currently planning massive crackdown on undocumented migrants;

2) Hold fact finding missions about the conditions of undocumented
migrants, specifically the crackdowns conducted by host governments, and use the results from these missions in engaging with governments and inter-governmental institutions such as the United Nations;

3) Study how impacts of the global economic crisis on undocumented migrants and the policy changes (i.e. bilateral agreements, national labor policies, etc.) at the governmental and inter-governmental levels. Use this information for education of migrant workers, as basis for dialogue with trade unions and other groups, and strategic methods in amending pro-migrant legislation;

4) Develop an internet-based mailing network for communication and information exchange, especially of statements, appeals, stories of best practices and case study experiences. Ensure translation in due consideration of non-English speaking organizations and individuals;

5) Strengthen solidarity and alliance among unions of local and migrant organizations in the destination countries as well as those existing between home and destination countries. Specifically, establish a network of service providers, NGOs and trade unions as well as strengthen outreach programs to undocumented migrants;

6) Use Universal Declaration on Human Rights and other existing international conventions in raising the issue of undocumented migrants. Maximize certain inter-governmental agencies in filing complaints regarding attacks on undocumented migrants and advancing the campaign for their protection;

7) Plan actions against the G20 summit happening in Seoul, South Korea this November 2010. Release a statement that shall aim to gather local and international support with specific concern on the intensified crackdown on undocumented migrants in Korea. Maximize the media in publicizing the campaign and gathering support;

8) Mobilize for the International Assembly of Migrants and Refugees in Mexico, November 2010.

Signed this 17th of July, 2010 at the Academy House, Seoul, South Korea.
The Need for Service Provision and Its Role in the Strengthening of the Migrant Movement

I would like to first thank the organizers of this conference, the Asia Pacific Mission for Migrants (APMM), Presbyterian Church of the Republic of Korea (PROK), Osan Migrants Centre, Migrants Trade Union (MTU) and Friends of Asia for inviting the International Migrants Alliance to this very important gathering on Asia Pacific Conference of Service Providers on Undocumented Migrants.

I am very grateful to be assigned by the organizers to talk about the needs for service provision and its role in strengthening migrants’ movement. In the midst of financial global crisis caused by the greed of monopoly capitalist countries, this agenda has become very urgent to be discussed by migrant workers and our service providers in order to cope with its consequences where migrant workers are exploited intensively and the number of undocumented migrants is on the rise. Poor people all over the world are left with no options in their home countries and forced to migrate in order to survive. However, on the other hand, most governments impose increasing controls and restrictions to limit the rights of migrants to work, stay, receive decent treatment and be treated equally with local workers. I am also hoping, as service providers, all of you will be able to consider the proposed recommendations in the last part of my presentation.

Migrant workers are not the cause of the crisis, but the impact of the crisis on them is inevitable. The intensification of exploitation to extract more profits for big business and imperialist countries has created new level in this phenomenon in which migrant workers worldwide are increasingly vulnerable, disposable and at ever increasing risks of becoming undocumented. It means both migrants and service providers are confronted with greater challenges.

Eni Lestari is the chairperson of the International Migrants Alliance. She has been a domestic worker in Hong Kong for 14 years now.
For migrants, our challenge lies in how to continue organizing migrant workers, documented or undocumented, and strengthening the movement to defend our eroding rights and welfare, which continue to be threatened by sending and receiving governments and international institutions, like the Global Forum on Migration and Development (GFMD). For many years despite all the conventions and agreements which in theory, were to protect and uphold our fundamental rights—as migrant workers, women and human beings—the reality is that these rights continue to be denied and violated. Now they are intentioned using their own crisis as an excuse to further deprive us of our rights through various regulations, policies and practices that treat us like commodities for export, cheap labor and modern slaves with no human rights. As members of the United Nations, it is hypocritical of member states to claim to be enforcers of human rights yet are the biggest culprits in abusing the human rights of migrant workers and other displaced people.

For service providers, the challenge is how to continue servicing migrant workers and displaced people, whether documented or undocumented, as individuals or groups, empowering them to know and fight for their rights, and assisting in strengthening migrants’ movements at multiple levels. They are also under State pressure to assist migrant workers, particularly the undocumented. Recipient governments openly threaten to charge them with criminal offences for assisting and accommodating the undocumented and promote racism and xenophobia among local communities, resulting to the social panic against migrants. This makes it harder for migrant workers and service providers to be visible and to get support for our cause.

And I believe that this gathering is aimed at finding answers to those challenges. To proceed, I strongly suggest that your initiatives are collectivized in terms of perspectives and approaches, in order to effectively serve the needs of migrants, especially the undocumented. At the same time, you can also support the development of migrants and their organizations, boosting their abilities to lead their own movement. Sharing experiences with you as a grassroot migrant, my role today is to provide insights of migrant aspirations.

To begin, I will relate my own personal experience as a migrant, my role today is to provide insights of migrant aspirations.

**From victim to organizer**

Ten years ago, I was forced to leave Indonesia and work as domestic worker to Hong Kong after the small business owned by my parent crashed during the Asian Financial Crisis in 1997. Like many other migrant workers, I needed to support my family and relieve them from debt, while my desires to further my education were set aside. The only wish I had at that time was to be able to get a good employer who would treat me decently, like a human being and respect my rights and dignity. I was also hoping that the Indonesian government would protect me.

But this was not to be. As part of the Indonesian national policy, I had to register with a private recruitment agency in Indonesia and be confined in its training centre throughout the processing period. For five months, I was not allowed to step outside the centre and had to rely on the visits of my parents to bring my basic necessities. Because of the “training” which I believed should be provided free by the Indonesian government, all prospective migrant workers are subject to the agency’s whim throughout migration. In turn, migrant workers to Hong Kong and other destination countries are made to bear very high placement fees through salary deductions for between 3 to 15 months or more, during their overseas employment.

To ensure the repayment of this arbitrary debt and to control my freedom to change employer or agency, my passport and employment contract were immediately confiscated and withheld by the receiving agency upon my arrival, and for the rest of my employment in HK. During my first contract, I was underpaid, maltreated, given one rest day a month, inadequate food and poor accommodation, such as sharing a very small room with their teenage son and sleeping without a mattress on bed planks. I was forbidden from worshipping and communicating with others; I was also required to work illegally in their shop.

After completing my first three months of employment, I had my first rest day and I met with Indonesian friends who had come from the same recruitment agency in Indonesia. In desperation, I asked for their help but none of them knew where to seek assistance. At the same time, there were no printed information anywhere in public places where Indonesians gathered, to learn of our rights as foreign domestic workers in Hong Kong.

Finally, through the assistance of an Indonesian friend, I got the number of Bethune House Migrant Women’s Refuge, a shelter for distressed migrant workers in Hong Kong. After many telephone consultations with Bethune House, I decided to run away 6.5 months later and terminate my contract on the basis of multiple contract violations. I
stayed at Bethune House and with their assistance, filed a case against my former employer at the Labour Department. It was here, a place which became my second home, that the transformation from victim to organizer took place.

**How the shelter helped and empowered me**

My case took five months to settle and as part of the Hong Kong Immigration policy, I was not allowed to work during this period and was completely dependent on the shelter for accommodation, food and legal advice. Staying in the shelter gave me the opportunity to understand completely the problems encountered by foreign domestic workers of different nationalities stemming from existing regulations of both Hong Kong and sending governments. My motivation and enthusiasm to learn was welcomed by the shelter management that provided empowerment programs, such as paralegal training, case management, exposure to different government departments and integration with migrant’s organizations of different nationalities. The shelter was no longer only a physical space to me but also space for learning, connecting and collectivizing. This experience changed me politically by giving me another worldview of how we can play a role in bringing about change, through the sharing of knowledge and assistance to other Indonesians in need. That was how the Association of Indonesian Migrant Workers in Hong Kong came about in 2000.

In this process, the staff of Bethune House provided us with guidance, advice and training in every step of the way, including training in organizing and leadership, sharing and learning from leaders of other organizations and preparing documents like the organization’s constitution and other official requirements.

Furthermore, after establishment, the shelter and other supporting institutions like the APMM and Mission for Migrant Workers continued to assist and guide us in developing our organization through outreaching to broader Indonesian migrants and encouraging us to work closely with migrant groups of different nationalities under the umbrella of Asian Migrants Coordinating Body (AMCB), an alliance of migrant’s organizations from Philippines, Indonesia, Thailand, Sri Lanka and Nepal in HK. Their contribution to the development of ATKI includes the following examples:

When we faced harassment from the Indonesian consulate and Hong Kong-based agencies that wanted to stop us from organizing among ourselves, the above organizations helped to register and legalize our organization with the Hong Kong government; and their staff were physically present in the park with us, to confront the harassment that we encountered, and to help boost our sense of confidence.

The APMM and the Mission for Migrant Workers helped us to develop our initial programs and activities for the organization, including organizing a public forum, publishing a newspaper, writing proposals for fund raising, etc.

They assisted in organizing a study of the exploitative practices involving Indonesian migrants and they helped to identify the best strategies to counter these through campaigning, advocacy and lobbying with both governments.

They facilitated and guided us in developing networks with other Indonesian groups in HK and in Indonesia and other local, regional and international networks.

They also provided continuing guidance in organizational management through regular consultations. As they paved the way for migrant workers to develop their own movement, they did not at any time patronize us or dictate what
we should do but always listened carefully to our ideas and supported their initiatives. They stood beside us and always there when we needed help. From the above, you can at least imagine the variety of assistance needed by migrant workers to enable them to exercise their rights and the vital role of service providers in this process.

The current situation of migrant workers

History has spoken when the monopoly capitalists suffer from economic and financial crises of their own making, but then, the poor suffer too. They are forced to bear the brunt of the crisis as migrant workers all over the world are the first to be sacrificed. In this current crisis, we witnessed how governments who promote neo-liberal globalization bailed out big business at the expense of its own people and migrant workers. The following are some cases of migrant workers’ situation in the crisis:

Retrenchment and deportation

Hundreds of migrant workers especially the undocumented in different countries such as in Korea, Taiwan, Middle East, US and Europe were laid off and deported without being paid. Dozens of undocumented migrant workers from Bangladesh who worked at a factory in Lebanon were arrested and deported, and the Lebanese government refused to facilitate when they filed legal cases for payment from their home country, against the company.

Border control and restriction of stay

Receiving governments have increased barriers to entry by limiting further the jobs that migrants can undertake, shortening their

“The intensity of repression has accelerated awareness among migrant workers and led to the emergence of various types of resistance, at both individual and collective levels. Thus, the intervention of service providers to assist in addressing the said problems and facilitate migrants’ initiatives is imperative and urgent.”
period of stay and tightening other immigration regulations. Some governments openly mobilize civilian militia in harassing and arresting undocumented migrants and displaced people, like in Malaysia and Macau.

**Obstruction of migrant worker entitlements to decent wages and other benefits**

Sending countries have intensified their labor export targets without ensuring the welfare of migrants abroad to earn more revenue and remittances, reduce unemployment and minimizing social unrest due to pervasive poverty. The Indonesian government targets 1 million people per year while the Filipino government’s target is 2 million per year.

In addition to the above, the formation of the GFMD has become the greatest threat to all migrant workers worldwide. All decisions taken by GFMD will surely erode our rights further. For sending countries, GFMD’s policies mean the intensification of labour export targets and programs in exchange for remittances. For the recipient governments and monopoly capitalists, GFMD ensures a continuous supply of cheap disposable labor without obligation to provide basic rights. With the GFMD, migrant workers are treated like commodities for export or as modern slaves.

The tightening of immigration regulations, limitations of options and the intensification of exploitation in this process mean that migrant workers will unavoidably be forced to be undocumented in order to work overseas. And once they are undocumented, they are treated as criminal, arrested, whipped, detained, fined and sold into trafficking by government agents.

In Indonesia, there is a saying that “as long as there is exploitation, then there will always be resistance”. The intensity of repression has actually accelerated awareness among migrant workers and led to the emergence of various types of resistance, at both individual and collective levels. More and more migrant workers are raising their voices, rejecting oppression and increasing their militant commitment to this struggle. Thus, the intervention of service providers to assist in addressing the said problems and facilitate migrants’ initiatives is imperative and urgent so that migrants can cope better during crises.

**A framework for comprehensive assistance**

In reflection, I can say that migrant workers, including the undocumented, need assistance to promote our rights, to empower us by facilitating the formation and development of migrants’ organizations, and to forge common platforms, multi-sectoral partnerships and alliances nationally, regionally and globally. In this regard, the formation of International Migrants Alliance (IMA) in 2008 represents the height of such collective assistance by service providers to migrant workers who aspire to represent ourselves on the global level.

However, the assistance of service providers continue to be integral to the growth of global migrant movements, like IMA in such areas as providing human resources for the secretariat, facilitating the meetings of grassroots migrants at all levels, in functions of liaison, promotion, fund raising, capacity building, outreaching to different migrant workers and their groups, and to coordinate the international campaigns and events like the International Assembly of Migrants and Refugee (IAMR) against GFMD.

Following are some recommendations for service providers to assist and empower migrant workers both in sending and receiving countries:

1. **Provision of space for**
   migrant workers, particularly the undocumented to meet, to share their problems and to form/run their own organization (physical space and discursive space)

2. **Provision of shelter, counseling**
   (welfare, paralegal, psychology, health, etc) and assistance in repatriation including referrals to organizations in their home countries so they can continue their cases and remain a part of the movement

3. **Provision of education to inform**
   and empower the migrant workers on their rights according to the regulation of sending and recipient countries, and international conventions

4. **Provision of education in**
   developing the knowledge and skills of migrant workers to establish and manage their own organizations, which include leadership, campaign and advocacy, membership recruitments and strategizing institutional linkages in local, regional and international level.

Lastly, I would like to close my presentation with a word from Paulo Freire: “To effect any kind of meaningful changes, one must listen and learn from the oppressed”.

Thank you very much!

Terima kasih!
There are three parts to today’s topic—migrant service providers, undocumented migrants and the current global economic crisis. I will address the part on undocumented migrants and economic crises and end by addressing the issues confronting migrant service providers and advocates.

In a nutshell:

There are today about 200 million documented migrants and 42 million refugees in the world, while the numbers of undocumented/irregular migrants are unknown. International agreements have emerged to address the problem of undocumented or irregular human flows in various ways, e.g. through UN protocols and conventions, such as the 1951 Refugee Convention, 1967 Refugee Protocol, 1990 Migrant Workers Convention, 2000 Human Trafficking Protocol and 2000 Migrant Smuggling Protocol. More recently, individual state governments have undertaken initiatives, securitized irregular flows and enacted legislation that aim at controlling irregular human flows, which are deemed to undermine state sovereignty. Others have drawn up bilateral agreements while the United States of America enacted the Trafficking Victims Protection Act of 2000 (TVPA). In addition to regional instruments, there have also been significant amendments to criminal law and other relevant legislation at the national level in different countries, and the adoption of new policies and implementation mechanisms.

Furthermore, in 2007 the International Labour Organization published its first general survey since 1979, on the ILO’s forced labour conventions, the 1930 Forced Labour Convention and the 1957 Abolition of Forced Labour Convention acknowledging that forced labour included abusive practices including human trafficking, slavery and slavery-like practices, debt bondage or bonded labour, and labour exploitation.

There are two points to note in these recent developments. One of these is the convergence of these creations with the emergence of nation states, especially with post-colonialism after...
the second world war, increasing wealth disparities between states, and hardening boundaries to regulate immigration and settlement. The second point to note is that all the above-mentioned conventions and agreements are grounded on the premise of the nation-state system.

The nation-state system

What is the significance of such observations? If we look at the historical development of bounded nation states which began only in 1648 with the Westphalian Agreements, or about 360 years ago, there were no undocumented or irregular populations, simply because there was largely an absence of territorial boundaries that either kept people in (immobilized) or that kept people out. The problem of undocumented flows is hence, a direct consequence of historical developments that began with warring European states in the 17th century, who drew up plans in an attempt to end wars by drawing lines in the ground, creating territorialized sovereignty.

Another point of significance, that goes to the heart of the legitimacy of the nation state lies in the social contract between the rulers and the ruled, which in its most basic form stipulated that as citizens, members of a defined geographical area should give up their arms, rights to violence and agree to pay taxes to the government whose job it becomes to provide basic services of protection/defence, and social and economic welfare. In connection with undocumented migrants and refugees, if one examined case studies closely, it becomes clear that it is often nation states that have failed to uphold its end of this fundamental pact and obligations, which is the basis of nation state authority. According to a number of sources, the world stock of refugees has declined, but the numbers of internally displaced people (IDP) and people of concern have risen. Hence, irregular migration will continue to rise as will restrictions to limit it.

Labour migration has become a key relationship between less developed and developing nations to advanced economies. The official focus is on how it might be possible to control and stop such flows, rather than understanding that the creation of boundaries has created ‘unnatural’ population differences that produce migratory flows. These can emanate from factors such as divergence in demographic or wealth profiles between states, as well as various forms of state failure, such as in the lack of job creation, in regulation of capital that dispossesses people (in the name of development), in its collusion with private capital, in permitting private militias without public accountability to exist, in the preferential allocation of land and resource extracting partnerships or with private recruitment agencies, etc. that result in the subordination of public duty to private agendas. Then there are states that blatantly refuse to recognize their obligations to its citizens, that are responsible for, e.g. the creation of stateless people, such as the Rohingyas in India, Thailand, Malaysia and elsewhere.

A fair question to ask is “Can such states be realistically be expected to uphold the very fine principles embedded in many of these conventions and international agreements, just because they are
“It is this ideology of unrelenting, acquisitive and unmitigated greed that has resulted in poverty, dispossession of people of their livelihood resources and political instability that impels people to move, seeking a freedom from want and a freedom from fear. The struggle to expose the unsustainability of ‘neoliberal capitalism’ has begun in earnest and this work must continue.”

States are assumed to be rational entities, some are not, while others arerationally biased towards capital and collusive politics that are not in the best interests of its people (but serve particulargroup) and despite their ‘modern’ nation state status, many are mired in systems steeped in feudalistic practices and patronage.  

We might usefully identify here are the characteristics of ‘rogue states’ which have no history of or culture, a necessary corollary for the development of people-centred systems of democratic governance. For example, even in a well-regarded up and coming state like Indonesia, the government has already lost sight of its key function with regards to the economic wellbeing of its people where it asserts in its own defense, that job creation for its people is not its responsibility (“you cannot expect the government to create jobs for people”). Then there is the Philippines, with 10 million nationals overseas, most of whom are overseas contract workers (OCWs). The Philippines does not recognize outmigration as incontrovertible evidence of its failure as a state, but instead holds this as evidence of the success of the Filipino model of labour export, that holds potential for other developing countries.

What are the challenges?

The nation state system has produced a world carved up into territorialized entities broken by boundaries that prevent free mobility, that is, with hostage populations, and where such mobilities are perceived as a threat to state sovereignty. There are problems with the nation state but it is the system that will likely be around for a foreseeable long time. Keeping in mind that it is a relatively new phenomenon of several centuries in some places and several decades in most others, it is fundamentally flawed in terms of cultural-political legacies to deliver on the social contract on which it is founded.

As an idea, it is neither a good nor a bad but useful, comprising a set of principles for organizing relations. However, in practice, it must be contested continuously, as a system of power that unless checked, reproduces and perpetuates hierarchies that serve small elites; and repression, brutality and violence against those who do not possess the means of opposition/retaliation.

That is why activism, advocacy, research, documentation, critique and exposure are central to the
Economic crises: the flip side of capitalism

Hence, if we can see how nation states as a global system compete for growth at all cost, is it realistic to expect anything else but repeated crises which characterize the boom-bust cycles. Some of these crises began with the financial markets, such as the 1929 Wall Street Crash (through leverage) or the Bear Stearns failure in 2007-08 because it was unable to renew the short-term debt it used to finance long-term investments (in mortgage securities), known also as Asset Liability mismatch, or the domino effect of the bet against British pound that finally resulted in the Asian Financial Crisis, or the crash of the dot com bubble. Then there are regulatory failures, e.g. the Managing Director of the IMF, (Dominique Strauss-Kahn) blamed the financial crisis of 2008 on ‘regulatory failure to guard against excessive risk-taking in the financial system, especially in the US’. On the other hand, the New York Times singled out the deregulation of credit default swaps as a cause of the crisis. The causes of such problems are endless: apart from the above there is fraud, contagion, recessionary effects, uncertainty and herd behaviour. In addition, economic crises occur can occur due to a rise in the price of oil, the deliberate creation of bad loans for homes that people could not afford called NINJA loans, i.e. for people with no incomes, no jobs and no assets, packaging and reselling these to other financial institutions as safe high yielding investment vehicles. Then there are structural political issues of a population held hostage by corrupt self-enriching regimes/political elites who give scant regard to the rights of the citizenry apart from performing the bare accoutrements of democracy, such as holding elections that are nonetheless characterized by violence, fraud, terror or move ‘civilized’ forms such as gerrymandering.

Recurrent major depressions in the world economy at the pace of 20 and 50 years (referred to as the business cycle) have just as long been the subject of studies critiquing classical political economy’s basic assumptions wherein the corollary to growth is the tendency for profits to fall, wealth to become centralized and for returns to workers fall below levels of production resulting in a contradiction of too much good, too little income and a downward spiral of further declines in prices.

In search of transformation

Given that the nation state is often complicit in the promotion of economic systems that fail and politics that perpetuate instability, poverty and social violence, and that the social contract between citizens and the state is just as often non-existent, how, given the current status quo, can transformation come...
from? The advent of the nation state marked the conception of migration as an issue that required special attention, i.e. securitisation. It is ironic that, given its role in the creation of irregular flows, it is now called upon as the main actor to respond to international instruments for upholding migrant rights, which could be a contributing factor to why migrant and refugee rights, which could be a contributor to why migrant and refugee rights will continue to be flouted in spite of well-meaning agreements based on state participation and implementation. What has changed, however, is the space created by developments in technology that brings to a head and juxtaposes disparate efforts at local, regional, national and globalised settings, and the possibility of documenting, disseminating and exposing practices in ways that serve to build wide coalitions of support and solidarity across multiple levels and sectors of society. Some initiatives have been more immediately successful while others are, in the midst of succeeding. Expect that some may outlast our lifetimes.

What am I talking about? Let me give you just a few examples. Earlier, I had mentioned the People’s Permanent Tribunal on extrajudicial killings in the Philippines, the movie Dukot and other documentation of this nature and Marites Danguilan Vituc’s recent book (Shadow of Doubt) interrogating the Filipino Supreme Court, these are all testimonies to the great work being carried out. These battles are not yet won but what is important is the public staking of spaces for contestations and the development of strategies must follow. Two recent examples of winning contestations follow.

In the Malaysian example, Irene Fernandez was persecuted by the Malaysian authorities for more than a decade for her publication of findings detailing the treatment of irregular migrants in 1995, (largely Bangladeshi) in Malaysia’s detention camp. She is free today because the space she had opened through her work, connected with spaces opened up elsewhere that have since become the International Migrants Alliance, which threw its collective weight behind her on and before the day she was to appear in court in 2008 in Kuala Lumpur; there were protests at different Malaysian Consulates and Embassies around the world. Knowing by then that she could no longer be quietly bullied within Malaysia, but that her continuing persecution was a source of global outrage, the cowardly Malaysian government quietly dropped all charges against her and ended their harrassment.

Exposure has also benefited Indonesian migrant workers who have not just confronted their government overseas in Hong Kong, Macau and Taiwan, but by bringing their issues home through mainstream media to Indonesia, and have been a source of education and information for the Indonesian public. Such exposure have also brought migrant workers together overseas where important alliances have been forged to confront and contest their exploitation.

What lies ahead for migrant’s service providers, migrants, refugees and their advocates

There now exists a range of intergovernmental platforms and instruments that can be deployed for leverage with national governments, in contesting and consolidating new ground. These can be used to critique existing practices and access to international showing through various means. (UN, CEDAW, ILO, GFMD, etc.). Discursive and political spaces for resistance and the amassing of solidarities can emerge from juxtaposing discourses, not just to critique, but also for shaping mechanisms and practices. In the Indonesian case in Hong Kong, where their consulate can ignore migrant women’s plight, it is less able to do so where such issues are made known in Indonesia and pressure comes from Jakarta for their consulate in Hong Kong to open channels of dialogue with Indonesian migrant women at the destination of employment. In the case of the inter-state forum, the Global Forum on Migration and Development (GFMD), which excludes the voices of migrants and refugees, the leadership of some of the groups here has led to the establishment of the International Migrants Alliance that together with refugee groups formed the International Alliance of Migrants and Refugees (IAMR), to contest the GFMD. These networks are being forged to respond to new challenges and to build support and solidarity on common platforms across the world. [the process is of course always messier than my simplistic portrayal here].

Such new configurations are exciting but experimental given that they are meant to respond to current top-down challenges to limit mobility and settlement. Yet, it is critical work that is being done because there are no other real opposition of this collective scale, for migrants and other displaced people to respond to increasing restrictions at origins or destination countries, in which they represent their own agendas.

Another sort of space, that has often been mistaken for welfare is that provided by shelters which make possible localized decisions by migrants to resist oppression in different destinations. Some countries do not allow these to exist while others insist on migrants getting permission before they are permitted to stay, such as in Taipei, Taiwan, where permission must be sought from both the police and mayor. Bethune House in Hong Kong has gone beyond the welfarist...
“Documentation and research can create discursive space that exposes malpractices and its actors. Public education and the engagement of the media create spaces of public discourse. Engagement with local communities must deepen. Cross-sectoral partnerships must be continually developed as key resources for the work at hand.”

Rationalities, irrationalities, space and critique

What new perspectives or approaches can we adopt to expand opportunities for social transformations?

States are assumed to be rational but when we juxtapose state rationalities to those of individuals, what becomes obvious is often the gap of difference represented by the, unintended but often foreseeable, irrational consequences of state policies and action mapped on people’s lives. Critique plays a role to ‘surface’ or make visible these silent corollaries, to catalyze solidarities, resistance, organizing and advocacy that follow. These episodic occurrences that take place simultaneously in different places provide reflexive pauses for the production of alternative knowledges/truths and voices that trigger action and transformation, and expanding spaces of contestations.

Hence, usefully on the ground, some juxtapositions that can catalyze entry points for engagement can be found:

• Between mainstream and alternative discourses (such as Indonesian migrant workers experiences pre-departure and in Hong Kong, and their government’s rhetoric and justifications)

• Between State constructions and international conventions, protocols and (multi/bilateral) agreements of Inter-governmental organisations (UN and ILO)

• Between discourse and practice (read, values/worldviews) among destinations (for migrants of different classes, regular and irregular and for refugees and asylum seekers)

• Between secular and religious discourses by formal institutions (governmental, religious bodies) and migrant organizations, and the secular and religious among them

• Between states of origin, in terms of policies and practice

• Between class and gender among women, among migrants and the local population (host and recipient communities; also worker-employer relations)

• Between co-opted/re-interpreted space: shelters (not merely for welfare and humanitarian assistance but for education and organising); churches for gathering, events, education, organising and advocacy; other places include parks like Victoria Park and Kowloon Park, schools rented out for migrant worker events

• Between male and female migrants or refugees of similar/different origins and destinations

• Between real conditions of existence and collective fantasies in cultural productions

• Between normativity and individual subjectivities

Such juxtapositions can perhaps be useful for catalyzing partnerships and generating activities that expand audiences and the field of engagement.
Repression against Migrant Workers and the Resistance Movement in South Korea

Jungwon Lee
Steering Committee Member of the Alliance for Migrants’ Equality and Human Rights
Education and Outreach Director for Migrants’ Trade Union
Since 2004 the ROK government has carried out one or two concentrated crackdowns against undocumented migrant workers each year. According to Ministry of Justice statistics these crackdowns have led to the deportation of roughly 160,000 migrants between 2004 and March of this year.

The Lee Myung-bak administration has carried out the most vicious crackdown yet. Roughly 60,000 individuals were deported in 2008 and 2009, a 65% increase over the previous two-year period. A massive raid on November 14, 2008, during which some 280 police and immigration officers blocked the exits to a furniture factory complex in Maseok and arrested 100 people, is representative of the Lee Myung-bak administration’s style.

Currently, the government is using the upcoming G20 Summit, scheduled to be held in Seoul in November, as an excuse to increase social control and restrict democratic rights. These efforts include the passage of a “Special Law to Guard the G20 Summit,” which permits mobilization of the army to suppress protests. The government has also been carrying out a witch hunt against People’s Solidarity for Participatory Democracy, one of South Korea’s main NGOs, and is strengthening persecution of left forces under the National Security Law.

Migrant workers are an important target of this repression. In May, the police began a concentrated crackdown against “foreigner crime”, which includes stamping out undocumented residents, along with theft, murder and rape, as the goal of investigations. Questioning or searching individuals solely based on their skin color or appearance is racial profiling. In other words, it is blatant racism.

On June 7, a Chinese migrant worker who had been arrested in a raid was brutally kicked and hit in the face with a pair of handcuffs by an immigration officer while being held in a temporary holding cell at an immigration office. These actions were carried out in retaliation against the man for resisting during the arrest and causing injury to an officer. In addition, immigration officers are imposing fines of up to several million won on migrants for having overstayed visas, causing these individuals severe hardship and leading to long-term detention. In several areas, documented migrants have received text messages telling them to report undocumented migrants to the Immigration Service. The individuals who received such messages did not go as far as to check their source, but one can generally guess as to where they came from. We have also heard through informal routes that the government is taking steps to stimulate competition between immigration officers as to who can arrest the most undocumented migrants.

In sum, we can say that the Korean government is scapegoating migrant workers, and especially undocumented migrants, as potential criminals. It is common these days to see police on the streets and in subway stations throughout the Seoul metropolitan area stopping any foreigner they deem to be suspicious and checking his/her identification. Questioning or searching individuals solely based on their skin color or appearance is racial profiling. In other words, it is blatant racism.
undocumented migrant workers, who are among the most vulnerable minorities, as part of its efforts at general social control.

This repression is highly unjust. What is more, because it clearly leads to greater restriction of the rights of all workers and citizens, resisting it is a task for migrants and Koreans alike.

Based on this understanding of the problem, we believe it is important to call attention to the repression against migrant workers along with other related issues, and develop a joint response. We believe it is important to unite to oppose all the attacks and forms of repression the government is carrying out in the name of the G20.

To support this effort we are participating in a coalition developed to form a joint response to the G20, which includes KCTU and a wide range of other labor and civil society organizations. The racist attack against migrant workers can be formally included as an issue this coalition will address. The coalition is preparing mass protests, forums and various other activities to protest the G20.

We are also attempting to build broad-based solidarity and a collective response to the repression against migrant workers on a more general level. As part of this effort, the migrants’ movement forces came together with KCTU and progressive political parties and social movement organizations to form a “Migrants Rights Defender”, which carries out protests, press conferences and street outreach opposing the crackdown and monitoring of crackdown activities. In addition we are working with local organizations in different regions to carry out monthly nation-wide joint actions to defend migrant workers rights. KCTU has also created a poster entitled “If you worker here, you are a worker” to emphasize that facing the same circumstances as workers, not differences in race or residence status, is what is important. This poster, which explains the unjust nature of the crackdown, has been distributed to KCTU affiliates and posted throughout the country.

We hope that these activities will encourage the activism of migrant workers themselves. When this conference opens, MTU will be carrying out a sit-in protest opposing the crackdown and calling for legalization of undocumented migrant workers. Through this struggle we seek to make the circumstances of migrant workers known in Korean society and call for an earnest solution, and to demonstrate the importance of migrant workers’ self-determined organization. We ask all participants of this conference for your enthusiastic support and solidarity.

We also hope that this conference will be an opportunity to strengthen solidarity between the struggles for migrants rights in different countries. Let us move our movement one step forward by sharing our experiences, knowledge and strength and the lessons we have gain from our work.

“In sum, we can say that the Korean government is scapegoating migrant workers, and especially undocumented migrant workers, who are among the most vulnerable minorities, as part of its efforts at general social control.”
The Mission for Migrant Workers (HK) and the Macau Migrants Rights Network congratulate the organizers of this very timely conference.

We have been witnesses to the deteriorating condition of migrant workers in various countries. With the economic crisis still raging, migrants have been subjected to most extreme policies that infringe on their rights and erode their livelihood.

Undocumented migrant workers are some of the first to face these grave attacks.

While it is very important to discuss the condition and problems of undocumented migrants and how NGOs and grassroots organizations can best respond to their situation, it is also important to tackle the conditions that force many migrant workers to be undocumented.

This paper presents a particular concern that sets the condition for migrant workers to become irregular migrants: that of practices of recruitment agencies and policies of sending and host countries that perpetuate the vulnerability of migrant workers to these unscrupulous practices.

This paper is in the context of the experiences of migrant workers and advocates in Hong Kong and Macau. Though small territories, the two host hundreds of thousands of migrant workers who are mostly women working in the service sector particularly domestic work.

Recruitment Policies

Recruitment agencies are the major partners of sending countries in the deployment of their nationals abroad. The two major migrant-sending countries in the Asia Pacific region – Indonesia and Philippines – rely in the recruitment industry to continue to broaden the market for their exports.

While the governments of said countries themselves are aggressive seekers of labour markets as well as recruiters, recruitment agencies have also become indispensable partners to the perpetuation of their respective labour export industry.
In the case of domestic workers, both Philippines and Indonesia do not allow direct hiring of domestic workers. This means that migrants are forced to go through recruitment agencies to have jobs in Hong Kong and Macau even if they are the ones who found the employer.

The ban on direct hiring is further worsened by other related policies on recruitment.

Filipino migrants are covered by the Philippine Overseas Employment Administration (POEA) Guidelines on Hiring Household Service Workers implemented in 2007. The guidelines carry a provision of scrapping payment for placement fees to recruitment agencies but, also put in place provisions for training that later on have been proven to be even more detrimental to migrants.

Previous to the guidelines, the legal placement fee that agencies can charge to workers is only up to the equivalence of one month salary of the worker.

Meanwhile, the Indonesian government has sanctioned recruitment agencies to charge up to HK$21,000 from the migrant workers. In 2007, the government even tried to implement a policy that prohibited Indonesian migrants to shift to other agencies if their contracts are terminated. However, because of the widespread protests the policy generated, the government was forced to scrap the said rule.

**Impacts of recruitment policies to migrant workers**

1. Overcharging and illegal collection

The most evident impact of the policies on recruitment is its perpetuation of overcharging of fees. In a survey made by the MFMW in 2007, it showed that there has been a marked increase in overseas Filipino workers (OFWs) who have been forced to pay high recruitment fees to agencies.

Before the guidelines were issued, the one-month salary rule was largely not followed by recruiters. Filipino migrants have to shell out from three to five times more than what is legally allowed. Recruiters do this through various modus operandi including non-issuance of official receipt or adding on to other unregulated fees to get the maximum profit from applying migrant workers.

According to the survey, 35% of Filipinos paid P60-100,000 (US$1,240 – US$2,040) in processing fees while 5% paid over P100,000 to recruiters. This number doubled after the guidelines were issued with 51% paying P60,000-100,000 to agencies while 10% paid over P100,000 in the guise of training fees that has no set ceiling.

The grievance mechanisms of the Philippine government on cases of overcharging do bring more harm to migrants instead of unburdening them.

Instead of charging the recruitment agency with illegal recruitment, the POLO instead has instituted the hands-on conciliation. In this process the POLO acts as mediator between the agency and the aggrieved domestic worker. What is worse is if the worker agrees to the terms of the agency, which is usually very low than the actual amount overcharged. If conciliation is concluded, the aggrieved migrant worker is then asked to sign a waiver that leaves recruitment agencies off the legal hook and ready to recoup what they paid for in the conciliation meeting.

If there is no agreement made during the conciliation process, the worker can opt to file charges against the recruitment agency in the Philippine Overseas Employment Administration (POEA) and the National Labor Relations Commission (NLRC). But it would take years before a ruling is issued out.

2. Debt Bondage

Overcharging of placement is almost always accompanied by debt bondage.

Even before stepping foot in Hong Kong or Macau, migrant workers are already in a dire financial condition. Many of them owe money from friends, individual usurers and lending agencies so that they can pay the required fees.

They are actually already in debt crisis even before their plane lands in the airport. To pay for the debts they incurred in their pre-employment stage and, at the same time, send financial support to their families, they are forced to borrow from other lenders. This system effectively traps them in debt bondage and the vicious debt cycle.

3. Erosion of wages

In order to ensure the payment or repayment of the migrant workers, unscrupulous agencies tie up with their partner lending agencies and unscrupulous employees to force the migrants to pay them through salary deductions.

In a survey done by the Asosiasi Tenagan Kerja Indonesia (ATKI) in 2005, it was revealed that more than 50% of Indonesians were overcharged by agencies while 93% of them experience underpayment and illegal deductions.

The connivance of recruiters, lending agencies and unscrupulous employers continue until today. In the first seven months of their employment, most Indonesian migrants do not receive their
exact legal wage because agencies automatically corner the bulk of their income as payment to their placement fee.

For Filipinos, 41% of the respondents of the survey by the Mission revealed that they still had to pay other fees to Hong Kong recruitment agencies in the form of salary deduction by their employer, monthly payments to agencies, finance companies or individuals.

Policies of host countries that aggravate the problems

The already vulnerable condition of migrant workers is not helped at all by existing policies in Hong Kong and Macau. In fact, these policies even expose migrants to more harm as they are made to desperately cling on to their jobs despite abuses and human and labour rights violations committed against them.

In Hong Kong, there is the New Conditions of Stay or more popularly known as the Two-Week Rule that basically stipulates that a migrant whose contract has been terminated can only stay in Hong Kong for 14 days regardless of the period stated in her visa.

In addition to this, the NCS also prohibits migrant workers from getting another job if they have ongoing cases. The prospect of being jobless prohibits many victims of overcharging and other forms of exploitation from filing complaints.

With the overcharging issue, the Employment Agency Administration can act to ban/suspend an agency and can require the agency to pay back what was overcharged. The problem is that most cases in Hong Kong involve payment through financing agencies in the guise of a loan. Even if one wins in the EAA and/or the Small Claims Tribunal, one still needs to pay for the so-called loan because the authorities would say this is a personal matter.

Meanwhile, a new law was recently introduced in Macau that imposes a re-entry ban of six months for migrants who terminate their contract without just cause or terminated by the employer for a just reason.

The new law also says that migrant workers can appeal to the Labor Affairs Bureau (LAB) and the LAB will be the one to determine if they terminated their contracts with their employers with just cause, or they were the ones fired without just cause.

However, the burden of proof for the appeal rests on the shoulders of the migrant workers. In addition to this, a migrant worker whose contract is terminated is usually only given 10 days visa extension. But the
Macau LAB also said that the appeal process can take up to more than a year which means that the aggrieved migrant workers has to constantly renew her visa in order to pursue her appeal. This puts the migrant workers in an even more insecure position.

In a recent newspaper report in Macau, it reported that 382 non-resident workers have already been banned for six months. There has been no due process in the handling of their cases for the workers, as well.

Conclusion

There are three ways that the policies that directly deal with recruitment or are related to it set by the governments and practices of recruiters can force migrant workers to become undocumented.

First, these policies and practices lead to grave exploitation and violations of the rights of migrant workers. Their labour is practically held in bondage as they are forced to shell out payment to monstrous and oftentimes unnecessary fees. During the payment period, migrant workers are reduced to slave-like wages and are put in deeper and deeper crisis situation. Such a situation can lead a migrant to decide to just run away and become undocumented in order to escape from the seemingly endless payment they have to make to recruitment agencies.

Secondly, the debt situation that these policies and practices create for migrant workers force them into desperation that they will resort to becoming an undocumented migrant just so they can stay in the host country and continue to earn wages.

Thirdly, the reality of the recruitment process and its resultant impacts can be prohibitive for a prospective migrant to take the legal path to going abroad to work.

The tedious and very expensive recruitment process is a discouraging condition for people who are in urgent and desperate need for survival. It is not therefore surprising that a number of migrants will take the more unconventional routes to migrate and look for jobs in other countries.

These recruitment processes and requirements are sanctioned and even strengthened especially by sending government who also earn a lot from a thriving recruitment industry. Aside from the immediate benefit of licensing fees and taxes, the recruitment industry boosts the labour export program that in turn will mean more remittance and more profit from fees for the government of sending countries.

If NGOs and grassroots migrant workers are to address the concerns of undocumented workers, advocacy against anti-migrant recruitment policies and practices of unscrupulous recruitment agencies should also be included. Those victimized by overcharging and other modus operandi of recruiters should be immediately assisted and actions must be done to lobby for grievance mechanisms that can lead to speedy resolution of cases and the attainment of comprehensive justice – including just compensation – for the victims.

The MFMW and the MMRN calls on to all participants of this significant gathering to further look deeper into the impacts of policies and practices on recruitment in different countries and campaign for the necessary changes in policies that will be beneficial for the rights and wellbeing of the migrants.

In this endeavor, we shall be with you.

“It must still be understood that the migration of workers stem from their dire condition in their home countries. Lack of jobs and extreme poverty are fertile grounds for the forced migration of people just so they can survive.”

It must still be understood that the migration of workers stem from their dire condition in their home countries. Lack of jobs and extreme poverty are fertile grounds for the forced migration of people just so they can survive.
Crises and Crackdowns: The Economic Downturn and Migrant Workers in Malaysia and Thailand
Globally, the impact of this “global economic crisis” has been the loss of jobs, paycuts, and growing unemployment. Its effects seem to have impacted all aspects of the economy and social life, and the worst affected have been the poor.

Amongst workers, the worst affected is the migrant worker. During such difficult times like this, discrimination and xenophobia are so easily cultivated and flourished, and often, it is that foreigner—that migrant worker—that is made the target of discrimination and suffers most.

This financial crisis has not spared the economies of East and Southeast Asia. This year Singapore’s economy is expected to contract by as much as eight percent, Hong Kong and Japan by six percent, Thailand by five percent and Malaysia by three percent.

Countries around Asia rely heavily on cheap foreign migrant labor, particularly women migrant workers from Southeast and South Asia, and especially in those very sectors that are now most adversely impacted by this crisis: electronics, manufacturing, food processing and domestic work. The collapsing demand for manufactured goods in the developed world will mean factory closures and the downsizing of most export-oriented manufacturing establishments in Thailand and Malaysia.

In Thailand, where the economy depends on exports of goods and services for 73 percent of its GDP, thousands have lost jobs in manufacturing grounded in automotive and electronics exports, although they are cushioned by a modest social security net for up to six months. The economy is set to shrink by up to three percent this year.

Malaysia predicts that 4.5 percent of its workforce will be jobless this year, up from 3.7 percent in 2008. Unemployment is forecasted at 4.5 percent by the end of the year. Official figures show that from October 2008 until June 2009, about 36,000 have permanently lost their jobs and about 45,000 have been temporarily laid-off, or are facing pay-cuts.

Migrants and the Crisis

There are about five million or more undocumented migrants in Malaysia, while in Thailand there are about four million migrant workers, most of whom are undocumented. The country of origin for most of them is Burma, while there are also large numbers of migrants from Cambodia and Laos in Thailand, and the Philippines and Indonesia in Malaysia. The industries these workers are employed in range from agricultural and fisheries to manufacturing and domestic work.

The poor living and working conditions of Burmese migrants in Thailand and Malaysia and the systematic exploitation and discrimination they face have been documented in many reports around the region. In the face of the current economic situation, the governments of Malaysia and Thailand have clearly been more concerned about their own companies and citizens, to the detriment of foreigners and migrant workers.

In Malaysia, the national response to the economic situation has included increased police crackdowns on and deportation of migrant workers who have been “stealing our jobs and affecting our incomes”—the usual response when the situation in the country is bad. A similar, large-scale crackdown took place in 2005. Of course, this is a hypocritical move since the very reason why the Malaysian government started...
allowing the employment of the cheaper migrant workers, was because they advocated keeping wages low, and hence attracting investment in Malaysia.

In 2008, the Deputy Chief Minister of Sabah state advocated intensifying the crackdown on migrants by saying: “We must be really serious in protecting our citizens and sovereignty of our country.”

In Thailand, meanwhile, the Prime Minister stoked fears of another crackdown when he said in January 2009: “We have to solve the illegal immigrant problem otherwise it will affect our security, economy and the opportunities of Thai laborers...We will push them out of the country.” Migrants in Thailand have faced similar, often high-profile crackdowns in the past—a “war on illegal foreign workers” was declared by the country’s deputy national police chief in 2003, for example. In a particularly shameful operation in 2004, almost 10,000 pregnant Burmese women were deported from Thailand, in what the government billed as a humanitarian measure to prevent their children from “being born stateless.”

All workers in the Mekong have been deeply concerned that their wages are falling below a living wage, and even below a subsistence level; however, for migrants the impact of a further reduction may have particularly severe repercussions. The survival and well-being of the workers and their families in Burma, as well as the settling of debts incurred during the migration process, will of course depend on their wages.

Two Destinations, One Origin

In response to their situation, migrants from Burma in Thailand and Malaysia met in June 2009 and discussed the impact of the global economic crisis on Burmese migrant workers at the second annual Two Destinations One Origin conference. The conference was attended by several migrants from both countries and was organized by local and regional organizations such as the MAP Foundation, Workers’ Hub for Change (WH4C), and the Network of Action for Migrants in Malaysia (NAMM).

Through their discussions at this meeting, migrants gained not only an insight on the origins and the cause of this “global financial crisis,” but also looked in particular at the impact and response from migrant workers to this crisis. They also looked at their own responses to the actions taken by the Malaysian and Thai governments with regards to this economic crisis.

From the experiences shared at the meeting, it was clear that the Malaysian government’s response showed concern mainly for the companies and the employers. When it came to workers, the government’s first concern was for local workers, with migrant workers a very distant second, and undocumented migrants barely registering as a concern. In fact, along with the state’s crackdowns against migrants, there has also been an explicit freeze on the employment of new migrant workers. The Malaysian Human Resource Minister clearly stated in January 2009, “We want industries
to stop recruiting foreign workers and offer jobs to Malaysians instead.” Backing up this statement, the government cancelled the work visas of migrant workers who had yet to arrive in Malaysia, a move that affected at least 55,000 Bangladeshi workers. There was no talk about compensating these workers for the (in some cases significant) money that they have already spent in preparation for going to Malaysia for work.

The Minister’s very direct statements and moves against new migrants only echo the official stance taken in Malaysia’s Employment Act, which states that the employer “shall not terminate the services of a local employee unless he has first terminated the services of all foreign employees employed.” This clause has become notorious in the country, known as the Foreign Workers First Out (FWFO) policy.

Another major issue for migrants in Malaysia, as in many parts of Asia, has been the levy imposed on employers who hire migrant labor. The rationale behind the US $331 – $500 charge has always been to discourage people from employing foreigners. In April 2009, there was talk of doubling this levy in order to further discourage the employment of migrant workers.

However, the reality of the policy has been that employers, with the permission of the Malaysian government, deduct the levied amount from the wages of migrant workers. Hence, the proposed doubling of foreign workers levy would bring far greater suffering on the migrant workers than on their employers. After angry protests from smaller businesses, the government eventually withdrew the plans to increase the levy.

There was still further use of the levy policy to encourage employers to lay off foreign workers—as of February 2009, employers can now be refunded the unused levy from the firing of a migrant worker within a month of termination. Prior to this, the bosses had to wait several years before they could have that money refunded.

In 1998, after the last major economic crisis that affected this country, the Malaysian Trade Union Congress (MTUC), the biggest body representing over 500,000 unionized workers, proposed the setting up of a National Retrenchment Fund, a fund that would be able to assist workers that lose their jobs during such an “economic crisis.” But, the Malaysian Government was not interested. On the other hand, the government set up a Human Resource Development Fund, a fund that employers can resort to during bad times.

The retrenchment fund proposal, however, did not include migrant workers. Sadly, during bad times local workers unions also pay less interest to the plight of migrant workers— their fellow workers from a country not their own.

### Continuing the struggle

Aside from migrant workers coming together in venues such as the Two Destinations conference, there have been other local and regional responses by organizations to the economic crisis and their respective government’s actions.

In March 2009, a major statement from fifty-nine local and regional labor organizations, groups and networks stated that they were “appalled at Malaysia’s unjust, discriminatory and unconstitutional anti-worker policy, known as the ‘Foreign Workers First Out’ (FWFO) policy.” They also pointed out that “this ‘Foreign Workers First Out’ (FWFO) policy and practice is unconstitutional, as it goes against Article 8 of the Malaysian Federal Constitution, which states ‘All persons are equal before the law and entitled to the equal protection of the law.’” There is nothing in the Constitution, they said, that permits discrimination against non-citizens.

In Thailand, the Thai Labour Solidarity Committee (TLSC), a major national network of labor organizations, have since 2008 also been raising the concerns of migrant workers. Migrant foreign domestic workers in Thailand, for example, have participated in many TLSC events and campaigns, and have raised the specific issues of discrimination and lack of protection for workers in their industry. A report and petition were also submitted by TLSC to the Thai Labour Department, outlining the issues that were arising concerning migrant workers and calling for the removal of unjust laws and government policies targeting migrants. The group has been raising the issue of better protection for all workers, including migrant workers.

And in Cambodia, a major labor-sending country, trade unions marched on May Day. Facing a heavy police presence, they lamented the economic recession, poor wages and increasing food and transport costs in their country. They called on their government to stimulate the employment market, and to improve working conditions, provide the living wages in all sectors.

As we can see, the mix of official and systemic discrimination, exacerbated by the current political and economic climate, has meant that migrant workers are some of the hardest hit by the “global economic crisis.” But there have been responses and efforts by migrant workers and their supporters in our region to address these issues. Migrant workers have shown that their resolve is strong, and they will not crawl into a corner and give up. They will continue the struggle for human rights and worker rights.
Introduction

The migrant worker says he was brought in illegally. He believed he had a passport and a visa to enter the country. He did not know of a work permit. His passport was of photo change, commonly known as PC passport. He was cheated and recruited falsely. Was he trafficked or recruited legally to work?

An Indonesian was brought into the country in a boat with many others by a middle-man or tekong as an individual and entered with only a travel document from the head of the village. Will he be allowed to enter into Malaysia?

And what about the woman who was promised a job as a waitress or domestic worker but pushed into prostitution at a Karaoke lounge. Trafficked or recruited?

Then there are many others where they have worked with proper work permits but the employer did not renew the work permit, so they have overstayed. But then, how do we see a migrant worker being arrested, charged and sentenced with whipping when he has a labour dispute pending in court? The immigration refused to issue him a special pass to legalize his stay. Is he illegal or undocumented?

These are the various scenarios in which the migrant worker faces over his stay in Malaysia.

For each case a new concept arises that brings about a different definition of being undocumented. We know that there cannot be an illegal human being in the world. We are all legal in this planet. But we have drawn our boundaries and the right to stay is determined within fulfilling the conditions established by a country- Malaysia. This notion is derived from the concept of a citizen. The notion is one that excludes others and thus the government believes that anyone who claims he is a migrant worker, unskilled or semi-skilled and does not have proper documents like a visa is deemed

Glorene A. Das
Program Director
Tenaganita
to be ‘illegal’. The individual has overstepped the boundary. And this has an effect on security determined by the boundary. He then is defined as a criminal.

Malaysia is the largest receiving country of migrant labour in Asia. Currently there are more than 3 million migrant workers from 14 countries in the region, including Timor Leste and China. It is also a known fact that half the 3 million migrant workers are undocumented or commonly referred to as illegal workers.

They work in the 3D (dirty, demanding and dangerous) jobs at a very low salary with no benefits or social security.

Faced with this intense competitive market, Malaysia believes that through the recruitment and employment of a cheap, temporary labour force, it can meet the competitiveness and thus be able to market its products and attract foreign direct investment.

Thus, Malaysian markets has become increasingly dependent upon undocumented migrants’ cheap labour, the nation-states like Malaysia, that host them refuse them membership and instead consign them to zones of legal, social, and political marginality and vulnerability. Denied the chance to become political citizens, undocumented migrant workers’ social and economic rights are compromised, and they can become, as anthropologist Phyllis Chock notes, “disenfranchised labourers who are objectified and dehumanized as a natural and therefore unregulated labour force” (Chock 1995: in Coutin 2003). Where their presence is criminalized, they are also liable to be arrested and deported, either quietly or through violent arrest tactics.

Such a situation is real in Malaysia.

Malaysia is the largest receiving country of migrant labour in Asia. Currently there are more than 3 million migrant workers from 14 countries. Half of them are undocumented or commonly referred to as illegal workers. They work in the 3D (dirty, demanding and dangerous) jobs at a very low salary with no benefits or social security.

Thousands languish in our prisons and detention centers. Many more remain in hiding out of the fear of imprisonment. And others are used by the private sector as cheapest form of labour and if these workers do resist, then they are surrendered to enforcement agencies.

In the last Fact Finding Mission on Undocumented Workers and their families in Sabah, East Malaysia conducted in June 2009, it was established that there an estimated 72,000 stateless children in Sabah born out of undocumented workers. Malaysia has about 200,000 or more stateless people. The number could even be more as the population of stateless persons has grown from the 1980’s. The largest number is from the Filipino and Indonesia decent especially in Sabah.

But at the same time, there are also large numbers of stateless persons from the indigenous communities as many of them are not register Malaysia is also a destination for refugees and asylum seekers. At least 90,000 and as many as 170,000 or more refugees, mostly from Myanmar – Burma are in the country. Since Malaysia is not a party to the Refugee 1951 Convention, this vulnerable group of people also fall under the “Undocumented” category. The Malaysian Law makes no distinction between refugees and undocumented migrants. As a result they are arrested, detained and prosecuted for Immigration offences.

In 2009, Tenaganita handled 5315 complainants in cases of claiming unpaid wages, wrongful dismissals, reports of abuse, many other forms of exploitations and human rights violations.

Malaysia has no comprehensive policy in recruitment and placement of employment on migrants. The country practises a form of adhocism in its policy, where the government reacts to problems and issues of concern regarding migrant workers through interim measures and temporary policy changes. Frequent
policy changes by the state lead to lack of clarity, abuse by different stakeholders and increase the vulnerability of migrant workers.

At least 3 different ministries oversee the aspects of the recruitment and place of migrant workers. They are the Home Ministry, Ministry of Foreign Affairs and Human Resources Ministry.

However, the Control and Dominance of Immigration Department and Home Ministry and the weak position of the Human Resources Ministry prevented the migrant workers in their right to redress and eventually led them to be undocumented.

**WHY do migrant workers become UNDOCUMENTED**

Recruitment and Placement – Trafficking in Persons

Many migrant workers in Malaysia are victims of trafficking in persons, through the case management at Tenaganita, it is very clear that they are recruited through fraud, deception for the sole purpose of labour exploitation. This form trafficking is usually perpetrated by recruiting agents in Malaysia and sending countries. Recruiting agencies in sending countries are largely unregulated. The fees they charge are very high amounting from US$ 3000 to 5000. Therefore the migrant workers chooses to come through a illegal channel entering the country “illegal” with a lesser amount, hoping that upon arriving in Malaysia and securing a job, she/he can be documented. However, because of the unregulated system in Malaysia, they continue to remain undocumented.

There is also a pattern of human trafficking, with thousands of women brought to Malaysia to work as prostitutes and subjected to harsh sexual abuse and exploitation. In most cases, the women – the victims of trafficking are seen as illegal and thus criminalized for not possessing proper documents.

They stay on in the country because they have very little choice for they must repay large sums of money they have borrowed at high interest rates. The Indonesian domestic workers also stay on working without pay for months or years to pay off the unscrupulous recruiting agents. As such the workers are in debt bondage.

**Domestic Workers**

Malaysia employs close to 400,000 domestic workers both documented and undocumented. Tenaganita has handled 286 cases of domestic Workers with 2288 Human Rights Violations. Domestic workers work in conditions that amount to labour exploitation. Their wages not paid, subject to numerous deductions, very long hours of work with no rest, no off day. Verbal abuse and physical abuse is very common. There have been many cases of sexual harassment and assault including rape. In such case, domestic workers take the decision to run away to escape such abusive situation leaving them undocumented in the process.

There are many cases of Indian and Sri Lanka domestic workers who are trafficked into the country and then sent to 5-8 employers in 5 months without any documents leaving them undocumented.

Most domestic workers in Malaysia also perform double jobs – domestic work plus laundry/restaurant, massage parlors, etc. They are also sent to work in the houses of families and relatives, not according to the address stated in the work permit.

Therefore they are very vulnerable to arrest, detention, imprisonment and deportation under Immigration Act.

Labour Outsourcing

In August 2005, the Malaysian government replaced the direct recruitment system with the outsourcing system to bring in Bangladeshi workers. The government had frozen recruitment for the last 10 years. The ban was lifted on the condition that Bangladesh agrees to send the workers under the Outsourcing system of recruitment and placement. Businesses requiring less than 50 workers would have to use specialised outsourcing companies. Furthermore, the outsourcing companies would be responsible for administrative matters. The system would transfer all responsibility from employer to the outsourcing companies.

The very word ‘outsourcing’ means these companies are labour contractors and not, as any employment contract would have it, as employers in the real sense. They take migrant workers and ‘send’ them out to work – changing them from one job to another, working irregularly and without monitoring and supervision. Again on paper it sounded positive as each migrant worker even if he has no work will be paid a minimum of RM400. But the outsourcing form of recruitment blew up on the face of the Home Ministry.

Thousands of Bangladeshi workers were stranded at the airport where the companies did not pick them up for employment. Hundreds of others, abused, beaten with no food and no work, broke free and began to demand their government to act. There was over recruitment with no jobs available. There was no proper verification from the Immigration department before approving the licence to recruit. The workers were moved from one place to another, and then finding there is no
The very word ‘outsourcing’ means these companies are labour contractors and not, as any employment contract would have it, as employers in the real sense. They take migrant workers and ‘send’ them out to work – changing them from one job to another, working irregularly and without monitoring and supervision. Again on paper it sounded positive as each migrant worker even if he has no work will be paid a minimum of RM400.

employment available – another way of being undocumented.

In Malaysia, outsourcing comes in conflict with the Employment ACT. It is unclear who is the employer defined in the Act. For the foreign worker, under the Immigration Act, the name of the company in the work permit is deemed to be the employer. The worker is expected to work under the company in its premises except for certain jobs like Cleaning. Therefore the worker can be arrested if he is working in another state Pahang in a plantation when he should be a security guard in another company. Incorrect information in the documentation – work permit can lead a worker to become undocumented.

There are so many different scenarios of outsourcing in Malaysia and most of them are victims of exploitation. They became undocumented in the process of recruitment and placement of outsourcing. Cases continue to flow in everyday as Malaysia has issued about 300 outsourcing license to recruiting agents.

Forced Labour

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

There are cases where the migrant workers worked for months and even years without receiving any pay. The most common reason for continuing to work is because the workers were threatened by their employers that their visas would be cancelled or that their passports would not be returned to them.

It was noted that a number of errant employers transferred their workers to work at other places upon expiry of their work permits making the workers “undocumented”.

Access Denied to Justice

The complaints are filed by migrant workers with common areas of concern being non-payment of wages, late or partial payment, excessive working hours, cheating on wages, physical and sexual abuse, lack of medical benefits or assistance, failure to provide support and compensation in cases of occupational accidents, etc.

The problem is that documented migrant workers often are fired by employers for filing complaints with Government officials. Termination of employment results in the ending of the work permit, which is the basis in law for the migrant’s right to stay in Malaysia but with the termination of employment puts the migrant worker under the “undocumented” status. And at most time, filing a complaint prompts action by the employer that makes the migrant complainant subject to immediate deportation.

Malaysia has a “Special Pass” process that allows a terminated migrant worker to temporarily remain in the country while the worker’s case is being considered, but this process is relatively difficult to access and expensive.

However, the Special Pass is issued at the discretion of the Immigration Department and there have been numerous cases when the denial of an application for the Pass effectively short-circuits a worker’s complaint to the relevant authorities. More than a two hundred cases where this has occurred have been documented by Tenaganita. Moreover, the conditions of the Special Pass prohibit the worker from seeking employment, making it difficult for the worker to afford the 100 RM monthly.
MIGRANT MONITOR 2011

fees charged by the Immigration Department.

In cases where specific periods of time are granted (for example, 2 or 3 months), there are numerous instances where legal processes drag on and then for some reason the pass is not renewed – leaving the migrant worker undocumented and subject to arrest at any time.

Withholding of Passports

Employers - whether labour recruitment companies or factories seize migrant workers’ passports upon arrival in Malaysia. This is practised in all sectors of employment, however it is illegal under the Passports Act of 1955 yet the government has never formally sanctioned employers who seize and hold migrant worker’s passports.

Employers and Immigration Officers give various reasons and explanation for this practice, including the suggestion that their workers preferred that employers hold the documents to keep them safe but the truth is, the purpose of holding the passports is to ensure that workers did not leave the employment and to restrict their movements.

When there are raids carried out by Police, Immigration and RELA, workers are found with no documents except for a photocopy of their passports. In most cases the enforcement officials do not accept the photocopied documents therefore the workers are arrested and detained.

Mandatory Testing

A migrant worker must also undergo mandatory health checks while in Malaysia and if the worker is found with one of the communicable diseases on the Government’s exclusion list (such as TB, HIV/AIDS, etc.), s/he is automatically excludable and will be deported. Many workers decide to continue working without work permit, as they still have debts to pay.

Pregnancy, of course is not a disease, but a worker who becomes pregnant is subject to immediate dismissal, her work permit is immediately revoked.

Conclusion

Undocumented workers constantly live in fear because of their “illegality”. Their “homes” tend not to be comfort and safe zones but vulnerable for RELA (Ikatan Relawan Rakyat) – The Malaysian Volunteer Corps, Immigration and the Police can enter their homes without a warrant, break their doors down and arrest all of them. We know of cases where RELA has broken into homes of migrants, taken their valuables and mobile phones, arrested them with absolutely no respect for basic rights. The RELA being ordinary citizens hold more power than the police.

Malaysia could not function without migrant labour, - cheap migrant labour though undocumented workers. Instead of protecting the undocumented workers, they are continuously criminalized for not possessing documents. Losing one’s legal status is so easy in Malaysia and at most times, it is not the fault of the workers.

However those who are convicted of illegal entry may be sentences to up to six strokes of ROTAN – wooden cane. Caning is deeply humiliating and extremely painful. It leaves deep welts on the buttocks that take days to heal sufficiently to dress and more ordinarily without re-opening the wounds. This practice violates the international prohibition on torture and other forms of cruel, inhuman and degrading treatment or punishment.

The Malaysian government has failed to address key causes and issues
that led to the presence of workers without documents. In fact the various industries prefer to employ undocumented workers as they know they need not be accountable.

The message is: Exploit the workers and protect the employer.

Corruption is high in the country and at the ground level, employers and recruiters ‘pay off’ the enforcement officers and the police. The corruption is really embedded in the system. High Corruption index only reflect on lack of political will to address migrant Labour issues.

Source countries are not making any attempts to address the issues of their “undocumented nationals” in Malaysia. As one of the largest receiving country, we should take lead in protecting all workers and recognize their rights particularly undocumented workers. Recognizing the Rights of Undocumented Workers – response effectively to trafficking in persons.

ASEAN - Malaysia is a Stumbling Block, contesting to include undocumented migrants and their families. There is no political will to push the agenda but rather exploit the workers.

It is very clear that with current enforcement of the Immigration Act and the labour recruitment system indicates that there is neither respect nor understanding of rights of migrant workers and the various reasons of how easy a migrant worker can become undocumented. Unless and until we do just that, we are not a country and a nation that is free from slavery and forced labour.
The activities and methods of Korean NGOs in upholding rights of undocumented migrants

NGOs, or non-governmental organizations: Are they providing services or hosting activities?

In the world of service, there are providers, the “subjects” service, and receivers, the “objects” of service. The service receivers benefit from the service.

On the other hand, activities are not about giving and receiving, so there is no distinctive separation between the “subjects” and the “objects.” Further, activities are not for benefits, but for ensuring the rights of the target population, in this case migrant workers. These are the main differences between services and activities.

Most NGOs in Korea do not discriminate between undocumented and documents migrants, with the exception of some extra concerns for undocumented migrants relating to crackdown and sheltering.

Labor Human Rights Counseling

In many cases, migrant workers do not know about their basic rights under the laws of Labor Standard Laws, Industrial Accident Insurance Compensation Laws and so on.

Furthermore, even if an unregistered migrant knows the laws, he or she may have difficulties addressing legal problems via governmental organizations.

Contents: Delayed wage, industrial accidents, assault and confinement, departure, etc.

Method: When a migrant is filing with government organizations such as the Labor Ministry, we either accompany the migrant worker to the building or attend as an agent in his or her place. Civil suit supports.

For counseling, the interpreter may either be a migrant volunteer who has lived in Korea for a long time, or a Korean volunteer who speaks the migrant’s language.

Education, training and information

It is important to show migrant workers what rights they are guaranteed and how they are
The most effective way to ensure labor rights is to join labor unions and do activities there. At the same time, it also strengthens the power of the unions currently consisting of Koreans. Strategically, we need to support the formation of unions in workplaces where Koreans and migrant workers work together. During the formation of a union, NGOs for migrants can help them effectively with experience and resources.

Contents:
- Education and discussions on migrant-related laws such as the Labor Standard Laws, the Employment Permit System, immigration laws, compensation and insurance laws for industrial accidents, labor unions law, including governmental policies.

Method:
1) An organization announces the time and the date for an education program. Some programs include: Leadership training for the representatives of organizations, Migrant Academy, dormitory visits and training, visiting and conducting trainings at religious institutions.

2) We periodically publish newspapers written in migrants’ languages and produce leaflets containing the basic rights of migrants. We distribute to those who visit organizations, at the migrants’ workplaces, and individually by mail.

Migrants who have long lived in Korea and participated in community work take important roles as interpreters or educators.

In my experience, it is very rare for migrant workers to visit us for education. Because of this, it is better to find and visit groups that would like to have trainings, or to make the education a part of an organization’s ceremony. Therefore, it is essential to keep close cooperation with other communities and organizations.

Supporting communities and organizations of migrants

Most communities are formed by nationality. The community of each nationality becomes the center for conducting its own ceremonies, helping friends in need, sharing information and discussing issues.

Often, there are more counseling requests from communities which are more active and maintaining close ties among their members. The education and management of the training programs also improve with greater cooperation from the communities. On the other hand, borderless migrant organizations are also being formed.

Contents:
- Education/training for the needs and methods to form a community or an organization. Providing a meeting place and every kind of information while meeting for them. Supporting community ceremonies.

Medical support

Undocumented migrants are not covered by the National Health Insurance, which makes their medical costs very expensive. Therefore, they often do not go to hospital with a mild symptom, which can make small sicknesses severe.

Contents:
- Korea Migrants Health Association (JCMK), based in Seoul and Gyounggi, runs a free clinic that was established in cooperation with a medical group within the association. In each province, they have organized an associated hospital to reduce the medical costs and create a medical network. (These are not only for migrants, but for anyone in need, such as homeless persons.) Now, municipal public hospitals in each region are also taking care of the homeless and unregistered migrants for free, but only for a limited number of people.

2) Accompanying the migrant patient and supporting him or her as an interpreter.
Supporting cultural activities

Cultural activities are a chance for the unregistered to take pride in their own cultures and introduce them to the citizens. This cultural exchange can reduce the prejudice which citizens have for migrants. It especially makes them uncover the ‘victim’ image propagated in the media.

Contents: Introducing their cultures through displays, food, performance, plays, etc.

Method: Cultural activities with migrants from various nations, such as Asia Culture Festival. Cultural ceremonies by each nationality-based community (Bangladesh food festival, Vietnamese New Year, Diwali Festival, etc.)

These are organized by migrants, often with the cooperation of existing Korea culture groups.

Campaign and public education

Correcting crooked impressions of migrants and attracting the support of the public. In Korea, public interest in migrants grew because of the multi-cultural sensation. The demand for education also grew.

Contents: Human rights of migrants, issues of laws and policies, social prejudice, the problem of unregistered migrants.

Method: Street display; distributing educational materials; marching and street campaigns, bicycle marching, etc.; educating students during lesson hours (from elementary to college) through lecture, group discussion, field study, movie watching and discussion, reading the agreements of human rights together; learning human rights through the counseling cases, meeting with migrants, etc.

Counteracting the crackdown and deportation

Pro-migrant NGOs in Korea are counteracting the intensive crackdown through solidarity. However, there is no usual countermeasure and long-term plan for the issues of undocumented migrants.

Contents: Illegal activities and human rights violations by immigration officers during the crackdown and inside of the detention center.

Method: Gathering information and grasping the problems through interviews with inmates of the detention center, reporting to media (distribution of the reporting materials and press conference, posting articles, etc.), protest demonstrations, publishing problems online (using blog, twitter, homepage and e-mail), petition to the National Human Rights Commission, discussion meeting, making posters and slips for citizens, manuals for counteracting the crackdown on migrant workers.

Network with local and national organizations

In each district, there is a united committee of countermeasures for the migrants. These committees consist of migrants, labor, human rights activists, and social NGOs. However, there is not yet any national base for solidarity. Some united organizations such as Network for Migrants Rights are not big or powerful enough to conduct activities confronting the government. Recently, the Rights Protector for Migrant Workers was formed under the intensive crackdown, which established a (temporary) discussion system including various organizations.

Contents: Joint confrontation through the solidarity of NGOs for labor rights and for ensuring the human rights protection of migrants. Policy suggestions.

Several actions and initiatives

1) The activities of the committee of countermeasure for the tragic fire of the Yeosu Detention Center

On the 11th of February, 2007, 10 inmates of the Yeosu Immigration Detention Center died of fire because the staff of the detention center did not open the prison bar, fearing that migrants might run away. At that time, NGOs for migrants, activists in Korea, and citizen social organizations in Yeosu formed a countermeasure committee, through which they demanded supporting bereaved families, revealing the truth of the fire, punishing those responsible, and solving problems for the undocumented migrants for two months. After that, the committee was dismissed, and they continued their activities for the undocumented migrants under the name, Migration Joint Activities.

2) Taking part in the National Human Rights Commission’s survey of the real status of the Immigration Detention Center

In 2005, the National Human Rights Commission started a survey to grasp the real status of the center by interviewing shelter inmates and staff regarding crackdown, imprisonment, deportation, and scanning materials.

It was meaningful because the activists of NGOs had an opportunity to personally interview inmates as external specialists and find out more specifically the problems of the
shelter; the inmates’ opinions could partially be reflected on the survey. There are, however, some defects that must be improved. The National Human Rights Commission accepts the opinions limitedly and advises the Ministry of Justice to correct problems, which is not obligatory. Furthermore, the survey is repetitious every year in a similar level. It does not raise fundamental questions about the crackdown of unregistered migrants, while the shelter facility continues to expand.

3) Monitoring the media

Some presses foster prejudice against migrants by reporting a supposed relationship between the undocumented migrants and the increasing crime rate by foreigners. A measure will be taken to correct this false information through monitoring articles about undocumented migrants. We plan to monitor medias with existing press monitoring groups.

4) ‘Protecting human rights in the Immigration Detention Center’ project

Various NGOs conducted the project ‘Protecting Human Rights In the Detention Center’ from April to December, 2008. They regularly visited the center to conduct interviews. The following are the activities they have done so far: gathering materials and research, receiving signatures and conducting a campaign (writing postcards, wearing t-shirts), surveying other countries’ NGOs and sharing activities with them, recording Yeosu Fire Accident, and publishing the detention center activities.

The limitations and the problems in supporting undocumented migrants:

It is clear that supporting undocumented migrants is a way of protecting their basic human rights, because they cannot actively protect themselves due to their unstable social status: they are vulnerable to human rights violation, limited in labor rights, difficult in accessing medical services, and are always in fear of being cracked down and deported. It is also important to educate and train them to be able to protect themselves. Furthermore, they need to form a group or community to counteract injustice and cooperate with other groups or communities. Activities to change the policies and law system must become more active.

Separate, individual approach vs united migrant group approach. Each person who experienced a certain type of problem comes to form a group where each member shares his or her experience with others to brainstorm for a better solution. The solutions will become the common method to solve the problem.

Rights relief vs changing the policy/system. Each NGO is very good at dealing with each case but poor at changing the system/laws which make the problems.

One time and temporary activities vs constant and professional activities. This is important especially in monitoring the detention centers, crackdown and control processes as well as having constant access to the problems of undocumented migrants.

5) Counteracting the racism and fostered by the Korean government

Nowadays, the Korean government directs a policy to criminalize undocumented migrants and goes further to gather their physical information and re-enforce the policy questioning. Regarding the undocumented as potential criminals threatening social security, they enforce governmental monitoring, security systems, regulations, and governmental power such as police. This is not just a problem for migrants, but for all of us, because it also violates the basic rights of any person in Korea.

6) Going beyond the isolation of the migrants’ movement

Emphasizing the special situations of migrants should not overemphasize their differences from others in Korea. They are different in nationality, lifestyle, language and culture, but they are also workers, women and minorities. Therefore it is important for them to acknowledge commonalities and mutual interests with other groups. Thus, we should be solidified with various movement groups such as labor groups, women’s groups, human rights groups, and so on.

Especially, the most effective way to ensure labor rights is to join labor unions and do activities there. At the same time, it also strengthens the power of the unions currently consisting of Koreans. Strategically, we need to support the formation of unions in workplaces where Koreans and migrant workers work together. During the formation of a union, NGOs for migrants can help them effectively with experience and resources.

Lastly, we see the interplay of individual approaches and the more important aspect of a systematic and organized approach, protecting the individual rights of migrants to actually changing the policy, and expressing support to extending solidarity.
Best Practices in Organizing Undocumented Migrant Workers

After the EPS was introduced in Korea in 2004, it has proven to be a great challenge for the Migrants’ Trade Union (MTU) to be able to organize more migrant workers. The vicious attack of the government has slowly eroded the confidence of the undocumented workers in the migrant workers movement. To some extent the government has managed to paralyze the undocumented migrant workers movement with fear and systematic arrests. In the early decades, the undocumented migrant workers out-numbered those with working papers. Today the undocumented migrants are less than 20% of the entire migrant population. The government’s aim is to reduce that number to only 10% of the entire migrant population in Korea.

The difficulty of organizing migrant workers today has been amplified because of the repression and the huge division between documented and undocumented workers. Although the restrictions in the Employment Permit System has been responsible for a large percentage of the new batch of the undocumented population today, most EPS workers fail to realize the risk in the policies until it is too late. The revision in the EPS policy did not seem to address the problem of EPS workers becoming undocumented. In fact, the shortened period and the ban of employment afterwards is sure to contribute to the rise of the undocumented population in the near future.

According to the recent statistics from the Korean Immigration Service, the undocumented migrant population is about 178,163, or 15.1% of the current foreign population. Amongst undocumented migrant workers: EPS workers-47,395; Tourist visa holders-37,756; Temporary
Business visa holders-25,128. These groups comprise the bulk of the undocumented migrant population, aside from other groups like entertainer visa holders, Korean spouses/marriage migrants, trainees, student visa holders, etc.

**Organizing Practices and Strategies**

Successful organizing entails a lot of assessment, planning, communication, credibility and relation-building, not necessarily in this order. The migrant workers movement is one of the most difficult in organizing successfully.

In Korea, migrants come from more than 15 countries. Cultural and language barriers always come into play. It is especially difficult for the undocumented workers to organize themselves because of the strong repressive policies against the movement. Repression, language/cultural differences, and the separation between the documented and the undocumented workers affect movement-building.

The apparent lack of and/or restriction of a migrants’ movement has been the insurmountable challenge that we have continuously worked to address.

**Education.** From our experience, one of the most effective tools in organizing the migrant worker is education. When we educate people about their rights, their consciousness is raised and they will then be more wary of their situation and how they are treated. They also become more indignant at the injustices around them.

**Conditioning.** Conditioning migrants to take a more active participation or role is also necessary. It is important that they be encouraged to think like leaders. Give them more responsibility like organizing other workers or educating other workers about the labor laws in Korea.

It is necessary for them to realize that they have the power or privilege equal to their oppressors (ex. employers + money = workers + labor + knowledge) and that they should lead other workers to recognize that power as well (educate, counsel or refer others to have the same education or training). It should also be our responsibility to make them realize that empowerment is not about receiving service—it is about being independent of it and also being able to give it.

**Relation.** The best product of communication is building relationships among comrades. Personal relations and regular meetings familiarize people and strengthen their kinship with each
other. Migrant workers being able to belong to a community is an integral part of living overseas. Isolation from any kind of community can cause undue stress and melancholy. Common interests, language, religion or political views are but few of the factors that may have an impact in effective organizing.

Acknowledgment. Acknowledging the limitations and strengths of the migrants may prove to be a challenge at times. Limitations in terms of participation are a factor that is primarily influenced by the dynamics of economics (additional earnings). Secondary would be the dynamics of power and class standing (employer-employee power relations).

In acknowledging the strengths of the migrants, the danger lies in the power-play between the migrants and native or more privileged activists. In some instances, organizers dictating the needs or the activities of migrants are often mistaken for initiative, whereas passiveness is often mistaken for subservience in addressing their wants. The danger in this practice is, instead of building up their confidence, it will teach the migrants to be dependent on the activists for every single detail in the movement.

First, it is important that organizers recognize their own privilege and understand the power dynamics so that they (organizers) may determine whether organizers are acting on their own needs and not on the actual needs of the people we are organizing.

Secondly, we need to determine between their needs and their wants and somehow find the intersection so that we may be more determined as to what action to take. Through this determination we can support and inspire and at the same time make plans and agendas according to what would be effective in stimulating the migrants’ interest and organizing them.

Challenge. Challenging the migrant to take a more active role in the union is actually not that difficult at all. Inadvertently, communicating the need for ideas, criticisms and suggestions is all that it takes for migrants to be more concerned in formulating strategies, forming ideas and making agendas. Give them a responsibility and they would be obliged to live up to what is expected of them. Right after discussions and meetings, it is also necessary that we find activities where we can direct their renewed vigor towards a particular action that can contribute to our efforts, whether organizing or mass action.

Stress Factors. We also need to take advantage of present conditions or environment. There are several stress factors or influences that may directly affect our organizing efforts. The most effective motivation in every occasion is the existence of a crisis. Some factors that threaten a way of life, rights, safety and security, although having negative effects, can have positive results in terms of organizing the people affected by these threats. Oppression. Discrimination. Violence. Physical danger.

MTU’s Organizing Strategy

MTU has several organizing programs and activities that aid us in organizing. Initially, we had the organizing team that took responsibility in aiding and establishing communication with the migrants, but the shortage of volunteers who would be responsible in organizing became an issue. Now, there is a higher dependency on the migrant leaders themselves facilitating the act of organizing the migrant workers.

1.) Targeting the branch leader (or potential leader) for organizing and training. These people are ideally: a) Active members - members who are interested in union activities and show positive interest to join activities and meet with MTU officials when called. b) Active migrants' community activists - KASAMMAKO, Burma Action, , Nepal Communities, etc. c) Non members - people who are interested and support MTU. They can be MTU supporters and organizers. We have to review people whom we meet in various meeting, events, and counseling sessions.

2) Organizing the Regional/Branch/Chapter/Cluster Leaders
a) Drawing up a list of “primary targets for leadership positions” that would represent the basic unit or group. b) Engaging in individual/personal meetings and grouping them in small clusters to create a smaller, more easily manageable and more intimate group. c) Quarterly Leadership training - sharing of organizing experience and adapting the best practices

3.) Widening our contact base
a) Campaigns and solidarity activities with different migrants’ events b) Relation with communities - Forming strong solidarity with other communities are important because nearly half the work has already been done; migrants have already been organized and are already active in their respective communities. c) Relations/Communication with other members, co-workers and friends.

4.) Give information to as many people as possible. We meet foreigners/migrants on the street, and we should take these opportunities to introduce ourselves if they seem receptive. Usually a smile or a brief greeting or comment is enough to put them at ease to start a conversation. Briefly introduce
MTU and what we do. Let them know that we can extend help and that they can come to us when they have problems. Almost always they are interested in any sort of info about recent or current policies that affects them. Be sure to give them a number that they can contact for any eventuality.

Questionnaires list should include things like the condition of the factory they are working at, accommodation, etc.

5) Start with organizing friends and co-workers. Giving regular education to friends. We also let our friends do the organizing for us. Most of the time, the people that we meet or were able to help show no interest in unionism or union work, but they almost always refer people who might later on show interest in our union and our activities.

6) Food is a strong drawing factor. Usually when we invite people to share a meal or dine out, they will most likely come. Having something to look forward to after a lot of discussion will give them a greater sense of satisfaction. Sharing meals or having snacks, lunch or dinner makes the meeting more personal and intimate and develops close relationships with our members.

7) Fun activities. It is rather difficult to organize a large-scale activity. The irregular working schedule and the available time workers have is rather difficult to manage. Usually workers' schedules do not coincide. Even though participants are willing, they may not have the available time.

Therefore, to address these situations we should be available for them when they do have free time. We also try to do some fun activities with them in smaller numbers. Some migrant centers have a lot of drawing power because of these activities. The difficulty lies in our financial constraints, but it may be possible to organize these events with our solidarity networks (joint activities), cost-sharing and finding inexpensive ways to conduct these activities. Hobbies, games, sports, music, movies, church, etc. are the activities that we provide migrants in order to attract their attention and participation.

8.) Promotion: Local campaign/organizing. Regular campaigns are very important. We make sure that we go to places where there are a lot of migrant workers or migrant worker activities are taking place. Church areas or venues for special events are scheduled regularly so we do campaigns in these locations in addition to labor counseling. For the people who come to us for counseling, we make sure to invite them to come to the office for any further needs that they may have. We always encourage them to organize other people and invite us to their area if they are interested in doing labor education or counseling on a regional level.

7.) Handout materials/contents. We print out and distribute printed materials for our campaign such as brochures and flyers for MTU and the current issues, a multi-lingual newsletter about migrant-relevant news and stories, MTU activities and members’ stories, making the newsletter team, continuously encourage volunteers and contributors, and statements concerning current issues and interest.

8.) Maximizing the power of the migrants. While it is true that a lot of us may not show interest in actively participating in MTU activities, some are willing to do other things to show support. In communities where they encourage members to share what they can, a person can share three things: 1. Time, 2. Talent, and 3. Treasure.

We encourage our members to share their time in our union activities as much as possible but if they cannot, we try to be more understanding of their situation. We give importance to the members’ talent, whether writing, translating, organizing, educating, performing, photography or any other activity that may prove beneficial to MTU. We support, encourage and utilize these talents for MTU.

While it is true that a lot of our members are inactive, we need to find ways to keep track of our members and be more systematic in our collection of their membership fees. A lot of our members face the constraints of work and are usually unable to participate in the activities, but they are very willing to extend their support in other ways, like financially. It is not uncommon for the members to feel that they should do everything they can within their power to extend support and we give great value to the efforts of our members in their support of MTU.

9.) Claim our victories. The more migrant knows about our union activities the more they will be encouraged to realize that there is power in collective efforts. Emphasize victories through union activities from the Myeongdong to our Moonjeongdong and Thai MTU member case, as well as the successful organizing and achievements in STU in Daegu, Samujeongmil and Borgwarner CS union, etc.

10.) Services the MTU provide as well or help in linking the migrants with, i.e. workplace problem counseling, medical service, language lessons, etc.
1. The character and needs of undocumented migrant workers

It has been established that the character and needs of the undocumented are rooted in their economic, political, social and cultural backgrounds. The main reason for their migration is the lack or the absence of employment opportunities in their home countries, which their governments have failed to solve. This is due to the lack of political will within the latter to institute economic justice, specifically the distribution of wealth and resources that have been concentrated in the hands of a few families that constitute the ruling class in their respective societies. Based on the organizing work experiences of KASAMMAKO with undocumented Filipino migrant workers in South Korea, the character of their lives and their needs are the following:

a) Determined to provide economic support for their families in spite of their difficulties, e.g. physical and psychological separation from families, deprivation of adequate rest and recreation, congested living places, physical, psychological and sexual abuse, anxiety of possible arrest and deportation.

b) Willingness to work for extended hours and follow their employers’ wishes and demands for production of goods to keep the job and have an income. Most undocumented migrant workers are prone to exploitation, working for 10 to 12 hours a day.

c) No health insurance, severance and pension benefits. Most undocumented migrant workers would depend so much on social service centers or on their organizations for health and medical needs.

d) Have inherent and native political power, but are not recognized as a political force with enough contribution to the wealth and prosperity of society.
e) Need to be organized so that they can be informed and educated of their basic labor and human rights in the host countries.

f) Need to forge greater social support among themselves for mutual support and encouragement and for access to available social services.

g) As organized groups, need to formulate goals and unite to carry out their goals to better their lives.

h) Need to nurture the consciousness of change in their home countries and internalize the political consciousness that the solution to forced migration is on the home front.

i) As organized groups, need the solidarity of institutions and labor movements in the host country to gain political recognition and to champion their rights.

2. Basic principles in organizing

a) Issue-based organizing work is relevant in uniting individual migrant workers to join organizations and pursue their goals to better their situation and to bolster respect for their human and labor rights. There is conscious effort to organize them on political, social or economic platforms, which provide broad and long-term solutions to forced migration.

b) Many Filipino migrant workers would join ethno-linguistic organizations rather than the goal-driven ones, although there are organizations which are goal-driven and are capable of carrying out their goals and programs.

c) Organizing undocumented migrant workers is effective in the sense that most of them have worked in the country for several years and have known the cultural, social, political and economic landscape. The longer the migrant workers have stayed in Korea, the more they are informed of their rights and the more willing they are to join organizations in order for them to support each other and foster social responsibility.

d) Organizing of women migrants has great potential and it is starting to develop new approaches. This organizing is based on gender and empowerment of women migrants in the context of the feminization of labor in South Korea.

e) Providing opportunities and avenues for political education, which will nurture the consciousness of change in society and on the international level.

f) Mass organizations’ political actions and advocacy for labor rights are encouraged and firmed-up in the context of the present political situation in South Korea. The present government supports anti-labor policies and brutish immigration and police powers against the migrant workers, such as constant and sustained opposition.

g) Welfare assistance such as facilitation of health/medical assistance, labor counseling, shelter and others should always be in line with the goals for organizing.

3. The future of organizing work

a) Sustain and increase vitality of organizations belonging to KASAMMAK0 through regular meetings and educational programs.

b) Expansion work through contact building and small-group, issue-based organizing in other regions of the country with big concentrations of migrant workers.

c) There should be at least one full-time organizer who will focus on organizing work. The organizer will be assisted by part-time ones and leaders of various organizations.

d) Mass organizations of migrant workers should have institutional support such as those from churches and allied social service centers.
About the APMM

The Asia Pacific Mission for Migrants (APMM) is a cause-oriented regional center committed to support the migrants’ movement through advocacy, organizing, building linkages for the advancement of migrants’ rights.

Established in 1984, APMM continues to work towards helping build a strong movement of migrants of different nationalities in Asia Pacific and Middle East (APME). We envision this as organized into a strong migrant movement, actively defending their rights, advancing solidarity with people’s movements in the countries where they are working and linking up with their peoples movements in their home countries.

About the Program for the Empowerment of Undocumented Migrants

We advocate for the recognition of the rights and wellbeing of undocumented migrants who are criminalized in different countries in the Asia Pacific and Middle East regions. The program works with international agencies and regional bodies like the United Nations, International Labor Organization and the ASEAN (Association of South East Asian Nations).

A conference of service providers and migrant organizations on the rights of undocumented migrants was held in South Korea last 2010 following a fact-finding mission conducted in Sabah, Malaysia to look into the conditions of undocumented migrants and stateless children there in 2009.

An international network working for the recognition of the rights of undocumented migrants was formed during the International Assembly of Migrants and Refugees (IAMR) held in Manila last October 2008.
There are many reasons why migrant workers become undocumented.

Regardless of that situation, they have rights that should be recognized, upheld and protected.

No one has the right to tag and treat them as criminals.

This issue is for them.