

Task Force for ASEAN Migrant Workers
ASEAN Civil Society Organizations (CSOs)-Trade Unions Consultation
on Protection and Promotion of the Rights of Migrant Workers
31 July 2007, Bangkok, Thailand

A new deal is urgently required for migrant workers in ASEAN, based on a collaborative effort to develop and effectively implement a new ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers. Recently ASEAN has taken a number of positive steps which the Task Force earnestly welcomes, and which we believe may significantly contribute to protecting the labour and human rights of migrant workers in ASEAN. First, the ASEAN Foreign Ministers deserve credit for their decision to propose the creation of a human rights body in the draft ASEAN Charter. We fully expect that the mandate of the forthcoming ASEAN human rights body will encompass the full range of rights of migrant workers, reflecting the core principle that migrant worker rights are human rights. Second, the decision to establish an ASEAN Committee for the Implementation of the ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers creates an important inter-governmental body to deal with the full range of issues and challenges faced by migrant workers in ASEAN.

Recognizing the importance of developing pro-active measures to deal with the challenge of migration, the ASEAN Governments set out a provision in the Vientiane Action Programme which called the “elaboration of an ASEAN instrument for the protection and promotion of the rights of migrant workers.” The Singapore Working Group on the ASEAN Human Rights Mechanism was requested to take up this work. To ensure a transparent and consultative process that will develop the best possible recommendations to ASEAN, the Task Force on ASEAN Migrant Workers (Task Force) was established at a consultation held in Singapore in April 2006. The Task Force is composed of civil society organizations, trade unions, community groups, and migrant worker associations.

The Task Force is committed to engage with civil society groups and trade unions to discuss the policies and issues raised in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. In line with ASEAN’s Vientiane Action Programme, the Task Force will study and offer recommendations for practical steps to implement the ASEAN Declaration by drafting an ASEAN Framework Instrument for the Protection and Promotion of the Rights of Migrant Workers.

The Task Force holds as a central principle that regardless of migrant workers’ origin or current documented or undocumented status, migrant workers in ASEAN shall be guaranteed non-discriminatory ‘national treatment’ in both their conditions of work and their life outside of work. Undocumented migrant workers should not be treated as criminals solely for the reason of their lack of status.

The Task Force believes that developing the ASEAN Framework Instrument should complement the Initiative for ASEAN Integration (IAI) and the ASEAN Framework Agreement on Services (AFAS). Quite clearly, significant differences in the levels of economic development among ASEAN member states and the continued persistence of

poverty in some nations prompts migration for the purposes of seeking better economic opportunities and livelihoods. Not surprisingly, then, labour mobility has increasingly become a component of integration as barriers are being removed to facilitate freer movement of capital, goods, services and technology. If handled properly through an ASEAN Framework Instrument that promotes best practices in managing migration and protecting migrant workers, the Task Force hopes that labour mobility can help reduce the poverty and development gap in ASEAN. By providing much needed labour to the economy of countries receiving migrant workers, and enabling those workers to earn wages which are sent back to their home country as remittances, migrant workers provide direct benefits that assist in the development of both countries, and increase economic equity among ASEAN countries.

Therefore, the civil society and trade union participants of the CSO-TU Consultation Workshop on the Protection and Promotion of the Rights of Migrant Workers, held on July 31, 2007 at the Asia Hotel in Bangkok, Thailand, make the following recommendations to the Royal Thai Government, to the Governments of the Greater Mekong Sub-region, and to ASEAN:

Recommendations to the Royal Thai Government

1. The Royal Thai Government is strongly urged to undertake an immediate review of all labour laws related to migration, and make revisions to bring those laws into compliance with the UN and ILO Conventions which Thailand has ratified. The Royal Thai Government is strongly commended for its ratification of ILO core labour conventions 29, 100, 105, 138, 182. However, the Royal Thai Government should immediately ratify the remaining ILO core Conventions, especially Conventions 87 and 98, and provide mechanisms for effective implementation of these international commitments.
 - The Royal Thai Government should revise the Labor Relations Act to allow migrant workers to organize their own trade unions and organizations, and to serve as trade union executive committee members.
2. The Royal Thai Government is requested to consider immediate ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
3. The RTG should repeal all declarations and rules by provincial Government authorities (such as the attached announcement for Phang Nga province) currently being used to restrict the rights of migrant workers. Among the restrictions that should be repealed in Phang Nga and other provinces are the following:
 - Imposition of a broad curfew – “Migrants are not allowed to leave their housing sanctioned by their employers between 8 p.m. and 6 a.m.”
 - Restrictions on travel – “Migrants must remain in districts and provinces specified by their work permits.”

- Restrictions on communications – “Migrants are not allowed to use mobile phones.”
 - Restrictions on transport – “Migrants are not allowed to drive cars, trucks, or motorbikes.”
 - Restrictions on association and assembly – “More than five migrants cannot gather outside their houses. If they want to perform religious or social gathering, then they must inform such a gathering to the district office one week in advance.”
4. The Royal Thai Government should eliminate the regulation that a registered migrant worker must find a new employer within 7 days of losing his job or face immediate arrest and deportation. An improved system with a longer transition period should be devised during which a migrant worker is allowed to freely seek a new employer so that migrant workers have a reasonable chance of continuing their documented status and maintaining legal employment.
 5. The Royal Thai Government should pay particular attention to the difficult circumstances facing migrant domestic workers in Thailand. Among the key problems that must be addressed are the lack of employment contracts, prevalence of sexual harassment as well as other physical and psychological abuse, failure to provide any holiday leave or over-time pay, payment of sub-minimum wages, forced working of long hours, seizure of worker’s identification documents, restrictions on movement and association, and existence of child labourers working in domestic service.

Accordingly, the Royal Thai Government is strongly urged to revise the Labour Protection Act, the Labour Relations Act, and all other labour laws to ensure that migrant domestic workers are fully covered by all provisions of law.

- a. The Royal Thai Government should immediately adopt a legally-enforceable “standard employment contract” for domestic migrant workers that complies with international standards.
 - b. The Ministry of Labour should issue the appropriate regulations to ensure that the “standard employment contract” adopted by the MOL is the only legal contract for hiring of migrant domestic workers in Thailand.
 - c. Given the “hidden” nature of domestic work, the MOL should consider working with partners to set up an effective complaints/grievance system which migrant domestic workers can easily access to seek assistance from Thai authorities.
6. The Royal Thai Government should respect and promote the right to education for all children of migrant workers, and should actively support their attendance in schools and ensure they receive a quality education. Government policy and programs should proceed on the basis that children of migrant workers have the same right to education as Thai children.

7. The Royal Thai Government should strictly enforce legal protections for women workers, such as ensuring that women migrant workers are not terminated because of pregnancy.
8. The Royal Thai Government should clearly articulate to employers and local officials that migrant workers have the right to hold their own travel and work documents (passports, migrant worker identification cards, work permits, etc.) and prosecute employers or other unauthorized persons who seize these documents.
9. The Royal Thai Government should establish a policy to compel recruitment of migrant workers to occur in a professional, transparent, and accountable manner. The Government should recognize that it ultimately needs to remove the private sector/agents from involvement in mobilization of migrant workers, replacing the current system with a Government-to-Government system (based on a written agreement between the Governments) as called for by ILO Conventions 143 and 181. This Government-to-Government system should be accessible, easy to understand and accountable to outside scrutiny.
10. The Royal Thai Government should establish a “one stop service center” system at the provincial and national levels, grouping the government agencies overseeing various aspects of migrant worker registration and regulation process.
11. Thai Labor Attaches and Embassy officers should be provided with adequate resources and staff to play a pro-active role in protecting Thai workers overseas. They must also cooperate closely with trade unions and civil society organizations to ensure effective and timely assistance is provided to Thai workers facing difficulties.
12. The Royal Thai Government should prepare information about the laws, working conditions, types of jobs, and existing health, education, and social services for migrants, and ensure that this information is provided to migrants (in the local language(s) of the country) prior to coming to work in Thailand. The Thai Embassies in neighboring countries should support the outreach and dissemination of these materials (directly, and in collaboration with local civil society partners) to ensure intending migrant workers receive the information in a timely way.
13. The Royal Thai Government should create a supportive environment for the creation and operation of “social networks” of migrant worker organizations/associations (supported by Thai trade unions and civil society organizations) which can facilitate efforts by migrant workers to protect themselves. The Government should also respond positively to effort by civil society organization and trade union “watchdogs” to monitor and highlight abusive employers and places of employment.
14. In cases where migrant workers are considered for deportation, the Royal Thai Government should give prominent consideration to the principles of human

- dignity and human rights of the migrant workers and ensure the physical safety of those being returned.
15. Officials and employers found to be guilty of corrupt practices that exploit migrant workers and diminish or deny them the protection they receive should be punished according to the law. The punishment provided under law should be increased for any official malfeasance and corruption which facilitates the non-enforcement of applicable labour law and other laws extending protections to migrant workers.
 16. In order to resolve some of the entrenched issues in Burma (Myanmar) that result in significant outflows of migrant workers to Thailand and other countries in the ASEAN region, the Royal Thai Government should press the Government of Burma (Myanmar) to reform its political system and restore democracy and respect for human rights of its citizens. The Royal Thai Government should institute serious and meaningful negotiations with the Government of Burma (Myanmar) on the issue of ensuring respect for the human rights of Burmese workers both in Burma (Myanmar) and Thailand.
 17. The Royal Thai Government should conduct an annual survey on the families of migrant workers to better understand the issues and problems they face living in Thailand, and take measures to ensure their rights are respected and they have access to basic health and education services.
 18. The Royal Thai Government, working in cooperation with key international agencies such as UNIFEM, the ILO, and IOM, should undertake a comprehensive study of the numbers, living and working conditions, and health of migrant workers in Thailand, and should make the data and results public. Given the hidden nature of domestic work, this sector should receive particular attention for further research.
 19. As the Royal Thai Government prepares to assume the chairmanship of ASEAN and host the bi-annual ASEAN Labor Ministers Meeting in 2008, the Government is urged to expand its partnership with the Task Force on ASEAN Migrant Workers and other relevant international agencies supporting the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and the establishment of a comprehensive, rights-based ASEAN Framework Instrument.

Recommendations for Governments of the Greater Mekong Sub-region (GMS)

1. Greater Mekong Sub-regional (GMS) Governments should publicly acknowledge the following are basic human and labour rights which should be guaranteed for all persons, including migrant workers, and take all necessary steps to ensure these rights are respected: right to education, provision of birth certificates, freedom of movement/travel for migrants and their families, right

to form associations and trade unions and to collectively bargain, access to health services, and access to legal systems and courts to seek justice and redress. International core labour standards should be clearly understood to fully apply to migrant workers.

2. GMS Governments should ensure systems of pre-departure training are made available for all persons intending to migrate. At a minimum, this training should include information on human and labour rights, labour law in the receiving country, grievance mechanisms and access to justice for migrant workers, content of employment contracts, and “safe migration” mechanisms. Pre-departure training should be gender-sensitive, reflecting the increasing predominance of women migrants.
 - a. GMS Governments should engage with civil society organizations, trade unions, networks of returned migrant workers, community groups and leaders, and respected religious and social organizations to provide this training and to disseminate information to intending migrants.
 - b. GMS Governments should also launch national awareness campaigns, providing clear messages on the importance of safe migration and giving information on contact points where additional information can be obtained by intending migrants.
3. Migrant worker recruitment systems should be made more efficient, more oriented towards protecting the rights of migrant workers, and more transparent so that civil society organizations can effectively monitor their operations.
 - a. Current Government recruitment systems in the GMS are seen by migrant workers as expensive, slow, and bureaucratic, and therefore use of these systems is less than it should be. Legal migration channels should be streamlined, and made affordable and accessible for intending migrants.
 - b. Government offices providing passports and other relevant documents for intending migrants should be extended to areas outside central/capital cities.
 - c. Standard employment contracts for migrant workers, outlining key aspects of wages and conditions of work, as well as benefits that migrant workers shall receive, should be introduced by the GMS Governments. These contracts should be legally enforceable.
 - d. Officials of the sending Government in the GMS should systematically monitor the status of their nationals working in the receiving country to ensure compliance by employers with the terms of MOUs made between the countries. Recruitment agencies must play a positive role

in ensuring compliance of employers with the labour contract, and should be held jointly accountable (with the employer) in cases of abuse and negligence that results in harm to the migrant worker.

- e. A system should be devised where workers returning to their country are provided with reintegration services and support, possibly through collaboration with the recruitment office that sent the worker abroad.
4. Migrant workers who are taken out of human trafficking situations should be treated as victims (in line with the GMS Governments agreement in the COMMIT Process) and provided with access to justice, including the right to reside in the receiving country until such time as all legal cases seeking redress are completed.
 5. Migrant workers from the GMS countries, regardless of their status, have the right to the full support of their Embassies in the country where they work. Diplomats from the GMS countries must be provided with training and support to pro-actively defend the rights of their nationals and provide assistance and shelter to their migrant workers who are facing difficulties. Diplomats who shirk these duties or are found to collude with exploiters of migrant workers should be held accountable.
 - a. The GMS Governments should support the establishment of “migrant help desks” in countries where their citizens work as migrants. These “migrant help desks” could consist of all key stakeholders such as Embassy officials and/or labour attaches, representatives of trade unions, civil society organizations, and migrant worker associations.
 6. GMS Governments should recognize the phenomenon of “statelessness” in the sub-region and understand that lack of status greatly increases the vulnerability of stateless migrant workers to exploitation. Accordingly, the GMS Governments should publicly acknowledge the right of all persons to health and education services and acknowledge and recognize birth certificates issued by any GMS Government.
 7. GMS Governments, working closely with civil society and trade union partners, should develop a list of exploitative practices and should publicly identify and shame labour recruiters and employers found to consistently violate labour laws and regulations. A database listing these recruiters and employers should be operationalized under the appropriate regional mechanism for protecting migrant workers.

Recommendations to Member States of ASEAN

1. The Task Force urges the Member States of ASEAN to immediately ratify all eight core ILO Conventions¹, and ensure that their national labour laws, especially those laws governing migrant workers, are harmonized with the standards contained in those core ILO Conventions.
2. The Task Force further urges all the Member States of ASEAN to ratify ILO migrant worker Conventions 97, 143 and 181 as well as the UN International Convention on the Protection of the Rights of Migrant Workers and Their Families.
3. The Task Force recommends the national Ministries of Labour should agree that the “instrument on the protection and promotion of the rights of migrant workers” to be developed (as called for in paragraph 22 of the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers) will be a binding instrument on ASEAN Member States.
4. The Task Force advocates that the ASEAN Framework Instrument should have a reporting mechanism for Member States to report on their compliance with the provisions of the Framework Instrument. An independent Commission should be created and empowered to receive the States’ reports, receive information from trade unions and civil society organizations, conduct investigations and follow-up activities, report to the ASEAN Leaders, and undertake other activities to be determined. The ASEAN Secretariat could be tasked to provide technical support and services to assist the functioning of this independent Commission. The ASEAN Committee for the Implementation of the ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers could play an important liaison role with this independent Commission.
5. The Member States of ASEAN are strongly urged to establish focal points in each national Ministry of Labour, give those focal points the necessary authority, and task them to engage substantively with the Task Force as it develops the draft ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.
6. To undertake the necessary work to support the protection of migrant worker rights, it is important that the Ministries of Labour (and other relevant Ministries tasked with migration issues) of the Member States of ASEAN have the most accurate and up to date information on migration possible, and personnel with the skills to carry out work to better monitor and regulate migration. Accordingly, the national Ministries of Labour should consider establishing and maintaining an effective, updated database of its nationals working overseas, and conduct the necessary capacity building for their officials to manage labour migration at all levels. Member States of ASEAN are urged to give their Ministries of Labour sufficient financial and other resources, and authority, to undertake this important work.

¹ ILO Conventions 29, 87, 98, 100, 105, 111, 138, and 182.

7. The right of all citizens of ASEAN Member States to hold their own passports and Government-issued identity documents should be considered inviolable, yet migrant workers regularly report that brokers, agents, and employers routinely and systematically seize their passports and documents. Member States of ASEAN should adopt a clear no-tolerance policy that imposes tough punishments on all persons who seize or hold migrant workers' documents.
8. ASEAN should create regional mechanisms for the protection of migrant workers which can complement relevant national efforts. These mechanisms should be supported by an ASEAN Migrant Fund that would be funded by contributions by ASEAN states and other sources. ASEAN should consider implementing the following schemes as a start to creating a wider web of regional protection:
 - a. "ASEAN Migrant Worker ID" – ASEAN should create an ASEAN Migrant Worker identification card that would be issued to all migrant workers in ASEAN states. This ID could serve as proof of identity and documented status of a migrant worker.
 - b. "ASEAN Hotline" – ASEAN should consider creating an "ASEAN hotline" at the national level in each of the ASEAN countries to provide information/advice for intending migrants (in source countries) or emergency assistance for migrant workers facing difficulties (in destination countries).
 - c. ASEAN should consider setting up an "ASEAN Migrant Social Security and Health Insurance" scheme to support the provision of basic health and social services to migrant workers.
9. The Member States of ASEAN should immediately ensure the end of all arrangements which devolve law enforcement authority over migrants to persons who are not law enforcement officials with permanent civil servant status in the Government. It is vital that the Member States of ASEAN take clear steps to protect all migrant workers from any form of human rights abuse perpetrated by civilian auxiliaries/groups.
10. The Member States of ASEAN are urged to intensify their actions against all forms of discrimination and violence against migrant workers, and set out clear policies that state that 'national treatment' in wages and working conditions shall be provided for all migrant workers, regardless of status.
11. The Member States of ASEAN are urged to ensure that migrant domestic workers are specifically included in coverage of the national labour law.
12. Since all the Member States of ASEAN have ratified both the UN Convention on the Rights of the Child (CRC), and the UN Convention on Elimination of Discrimination Against Women (CEDAW), all children born to migrant workers should be provided with birth registration and access to education and health care.

13. Recognizing that migrants in ASEAN are increasingly female, the Task Force believes the Member States of ASEAN should set out clear gender-sensitive policies on migration, and ensure that Government practices towards migrants reflect these gender specific migration policies.
14. Recognizing that quality of health of a migrant worker does not just affect the worker, but also his/her family residing in the country of origin, the Task Force recommends that the Member States of ASEAN create an effective scheme of high quality, portable health care insurance for migrant workers.
15. Given the importance of migrant worker remittances to the economy of the migrant's origin country, a dependable, accessible, and low-cost system for transmitting remittances in ASEAN is vital. The Member States of ASEAN are urged to support the creation of such a remittances system, whether implemented by the private sector, trade unions and civil society organizations, or Government agencies.
16. The Member States of ASEAN should favorably consider the results of the TF-AMW's consultations of civil society organizations and trade unions (held in Singapore, April 2006; Kuala Lumpur, March 2007; Jakarta, May 2007; Bangkok, July 2007); the CSO-TU Position Paper on an ASEAN Instrument on the Promotion of the Rights of Migrant Workers, adopted by the TF-AMW on December 6, 2006; and the TF-AMW's Statement on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted February 15, 2007.

Agreed in Bangkok, Thailand
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