

**Regional Civil Society Recommendations  
on the  
Implementation of the 2017 ASEAN Consensus on the Protection and Promotion of  
the Rights of Migrant Workers**

We, representatives of the civil society, trade unions, and people's organizations of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, have gathered here today in Jakarta on the twenty first of February two thousand and eighteen for the purpose of solidifying our common ground with a view towards ensuring utmost protection and promotion of the rights of all migrant workers in the ASEAN region;

**Reiterating** that a legally binding ASEAN instrument on migrant workers is still key to ensure full enjoyment of the rights of migrant workers that would strengthen political, economic, and socio-cultural pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers and their family members in a climate of freedom, equality, and stability;

**Acknowledging** the existing national and regional conflict of interests and politics of migration in addition to the varying challenges, national interests, and development gaps among the ASEAN Member States (**AMS**) that contribute to the lengthy negotiation and discussion process towards having a legally binding ASEAN instrument on the rights of migrant workers;

**Welcoming** the political commitment of the AMS as expressed through the adoptions of the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (**Cebu Declaration**) and the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (**ASEAN Consensus**);

**Emphasizing** the need for the ASEAN Consensus to be guided by international norms and standards embodied in the Universal Declaration of Human Rights and other international instruments particularly the International Convention on the Protection of the Rights of All Migrant Workers and Their Family Members (**CMW**), United Nations Convention on the Elimination on Discrimination against Women (**CEDAW**), the United Nations Convention on the Rights of the Child (**CRC**), the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**), and/or other international human rights treaties, international humanitarian law treaties, and the International Labour Organization (**ILO**) core labour standards;

**Emphasizing** the need to have a synergy with other cross-cutting ASEAN human rights commitments, namely the 2015 ASEAN Convention against Trafficking in Persons, Especially Women and Children (**ACTIP**), ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children, the Bohol TIP Work Plan, the ASEAN Regional Plan of Action on the Elimination of Violence against Women (**RPA EVAW**), the ASEAN Regional Plan of Action on Elimination of Violence against Children (**RPA EVAC**), and Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection and other relevant ASEAN commitments;

**Affirming** that regional commitments have to be supported by dedicated national structures to ensure sustainable and effective protection and promotion of the rights of migrant workers and their families;

**Welcoming** the commitment of AMS to develop and review an action plan in view of fully implementing the ASEAN Consensus;

**Reaffirming** that the inclusion of and engagement with civil society, trade unions, and people's organizations is integral to the adherence to the purpose of ASEAN as stipulated in Article 1.13 of the ASEAN Charter 'to promote a people-oriented ASEAN, in which all sectors of the society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building';

Based on Chapter 8 of the ASEAN Consensus that allows for amendments, we hereby submit and call upon AMS to consider and adopt the following recommendations:

1. Ensure that the Regional Plan of Action (**RPA**) is linked to the Sustainable Development Goals (SDGs), time-bound, measurable with clear goals, targets, and indicators;
2. Ensure that the RPA review mechanism is transparent and inclusive of the ASEAN civil society, trade unions, and people organizations;
3. On **decent work and social protection**, include the following items in the RPA:
  - a. Relevant to Chapter 4 paragraphs 14-17 and Chapter 6 paragraph 36, developing a standard employment contract that has to be respected and commonly applied in all AMS. The standard employment contract (i) has to be in compliance with international human rights standards, including the ILO Conventions, (ii) has to be distributed to all relevant parties, including but not limited to the migrant worker, the employer, the governments of sending and receiving states, and family of the migrant worker, and (iii) has to be written in a language understood by the migrant worker;
  - b. Relevant to Chapter 6 paragraphs 36-40, the standard employment contract should, at the minimum, the following terms: clear job description, working hours, rest days, annual leave, mandatory medical insurance at the expense of the employer, full access to medical care and social protection, clear remuneration elements such as salary, bonuses, overtime rate, and/or other allowances, occupational hazards and safety precautions, notice period and repatriation, guarantee to hold all documents including but not limited to passports and work permits, enjoyment of reasonable and adequate housing and/or accommodation, clear recruitment policies and description of responsibilities, guarantees to the rights to privacy, communication, and/or other human rights and labour standards, access to labour dispute mechanisms, and a guarantee of periodical review and updating of employment contract to maintain relevance to the changing economic conditions;
  - c. Relevant to Chapter 6, developing clear criteria of minimum medical insurance and access to healthcare and social protection, reasonable and adequate housing and/or accommodation to be afforded by the employers to any migrant workers in the ASEAN region;
  - d. Relevant to Chapter 5 paragraphs 21-24 in conjunction with Chapter 6 paragraphs 32 and 36(c) and Chapter 7 paragraphs 51-55, developing an effective communication system between migrant workers, consular offices, labour representatives and civil society to assist migrant workers to obtain necessary information, access to justice, and/or aid in times of crisis in

addition to providing other services that ensure the enjoyment of decent work and living conditions of the migrant workers and their families;

- e. Relevant to Chapter 3 paragraph 7 in conjunction with Chapter 4 paragraph 15 and Chapter 6 paragraph 30, initiate a process of developing binding national law or regulations that ensure enjoyment of fair and equal treatment for migrant workers where the rights afforded to migrant workers shall not be less favourable than the rights afforded to local workers. The right to fair and equal treatment shall include the rights for domestic workers, undocumented migrants, people working in vulnerable sectors, rights to citizenship of children, family reunification, reproductive rights, and other international standards;

4. On **undocumented migrant workers and cross-cutting human rights issues**, include the following items in the RPA:

- a. Relevant to Chapter 7 paragraph 52, implement the ACTIP provisions and ensure the national anti trafficking systems are victim-centric to ensure the victim has freedom to work, freedom of movement, and rightful compensation. The system should also ensure the protection of the families of victims from traffickers, and non-criminalization of victims and informants of trafficking. Stronger cross border cooperation is needed to ensure that trafficking syndicates are prosecuted in their countries;
- b. Relevant to Chapter 7 paragraphs 55 and 57, provide a rescue system at the embassies and consulates to assist migrant workers with any necessary help and information to ensure protection and promotion of their rights;
- c. Relevant to Chapter 7, governments of the AMS should ensure compliance of laws and regulations by recruitment agencies and/or any other parties involved in the recruitment process of migrant workers. Among other programs, AMS should:
  - i. Develop simple and clear guidelines accessible to migrant workers on the recruitment process and the costs involved;
  - ii. Enact national laws and regulations on the licensing and registration of recruitment agencies and their sub-agents, including penalties for any breach of licensing laws and regular auditing of their processes;
  - iii. Increase the number of labour inspectors in receiving states to facilitate more random inspections at households where domestic workers work without the need for a complaint to be lodged;
  - iv. Increase number of labour inspectors in sending states to oversee the predeparture documentation of migrant workers and recruitment agencies without notice;
  - v. Implement effective amnesty programmes in receiving states wherein all existing undocumented migrants should be able to register without restriction and cost barriers. Governments should facilitate free repatriation of migrants who volunteer to return home;

- vi. Ensure that all migrant workers regardless of their migration and documented status receive the same protection and benefits as local workers to prevent employers from exploiting migrant workers.
  - d. Relevant to Chapter 7 paragraphs 52 and 55 and provisions of the ACTIP, increase collaboration among the AMS and ASEAN bodies and mechanisms, including the AICHR, ACWC, SOMTC, and SOMSWD to establish mechanisms to prevent trafficking in persons and minimize the impacts of trafficking in persons to the victims and members of their families.
5. On **access to justice**, include the following items in the RPA:
- a. Relevant to Chapter 4 paragraphs 19-20 and Chapter 6 paragraph 42, AMS should facilitate migrant workers' access to legal representation by:
    - i. Developing and enacting legal aid law, regulations, and policies on the protection and promotion of the rights of migrant workers in AMS;
    - ii. Providing legal aid services, including pro bono lawyers, interpreters, and cross-border cooperation for returnee migrant workers and their families;
    - iii. Ensuring fair trial processes in any courts and judicial procedures for migrant workers and their families;
    - iv. Eliminating criminalization of migrants who, through no fault of their own, have subsequently become undocumented.
  - b. Relevant to Chapter 4 paragraph 20, allowing migrant workers to form and join trade unions in all AMS in accordance with ILO Conventions Number 87 on the Rights to Freedom of Association and Number 98 on Collective Bargaining;
  - c. Relevant to Chapter 7, conduct activities to increase awareness on the rights of migrant workers, including migrant workers with disability, and provide access to translators and interpreters to overcome any language barriers and/or disability.
6. On **information, empowerment, and recruitment**, including the following items in the RPA:
- a. Relevant to Chapter 4 paragraph 13 and Chapter 5 paragraphs 21-24 and Chapter 6 paragraphs 32-34, develop concrete national programs aimed at disseminating information related to migration, including:
    - i. Cooperating with civil society and international organizations to formulate pre-departure and post-arrival curricular that cover all necessary information related to migration procedures, rights and obligations of migrant workers in addition to sharing cultural differences, language trainings, and useful contact information;
    - ii. Establishing media platforms for the dissemination of information on migration, recruitment process, and complaint mechanisms;

- iii. Adopt the ILO Fair Recruitment Initiative to foster fair recruitment practices, preventing human trafficking, and reducing the costs of labour migration;
  - b. Relevant to Chapter 5 paragraph 25 and Chapter 7 paragraph 57, include the following items in the RPA:
    - i. Establish, regulate, and monitor medical and healthcare providers that conduct mandatory health checks for migrant workers in sending states to prevent fraudulent health certifications;
    - ii. Remove discriminatory policies in receiving states, such as deporting migrant workers on grounds of sickness, hospitalization, or pregnancies.
- 7. On **repatriation and reintegration**, include the following items in the RPA:
  - a. Coordinating with migrant workers organizations in conducting baseline studies aimed at identifying the needs of returnee migrant workers;
  - b. Coordinating with migrant workers organizations in formulating detailed steps to develop (i) participatory reintegration program for migrant workers and their families, (ii) social protection law for migrant workers, (iii) measures to access birth certification and education for children of migrant workers, (iv) promoting the positive image of returnee migrant workers.
- 8. On **the cooperation among AMS and mechanisms**, relevant to Chapter 7 paragraphs 59-60, include the following items in the RPA:
  - a. Task the ACMW to develop a database on migrant workers in the ASEAN region comprising all relevant information, including but not limited to the lists of certified recruitment agencies, costs and fees related to recruitment and placement of migrant workers;
  - b. Task the ACMW to (i) produce written and accessible public reports on the implementation and progress of the ASEAN Consensus (ii) set a dedicated session to review the implementation of ASEAN Consensus at the ASEAN Forum on Migrant Labour (**AFML**);
  - c. Develop steps to familiarize all national and regional stakeholders on ASEAN documents including but not limited to ACTIP, ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children, the Bohol TIP Work Plan, the RPA EAW, RPA EVAC, and Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection and other relevant ASEAN commitments with a view of creating a synergy among all cross-cutting issues related to the protection and promotion of the rights of migrant workers;
  - d. Enact national laws, regulation and/or policies obliging the employer to use electronic banking system for the payment of salary of migrant workers;
  - e. Task AMS to develop one stop service centres to provide information, education, and services to migrant workers;

- f. Enact regulations or policies to ensure that any recruitment and money transactions are conducted in the company or agency's office unless authorized and monitored by the government;
9. On **standard-setting and ratification of the CMW**, include the following items in the RPA:
    - a. Develop clear measures and activities aimed at raising better awareness of the international norms and standards related to migrant workers and for AMS to ratify the CMW, namely through:
      - i. ACMW's collaboration and engagement with AICHR;
      - ii. Tasking the Ministry of Foreign Affairs to lead the national development and intra-ASEAN cooperation in the pursuance of CMW ratification;
      - iii. Officially inviting the United Nations Special Rapporteur on the Human Rights of Migrants and implement their recommendations (if any);
    - b. Harmonizing national legal systems with the regional commitment and international standards on the protection and promotion on the rights of migrant workers, by enacting and/or amending and/or repealing laws, regulations, and policies.
  10. In ensuring sustainable and effective implementation of the regional commitment adopted by AMS, include the following items in the RPA:
    - a. Establish national focal points in each AMS mandated to cooperate at the regional level and implement the RPA in the national context;
    - b. Conduct activities, such as regional and national studies, focus group discussions, civil society consultation, awareness raising campaigns and/or other activities that contribute to the process of ratifying the CMW and relevant ILO Conventions;

Done in Jakarta, Indonesia on this twenty first day of February of two thousand and eighteen.

**Endorsed by the following civil society members:**

1. Human Rights Working Group (HRWG) – Indonesia
2. Majlis Kesejahteraan Masyarakat (MKM) – Brunei Darussalam
3. Legal Support for Children and Women (LSCW) – Cambodia
4. Agency for Basic Community Development (ABC) – Myanmar
5. Migration Working Group (MWG) – Malaysia
6. Migrant Working Group (MWG) – Thailand
7. HOME – Singapore
8. Center for Migrant Advocacy (CMA) – Philippines
9. Network of Action for Migrant Workers (M.Net) – Viet Nam
10. Confederation of Indonesian Prosperous Labor Unions (KSBSI) – Indonesia
11. Women's Solidarity for Human Rights (Solidaritas Perempuan) – Indonesia

12. Jakarta Legal Aid (LBH Jakarta) – Indonesia
13. Migrant Workers Network (JBM) – Indonesia
14. Migrant Care – Indonesia
15. Trade Union Rights Centre (TURC) – Indonesia
16. Indonesian Migrant Workers Union (SBMI) – Indonesia
17. ...