

CARAM Asia Network:

Position Paper/Policy Brief:

Protect Migrant Workers' Health Rights in Line with International Human Rights Standards

The legal and policy environment in both sending and receiving countries lacks necessary mechanisms to ensure protection of migrant worker's rights. As a result, migrants are commodified as a tool for development without consideration of their human, labour or health rights. This leaves millions of migrant workers vulnerable to abuse, exploitation, and physical and sexual violence, without access to justice mechanisms or the right to redress. Their living and working conditions put their health at risk without access to health information and services.

In view of fundamental rights violations against migrant workers, CARAM Asia calls on governments of sending and receiving countries to adopt a Human Rights approach in all migration policies and to evolve mechanisms to provide necessary protections.

Development policies and programmes must look at migrant workers as human beings with dignity and self respect. This requires acknowledgment and respect for their human rights throughout the migration process as established in the 1990 UN International Convention on the Protection of Rights of all Migrant Workers and Members of their Families. The conditions that dehumanise migrant workers or violate their human rights must be exposed and addressed. All human rights are universal, indivisible, interdependent and interrelated. It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms of migrant workers at all stages of migration.

Health and Rights

Health and human rights must be addressed in a holistic manner, as both contribute to the wellbeing of an individual. However, health rights of migrant workers are currently neglected in both sending and receiving countries. Only the fittest migrant workers are allowed to enter a receiving country after passing an elaborate screening process which includes mandatory testing for a series of conditions (e.g. HIV, TB, Malaria, Hepatitis, Leprosy, Cancer, Mental Health, Pregnancy, etc). Research indicates that limited rights undermine the health of migrant workers. By being subjected to demanding working conditions in "dirty, dangerous and difficult" jobs, in combination with poor living conditions and lack of access to health care and information, migrant workers' vulnerability to disease and health conditions increase considerably. For example, there are regular reports of migrant women domestic workers suffering abuse, which is a direct consequence of not being recognized as formal workers; and cardiac arrest as a cause of death is not uncommon among relatively young migrants in construction.

Migrant Workers' Access to Health Information and Services

CARAM Asia's regional research on migrant workers' access to adequate health information and services in sending and receiving countries reveals that the policies in place do not properly recognize migrant worker's health rights, and in fact are barriers to health. Obstacles that restrict migrants' access to health include a lack of information, a fear of losing their jobs, the types of jobs migrants take, the high cost of health services, restrictions on movement, and gross neglect on the part of their employers.

Additionally, most health policies and programmes do not take into consideration the unique circumstances of migrant workers such as cultural differences, language barriers, and isolated working conditions. Without proper communication channels, migrant workers are left unaware of their health

rights and are unable to communicate with health providers. Likewise, governments of sending countries do not invest in providing preventive health information to migrants before they leave the country.

Migrant Workers' Health Rights Regarding HIV and AIDS

HIV is a key issue of concern regarding cross border and overseas migration and mobility. Factors such as lack of knowledge, detachment from family, and peer pressure may lead to sexual behaviours that increase risk of HIV infection. A lack of awareness about HIV and AIDS, limited access to condoms and proper information limits their ability to protect themselves and thus increases migrant workers' vulnerability to HIV infection. This is exacerbated by avoidance of treatment for STIs due to the high cost of treatment, and the fear of losing their job and being deported.

The ILO Code of Practice on HIV and the World of Work states in 4.6 & 4.7 that HIV & AIDS screening should not be required of job applicants and persons in employment. With regard to *Confidentiality* the Code states that there is no justification for asking job applicants or workers to disclose HIV related personal information. Nor should co-worker be obliged to reveal such personal information about fellow workers. Access to personal data relating to worker's HIV status should be bound by the rules of confidentiality consistent with the ILO's Code of Practice on the protection of worker's personal data, 1997.

In spite of having the right of employment and confidentiality with regard to HIV status under various UN Conventions and ILO Codes, migrant workers are discriminated by being required to undergo mandatory HIV testing. In case of HIV positive status, migrants are unable to go abroad for employment; migrant workers found to be HIV positive as a result of periodic mandatory testing in destination countries are detained and deported immediately without provision of health care services, support or counselling.

Sexual, Reproductive Health and Women Migrant's Vulnerabilities

Many migrant workers are single, young, sexually active and in reproductive age group. Young, lonely and socially isolated men and women tend to seek comfort by developing relationships abroad. Yet, they lack knowledge and access to contraception, including condoms, to protect themselves from sexually transmitted infections (STI) and unplanned pregnancy. No information is provided in their language, and many destination countries have policies that deport migrants for STIs, HIV and pregnancy. This makes women migrants desperate; and, in some cases of unplanned pregnancy, they will put their health at risk by having an unsafe abortion. The other options are just as complicated and risky: continuing with the pregnancy will potentially result in losing employment and income; the mother will face stigma for returning home early, pregnant; while if possible to give birth to the child in that country, the child may be stateless.

Scores of migrant women end up in the informal sector, mostly doing domestic work. Working in isolated conditions and completely at the control of their employers, foreign domestic workers face acute vulnerabilities in the area of sexual health and sexual abuse. Restrictive employment policies often make it impossible for women migrants to change employers, even in cases of sexual abuse. When they are found pregnant or HIV-positive, no investigations take place and access to redress is blocked, but they are deported without medical care or compensation, or else arrested for "adultery."

Considering the considerable financial and cultural contributions migrant workers make to origin and destination countries, CARAM Asia calls upon all governments to immediately consider and adopt the following recommendations:

Recommendations

1. All Governments should ratify and uphold the UN Convention on “The Protection of the Rights of All Migrant Workers and Members of Their Families” and ILO Convention 189 “Decent Work for Domestic Workers.”
2. States must recognise that migrants - regardless of their status as being either documented or undocumented - are entitled to fundamental human rights, including the right to health, equal access to justice, the freedom of movement, freedom of association and freedom from exploitation and abuse, including torture and cruel, inhuman and degrading treatment.
3. Governments of origin, transit and destination countries must develop, implement and strengthen migrant-friendly, gender-sensitive and rights-based policies and mechanisms in the governance of migration, and institutionalise the participation of civil society in these mechanisms.
4. Ensure protection of migrant workers’ labour rights, including the rights to equal pay, to safe and healthy working conditions, to form and organise trade unions and migrant workers’ associations, and portability of social protections and benefits.
5. Countries must reform national laws and policies to recognise domestic work as work, and protect migrant domestic workers’ rights under national labour laws, and ensure that these policies adhere to existing rights as enumerated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979).
6. Ensure that employment is most beneficial to migrant workers by working towards the abolition of labour outsourcing companies, recruitment agencies and labour suppliers, and by promoting direct hiring¹ instead.
7. Repeal all policies and practices of mandatory testing of migrant workers for HIV and pregnancy and related deportation.
8. Provide equitable access to health care and treatment for migrants and their families through provision of innovative and responsive mechanisms.
9. Governments need to recognize the gender aspects of migration, address the impacts, affirm women’s autonomy and protect and fulfil their rights throughout the migration process by ensuring independent migration status that provides the right to work, and by promoting women’s livelihood options and choices in employment, both at home and abroad in part through increased access to education and resources. Governments must prevent and address sexual harassment, violence and sexual abuse in and outside of the workplace, ensure proper access to redress, and promote equitable access to sexual and reproductive health and rights.

¹ ‘Direct hiring’ is defined as the direct employment relationship between employers (owner/operator/end-user /principal employers) AND workers to the exclusion of third parties including labour suppliers.

10. Establish processes to facilitate the participation of migrants, people affected by migration, civil society and trade unions, in the development of laws, policies, programmes and initiatives on migration and migrants' rights.