

# **ONE PAID DAY OFF CAMPAIGN FOR DOMESTIC WORKERS**

## **i. Overview of the situation of migrant domestic workers in Malaysia**

Families in Malaysia employ about 400,000 migrant domestic workers, primarily from Indonesia, Cambodia, Philippines, Sri Lanka, Thailand and India. Domestic workers are not recognized. Employers refer them as maids, helpers, servants. In law, they are defined only as domestic servants under the Employment Act 1955. Consequently they do not enjoy the benefits and rights enshrined in the Employment Act and in other labor laws like the Industrial Relations Act or the Trade Union Act. The only right is the right to claim wages through the Labor Court.

Due to the lack of protection and recognition as workers, many migrant domestic workers encounter physical, sexual, and psychological abuse, not paid wages, no off days, work long hours -seven days a week, for 16-18 hours a day. The workers are confined to the workplace where their passports are held. The numerous violations further include wrongful and excessive deduction of wages, deprived proper food and space to live. Many domestic workers are made to do two jobs which would include working at the business entity of the employer. Employers ensure that they remain isolated and solely dependent to the family by cutting off communications even with their own family and made to do double or triple job.

This form of institutionalized exploitation of the domestic workers has been ongoing for the last three decades. The government continues to maintain the same unprotected form of labor within domestic work. In fact, it is clear that the above form of intense rights violations bring about a bonded labor with intense servitude and debt bondage that constitutes trafficking in persons.

Malaysia, in spite of passing the Anti trafficking in Person Act in 2007 and bringing it into enforcement in February 2008, has yet to address or even look at the whole dimension of recruitment, placement and employment of domestic workers as a form of trafficking in labor. The US government in its status report on Trafficking in Persons has included domestic work in its current reality as servitude and form of bonded labor.

The increased reporting of violent abuses and denial of labor rights of domestic workers, coupled with regional campaigning has led Indonesian women turning down Malaysia as a destination country. The Malaysian government remains adamant and now has begun recruitment of domestic workers from Nepal, Vietnam and Laos. This strategy shows that Malaysia does not want to address the rights violations and continues to keep running to new source countries to get the domestic workers.

This intervention will not deal with the root causes of the problem. The cycle of abuses among migrant domestic worker will continue until and unless the Malaysian government protects the rights of domestic workers by guaranteeing the rights through the law and setting up of mechanism.

## **ii. Malaysia National and International obligations to protect domestic workers**

### **National obligations**

Malaysia has ratified the ILO Convention on forced labour. Article 6(2) of the Malaysian Constitution states that " all forms of forced labour are prohibited." Forced labour is defined by the ILO Forced Labour Convention as "all work or service which is extracted from any person under the menace of

any penalty and for which the said person has not offered himself voluntarily." "Menace of any penalty" was explained by the ILO Committee of Experts as a penalty that "need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges."

In Malaysia, the Anti Trafficking In Persons Act 2007 is being enforced. The Act safeguards against trafficking in persons for labour exploitation purposes. It is too common to discover domestic workers in the situation of being trafficked for labour exploitation and forced labour.

Malaysia has national-level legislation to address violence against women. These aspects are guaranteed under the Penal Code. A Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace is now in place under the Human Resources Ministry. These protective mechanisms must be applicable to the domestic workers' situation.

### **International Obligations**

Upholding the rights of every person as stated in the 1948 Universal Declaration of Human Rights that is international customary law and therefore is binding on Malaysia. The rights encompass the right to life, liberty and security of person, the right to freedom.

On top of this Malaysia has both committed to uphold human rights protections defined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). They must ensure that domestic law and its enforcement comply with their international obligations to protect the rights of women and children and to guarantee equality under the law.

Malaysia has also ratified several ILO conventions, including the ILO Forced Labour Convention (No. 29), the Worst Forms of Child Labour Convention (No. 182), and the ILO Right to Organize and Collective Bargaining Convention (No. 98). As such, Malaysia has an obligation to protect the rights of workers as set forth in those treaties.

### **iii. Tenaganita's Experience**

Tenaganita has been working on domestic workers' issue since 1994. Its started with Filipino domestic workers followed by Indonesian, Cambodian, Sri Lankan and Indian as Malaysia recruit domestic workers from different source countries.

In June 2004, Tenaganita launched a 24 hours Domestic Workers Action Line in cooperation with Royal Malaysian Police to rescue domestic workers from abusive situation. The Action Line is also a counseling line for domestic workers and an information line for employers.

Tenaganita has received more than 300 calls through the 24 hours DW Action Line since Jun 2004 and had handled 215 cases consisting of 1510 human rights violations. These human rights violations include non payment of wages, wrongful deductions, withholding of passports, physical abuse, sexual harassment and rape, psychological abuse, threats, long working hours, no off day, confinement, work in two places, employment of children, no proper food provided, various health problems with no treatment and not allowed to conduct religion obligations as well as denied access to family. Such form of violations constitute bonded labor that is classified as trafficking.

Every single case that we received comes with multiple complaints and usually for one particular case there are 7-10 complaints and rights violations. The Tops six Violations received are as follows:

- No Off Day
- Withholding of Passport
- Unpaid Wages

- Physical and verbal Abuse
- Long Working Hours (16-18 hours a day)
- Sexual Abuse

From the cases handled, it was very clear that many domestic workers suffer abuse and violence because they do not know what to do and where to go to seek help and assistance. They do not have an off days and they are confined in the employer's house. They suffered in silence until someone report the abuses to the police or organisations. Many have left the employment due to the ill treatment by the employers or the recruiting agencies. All the above violations to domestic workers constitute forced labor or trafficking in persons for labor.

#### **iv. National and Regional Campaign to increase protections for domestic workers**

##### **National Campaign**

##### **A “One Paid Day Off” Campaign leading towards the “Recognise Domestic Work as Work” Campaign**

**The reality speaks for itself. The situation and the trafficking of women and children in domestic work will continue if we do not work for change. Gender based violence will increase, as we have seen, more brutal as the days go by. Most of all Malaysians will begin to believe that it will be perfectly fine to beat, to rape, to hold in captivity migrant domestic workers. WE NEED TO ACT. WE NEED TO MAKE THE DIFFERENCE COLLECTIVELY.**

To Achieve the goal of increased recognition of rights and protection, we need a national and regional campaign. The campaign will be officially launched in October 2008. But we will move into organizing a series of awareness raising activities targeted at employers and related government agencies.

##### **What do we want to ACHIEVE?**

##### **Our Long Term Goal:**

**A special legislation that will enshrine and give recognition to domestic work as work where all the rights will be guaranteed.**

##### **Our Short term Objective:**

- 1. A One Paid Day Off for Domestic workers.**
- 2. A standardised Contract for All Migrant Domestic workers with terms and conditions that uphold fundamental rights of decent work and decent wage.**

##### **Regional Campaign**

The national Campaign will and must be part of the Regional campaign. Malaysia is the destination country where domestic workers are being recruited from no less than seven countries. In order to reduce violations and increase protection of rights, all source countries need to work together for a standard contract.

Meanwhile, Caram Asia has been instrumental and is leading the regional campaign for the recognition and protection of Foreign Domestic Workers' rights. The campaign which is supported by various regional organizations is moving towards recognition of domestic work as work. The Malaysian campaign will become part of the regional strategy. Through this process, we will all be strengthened to realize the goals of the campaign.