

Civil Society Proposal: ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

Task Force on ASEAN Migrant Workers



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ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

Task Force on ASEAN Migrant Workers (TF-AMW)

www.workersconnection.org

Edited by

Sinapan Samydorai

Philip S Robertson Jr.

Published by

Task Force on ASEAN Migrant Workers (TF-AMW)

P.O.Box 640, Teban Garden Post office,

Singapore 916002

Tel: + 65 9479 1906

Fax: + 65 6425 0709

email: samysd@yahoo.com

Weblink: <http://www.workersconnection.org>

Asian Forum on Human Rights and Development (Forum-Asia)

246 Time Square Building, 12 Floor, Unit 1201

Sukhumvit Road, Klongtoey, Bangkok 10110,

Thailand

Tel: + 66 (0) 2 653 2940

Fax: + 66 (0) 2 653 2942

email: info@forum-asia.org

Weblink: <http://www.forum-asia.org>

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12 May 2009, in Vientiane, Lao PDR, the TF-AMW proposal is delivered to the ASEAN Secretariat and the ASEAN Committee for the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers [ACMW]. The TF-AMW encourages the drafting team of the ACMW to refer to the Civil Society Framework Instrument in their deliberations, and to freely use the recommendations made therein as they deem appropriate.

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*2nd ASEAN Forum on Migrant Labour
30 - 31 July 2009, Bangkok, Thailand
hosted by ASEAN Secretariat and Thai Ministry of Labour*



Preface

The ASEAN Secretariat appreciates the initiative of the Task Force on ASEAN Migrant Workers (TF-AMW) to conduct bottom up consultation processes to garner inputs from relevant civil societies in ASEAN to contribute to the ASEAN's effort to protect and promote the rights of migrant workers. The civil society's Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers is one of the major milestones of the TF-AMW after a two-year intensive consultation. This document was formally submitted to the ASEAN Secretariat on 12 May 2009 during the 6th ASEAN Senior Officials Labour Meeting (SLOM) held in Vientiane, Lao PDR. The ASEAN Secretariat in turn shared it with the ASEAN Senior Labour officials.

The development of the civil society's Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers and its publication is very timely as ASEAN, led by the Committee on Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), is currently in the process of drafting an instrument on the protection and promotion of the rights of migrant workers. This document would certainly be very useful as a tool and reference material for the ACMW in drafting the instrument. In addition, it would also be very useful to serve as a tool to various stakeholders who have high interest in the protection and promotion of the rights of migrant workers.

The development and publication of this document is another evidence of the strong interest of the ASEAN civil society to promote the ASEAN Community building process. The ASEAN Secretariat therefore congratulates the TF-AMW for such an effort. We would like to encourage the TF-AMW to continue its engagement with ASEAN through the consultation process on the protection and promotion of the rights of migrant workers at the national and regional levels.

Dr. Donald Tambunan

Head

Social Welfare, Women, Migrant Workers and Labour Division

ASEAN Secretariat

Acknowledgement

As ASEAN moves towards regional economic integration by 2015, the deficiencies of national government policies on labour migration are becoming increasingly clear. Left unresolved are many challenges to promoting a fair deal for migrants, protecting their rights (especially of undocumented workers), and developing strategies to put an end to trafficking of workers. A comprehensive regional approach is needed to build effective collaboration between labour sending and receiving countries. There is also an urgent need to sketch out the roles and responsibilities of regional organisations like ASEAN towards migrant workers.

However, national political sensitivity about migrant issues is slowing down the drafting process for an ASEAN regional Framework Instrument to Protect and Promote the Rights of Migrant Workers. The Task Force on ASEAN Migrant Workers (TF-AMW) is committed to help find a regional answer to real challenges faced daily by migrant workers. We are proud to bring forth this publication which documents part of the long journey towards that goal.

The TF-AMW's civil society proposal for the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers is a product of an ASEAN process set out by the Vientiane Action Programme (VAP), calling for the drafting of such an ASEAN Instrument. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted by the ASEAN leaders on 13 January 2007, in Cebu, the Philippines, reinforced the VAP's call by elaborating in Article 22 of the Declaration that an ASEAN Instrument must be developed.

Migrant workers are human beings with rights, and ASEAN Member States are obligated to protect those rights. The TF-AMW deems it critical that cooperation be developed among governments in countries of origin, transit and destination, and among non-governmental organisations, civil society and trade unions, and the migrants and their organisations. Only through such cooperation can we ensure the ASEAN Declaration (and the forthcoming ASEAN Instrument) are effectively implemented, and monitored by migrants workers who have been made aware of their rights.

The TF-AMW firmly believes that all migrants, regardless of their legal status, including women domestic workers, migrant workers' children, and victims of human trafficking are entitled to effective protection. We strongly reject the approaches that would limit protections to only migrants who are considered "legal" or "documented" such policies are both unjust and destined to fail.

As the Convener of the TF-AMW, I would like to sincerely thank SEARCH-CIDA for supporting the TF-AMW initiatives for national and regional consultations that served as the foundation for the drafting process for the TF-AMW's ASEAN civil society proposal for the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers. The TF-AMW's comprehensive proposal was formally delivered to the ASEAN Senior Labour Officials Meeting (SLOM) and to the ASEAN Secretariat in Vientiane, Lao PDR, in May 2009.

Moreover, the TF-AMW proposal was used as a key reference document at the 2nd ASEAN Forum on Migrant Labour in July 2009, hosted by the Royal Thai Government's Ministry of Labour and the ASEAN Secretariat. The TF-AMW proposal and recommendations from the 2nd ASEAN Forum on Migrant Labour were received by the ACMW which included the Drafting Team during their meeting in Chiang Rai, Thailand, late September 2009.

The TF-AMW recognises and acknowledges the support provided by the ASEAN Secretariat Department covering the issue of migrant workers. We particularly want to thank Anish Kumar Roy and Donald Tambunan, and their hardworking staff, for facilitating and communicating our issues and views to the concerned national governments and the ACMW.

The national committees and regional partners of the TF-AMW are to be commended for their inputs and participation in national and regional consultations that made the ASEAN civil society proposal for the Instrument a reality.

I sincerely hope the ASEAN civil society proposal will be a useful tool for civil society and ASEAN member countries in their future efforts to protect and promote the human rights of migrant workers. We are certain that our civil society and government partners can use this as a tool for advocacy, capacity building, and negotiations on language for a binding regional Instrument to protect migrant workers. The TF-AMW pledges to continue to support ASEAN civil society organizations and trade unions' efforts to substantively engage with the representatives of their governments to create a system of protection for migrant worker rights that will be effective and sustained.

I would like to give special thanks to Philip Robertson, the SEARCH Technical Advisor on Migration and Worker Rights,

who played a central role in the drafting process of the TF-AMW's ASEAN civil society proposal for the Instrument on the Protection and Promotion of the Rights of Migrant Workers. I would also like to extend my sincere thanks to Shum Yun Shan of the TF-AMW Secretariat and to all the staff of FORUM-ASIA for their continuous cooperation, in one way or another, towards the work of the Task Force and successful publication of this document.

I would also like to extend my appreciation to all of our national partners who contributed photographs taken at the various national and regional consultations conducted over the past two years. Let me also give special thanks to all the persons who kindly contributed the photographs of migrant workers toiling in various ASEAN countries.

The TF AMW sincerely acknowledges and appreciates the very effective support we have received from the following organisations:

1. Asian Forum on Human Rights and Development (FORUM-ASIA)
2. Union Network International Asia-Pacific Regional Office (UNI APRO)
3. Migrant Forum in Asia (MFA)
4. Mekong Migrant Network (MMN)
5. Asia Pacific Forum on Women, Law and Development (APWLD)
6. Coordination of Action Research on AIDS and Mobility (CARAM Asia)
7. Think Centre - Southeast Asia Migrant Workers Initiatives

National Consultations on ASEAN Declaration Focal Point:

1. Indonesia Focal Point - May 2007 - Indonesia Human Rights Working Group and ASPEK
2. Thailand Focal Point - July 2007 - Thai Migration Working Group
3. Philippines Focal Point - Sept 2007 - Center for Migrant Advocacy
4. Vietnam Focal Point - March 2008 - Vietnam Lawyers' Association
5. Malaysia Focal Point - August 2008 - Tenaganita
6. Cambodia Focal Point - September 2008 - CARAM Cambodia
7. Laos Focal Point - October 2008 - Lao Youth Union and Lao Federation of Trade Unions
8. Singapore Focal Point - April 2009 - Think Centre/Singapore Working Group on ASEAN

Sinapan Samydarai

Convenor

Task Force on ASEAN Migrant Workers

Foreword

Civil society “bottom-up” consultation process on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

Recognizing the importance of developing pro-active measures to deal with the challenge of migration in the ASEAN region, the Leaders of the ASEAN member nations set out a provision (program area 1.1.4.6) in the Vientiane Action Programme which called for the “elaboration of an ASEAN instrument for the protection and promotion of the rights of migrant workers.” At a meeting in Vientiane on 25 July 2005, ASEAN officials, led by then Secretary-General Ong Kee Yong, requested the Working Group on the ASEAN Human Rights Mechanism to take this effort forward. The Think Centre (Singapore) was then encouraged by the Working Group to take the leadership in supporting this ASEAN initiative.

In line with the calls of the ASEAN Secretary-General and the provisions of the ASEAN Charter, the Task Force on ASEAN Migrant Workers (TF-AMW) has as a main objective to promote participation from the peoples of ASEAN in the effort to implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Adopted by the ASEAN Leaders at the Summit in January 2007 in Cebu, Philippines). The TF-AMW activities focus on the following three major areas of work:

1. Conducting national and regional consultations to raise awareness and build knowledge about the ASEAN Declaration, and encourage trade unions and NGOs to make constructive and positive recommendations to Governments about ways to protect the rights of migrant workers. So far, the TF-AMW has conducted 8 national consultations (Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand, and Vietnam) and 7 regional consultations. Most of these consultations have included presentations from Government and UN officials and all the activities at the consultations were led by representatives of civil society and trade unions.
2. Drafting civil society’s proposal on the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers, which is the document presented in this book. The TF-AMW has been in constant communication with the ASEAN Secretariat throughout this process.
3. Following up on the work of the ASEAN Committee on Migrant Workers (ACMW) as it develops the Instrument called for in article 22 of the ASEAN Declaration on Migrant Workers, and communicating with the national Governments and ASEAN Secretariat about this process.

On 12 May 2009, after two years of intensive consultations, the TF-AMW formally proposed its detailed civil society ASEAN Framework Instrument for the Protection and Promotion of the Rights of Migrant Workers to the ASEAN Secretariat and the ASEAN Senior Labour Officials Meeting (SLOM) during their meeting in Vientiane, Lao PDR.

In the letter accompanying this comprehensive Framework Instrument, which contains 192 recommendations in 42 pages covering all aspects of migration, the TF-AMW called for greater participation of civil society in ASEAN’s deliberations, and demanded the ASEAN member states ensure the final ASEAN agreement covers all workers regardless of their status or origin and is legally binding on all ASEAN nations.

A brief summary: civil society’s Instrument on the Protection and Promotion of the Rights of Migrant Workers

The purpose of the TF-AMW national and regional consultations has been to garner inputs to develop ASEAN civil society's contribution to the ASEAN regional framework on the protection and promotion of the rights of migrant workers. There are four sections in the TF-AMW civil society ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers, which are as follows:

“Obligations of Labour Receiving Countries.

From the outset, key recommendations include ensuring that migrant workers are treated in accordance with the core labour standards of the ILO. The Instrument calls for according “national treatment” to migrant workers in terms of wages and conditions of work, and instituting standard contracts for hiring migrant workers throughout the region. The Instrument reaffirms migrant workers’ rights to hold their own passports and worker identification documents and calls for strong penalties against employers and others who seize those documents. Furthermore, the Instrument seeks special attention to the challenges faced by particularly vulnerable migrant domestic workers. Other areas where action is sought include ensuring provision of health care for migrant workers and their families, guaranteeing safe and hygienic accommodation and living conditions, making certain there are effective systems of inspection, and providing migrant workers with effective access to legal systems and justice.

“Obligations of Labour Sending Countries”

These obligations are understood to include effective pre-departure training systems and programs. Efforts should also be focused on vocational training and capacity building, especially for the CLMV countries. These elements are part of a larger set of requirements related to deployment of effective systems to regulate migrant workers’ departure to work in another country as well as their return and reintegration to their origin country. The Instrument also urges Governments to institute effective accreditation and regulation processes to oversee labour recruitment agencies in order to prevent abuses. Another area for action is to ensure systems of protection for migrant workers, through deployment and pro-active efforts of committed labour attachés or other staff at sending country Embassies in labour receiving countries.

“Joint Obligations of Labour Sending and Labour Receiving States”

Among the areas where action is recommended are effective regulation of labour recruitment agencies; institution of practical and effective grievance systems that can be used by migrant workers; development of schemes to facilitate the migration of skilled labourers and recognition of their skills; effective suppression of human trafficking; and creation of easy-to-access systems to facilitate transfer of workers’ remittances and provide safe institutions where migrant workers can save their money. Finally, and importantly, the section calls for member states to harmonise their national labour laws with international labour standards.

“Commitments by ASEAN”

This section discusses administrative requirements, such as reporting, and encourages participatory systems that include ASEAN civil society both at the national and regional level. The Instrument also explores some of the possibilities for future ASEAN systems to protect migrant workers (such as an ASEAN worker ID, hotline, and portable insurance). Concerning the ASEAN Inter-Governmental Commission on Human Rights (AICHR), the Instrument recommends the creation of a Subcommittee on the Rights of Migrant Workers operating under the supervision of AICHR. The Instrument lays out systems that could be further developed by ASEAN to manage the responsibility (set out in the ASEAN Declaration on Migrant Workers) for mutual cooperation among ASEAN countries in assisting migrant workers from ASEAN when they are toiling in countries that are outside of ASEAN.

Regional and National Consultative process on the implementation of the ASEAN declaration on the protection and promotion of the rights of migrant workers

2006 – 2007: Inputs into Drafting of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

From April 2006, the TF-AMW provided inputs through the mechanism of the ASEAN 2004 Vientiane Action Programme (VAP) provision calling for creation of an ASEAN Instrument on Migrant Workers. These inputs were used in part by various ASEAN member governments in their drafting of the ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers agreed to by ASEAN leaders in January, 2007 in Cebu, Philippines.

2007 – 2009: Consultations on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The TF-AMW has worked for three years to ensure trade union and civil society inputs are included in the process of implementing the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The TF-AMW's eight national and seven regional consultations helped ensure meaningful participation of migrant workers and their representatives in this ASEAN process. The TF-AMW also helped significantly stimulate increased interest from the ASEAN Secretariat and ASEAN Governments in engaging with civil society and trade unions.

Between February 2007 and May 2009, the Task Force successfully organised large, well-attended national consultations of trade unions, mass organisations, and NGOs in Vietnam, Thailand, Indonesia, Philippines, Malaysia, Lao, Cambodia and Singapore and seven regional consultations focus on thematic areas (such as gender and migration) and concrete proposal drafting work. In each case, the consultation developed a statement with recommendations for the national government and for ASEAN. The TF-AMW then worked with the participants of the national or regional consultation to conduct follow-on advocacy based on the adopted statement.

Finally, on 12 May 2009, the TF-AMW formally proposed the fruits of its intensive consultation work, the comprehensive proposal that is contained in this book.

ASEAN Process: The ACMW

In terms of background and processes to date, ASEAN has set up the ACMW, which is composed of representatives from each of the 10 ASEAN Member States, and formally tasked the Committee to draft a regional agreement (“the Instrument”) to protect the rights of migrant workers, as called for in Article 22 of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The importance of having a binding framework for the protection of migrant worker rights, and management of labour mobility can no longer be overlooked by ASEAN now that the ASEAN Charter has been adopted.

The ASEAN Charter describes the magnitude of the economic integration plan by noting that ASEAN will “create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital.”

However, ASEAN also commits in the Charter to “enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice” and to “promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.”

2009 -2010: Inputs into the ACMW Drafting of the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers

The TF-AMW and partners will engage the ACMW and the ASEAN Secretariat to help ensure that commitments made as part of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers rights are implemented.

The TF-AMW encourages the government officials on the drafting team of the ACMW to refer to this Civil Society Instrument in their deliberations, and to freely use the recommendations made by these organizations representing civil society of ASEAN -- especially the workers and the migrants of the region. The TF-AMW will support the ACMW's Instrument drafting process because the TF-AMW is strongly committed to engaging with ASEAN and its Member States on this criti-

cal issue over the long term. The TF-AMW and its members believe there needs to be a new deal for migrant workers in ASEAN, where their rights are respected, and laws and policies are harmonised with international labour standards.

The TF-AMW further pledges to work closely with ASEAN Secretariat to implement the ASEAN Socio-Cultural Blueprint (2009 – 2015) on C2. Protection and Promotion of the Rights of Migrant Workers to ensure fair and just comprehensive policies on migrant labour and adequate protection for all migrant workers.

The TF-AMW: Task Force on ASEAN Migrant Workers

In April 2006, Sinapan Samydorai, the Singapore focal point of the Working Group on the ASEAN Human Rights Mechanism, working together with members of the Solidarity for Asian People's Advocacies (SAPA) Working Group on ASEAN, oversaw the establishment of the Task Force on ASEAN Migrant Workers (TF-AMW), composed of regional networks of civil society organisations and trade unions. Since then, Sinapan Samydorai has served as the Convener of the TF-AMW.

Sinapan Samydorai, a Singapore national, is assisted by Technical Advisor Philip Robertson (based in Bangkok, SEARCH-CIDA) and Finance Manager Suleeporn Permprasertsuk (based in Bangkok, FORUM-ASIA). The TF-AMW regional activities are managed with technical support from FORUM-ASIA (Bangkok) and assisted by the ASEAN Peoples' Center (Jakarta). The trade union and NGO regional partners have their own staff working on matters related to migrants' rights. The TF-AMW national activities are managed by the national focal persons and/or Working Groups on Migrant Workers in eight ASEAN member countries. SEARCH-CIDA provides the vast majority of the financial support for TF-AMW activities.

Starting in April 2007, the TF-AMW has been directly engaging and sharing information with the ASEAN Secretary-General, and regularly works with the ASEAN Secretariat Division on Labour and Migrant Workers (Socio-Cultural Directorate) and other relevant ASEAN Secretariat officials. During this period, frequent reports and recommendations by the TF-AMW have been accepted for consideration by the ASEAN Secretary-General and the Secretariat.

Further information about the TF-AMW is available at www.workersconnection.org

Sinapan Samydorai

Convener

Task Force on ASEAN Migrant Workers

Civil Society Proposal: ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

Introduction

1. The 12th ASEAN Summit in Cebu, Philippines in January 2007 agreed to an ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which takes important steps in moving ASEAN towards compliance with existing UN conventions and treaties that many ASEAN states have already ratified. It also gives important recognition to the need to share responsibilities regionally for the protection of migrant workers while also acknowledging both the differences and similarities of concerns of the ASEAN member-states.

2. The Declaration builds specifically on the commitments undertaken by ASEAN as part of its six-year Vientiane Action Plan, covering the years of 2004 to 2010. In program area 1.1.4.6 of the Plan, it is mandated that an Instrument shall be developed. Specifically, the Plan calls for an “Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers.” Furthermore, Article 22 of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers reinforces this mandate by calling for the creation of such an Instrument “consistent with ASEAN’s vision of a caring and sharing community.”

3. ASEAN has set forth plans for full economic integration of its ten member nations by the year 2015. A regionally integrated Southeast Asian market means the divisions that continue to separate the work forces of the ASEAN countries will be difficult to maintain. With economic integration will invariably come increased migration and labour mobility so a new framework and mechanism for migrant workers is needed to provide for the effective protection of their rights within the new, economically integrated ASEAN. Through the implementation of this Framework Instrument, ASEAN, as a self-proclaimed caring and sharing community, shall act in a clear and concrete way so that the people of ASEAN who wish to migrate can benefit from a new regional agreement that ensures their rights as migrant workers will be protected.

4. The ASEAN Charter clearly sets out a vision in which there shall be movement of labour within the region. Specifically, the ASEAN Charter sets out among its purposes “*to create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital...*”

5. The Charter further states that it has a purpose to “...promote and protect human rights and fundamental freedoms...” and “to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.”

6. To ensure that the achievement of these goals of economic integration and building a caring, sharing community, are mutually reinforcing it is essential that there be full participation of ASEAN civil society, trade unions, professional organizations, and community based groups in all aspects of the development and the implementation of this Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers. H.E. Surin Pitsuwan declared at his office transfer ceremony to become the ASEAN Secretary-General on January 7, 2008 that “...to be successful and meaningful in building the ASEAN Community” our “560 million people must be part of this historic mission. This is, in fact, clearly stated in the ASEAN Charter.” Accordingly, the development and finalization of this Framework Instrument shall be done with the full participation of ASEAN civil society in close collaboration with the ASEAN Committee on Migrant Workers (ACMW), which was established in accordance with the Foreign Ministers Statement of July 28, 2007, on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

7. This Framework Instrument shall be included as a core element in the forthcoming Blueprint for the ASEAN Socio-Cultural Community, under which the issue of migration and labour are prominently covered. Provisions for the protection and promotion of the rights and interests of migrant workers and their families shall also be included in the Blueprint for the Economic Community, and the Blueprint for the Political-Security Community. Accordingly, although this Framework Instrument primarily falls under purview of the Socio-Cultural Community and shall continue to be led by that Community, the issue of fair and safe migration shall remain a priority in the implementation of all the three pillars of the ASEAN Community.

8. This Framework Instrument shall be a legally binding agreement among all ASEAN states in accordance with ASEAN Charter article 5.2 which mandates that “Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.”

General Principles

Principles of human rights, gender, and migrant workers rights – connection to international labour standards (statement of principles, ratifications, implementation)

9. The ASEAN Charter sets out that all ASEAN states shall act in accordance with a set of principles, including in Article 2.2.(i) which proclaims the principle of “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.”

10. In the ASEAN Charter, the states of ASEAN further committed themselves to act according to a series of Principles, including “upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States.” All member states of ASEAN are members of the United Nations and therefore recognize the importance of respecting the Universal Declaration of Human Rights (UDHR). All member states have also ratified the UN Convention on the Rights of the Child (CRC) and the UN Convention on Elimination of Discrimination Against Women (CEDAW), thereby voluntarily taking on the obligation to ensure that their national laws, regulations, and practices conform to the provisions of the CRC and CEDAW. As parties to CEDAW, ASEAN member states must also recognize the important recommendations made in General Recommendation no. 26 (Women Migrant Workers) of the Committee on the Elimination of Discrimination Against Women, issued in November 2008. ASEAN Member States shall also agree to remove any specific reservations they have lodged against the application of any of the provisions of the CRC and CEDAW in their national territory.

11. This Framework Instrument shall be guided by four central principles. First, it shall include and cover all migrant workers in ASEAN. Second, it shall recognize that the protection of the rights of migrant workers is a shared obligation of both sending and receiving countries. Third, it shall follow the principles of non-discrimination in treatment provided to migrant workers and their families. Finally, given the predominance of women who are migrating for work, the fourth principle shall be to ensure migration policy and practices are gender-sensitive.

12. The first core principle is all migrants in ASEAN shall be covered by the Framework Instrument, regardless of legal status. This principle was affirmed by the ten nations of ASEAN as well as other Asia-Pacific countries in 1999 in the Bangkok Declaration on Irregular Migration, which declared that “Regular migration and irregular migration should not be considered in isolation from each other” and added that “migration, particularly irregular migration, should be addressed in a comprehen-

sive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination.” The Bangkok Declaration committed the signatory nations to an approach that underlines “*comprehensive, coherent and effective policies on irregular/undocumented migration have to be formulated within the context of a broader regional framework based on a spirit of partnership and common understanding.*”

13. The second core principle is ASEAN’s approach to migration shall be guided by the recognition that just as the protection of the rights of migrant workers is a joint responsibility of sending and receiving states, so also migration should be expected to provide benefits to both receiving and sending countries. The ASEAN Leaders understood and voiced support for this fact in the preamble of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers by “*Recognising the contributions of migrant workers to the society and economy of both receiving states and sending states of ASEAN.*” It should be further recognized that migration has its own costs and benefits for the migrant worker, his/her family, and the sending and receiving states, and that addressing the many challenges to migrant workers’ rights can only be done through effective collaboration between sending and receiving states.

14. The third core principle guiding the protection and promotion of the rights of migrant workers shall be non-discrimination and “national treatment” for migrant workers. Specifically, migrant workers shall have equal access to treatment and services no less than the legal minimum provided to national workers of the receiving country. Included in this core principle is the recognition that special attention shall be paid to important rights which cumulatively serve to enable migrant workers to better protect themselves from highly exploitative situations. Among these rights are freedom of movement, freedom of association, right to receive and send communications, and the right to life including the right to a family, and security of person.

15. An important supplement to this third core principle is ASEAN states shall take pro-active measures to reduce all forms of stigma faced by migrant workers and their families, including promoting education efforts to increase tolerance and ensuring that prompt action is taken in cases of incidents of harassment and violence against migrant workers.

16. The fourth principle is that since women citizens of ASEAN states consistently comprise large percentages of migrant workers moving within ASEAN and from ASEAN to external destinations, this Framework Instrument shall also be guided by gender-sensitive policies, processes and practices on migration.¹

17. To ensure that these four principles are met, and in accordance with their obligations as member states of the ILO, under this Framework Instrument all the governments of ASEAN agree they shall immediately ratify all eight core ILO Conventions², and ensure that their national labour laws, especially those laws governing migrant workers, are harmonized with the standards contained in those core ILO Conventions. The ILO Declaration of Fundamental Principles and Rights at Work adopted in 1998 notes that all member states of the ILO have “*endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia*” and therefore are bound by an “*obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are... freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.*”

18. The member states of ASEAN shall also favorably consider the ratification of key ILO conventions related to migration, specifically ILO Conventions 97 and 143, and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The ASEAN Charter Article 2.2.[j]) states that ASEAN shall “*uphold the UN charter and international law, including international humanitarian law, subscribed to by ASEAN Member States.*”

Principles of cooperation with ASEAN civil society and trade unions

19. The ASEAN Charter resolves to “*...place the well-being, livelihood, and welfare of the peoples at the centre of the ASEAN community building process.*” The Charter further sets out that one of ASEAN’s central purposes is “*to promote a people-ori-*

1. Women constitute a large and increasing proportion of the region’s migrant workforce. In 2006, 72 per cent of workers newly deployed from the Philippines to all destinations were women, comprising not only domestic workers but also nurses and caregivers. Among Indonesian migrants in 2004, 81 per cent of those who registered before leaving for work abroad were women. Female labour migrants are often more vulnerable to abuse and exploitation than male migrant workers.

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

ented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.”

20. ASEAN Secretary-General Surin Pitsuwan stated to the ASEAN Foundation’s 10th Anniversary gathering in Jakarta on January 16, 2008, that “...we need to widen and deepen our engagement and interaction with the non-governmental and civil society organizations in the region, as these organizations work closely with the people and are in a better position to articulate their aspirations for an ASEAN Community.”

21. Accordingly, there shall be clear and transparent mechanisms for regular and continuous consultations with representative trade union, NGO, community based organizations and migrant workers associations.

Obligations of Receiving States

Right to effective organization (in unions or otherwise) and collective bargaining for migrants

22. This Framework Instrument recognizes that workers’ organizations are vital in the effort to protect migrant workers. Accordingly, in line with ILO Convention 87, migrant workers shall have the right to form trade unions and associations of their own choosing, or join and be represented by trade unions in receiving states. Employers shall be required to bargain in good faith with such unions and associations, in line with the principles of ILO Convention 98 and national labour law.

23. While a trade union has the right to make the final determination on the composition of its membership, there shall be no legal and regulatory barriers which are permitted to systematically obstruct migrant workers’ right to freedom of association. As technical support for the progressive compliance with this provision, ASEAN shall support a Survey of Legal and Regulatory Barriers to migrant workers’ freedom of association and collective bargaining in each member state. The Survey shall be done transparently, with involvement of trade unions and civil society organizations which will describe each legal/regulatory barrier to freedom of association and collective bargaining in detail and make recommendations for its amendment or removal. The Survey shall be submitted to the ACMW for action and follow-up in accordance with one of ACMW’s designated functions to “promote bilateral and regional cooperation and assistance on matters involving the rights of migrant workers.”

24. All ASEAN states shall make the necessary legal and policy changes to allow for portability of trade union membership between countries in the region, thereby allowing migrant workers who are members of a national trade union body in the sending state to be effectively and legally represented by trade unions in the receiving state. All ASEAN states shall also make the necessary legal and regulatory amendments to enable migrant workers to form their own unions and associations, and register those unions and associations using the same procedures and methods as those used by workers’ organizations of the receiving state. All types of work done by migrant workers shall be covered by the above-mentioned legal and regulatory amendments.

25. ASEAN states shall also create an environment that enables the establishment and effective operation of “social networks” of migrant worker organizations/associations (possibly supported by trade unions and civil society organizations from the receiving country) which can facilitate efforts by migrant workers to protect themselves. ASEAN states shall also respond positively in policy and practice to efforts by civil society organizations and trade union “watchdogs” to monitor and report places of employment that refuse to recognize and bargain with migrant workers’ organizations on terms and conditions of work.

Wages and conditions of work and national treatment

26. The ASEAN Declaration provides that “...the receiving states will...promote fair and appropriate employment protec-

3. To accomplish this commitment, ASEAN shall request technical assistance from the ILO, which shall be made available pursuant to the Cooperation Agreement between the ASEAN Secretariat and the International Labour Office concluded in March 2007.

tion, payment of wages and adequate access to decent working and living conditions.” In line with the principle of “national treatment”, ASEAN states shall ensure that both labour laws and regulations provide that all migrant workers shall receive no less than the legal minimum wage provided to workers of the receiving states, and shall be protected according to all legal provisions governing hours of work, working conditions, worker benefits and welfare, and all other relevant provisions of law.

27. Where no legal minimum wage is established according to law, the Government shall establish, in consultation with tripartite partners and with technical assistance from the ILO, the prevailing daily wage for each industrial sector in which the migrant workers are employed and ensure that migrant workers are paid no less than that prevailing daily wage for the sector where they work. The prevailing daily wage for each sector shall be sufficient to cover a worker and family’s basic needs and provide enough additional for the worker to accrue some savings. Provision should also be made for old-age pensions and a fund or insurance scheme set up for periods of unemployment and emergencies for all workers, including migrant workers.³

28. Each ASEAN nation shall devise and implement a transparent and time-bound process to establish a daily minimum “living wage” that enables both workers who are nationals of the country and migrant workers to live and work with dignity.

29. As called for in Article 11 (1) (d) of CEDAW, ASEAN Member Governments shall progressively achieve equal remuneration between men and women in all fields through appropriate measures.

30. Pregnancy shall not be considered a legally legitimate reason for termination of work or deportation. Maternity benefits and protections shall be included in migrant worker contracts, in accordance with the rights guaranteed by Article 11 (2) of CEDAW.

Use of standard contracts for hiring migrant workers

31. In ASEAN states that receive migrant workers, the appropriate regulatory authority shall issue Ministerial regulations prescribing minimum standards that shall be required to be embodied in all employment contracts for migrant workers. The appropriate regulatory agency shall likewise issue standard employment contracts for migrant workers⁴ that is issued by the receiving state’s Ministry of Labour or other appropriate Government agency. Additional information which shall be determined (and committed to writing in the contract) in consultation between the migrant worker and employer includes: name and type of position, any specific provisions and responsibilities connected to the job not covered in standard sections of the contract, place of work and name of supervisor, and specific information about wages and benefits above the minimum set out in law. Where applicable, the standard employment contract shall also provide for a joint and solidary obligation between the employer, the employment broker, if any, and the private recruitment agency that deployed the migrant worker for money claims of the migrant worker.⁵ Contracts will be effective only when freely signed by both parties, in the presence of witnesses. The standard contracts for migrant workers shall be enforced under the provisions of the national labour law. The standard contract shall be produced in three languages – the language of the country of origin of the migrant, the language of the receiving country, and English – and all three contracts shall be legally enforceable in both sending and receiving countries.

32. Appropriate systems for verifying migrant workers contracts shall be established by each sending Government prior to the departure of the migrant and supplemented by checks of migrant worker contracts by the Embassy of the sending Government in the receiving country.

33. Both the employee and the employer shall be given a copy of the signed contract in a language understandable to them.

4. These shall contain standard provisions on wages, benefits, and hours and conditions of work that conform to all provisions of national labour law. The standard employment contract shall also provide sections for particular details of the migrant worker and the position s/he will occupy.

5. If the migrant worker’s employment was arranged through a private recruitment agency in the sending country, the foreign employer, the private recruitment agency in the sending country, as well as third-party brokers in the receiving country, if any, shall all be held jointly and severally liable for all money claims of the migrant worker.

6. “Direct employer” is defined by the employer who is the owner or manager of factory, office, or worksite where the migrant worker is actually working on a regularly basis.

34. A pre-work orientation program on the rights and responsibilities of migrant workers under the provisions of the standard contract shall be organized at no expense to the migrants in the receiving country immediately after their arrival.

35. Only contractual relationships between migrant workers and employers which are concluded using the Government issued standard contracts or government approved contracts shall be considered legal. Use of any other contract to hire migrant workers shall be considered illegal. Action by an employer to compel the signing of non-Government issued or approved standard contract, or contract substitution for a Government-issued standard contract, shall be punished with significant fines and other legal penalties being levied against employers. Contracts shall be concluded only between the direct employer⁶ of the migrant worker and the migrant worker, and contracts concluded between the worker and any other third party shall not be considered a valid work contract. “Outsourcing” arrangements that permit direct employers to divert responsibility for wages, benefits and welfare of migrant workers to external employment agents shall be prohibited.

36. Government authorities shall undertake education and public awareness campaigns, targeting employers of migrant workers, to clearly explain the legal requirement to use a Government issued standard contract to hire migrant workers and outline possible penalties for non-compliance.

Right to hold original travel (passport), work and personal documents and prohibition on seizure of documents

37. The right of all migrant workers to hold their own passports and the original Government-issued work and personal documents shall be considered inviolable. All Governments shall set out severe legal penalties against any person who willfully destroys, mutilates or confiscates a migrant worker’s travel, work or personal identity documents issued by any Government agency.

38. Such documents shall only be taken away from the migrant temporarily by permanent civil service officials of a Government in the course of a criminal or civil case investigation, and then only for the minimum possible time and in exchange for an officially recognized receipt for the document. Member States of ASEAN shall adopt a clear no-tolerance policy that imposes heavy fines and other punishments on all persons (employers, brokers and recruitment agents, and non-authorized government personnel) who for any reason seize or hold migrant workers’ documents.

39. For migrant identity documents (such as work permit or work ID card) issued by the receiving country government to legally registered migrant workers, the government shall issue two (2) original copies of the document, one clearly identified as “for the employer” and the other identified as “for the worker.”

40. The right of migrant workers to freedom of movement, especially the right to leave their workplace or worksite during times outside of their regular working hours, shall be guaranteed. Members States shall also allow migrant workers to apply for and receive a driver’s license under the same terms and conditions as driver’s licenses are granted to nationals of the receiving country.

41. Authorities of labour receiving countries shall develop and sustain public outreach campaigns using popular media and events to educate current and future employers of migrant workers about the right of workers to hold their original work and personal documents and leave the workplace, and shall take criminal and civil action against employers who illegally confine migrant workers.

Special challenges facing foreign domestic workers and caregivers

42. Governments shall address key problems faced by domestic workers, who are especially vulnerable because they frequently face isolation and a lack of support mechanisms because their worksites are in private homes. Among these problems are: 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. Governments shall consider appropriate programs with civil society organizations working with migrant workers to conduct outreach to domestic workers and build effective protection systems for these vulnerable workers.

43. Both sending and receiving Governments of ASEAN shall amend their labour laws and regulations to ensure that

domestic workers are specifically included as a recognized category of worker covered by the national labour law, and shall ensure their rights to freedom of association and assembly are protected.

44. Receiving and sending Governments shall agree that due to the special nature of domestic work, it is important that migrant domestic workers shall receive, at a minimum, one day of paid leave in each 7 day period and be allowed off days for public holidays or festivals celebrated by them; or substitute days off for these. All ASEAN states shall incorporate this requirement in their labour laws and regulations.

Agreements/mechanisms to change employers in receiving countries and other employment recruitment processes

45. ASEAN Governments receiving migrant workers shall devise migrant registration schemes that enable migrant workers to directly register with Government authorities and eliminate the guarantor role played by employers in many such schemes. The role of employers shall be restricted to informing the Government of the entry and departure of migrant workers to their work forces, and strictly following the provisions of the national labour law and the standard migrant worker contract.

46. As part of the migrant registration schemes adopted by receiving states, workers shall have the right to seek a new employer.⁷ If the worker's employment is unilaterally terminated by the employer, s/he shall also have the unrestricted right to change employers. Registration systems shall not unnecessarily hamper workers' ability to move within the receiving country to find or undertake work.

47. An improved system with a longer transition period (no less than 30 days) 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.

48. ASEAN Member Governments shall ensure that migrant registration schemes are transparent in requirements and processes, conducted in language(s) the migrants understand, and guided by migrant-friendly procedures.

Migrant worker health

49. The ASEAN leaders determined in the Bali Concord II that *"ASEAN shall further intensify cooperation in the area of public health, including in the prevention and control of infectious diseases...and support joint regional actions to increase access to affordable medicines. The security of the Community is enhanced when poverty and diseases are held in check, and the peoples of ASEAN are assured of adequate health care."* (Bali Concord II, Article c.4) Providing easily accessible, quality health care to migrant workers and their families not only benefits migrant populations, but also serves an important public health purpose that protects the people of the receiving country. If migrant workers are unable to access public health systems (because of lack of status, fear of arrest, financial costs) then they will be forced to remain untreated, thereby undermining the comprehensive public health response required to keep all persons in the nation's territory healthy and safe.

50. Receiving and sending countries shall establish and operate effective migrant workers health referral networks. Cooperation shall be undertaken to ensure that sending countries have appropriate information about health care systems in country of destination for use in their pre-departure programs. Receiving countries shall devise systems for delivering health care for migrant workers and their families in the areas where they work and live. Migrant health care workers, who have the linguistic and cultural understanding of migrant communities, and the trust of migrant workers and their community leaders, shall be identified, trained, and supported (through job registration and appropriate support) to assist the receiving country's public health service conduct effective outreach and support to migrant communities.

51. In order to guide effective public health interventions focused on migrant workers and their families, receiving countries (working with the support of the UN and international agencies) shall undertake on an annual basis a comprehensive

7. The right to change employers should be unrestricted. However, if Governments place limitations on this right, they should consider the following scenarios in which Governments would agree to permit unrestricted changes of employers -- the employer fails to comply with all aspects of the labour law and regulations; subjects the worker to potentially dangerous or health threatening working conditions; sexually or physically harasses or abuses the worker; illegally restricts freedom of movement of the worker during non-work hours; faces financial difficulty or insolvency; or defies a legal order from a Government authority.

study of the numbers, living and working conditions, and health of migrant workers in the country, and shall make public the data and results of this research.

Migrant worker accommodations and living conditions

52. An employer of migrant workers shall be required to provide those workers with clean, hygienic, and safe accommodation at no cost to the worker with provisions for sex segregated accommodation where required on safety grounds. Employers shall be responsible for regular maintenance of the housing provided.

53. Migrant workers shall be given the right to accept or refuse employer-provided accommodation and in no instances shall the right to work be conditioned on acceptance of employer-provided accommodation. If the worker exercises their right not to use employer provided accommodation, then the migrant workers shall pay for the cost of the rental of his/her chosen accommodation.

54. Migrant workers shall not have their freedom of movement restricted as a condition of accepting employer-provided accommodation.

55. ASEAN governments shall develop adequate housing for migrant workers, taking into account the number of incoming migrants entering each area, and ensure provision of a range of services (proper sanitation, access to clean water and electricity, garbage collection, building safety, public transport services, and security) are provided to these areas. Migrant workers' accommodations shall be sanitary, safe, and secure, and subject to regulation under national laws dealing with building safety, and public health. ASEAN Governments shall strive to ensure that accommodation and living conditions for migrant workers accord with the principles of the *Istanbul Declaration on Human Settlements* of the UN Habitat II conference.

Access to health services for migrants and families

56. Article 12(1) of CEDAW provides that all ratifying states “shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure...access to health care services, including those related to family planning.” Accordingly, all ASEAN states shall ensure migrant women workers are provided access to gender-sensitive reproductive health services, in addition to ensuring the protection of women workers' health in the work place.

57. All ten member nations of ASEAN have ratified the UN CRC, which states in Article 24 that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Accordingly, ASEAN Member States shall ensure access to pediatric care for the children of migrant workers.

58 ASEAN recognizes that the quality of health of a migrant worker does not just affect the worker, but also has implications for his/her ability to work and contribute to the economy of the receiving country, and to earn and send money to his/her family still residing in the country of origin, and to return to the country of origin and have a productive life upon their return.

8. These principles were adopted in the joint multi-stakeholder dialogue held in Bangkok on February 12-13, 2009, which was led by high-level ASEAN Secretariat officials overseeing health, representatives of the ASEAN Member States' Ministries of Public Health, the Joint United Nations Initiative on Mobility and HIV/AIDS in South East Asia and China (JUNIMA), and CARAM Asia (a TF-AMW partner). These recommendations were formally submitted by the ASEAN Secretariat to the 14th ASEAN Summit in Hua Hin, Thailand. Specifically, the relevant recommendations state: “Strongly encourage and support governments to review policies, laws and practices related to HIV specific restrictions on entry, stay and residence and ensure that people living with HIV are no longer excluded, detained or deported on the basis of HIV status”, “Prioritise and align HIV policies and programmes with global standards and procedures to address the needs of migrants in ASEAN countries, focusing on ensuring that any testing of migrants adheres to international standards including informed consent, confidentiality and counseling”, and “Put into place necessary policies and legislations, including workplace programmes, to ensure that migrant workers are protected and are not subjected to stigma and discrimination, and have equal access to information, HIV prevention, treatment, care and support.”

9. ASEAN should link the ASEAN Task Force on HIV/AIDS and the Work Program on HIV/AIDS with this Framework Instrument in order to ensure that the ASEAN Work Program also benefits migrant workers.

59. ASEAN Member States shall ensure accessible, affordable and quality health care, including health education and counseling, is provided for migrants.

60. The ASEAN Commitments on HIV and AIDS, adopted by the ASEAN leaders on January 13, 2007, in Cebu, Philippines, declares that the ASEAN Governments commit to “Put into place necessary legislation and regulations (including workplace policies and programmes) to ensure that persons living with HIV and affected groups are protected and are not subjected to stigma and discrimination, have equal access to health, social welfare and education services...” Therefore, ASEAN Member States shall ensure that migrants are able to access proper HIV prevention, treatment, care and support services, including voluntary and confidential HIV counseling and testing in both countries of origin and destination.

61. ASEAN Member States shall recognize that mandatory HIV testing violates individual human rights and shall change their requirements and practices to conform to international standards. States which require health tests from migrant workers shall first provide access to information in the language of the migrant about the test(s) to be performed. Pre- and post-test counseling shall also be provided by qualified health counseling personnel in the language of the migrant. HIV shall not be considered as an exclusionary condition for employment of migrant workers and migrants shall receive equal protection from such discrimination as stipulated in national laws. At all stages of the testing process, migrant workers shall be afforded the right to privacy and dignity. The HIV status of migrant workers and members of their families shall remain confidential.⁸

62. Migrant workers and their families shall not be obliged to undergo discriminatory or abusive medical examinations for any reason, and shall not be involuntarily deported based on the results of a medical test.⁹ In line with the humanitarian principles underpinning the medical profession, ASEAN Member States shall extend treatment in the receiving country to migrant workers in order to ensure there is no delay in providing medical services necessary for them to recover their health.

63. Accordingly, it is imperative that the Member States of ASEAN create an effective scheme of high quality, portable health care insurance that provides maternity and other benefits for migrant workers and their families.

Occupational safety and health

64. In the Joint Communiqué of the 19th ASEAN Labour Ministers Meeting, issued in Singapore in May 2006, the Ministers “... recognised that OSH policies and programmes should be an important element of ASEAN labour cooperation” and set out “advocating OSH as a priority in national and regional labour agendas” as one of the four priority areas for future cooperation. Further, in their Joint Communiqué at the 6th ASEAN Ministerial Meeting for Social Welfare and Development, held in Hanoi, Viet Nam on December 6, 2007, the Ministers stated “we strongly felt that the principles of regional cooperation and integration need to be translated into proactive, effective and productive action in the field of Occupational Safety and Health in the ASEAN region, which will be to the benefit of the populations of ASEAN.” The commitment to OSH policies as stated in the ASEAN Joint Communiqués of 2006 and 2007 shall be adopted and implemented.

65. The ASEAN states shall strictly regulate all workplaces and ensure that all national OSH statutes are complied with. The ASEAN states shall ensure that all migrants have access to health care, treatment, rehabilitation, and compensation for injuries, disease or deaths in the workplaces. In addition, referral systems shall be set up between the sending and receiving countries to address any long-term effects (diseases, disabilities) resulting from injuries at work or occupational disease suffered by migrant workers, as well as to ensure dependents of deceased work accident victims, especially those who have lost their sole source of income, are able to speedily and effectively access entitled compensation.

66. Employers shall be required to provide, at no cost to the worker, comprehensive training on OSH issues and safety equipment in the workplace for all migrant workers employed by them.

67. ASEAN shall determine which professions and sectors can be determined as particularly dangerous (such as but not limited to quarrying and mining, construction, ship-building, off-shore fishing, and other hazardous jobs in the formal and informal sector) and set out appropriate additional safety regimes for these jobs. In making such determinations, ASEAN should seek appropriate technical assistance from knowledgeable international organizations such as the ILO or other organizations/ agencies specialized in OHS systems and equipment that meet internationally recognized and accepted standards.

Policies on migrant worker family & children, including marriage, birth registration, education and access to other services

68. 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), ASEAN shall regard the requirement to provide birth registration to children born of migrant workers to be a joint obligation of sending and receiving states. Birth registration shall be provided to the child regardless of the legal status of the parent(s). First, all children born to migrant workers shall be provided with birth registration certificates issued by the receiving Government authorities which clearly identifies the names and nationalities of the child's parents, and shall be registered on the civil register of the country (thereby providing a concrete record of the child's birth.) Procedures adopted shall be in accordance with Article 7 of the CRC which provides that *"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."*

69. All ASEAN states shall establish an easy to access, inexpensive, rapid, and effective procedure at its overseas Embassies and Consulates which shall accept birth registration documents of the receiving state (showing the child as being born from a migrant worker who is a citizen of the sending state) as the necessary evidence to verify nationality of a child. The procedure shall result in the extension of citizenship (and issuance of official documentation to that effect by the Embassy or Consulate) to the migrant child.

70. The Government of the receiving country shall be responsible for documenting the birth of all migrant children in its national territory, and for compiling and sharing overall aggregated data on migrant births with the sending countries and with the ASEAN Secretariat.

71. CEDAW provides in article 16 that *"State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations..."* including the *"...right to enter into marriage."* Furthermore, the Universal Declaration on Human Rights states in article 16 that *"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."* Therefore, all ASEAN Member States shall guarantee the right of migrant workers to marry and formally register their marriage in the receiving country and shall ensure no punitive measures are taken against migrant workers who marry while in the receiving country.

72. Receiving Governments shall provide access to free education for the children of migrant workers at Government schools, in line with the provisions of Article 28 of the CRC which states that *"States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education...and...make them available and accessible to every child."*¹⁰ Systems shall be established to ensure recognition by sending countries of education certificates issued to migrant children by receiving country schools.

73. Receiving governments shall permit the establishment of migrant "learning/education centers" for migrant youth operated by migrant communities themselves with support from civil society or charitable organizations. The Governments shall recognize that migrant "learning/education centers" can play an important role in ensuring migrant children gain the knowledge and skills to play a positive role in the societies where they reside. The Governments shall have the right to monitor and provide general oversight for such centers, but they shall not unduly obstruct or hinder (with burdensome or unreasonable regulations or requirements) the efforts to establish and operate migrant-operated "learning/education centers" for migrant children.

74. The ASEAN Governments shall recognize the significant problem of "statelessness" in many parts of the ASEAN region, especially since lack of nationality greatly increases the vulnerability of stateless migrant workers to exploitation. Accordingly, the Governments shall publicly acknowledge the right of all persons to health and education services and

10. The excellent example of Thailand, which since 2005 has adopted a policy of education for all children in the country regardless of origin or current status, shall serve as the model for ASEAN's commitment to the education of migrant children. These Government policy and programs proceed on the basis that children of migrant workers have the same right to free public education as Thai children.

11. The migrant registration exercise conducted by Royal Thai Government to regularize undocumented migrants in 2004 is an important illustrative example of a highly successful program of the type envisioned.

recognize birth documentation issued by any Government for the purposes of identification and access to services.

Systems to protect and promote rights of undocumented workers

75. The Bangkok Declaration on Irregular Migration, signed on April 23, 1999, by all ten member governments of ASEAN clearly states that the issue of irregular migrant workers is a historical one in Southeast Asia which must be tackled through a regional framework. Specifically, the signatory Governments agreed that “comprehensive, coherent and effective policies on irregular/undocumented migration have to be formulated within the context of a broader regional framework based on a spirit of partnership and common understanding.” The Framework Instrument is precisely such a regional framework and therefore the rights of undocumented workers shall also be protected and promoted under the Framework Instrument, on the basis of non-discrimination.

76. Thus, all ASEAN Member-States shall recognize and protect the rights of undocumented migrants and ensure their well-being. Migrants shall not be penalized because of a lack of status or documents, and Governments shall adopt procedures to speedily and effectively regularize their status and provide necessary identification documents.

77. Receiving countries shall devise and implement (at regular intervals) programs to ensure undocumented migrant workers in their territory are provided with the opportunity to undergo an administrative procedure that will allow them to become documented without being penalized. This shall be accomplished through implementation of administrative programs that enable undocumented migrants to come forward without fear of punishment, register themselves (and their families) and regularize their status, seek legal employment or convert their existing work status to legal employment, and gain access to the full range of services available to migrant workers under this Framework Instrument and national laws. Such programs shall be widely publicized in advance in both the national language of the receiving country and the major language(s) spoken by migrant workers through a combination of radio, TV, print, and online media, and use of posters and other information designed to reach migrant workers where they live and work.¹¹

78. All receiving countries shall establish effective migrant worker assistance hot-lines, with ability to receive phone calls from migrant workers in their own language, English, and the language of the host country. These hot-lines shall be connected to an effective service referral system. These systems shall be connected also to representatives of sending countries in the receiving country, such as Embassy personnel, empowered to provide assistance to migrant workers in distress.

Policy to abolish discrimination in all forms against migrant workers

79. The ASEAN member Governments shall eliminate all forms of discriminatory policies and practices against migrant workers and ensure that all aspects of labour law, and social protection and anti-discrimination laws, are equally applied to all categories of migrants, in adherence with the principle of “national treatment.”

80. Because migrant workers in ASEAN are increasingly female, the Member States of ASEAN shall set out clear gender-sensitive policies on migration, and ensure that Government practices towards migrants reflect these gender specific migration policies. These practices should aim to be empowering rather than restrictive of women’s migration and mobility.

Effective systems of labour inspection and implementation of regulations

81. In the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) MOU signed between 5 Member Governments of ASEAN and the Government of the People’s Republic of China, it was agreed that Governments shall “*apply national labour laws to protect the rights of all workers based on the principles of non-discrimination and equality.*” All ASEAN¹² member states shall ensure that their systems of labour inspection are adequately staffed and funded to undertake

12. Cambodia, Lao PDR, Myanmar, Thailand and Vietnam

13. To implement this provision, the ACMW shall survey the technical needs of the ASEAN Governments to achieve better labour inspection and legal compliance, and conduct a training needs assessment for labour inspectors and authorities with a mandate to conduct such inspections. This survey report and assessment shall form the basis of a request from ASEAN to the ILO for technical support in this area, put forward under the terms of the Cooperation Agreement between the ASEAN Secretariat and the International Labour Office.

effective regulation of labour laws related to migrant workers, with a primary focus to be maintained on monitoring and enforcement of laws related to conditions of work. Special arrangements shall be made by labour inspectorates to provide public information on labour laws and migrant oversight policies in the languages of the migrant workers, and to develop language/translation capacity so that investigations of non-compliance with law can include the input and testimony of migrant workers.¹³

Access to legal systems and justice

82. ASEAN member Governments shall ensure that there are systems of effective legal aid for migrant workers that specify measures that should be taken to assist the migrant workers when they lodge complaints about ill treatment and violations of the law.

83. Specifically, the legal aid system shall be readily accessible to migrants in the communities where they live and work; legal aid officers must be able to converse and receive information from migrants in their own language or through interpreters; have standing to represent migrant workers in the courts; and be authorized to facilitate settlements between the aggrieved migrant worker plaintiffs and defendants in line with the professed preferences of the plaintiffs. ASEAN states shall agree to the principle that potential plaintiff(s), whether documented or undocumented, shall be guaranteed the right to receive legal assistance to file a legal case seeking justice and pursue the case to its conclusion without threat or fear of harassment, arrest or deportation. Migrant workers shall also have the right to petition all relevant courts to seek legal redress and shall not be denied access because they are migrant workers and/or lack legal status in the country. Migrant workers involved in legal proceedings shall be allowed to seek and accept gainful employment during the course of the legal proceedings.

84. Governments of labour receiving nations in ASEAN shall ensure that quality public information about access to legal systems and justice for migrant workers is widely distributed in languages the migrant workers understand, and shall widely publicize the existence of systems to receive complaints from migrant workers (such as phone hot-lines, post office boxes, legal assistance offices, Embassy referral systems, etc.) The content of the information provided and the methods for distribution of that information shall be culturally and gender sensitive. These information outreach efforts shall be coordinated with trade unions, local/community based organizations, and NGOs whose support for awareness raising for migrant worker organizations and leaders can help ensure effective acceptance of the information by migrant communities.

85. Given the vulnerability of migrant workers to retaliation by employers, brokers and criminal gangs, witness protection systems shall also be created and/or strengthened in all ASEAN states, with specific mention of migrant worker complaints to be included in the categories of cases for which witness protection applies. Where cases involve women migrant workers, it should be ensured that trained women officers are involved in protection for witnesses.

86. In cases involving human trafficking, international standards for victim protection (contained in the COMMIT MOU and elaborated in depth in the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking) shall be followed by all ASEAN states.

Screening, arrest, detention and deportation policies and processes

87. The Bangkok Declaration on Irregular Migration, signed by all ten ASEAN Governments in 1999, included the clear recommendation that *“Irregular migrants should be granted humanitarian treatment, including appropriate health and other services, while the cases of irregular migration are being handled according to law. Any unfair treatment towards them should be avoided...”*

88. In line with the commitments undertaken in the ASEAN Declaration Against Trafficking In Persons Particularly Women and Children, adopted by the ASEAN Leaders in Vientiane in 2004, undocumented migrants discovered by the authorities in conditions of highly exploitative work shall be screened to determine whether they are victims of human trafficking, in accordance with the provisions of the Framework Instrument and national laws on human trafficking. Those found to be victims of human trafficking shall be given special protection in line with anti-trafficking policies and laws, and case management coordinated with the representatives of the sending Government. Bilateral and/or multi-lateral agreements on the policies and procedures to support the repatriation and reintegration of trafficking victims shall govern the return of these victims to the sending countries.

89. The Member States of ASEAN shall immediately end all arrangements which devolve law enforcement authority over migrant workers and their families to persons who are not law enforcement officials with permanent civil servant status in the Government. Arrests and detention of undocumented migrant workers shall be done only by permanent civil servants with a legal mandate for law enforcement and in accordance with a warrant. Locally recruited paramilitary or civilian auxiliaries shall not be authorized to arrest or otherwise detain migrant workers, and shall be prohibited from involvement in deportation procedures.

90. In order to prevent possible forced or unlawful deportations, private companies or individuals shall be prohibited from involvement in providing detention and deportation services. Officials of receiving countries at ports of entry and exit shall be provided with appropriate knowledge and training to pro-actively recognize and intervene in cases of involuntary deportation of migrant workers, and translation services shall be readily accessible to allow officials to investigate suspected cases of forced/involuntary deportation.

91. Any housing, detention, and deportation of migrants shall only be carried out lawfully, in a safe and dignified manner and in humane conditions. Governments shall prevent migrants from being pushed back and forth across borders from one country to another without being able to access the protection of their national authorities or to access international protection.

92. Penalties for remaining in an irregular or undocumented status in the territory of an ASEAN member State shall be proportionate. Violations of administrative laws or procedures shall not be treated as criminal offences. Provisions of law that subject migrants to cruel, inhuman and degrading treatment shall be reformed to eliminate the practice, in accordance with a time-bound consultation between sending and receiving states conducted within the ASEAN Committee on Migrant Workers.

Social and cultural beliefs and practices of migrants

93. Receiving states shall afford migrants the right to peacefully practice their social, cultural and religious beliefs and shall not impose restrictions or otherwise obstruct the non-violent practice of those beliefs. Practice shall be in accordance with the ASEAN Charter, which sets out in article 2.2.1 that one of its core operating principles shall be “...*respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity.*”

94. Children shall be similarly provided the right to practice their social and cultural beliefs, in accordance with UN CRC Article 31 which states that “*States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*”

95. In cases where the social and cultural beliefs of migrants are reasonably found to significantly violate the sensibilities or morals of the receiving Government and communities, the receiving Government shall initiate consultations with officials of the sending Government, representatives of the migrant workers, and representatives of the receiving country’s civil society. The consultations shall focus on effectively mediating the dispute(s) and finding appropriate solutions that will encourage greater mutual understanding.

96. Receiving states shall provide their civil servants in departments working directly on matters concerning migrant workers with appropriate training and capacity building to ensure those civil servants have knowledge of migrant workers’ language and culture. Regular and open communications between migrant communities, migrant leaders, trade unions and NGOs assisting migrants, and government officials shall be promoted as means to realize this aim.

Migrants’ ownership of communication devices and transportation vehicles

97. The right of migrant workers to personal communications shall be respected. Migrant workers and their families shall have the right to purchase and use mobile phones without undue restrictions by the authorities. Migrant workers who have applied for and/or received driver’s licenses in the receiving country shall also have the right to purchase, register and use vehicles, such as motorcycles, without onerous or discriminatory restrictions based on their nationality or status. The right to apply for and receive a driver license shall not be unreasonably limited given the essential need in some geographical locations to use personal transport.

Obligations of Sending States

Ensure the right to decent employment and development

98. Governments recognize it is their duty to ensure the right to development, including the provision of opportunities for decent work, for their citizens within their own countries. They affirm the principle that the decision to migrate should be a free and informed choice rather than a final option driven by economic necessity. The Governments of labour sending states in ASEAN fully commit themselves to the achievement of human and humane development in their countries and to the effective protection and promotion of the rights and welfare of their citizens who decide to migrate.

Effective pre-departure training and systems for migrant workers

99. Pre-departure training programs shall be required by law and/or regulation prior to the departure of intending migrants. This pre-departure training shall be provided at no cost to the worker, and shall include information on human and labour rights, labour law and regulations in the receiving country, grievance mechanisms and access to justice for migrant workers, content of employment contracts, culture, and working/living practices of the destination country, and “safe migration” mechanisms. Pre-departure training should be gender-sensitive, reflecting the increasing predominance of women migrants.

100. Governments shall ensure that pre-departure training includes meaningful and effective training of skills and that mobilization of the workers to work in the receiving country is done on a timely basis, and without inordinate delays. While receiving pre-departure training, intending migrants shall be provided with hygienic living conditions and accommodation. If the training programmes include any actual work practice in the sending country, intending migrants must be compensated in accordance with the labour law for any work they perform as trainees. Under no circumstances shall migrant worker training centers be allowed to lock up intending migrant workers and impede or deny the freedom of movement of migrant workers.

101. Specific curriculums for pre-departure training shall be developed in close consultation with intending migrant workers and their associations, migrant worker assistance organizations, NGOs and trade unions, and other relevant stakeholders.

102. The Governments shall engage with civil society organizations, trade unions, networks of returned migrant workers, community groups and leaders, and respected religious and social organizations to help provide this training and to disseminate information to intending migrants.

103. Wherever possible, these education programs should be community-based and emphasize awareness during the decision-making process. The Governments shall also launch national awareness campaigns, providing clear messages on the importance of safe migration and giving information where additional information can be obtained by intending migrants. Specific information shall also be made available on Government policies and regulations relating to all allowable costs and fees in the migrant recruitment and mobilization process.

104. Cooperation should be forged between the ASEAN Governments that are sending migrants and those Governments which are receiving them to conduct a training needs assessments among intending, current, and former migrant workers that will support the development of pre-departure training programs that are practical and relevant to the workers’ needs. These assessments should be gender-sensitive.

105. Given the significant number of youth departing for work overseas, sending Governments shall consider the possibility of creating “safe migration for employment” programs to be incorporated into the all applicable curriculums in secondary school and at national/Government Universities.

14. It is recommended that migrant workers should not be expected to pay recruitment fees amounting to more than one month of full pay in the receiving country.

Cooperation in vocational training and capacity building

106. The Governments shall establish a comprehensive capacity building program for intending migrant workers, concentrating on building of vocational skills and competences that will enable them to succeed in their own country, and in other countries should they decide to migrate.

107. Receiving Governments shall provide information, technical assistance, and financial support for vocational skills development programs set up by labour sending Governments and other national institutions (universities, vocational institutes, mass organizations, and civil society organizations), thereby helping bridge the human resource development/capacity gap that exists within ASEAN.

Effective systems and regulations of the migrants' departure from and return to their country of origin

108. Governments of sending countries shall set out effective policies and systems for workers' departure and return that are based on (and learn from) migrant workers' actual experiences. Key principles that shall underpin these systems are: workers shall not have to pay exorbitant fees¹⁴ for overseas placements; one-stop processing center approaches shall be adopted to reduce bureaucratic inefficiency and opportunities for graft; contract verification and assistance shall take place; pre-departure training shall be conducted; and recruitment agencies will be licensed and strictly regulated to ensure compliance with the law and regulations. Governments shall prohibit recruitment agencies from using "security" bonds or deposits, or other similar financial requirements, that oblige migrant workers to remain with one employer in the receiving country.

109. Sending Governments shall publicly set fixed and reasonable fees for passport issuance and take all appropriate steps to ensure middle-men and agents do not overcharge intending migrants for issuance of a passport. Sending Governments shall consider opening passport offices in major provincial cities to ease the burden of their citizens in applying for a passport.

110. ASEAN Governments shall develop a comprehensive database to maintain accurate data about their citizens working overseas. The objective for this effort is to ensure that Governments have the most accurate and up to date information on migration possible to guide their policy formulation on migration and enable effective provision of services to migrant workers while overseas. Ideally, this database could be situated at the Ministry of Labour in each Member State of ASEAN, and procedures developed to ensure the Government's overseas Embassies and other national Government agencies assisting migrant workers can also access this database. Each Government shall ensure necessary financial and technical support is made available for their designated officials to manage this database. Clear procedures shall be set for responsible use of the information, including a policy to maintaining privacy of information (such as health information) about individual migrant workers that shall be kept confidential. Confidentiality should also be respected and guaranteed in cases of migrant workers claiming international protection.

111. The participation of intending migrants, and returned migrants, and their families, shall be prioritized so that interventions by Governments to make the migration processes safer are based on practical lessons learned from the migrants themselves. Therefore, the Governments shall improve and broaden current mechanisms and processes to ensure genuine representation and participation of migrant workers in the governance of key Government agencies working with migrants, possibly through use of advisory boards or other systems, in order to institutionalize consultations with migrants, and ensure transparency in operations and in collaboration with civil society.

112. The ASEAN Governments shall seriously consider setting up a "one stop service center" at both the district, provincial and national levels, placing under one roof personnel from all the relevant Ministries, with all the required forms and applications needed for a worker to go overseas. Adequate and competent personnel and financial resources should be provided to relevant Government agencies to enable the creation of the "one stop service center" model. The costs for required procedures could therefore be kept at a reasonable, affordable level.

113. Sending Governments shall devise (in close consultation with representatives of migrant workers' families who have remained in the sending country) a set of comprehensive medical and health benefits, social security, and other support

15. In cases where the financial bond of a recruiting agency is seized for malfeasance, the Ministry shall use the seized monies to compensate those workers who were cheated by the recruiting company.

services for families in order to ease the difficulties they face as a result of family separation.

114. Each ASEAN Government shall require the labour recruitment agency to provide a copy of each worker's contract to the appropriate Ministry with oversight authority so that these contracts can be verified by the Government prior to the worker departing the country. All contracts must be strictly in conformity with both the laws of the sending and receiving country, with at least one version written in a language that migrant workers understand.

115. Labour-sending Governments shall not impose penalties of any kind against returning migrant workers who originally departed the sending country through informal channels and shall issue appropriate regulations and take pro-active steps to ensure that all local, district, and provincial officials comply with this requirement.

Monitoring and regulation of labour recruitment agencies and brokers

116. ASEAN Governments shall ensure that all labour recruitment companies operating from their national territory are licensed and set out regulations requiring these companies provide significant financial bonds to the Government which shall be subject to seizure if the recruitment company is found to have deceived or defrauded intending migrant workers.¹⁵ Representatives of civil society and returned migrant worker associations shall be included as members of Government oversight bodies to ensure transparency and fairness of regulatory monitoring. Labour recruitment companies shall be required annually to publicly disclose their fully audited financial accounts, displaying all income, losses, profits and balances, including existing contracts with workers placed overseas, and provide information on current ownership of the company, and shall face criminal and civil penalties for misreporting. Government officials shall make available information to potential migrants regarding licensed recruitment agencies.

117. ASEAN Governments shall set out in regulations of recruitment agencies that the recruiting agency in the sending country has joint and severable liability with the principal/employer in the receiving country and can be held legally liable for any money claims or damages resulting from violations of the migrant workers' contract and other violations of the worker's rights.¹⁶

118. Labour recruitment companies shall be held accountable for ensuring that dependable and safe transport is provided for transporting migrant workers. These companies shall be required to send a representative to accompany migrant workers on their journey to the destination country to ensure safe arrival, and check that employer/agents in the receiving country comply with the contractually agreed arrangements for the migrant workers in the receiving country. Ideally, recruitment companies involved in sending significant numbers of migrant workers to a particular receiving country should establish a permanent representative or office in that country in order to handle cases that arise with migrant workers it has placed in employment.

119. Labour recruitment companies and their industry associations shall be expected to develop and enforce specific and detailed codes of conduct among its members that provide for protection of the rights of migrant workers they recruit to send overseas, and take appropriate administrative actions, including expulsion of member companies that violate the association's code of conduct.

Role of Embassies of sending countries in protecting migrant workers who are their nationals

120. ASEAN Governments shall ensure that their overseas Embassies shall be provided with adequate resources and staff to play a pro-active role in protecting migrant workers overseas. Diplomats shall 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. Humane and victim-sensitive procedures shall be drawn up for the treatment of those migrants with especially

16. Philippines Republic Act 8042 (The Migrant Workers and Overseas Filipinos Act of 1995), Section 10 provides that "the liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond filed by the recruitment/ placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/ placement agency is a juridica being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages."

difficult or sensitive situations, for example such as victims of sexual abuse, or persons who are HIV positive. To the maximum extent possible, female Embassy staff should be trained and available to assist female migrant workers. The terms of reference and duties for officials assisting migrant workers shall include a requirement that these Embassy personnel shall cooperate closely with trade unions and civil society organizations of the receiving country, and shall engage regularly with the migrant community, to ensure effective and timely assistance is provided to their nationals who are migrant workers facing difficulties.

121. Governments shall consider creating a system of labour attaches, including representatives of trade unions on temporary duty in Embassies, to support migrant workers, and shall also require that representatives of labour recruitment agencies from sending countries take responsibility for ensuring workers are not cheated or abused in jobs to which the recruitment company places them in the receiving country. To the maximum extent possible, the recruitment and assignment of labour attaches should be gender-balanced to ensure significant representation of women in this migrant protection system.

122. Embassy personnel shall actively represent the interests of all of their migrant workers, regardless of immigration status, with agencies in the receiving Government, and pro-actively and positively respond to referral of cases of their nationals from Government and civil society representatives in the receiving country. Sending Governments should devise necessary migrant fund schemes, paid for by the Governments and recruitment agencies, which can provide emergency financial assistance to migrant workers facing crises in the receiving country.

123. In countries where there are significant numbers of migrant workers from a particular sending state, the Government shall provide adequate resources to establish shelters to protect migrants in crisis (especially but not only for women), and ensure that these shelters are staffed with personnel with appropriate counseling and other support skills. Systems could also be established to provide support to injured workers. For this work, it is important that the Government provide clear authority, and adequate budgetary and personnel support to the effort of Embassies to reach out to and protect migrant workers from their country.

124. The Governments shall also develop and implement effective feedback mechanisms to monitor and evaluate the performance of government agencies addressing labour migration overseas, including both Embassies and Consulates, and shall undertake remediation when performance is found to be below expected standards. Methods shall be developed to ensure participation of migrant workers (current as well as those who have returned to the original country) in this feedback mechanism.

125. Governments shall develop effective mechanisms to monitor migrant workers employed in foreign countries and ensure that these systems are kept up to date. In the case of a sending country's Embassy in a receiving country, the Embassy personnel shall be provided with a regularly updated list of its country's nationals working in that country, including name and personal details, location of the workplace (if known), and contact information for relatives/family in the country of origin. This information may be provided separately or in conjunction with the database of overseas migrant workers to be developed in line with paragraph 110. Governments shall also devise and regularly update an easily accessible database (or other similar information maintenance system) containing information on children of migrant workers born in a receiving country, in line with the systems required by the provisions contained in paragraphs 68, 69, and 70.

126. Officials in the Embassies of the sending Governments shall systematically monitor the status of their nationals working in the receiving country to ensure compliance by employers with the terms of labour sending MOUs concluded between the two countries. Embassies shall develop systems to enable their nationals to register their presence with the Embassy, and shall work with Governments of receiving countries to ensure that as a part of the recruitment and hiring process that the labour recruitment agency must inform the Embassy that it has brought in nationals of that country to work. Information developed by the Embassies shall be consolidated in an information system maintained by the Ministry of Foreign Affairs, and shared with other line Ministries with responsibility for migrant workers.

Effective reintegration of migrants returning to sending states

127. ASEAN Governments shall provide political, policy and financial support to assist in the creation and operation of associations and unions of returning migrant workers, and shall establish processes for the involvement of representatives of these associations/unions in all policies and programs involving the sending of migrant workers overseas, and the provision of services to returning migrant workers and their families.

128. For migrant workers returning to their countries of origin, Governments shall develop a coherent policy framework

on socio-economic reintegration of these workers, and shall ensure that development policies truly reflect the interests of returning workers. Governments shall take into account disabilities and/or medical conditions of returning migrant workers in developing this framework. Such frameworks must also include measures to prevent the discrimination against returnees on the grounds of gender or profession. Governments shall allocate adequate financial, human and social resources for effective reintegration of these migrant workers, and shall institutionalize the representation of the returned migrant workers and their family members in local decision-making councils.

129. Governments shall further provide returning workers with economic incentives and assistance such as tax holidays, simplified business registration and regulatory systems, provision of marketing assistance to help workers set up economic enterprises to secure their livelihoods. Governments shall also support the provision of capacity-building/training in livelihood development, financial literacy, and entrepreneurship for returning workers and their families. Governments shall seek to involve local organizations and NGOs in the delivery of such services for migrant workers.

130. Governments shall consider undertaking measures to prepare families of intending migrant workers for the situations they will face when their family member is working overseas, and to provide them with social protection measures. Training could be provided on ideas, values, and strategies to strengthen families (on topics like dealing with strains faced by migrant workers' families, solo parenting, building understanding and ways to hold the family together), and creative and innovative IEC materials to reach youth to supplement these sessions. Publicity and support for these orientation sessions can also be supplemented by outreach strategies like setting up e-groups and forums, and joint organizations. Coordination can be undertaken with NGOs and community organizations on programs and services to provide structures of care for children with migrant parent/s, and mitigate adverse effects of migration.

131. ASEAN Governments and academic institutions should cooperate closely with the ASEAN Secretariat to examine procedures, policies, and practices for effective and just integration of migrant workers entering the work force of a receiving country, and study mechanisms for re-integration of migrant workers when they return to the sending country. These studies should be made public, and consultative dialogues organized with ASEAN civil society organizations to discuss the findings and make further recommendations.

Fulfilling international obligation towards country's national – citizenship, travel documents, right of return

132. The Bangkok Declaration on Irregular Migration, signed by all ten ASEAN Governments, recognized the obligation of the country of origin to accept its nationals back and the obligation of the countries of transit and destination to provide protection and assistance in accordance with their national laws. All ASEAN Governments shall quickly and effectively provide verification of nationality to its overseas citizens, re-issue travel and personal identity documents with minimal possible costs and delays for migrant workers, guarantee financial assistance (in either grant or loan form) and provide support for destitute migrant workers and victims of human trafficking overseas who are the country's citizens seeking to return to their country.

Joint Obligations of Receiving and Sending States

Effective regulation of private recruitment industry, emphasizing transparency, accountability and affordability of recruitment systems, and issuance of sanctions against abusive agents and brokers (individual and/or corporate) in both sending and receiving countries

133. As a matter of policy, ASEAN member states shall ratify ILO Convention 181 (Private Employment Agencies) and immediately implement the following key protective elements of that Convention as part of their commitments under this Framework Instrument:

- Ensuring that there is an effective system of licensing or certification for recruitment agencies operating in their na-

tional territory;

- Prohibiting any discrimination in the recruitment of workers based on race, color, gender, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability;
- Preventing private agencies from charging any direct or indirect fees or costs to workers for placement or training;
- Ensuring that, in policy or practice, private employment agencies neither hinder nor obstruct workers' rights to freedom of association and collective bargaining; and
- Ensuring adequate protection that is at least in line with legal minimum standards for freedom of association and right to collectively bargain, payment of minimum wage, hours and conditions of work, occupational safety and health, legal social security benefits, reproductive health, maternity protection and benefits, and compensation in cases of occupational accidents and diseases or employer insolvency.

134. In all instances, the Governments shall compel recruitment of migrant workers to occur in a professional, transparent, and accountable manner. The process of granting labour recruitment licenses shall be seriously and strictly managed, with Government officials conducting continuous monitoring of the activities of migrant recruitment enterprises and taking prompt action to withdraw licenses of those enterprises which violate the law, or which are judged not to have the mandate and capacity to effectively carry out their recruitment activities. Information on the legal status of labour recruitment agencies, including their mandate, responsibilities and authority should be publicized throughout countries where they operate.

135. Governments, working closely with civil society and trade union partners, shall develop a list of exploitative practices that are considered unacceptable, and shall publicly expose the names of both individual recruiters and recruitment companies whose are found to engage in these practices and/or consistently violate labour laws and regulations. Owners/operators of recruitment companies reliably found to engage in these practices shall be held accountable and effectively barred from any future engagement in labour recruiting work by all ASEAN Governments.

136. A database listing these recruiters and employers covered in mechanisms set out in paragraphs 116, 117, 118, and 119 shall be made operational under the appropriate regional mechanism for protecting migrant workers, and all Governments shall contribute information to this database about recruiters and employers operating from their national territory.

137. Governments shall ensure that private sector recruitment agencies play a positive role in ensuring compliance of receiving country employers with the labour contract and the provisions of the labour law, and shall be held jointly accountable (with the employer) in cases of abuse and negligence that results in harm to the migrant worker.

138. ASEAN Governments, in cooperation with the ASEAN Secretariat, shall investigate the problems and abuses that exist in the current systems of labour recruitment in the sending countries and engage systematically with all stakeholders (migrant workers, NGOs, trade unions, local, provincial, and national government officials, employers organizations (including small and medium enterprises), and recruitment agency trade associations) to develop just and realistic solutions to issues of exorbitant recruitment fees, contract substitution, abusive oversight and maintenance of migrant workers being mobilized or "trained", deception and human trafficking, and other abuses against migrant workers.

139. Through a participatory process involving all stakeholders, ASEAN shall develop and promulgate a Code of Conduct that sets out ethical and transparent practices for labour recruitment agencies operating in ASEAN states. The code shall outline expected standards in operations that protect and promote migrant worker rights, ensure transparency and accountability, and incorporate best practices. This code of conduct should be the first step in a longer term process to develop a regional procedure for accreditation of labour recruitment agencies by ASEAN.

Government to government recruitment systems

140. International best practice from Southeast Asia and other regions of the world indicate that well-run bilateral "Government-to-Government" systems, based on signed bilateral agreements or MOUs, can significantly reduce abuses and fraudulent practices in recruitment, placement and employment of migrant workers. In whatever recruitment system that is used, Governments shall place an emphasis on creating a system that places an emphasis on good governance, and includes components such as clear regulations, transparent procedures and processes, use of standard employment contracts that conform to international standards, processes to prevent malfeasance, and systems for aggrieved workers to file

grievances.

141. To complement this Framework Instrument, ASEAN member states shall negotiate and seek to conclude bilateral agreements that provide for government-to-government recruitment systems based on the Framework Instrument and the principles and provisions of ILO Convention 181. Given the increasing number of women who are migrating, and the important protection requirements for these women, the Government-to-Government agreements should be gender-sensitive.

142. The Governments shall consider moving expeditiously and progressively to replace the current private-sector/agent driven systems with Government-to-Government systems (based on a written agreement between the Governments).

143. Government-to-Government systems shall be accessible, easy to understand and accountable to outside scrutiny by a joint board composed of Government officials and external civil society representatives that include NGOs, migrant worker associations, labour unions, and academic/technical experts.

144. As part of these Government to Government recruitment systems, the receiving Government shall prepare information about the prevailing laws, working conditions and skills required, types of jobs, rights and cultural norms, and health, education, social and financial services for migrant workers, and convey this information to the sending Government(s) prior to recruitment of worker. The sending Government, working in collaboration with civil society organizations, shall ensure that this information is provided to migrants prior to their recruitment.

Creation and support for practical and effective grievance and complaint mechanisms and referral systems for migrants

145. In line with article 8 (1) and article 10 of ILO Convention 181, ASEAN members states shall provide mechanisms and processes for transparent and effective investigation of complaints, alleged abuses and fraudulent practices regarding the activities of private employment agencies, and make certain legitimate representatives of worker and employer associations are provided the opportunity to monitor and participate in these investigations. The investigation processes shall be gender-sensitive.

146. Furthermore, these mechanisms shall be able to effectively respond to and solve the cases of all migrant workers (irrespective of status) who are facing difficulties, with uniform standards and transparent procedures in place to ensure quality response to all migrant workers, irrespective of status.

147. ASEAN Governments shall reach agreements on cross-border legal cooperation that allows all migrant workers to file civil and criminal cases against employers who exploit them and violate the law, where there is prima facie evidence that exploitation has taken place. All migrant workers shall be provided with free legal aid to file such cases, and shall be free to work (for another employer) in the receiving country or to return back to their country of origin, while the legal cases are proceeding. Should the worker choose to return to their country of origin, the ASEAN state where the legal case has been filed shall allow the migrant worker to return as needed to participate in ongoing legal proceedings.

Migration of skilled labour and the ASEAN Framework Agreement on Services

148. The Bali Concord II explicitly recognizes the need to enhance cooperation and integrate activities in “*human resource development and capacity building*” and “*recognition of educational qualifications*” and commits that “*ASEAN shall continue existing efforts to promote regional mobility and mutual recognition of professional credentials, talents, and skills development.*”

149. The ASEAN Charter further sets out as one of its core purposes “*to develop human resources through closer cooperation in education and life-long learning, and in science and technology for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community.*”

150. This Framework Instrument shall complement the Initiative for ASEAN Integration (IAI) and the ASEAN Framework Agreement on Services (AFAS). 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. Thus 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 this Instrument which 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.

Accreditation of skills and education of migrant workers

151. Sending and receiving Governments shall work closely with the ASEAN Secretariat to develop an effective system of accreditation of skills and education, sector by sector, at the regional level. This work shall begin with a study of all aspects of developing such a regional skills and education accreditation system, done in close consultation with the ASEAN Secretariat, other ASEAN Member Governments, employers, trade unions and civil society organizations, and international technical experts.

Effective prevention and suppression of human trafficking, establishment and implementation of systems to identify trafficking victims, and provision of support for victims of human trafficking

152. Under the auspices of the Framework Instrument mechanisms, the ASEAN Governments shall establish distinct national focal points for the purposes of establishing and maintaining case by case cooperation on human trafficking, in line with the intent of the ASEAN Declaration against Trafficking in Persons Particularly Women and Children that called for establishment of a “regional focal network.”

153. Half of the members of ASEAN are signatories of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) MOU which has established a comprehensive and sustained framework for cross-border cooperation between states to combat human trafficking. These following key elements of the COMMIT MOU which are critical to the effective prevention and suppression of human trafficking shall be progressively adopted by all ten ASEAN states under this Instrument:

- Using the definition of trafficking contained in the Protocol to Prevent,
- Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention on Transnational Organised Crime;
- Improving regional cooperation against trafficking, in particular through bilateral and multilateral agreements;
- Strengthening cooperation between Governments, international organizations and nongovernmental organizations in combating trafficking in persons;
- Adopting appropriate guidelines and providing training for relevant officials to permit the rapid and accurate identification of trafficked persons and to improve the investigation, prosecution and judicial process;
- Making available to trafficked persons legal assistance and information in a language they understand;
- Adopting and enforcing appropriate legislation against trafficking in persons that is in accordance with international standards;
- Developing realistic and effective cooperation in the criminal justice system to remove impunity for traffickers and provide justice for victims;
- Strengthening cross-border cooperation in law enforcement among the ten ASEAN countries to combat trafficking through criminal justice process;
- Providing the necessary personnel and budgetary support for trafficking response capacities within national law enforcement authorities;
- Promoting bilateral or multilateral agreements among the GMS countries to assist each other in the judicial process;
- Promoting greater gender and child sensitivity in all areas of work dealing with victims of trafficking;
- Ensuring that persons identified as victims of trafficking are not held in detention by law enforcement authorities;

- Providing all victims of trafficking with shelter, and appropriate physical, psycho-social, legal, educational, and health-care assistance;
- Adopting policies and mechanisms to protect and support those who have been victims of trafficking;
- Ensuring cross-border cooperation in the safe return of trafficked persons, including support to ensure their well-being; and
- Working together to facilitate the successful recovery and reintegration of trafficked persons and to prevent them from being re-trafficked.

154. ASEAN Member Governments shall enact and effectively implement anti-trafficking legislation that conforms with the international standards contained in the Palermo Protocol to the United Nations Convention on Transnational Organized Crime. Such legislation shall conform to the Universal Declaration of Human Rights, and the UN conventions (such as CEDAW, CRC and others) which have been ratified by the ASEAN Member Governments. The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, which is recommend in the text of the COMMIT MOU, shall be used as a guideline for developing and revising anti-trafficking legislation.

155. This Instrument shall ensure that protection and access to services are provided in an efficient and timely way to those persons who are identified as victims of human trafficking, as determined by the ASEAN Declaration against Trafficking in Persons Particularly Women and Children adopted in Vientiane, Lao PDR, on November 29, 2004. As provided for in that Declaration, the ASEAN Governments shall *“distinguish victims of trafficking in persons from the perpetrators, and identify the countries of origin and nationalities of such victims and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate by the respective receiving/ recipient country, including prompt repatriation to their respective countries of origin; and shall...undertake actions to respect and safeguard the dignity and human rights of genuine victims of trafficking in persons.”* However, provision of this assistance and services shall not be made conditional on the trafficked person’s willingness to cooperate in the criminal prosecution process.

156. Migrant workers who are identified to have been in human trafficking situations should be treated as legal victims 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. However, being deemed as a victim of human trafficking should in no way infringe upon the rights of the individual inter alia to assistance and services without pre-conditions, freedom of movement, and freedom from arbitrary detention, and privacy.

157. Special protection shall be afforded by ASEAN states to children in line with UN CRC, which has been adopted by all ten member states. Governments shall ensure that they act in accordance with CRC Article 32 which commits state parties to *“...recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”* and Article 35 in which state parties *“shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”*

Bilateral and regional cooperation systems to protect migrant workers rights

158. The Bangkok Declaration on Irregular Migration mandated that ASEAN countries shall conduct *“a comprehensive analysis of the social, economic, political and security causes and consequences of irregular migration in the countries of origin, transit and destination”* which would be developed *“in order better to understand and manage migration.”* (Bangkok Declaration, recommendation 4) ASEAN shall re-visit this important recommendation in order to improve bilateral and regional cooperation systems to protect the rights of migrant workers and their families.

159. The ASEAN states shall ensure that bilateral agreements concluded among Governments in the region are harmonized with international standards and best practices regarding recruitment policies and procedures, preventing illegal recruitment and human trafficking, and protecting the rights of all migrant workers, regardless of legal status.

160. ASEAN states shall actively support the establishment of civil-society run “migrant help desks” in areas of origin from which migrant workers are departing, and in receiving countries where the migrants work live and work. ASEAN Government shall adopt policies that clearly support active collaboration with these “migrant help desks”, and ensure the participation (though an advisory/oversight council or other appropriate mechanism) of all key stakeholders such as Embassy officials and/or labour attaches, representatives of trade unions, civil society organizations, and migrant worker associations

in the “migrant help desks.”

Remittances, banking infrastructure systems, and savings schemes

161. 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.

162. ASEAN Governments shall not deduct fees or otherwise divert worker remittances to Government development projects or other programs. However, Government regulations may be developed to limit the fees charged for worker remittances, especially those implemented by private sector companies.

163. To support remittances by migrant workers and to reduce potential theft and criminal acts targeting migrant workers and their families due to a lack of secure systems for migrants to hold their financial savings, ASEAN countries receiving migrant workers shall issue regulations permitting migrant workers to easily open savings accounts at local banks with a minimum of personal identification required. These regulations shall also permit workers who are in an undocumented status to open bank accounts. Governments shall also actively support and facilitate other efforts by migrant workers, migrant support organizations and other stakeholders to create alternative safe and secure saving options for migrant workers.

Harmonization of national labour laws with ILO core labour standards

164. Many ASEAN Member Governments have already taken important steps to harmonize their national labour laws with ILO core labour standards, especially those Conventions which they have already ratified. However, in order to support a more comprehensive and inclusive approach, the ASEAN Governments shall undertake an immediate review of all their national labour laws and regulations related to migration, and make progressive revisions to harmonize those laws with the eight core ILO Conventions. The ASEAN Governments shall also provide mechanisms for effective implementation of those newly harmonized labour law.

165. Since all member Governments of ASEAN are members of the ILO, they are covered under the terms of the ILO Declaration on Fundamental Principles and Rights at Work which obliges recognition of core labour standards.

Commitments by ASEAN

ASEAN regional systems

166. ASEAN shall conduct research on the issues, rationales, and possible action areas where regional mechanisms could be created for the protection of migrant workers, while ensuring that such regional mechanisms will complement national efforts.

167. Among the mechanisms that ASEAN should consider as part of an effort to create a wider web of regional protection are creating an electronically networked “ASEAN Migrant Worker ID” that could supplement migrant worker’s national passports, or serve as a primary ID in cases where migrant workers are stateless or encounter other difficulties in obtaining a passport. A second possible scheme could be the creation of 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). Appropriate arrangements would have to be made to ensure that telephone operators are trained responders who are familiar with the language and culture of callers, gender sensitive, and able to either answer questions on laws and regulations, or make timely and efficient inquiries/referrals for information and services. If set up an ASEAN Hotline would have to effectively collaborate with national level hotlines (where they exist) for intending migrants and anti-trafficking efforts. Another possible scheme could be the development of a regional system of portable “migrant social security and health insurance” to support the provision of a standard package of basic health and social services to migrant workers. The provisions of this package would have to be negotiated, but it should

contain elements of preventative as well as curative care, access to public hospitals, reproductive health and family planning, and public health and hygiene information.

168. An important element of an economically integrated ASEAN will be systems of social protection devised for migrant workers to ensure they are not deprived of social security as a result of extended periods of time working outside their home country. ASEAN and its member governments should conduct research, possibly with technical support and assistance from the ILO, on the feasibility of bilateral and multilateral social security agreements that cover migrant workers and their families. This research could focus on both the mechanisms and the substantive content of possible future bilateral and multilateral social security agreements between sending and receiving countries.

169. ASEAN should study the feasibility, potential role(s), and methods of operation of an ASEAN Migrant Fund that could support the creation and operation of ASEAN regional mechanisms. Sources of financial support for the fund could include contributions from ASEAN member governments and other ASEAN stakeholders, UN agencies and other inter-governmental bodies, and bilateral donors. If created, the ASEAN Migrant Fund should have a clear and defined set of objectives and statement of purpose, operate transparently and accountably, have a system of governance that includes both Government and civil society representatives, and focus only on activities that are linked to ASEAN initiatives on migration.

ASEAN mechanism for a practical and effective system to handle migrant grievances and refer them for mediation and resolution

170. The Member States of ASEAN shall agree to an effective three-step process to receive and address grievances made by migrant workers, or civil society organizations on behalf of an individual or group of migrant workers. The principal of step-by-step handling of grievances shall be observed.

171. The first step shall consist of a referral of the grievance to the focal point at the Embassy of the migrant workers' country, and to the relevant Ministry office of the receiving country. If the migrant has been recognized by a UN agency as being under its protection mandate, and s/he has been provided with a document, the UN agency shall also be invited to participate in the grievance process. The grievance shall be registered by the Embassy of the migrant workers' country, and consultations and negotiations undertaken between the Embassy, the Ministry office, the migrant worker (and/or organization representing the worker), the employer, and other relevant stakeholders. The aim of this step shall be to establish the facts of the case, mediate the dispute (if possible), and reach a fair and just settlement. If the grievance cannot be satisfactorily resolved within thirty (30) days, it shall be referred to the second step.

172. The second step shall consist of a Government-to-Government consultation which shall be conducted at the appropriate levels and means to be determined between the Governments. A representative of the ASEAN Secretariat (who is not a national of either of the Governments in question) shall be involved as an impartial facilitator. The process shall seek a fair and just settlement through conciliation, while considering all the relevant facts in the case. The second step process shall take thirty (30) days, with the possibility of an extension of another thirty (30) days in exceptional cases. If no resolution is reached, the grievance shall be referred to the third step.

173. The third step shall involve the ASEAN representative reviewing all aspects of the case and issuing findings and recommendations within thirty (30) days of the end of the second step. At any time during the third step, either the migrant worker(s) and their representatives, or the party who is the subject of the original grievance, may file for binding arbitration under the supervision of ASEAN, and based on selection of arbiter from a list of impartial arbiters to be maintained by the ASEAN Secretariat.

174. Active involvement in any of the above-mentioned steps shall not preclude the migrant worker(s) and/or their representatives from filing a complaint with the national human rights institution in the receiving country, or the ASEAN Human Rights Body (AHRB).

175. All parties shall ensure that there is no retaliation of any sort whatsoever against migrant worker(s) and/or their representatives for filing a grievance under this procedure. Given the high number of women migrant workers in the region, gender sensitive practices shall also be employed in all steps of this grievance process.

ASEAN Human Rights Body (AHRB)

176. ASEAN shall create a Subcommittee on the Rights of Migrant Workers as part of the AHRB. The Subcommittee shall operate with the authority of the AHRB, using the procedures and processes set by the AHRB, and shall have oversight on all aspects of the effort to protect and promote the rights of migrant workers.

177. The Subcommittee on the Rights of Migrant Workers shall encourage the continuous participation of NGOs, trade unions, and other ASEAN civil society organizations in all its efforts to fulfill its mission.

Creation and operation of reporting and evaluation mechanisms on situation of migrant workers in ASEAN

Report of ASEAN Secretary-General and Report of the ASEAN Socio-Cultural Community Council

178. In compliance with the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the Secretary-General of ASEAN “shall submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.” To achieve the most comprehensive and informative report possible, a participatory national and regional reporting process, involving representatives of employers, trade unions, civil society organizations, and representatives of migrant workers organizations, shall be established to provide inputs to the Secretary-General’s report. This reporting process shall follow a reporting schedule and process developed by the ASEAN Secretariat for national report inputs to be provided to the Secretariat, and this reporting time-line shall be shared with national stakeholders.

179. The report on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers which is submitted by the Secretary-General to the ASEAN Ministerial Meeting shall be made public and posted on the ASEAN website in a timely manner.

180. Each ASEAN Community Council is tasked in article 9.4.b of the ASEAN Charter to “coordinate the work of the different sectors under its purview and on issues which cut across the other Community Councils” and in article 9.4.c to “submit reports and recommendations to the ASEAN Summit on matters under its purview.” The ASEAN Socio-Cultural Community Council (ASCCC) shall develop an appropriate mechanism to receive on a regular basis, and not less annually, reports submitted by representatives of employers, trade unions, civil society organizations, and representatives of migrant workers organizations. The Council’s review of the reports submitted, and writing of its report, shall be complemented by at least an annual public hearing which is no less than one day in duration and open to representatives of all ASEAN civil society organizations which have submitted reports to the Council during the previous year. The public hearing shall be held to coincide with the regularly scheduled meeting(s) of the Council as stipulated in article 9.5 of the ASEAN Charter.

181. This reporting process shall follow a reporting schedule and process developed by the ASEAN Socio-Cultural Community Council and the time-line and formats for reports to be submitted shall be widely publicized by the Council at the start of each calendar year.

Participation of National Civil Society in Government’s Reporting on Implementation of the ASEAN Instrument

182. In order to contribute information and reports in line with the reporting processes of the Secretary-General and the ASEAN Socio-Cultural Community Council, each ASEAN member Government shall designate a focal point within the Government to handle these responsibilities and shall develop a draft national report in line with the report schedule and processes set by the ASEAN Secretariat (for the Secretary-General’s report) and the ASCCC. Prior to submitting the national report to ASEAN, the national focal point shall organize an annual national consultation meeting, convened in cooperation by the appropriate Government office(s) and including representatives of employers, trade unions, civil society

17. Secretary-General Pitsuwan stated to the ASEAN Foundation in Jakarta on January 15, 2008 that “In order to convince the 567 million in ASEAN to join and support the community-building endeavour...we need a network across the sectors in every ASEAN Member State, which includes professional groups, civil society organisations, and other stakeholders...Most of all we count on the ASEAN citizens.”

organizations, women's organizations, youth groups, representatives of migrant workers present in the country, and other relevant stakeholders to discuss the national report which shall be sent to the ASEAN Secretariat and ASEAN Socio-Cultural Community Council. The national focal point shall receive the recommendations from this national consultation and make revisions to the national report as appropriate prior to conveying the report to the ASEAN Secretariat and the ASCCC.

183. The national Government focal point shall also agree to accept at any time and review "shadow reports" provided by civil society organizations and trade unions for consideration by the ASEAN Secretary-General and/or ASCCC. Upon submission of a "shadow report" the Government focal point shall pro-actively engage in consultations on the content of the report with the organization(s) submitting the report.

Civil society and trade union role with ASEAN Committee on Migrant Workers

184. The ASEAN Governments shall agree to provide a substantive role to civil society and trade unions in ASEAN to work jointly with the CSO-TU Task Force on ASEAN Migrant Workers (TF-AMW), thereby answering the call of the new ASEAN Secretary-General, H.E. Surin Pitsuwan, to support the greater participation and involvement of ASEAN civil society in important matters that affect the welfare of the peoples of ASEAN.¹⁷ The TF-AMW should be seen as complementing the efforts of ACMW. The TF-AMW has continually focused on building the capacity of civil society stakeholders to play effective roles in supporting the work of the ACMW to draft and implement the forthcoming Instrument on the Protection and Promotion of the Rights of Migrant Workers. By including civil society and trade unions, the Member Governments will be fulfilling a central premise of the ASEAN Socio-Cultural Community Plan of Action which contains as one of its key features that "civil society is engaged in providing inputs for policy choices."

Civil society and trade union role in ASEAN Forum on Migration

185. The ASEAN Forum on Migration shall be organized as an annual event to provide an inclusive platform for exchange of information and views on migration topics between representatives of ASEAN Member Governments and civil society organizations including trade unions, NGOs, mass organizations, community based organizations, and migrant workers associations. Given the constructive role that the ILO has played in assisting the Forum in accordance with the provisions of the ASEAN-ILO agreement, ASEAN should continue to engage with the ILO to seek its support for the annual meeting of the Forum.

Systems to coordinate and provide assistance to migrant workers who are ASEAN nationals caught in conflict or crisis situations outside ASEAN

186. The ASEAN Declaration clearly obligates member states of ASEAN "extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements."

187. Under the Framework Instrument, an ASEAN Nationals in Crisis (ANC) facility shall be established which is chaired by an official of the Ministry of Labour of the national holding the Chairmanship of ASEAN, and coordinated by a focal point official named by the ASEAN Secretary-General at the Secretariat. The Secretariat shall devise a Terms of Reference for the ANC which shall set out procedures of mutual assistance and collaboration between ASEAN countries with nationals in non-ASEAN countries facing conflict or crisis. The ANC shall be based on the principles of ASEAN solidarity and support, and based on the premise that when one or several ask, all shall answer to the utmost best of their ability. The TOR shall set out that the ANC can be activated at any time and for any situation by the request of one ASEAN Government transmitted to the ASEAN Secretary-General. The TOR should also set out administrative and financial arrangements required for the effective operation of the ANC.

Resolution of Disputes Regarding the ASEAN Framework Instrument

188. In line with Articles 22 and 25 of the ASEAN Charter, a dispute mediation mechanism shall be created and maintained under the purview of the ASEAN Socio-Cultural Community Council to resolve any disputes between member states which arise in the course of the implementation of Framework Instrument. If the dispute concerns the rights of a particular ASEAN citizen or group of citizens who are migrants, the dispute shall be simultaneously referred to any ASEAN Human Rights body which is ultimately created in compliance with ASEAN Charter article 14. If the dispute remains unresolved after completing the dispute resolution system(s) set out by the ASEAN Socio-Cultural Community Council (and the ASEAN Human Rights body if the dispute was referred to it), then the dispute shall be referred to the ASEAN Summit (in line with articles 26 and 27.2 of the ASEAN Charter) for a final decision.

Cooperation in effective implementation of the ASEAN Framework Instrument

189. Recognizing the fact that there some limitations at the national and regional levels to implement all the provisions of this Instrument, the ASEAN civil society organizations in the Task Force on ASEAN Migrant Workers shall cooperate continuously in joint action with the Governments and other relevant stakeholders to ensure that adequate capacity is developed and is in place for effective and timely implementation of this Instrument.

190. ASEAN shall develop an advisory body, composed of representatives from civil society organizations, trade unions, employers associations, and governments, which will play a leading role (under the umbrella of the ASEAN Secretariat) in ensuring effective implementation of regional standards included under the Instrument on the Protection and Promotion of the Rights of Migrant Workers which is developed by the ASEAN Committee on Migrant Workers (ACMW) and ultimately adopted by ASEAN.

191. ASEAN shall actively engage with the Task Force on ASEAN Migrant Workers, and its constituent members in civil society and trade unions, in all efforts intended to effectively monitor the implementation of the Instrument and ensure the provisions of the Instrument are enforced at the national and regional level.

Support from the International Community

192. The ASEAN Secretariat shall be tasked to coordinate with all appropriate UN agencies, bilateral and multilateral donors, and other international organizations to secure the resources and technical assistance necessary to effectively implement all the provisions of this Framework Instrument.

National Statement Cambodian National Consultation on the Protection and Promotion of the Rights of Migrant Workers

Phnom Penh, Cambodia

September 12, 2008

1. We, the representatives of over 60 NGOs, trade unions, private sector companies, and civil society organizations, gathered on September 11-12, 2008 at the Phnom Penh Hotel in Phnom Penh, Cambodia, to discuss the current situation faced by migrant workers leaving the country to work overseas and migrant workers entering the country. This is a historic consultation which marks the first time that civil society representatives of Cambodia have sat together to develop comprehensive recommendations on the rights of migrant workers to both the Royal Government of Cambodia (RGC) and to ASEAN.

2. We had the privilege of being addressed by senior officials from the Ministry of Labor and Vocational Training (MLVT), the Ministry of Women's Affairs (MOWA) and the Ministry of Foreign Affairs (MFA) of the Royal Government of Cambodia, all of whom provided valuable information and insights about the Government policy regarding migrant workers. Representatives of the Task Force on ASEAN Migrant Workers were also present and briefed the participants about the important value that ASEAN places on the national consultation process. The ASEAN Secretary-General, H.E. Surin Pitsuwan, has repeatedly called in public statements for greater levels of participation by the citizens of the member nations of ASEAN in determining policies adopted by the regional grouping. In this spirit, the Task Force will be providing this National Statement to Secretary-General Surin, other senior officials at the ASEAN Secretariat in Jakarta, Indonesia, and the Ministry of Foreign Affairs in each of the ten member nations of ASEAN. The Cambodian participants plan to conduct advocacy based on this National Statement by calling for meetings with all the relevant Ministries of the Royal Government of Cambodia to discuss the recommendations and encourage their immediate adoption.

3. We sincerely welcome the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in January 2007 and the establishment of the ASEAN Committee to Implement (ACI) the Declaration on the Protection and Promotion of the Rights of Migrant Workers in July 2007. We were heartened to see the agreement of the ASEAN Labor Ministers at their meeting in Bangkok in May 2008 that the ACI will be constituted soon and hold its first meeting before December 2008. We strongly urge the Royal Government of Cambodia to designate its focal point for the ACI as soon as possible, and we look forward to collaborating closely with the ACI in the future.

Recommendations to the Royal Government of Cambodia:

4. The Royal Government of Cambodia is to be commended for its actions to adopt international instruments and human

rights standards. For example, Cambodia has signed the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) on September 27, 2004, making it one of only a handful of nations in Southeast Asia to adopt this critical international Convention. Moreover, Cambodia is to be congratulated for ratifying all of the eight core labour standards of the International Labour Organization (ILO), including conventions 29 and 105 (forced labour), 87 (freedom of association), 98 (right to collectively bargain), 100 (equal remuneration), 111 (non-discrimination), and child labour (138 and 182).

5. However, we recognize that there is often a gap between the promises of the Government to follow international standards and the reality faced by the Cambodian people who are seeking to migrate. As a first comprehensive step, the Government must undertake an overall review and set out an implementation plan to bring all of its policies on migrant workers into line with these important international instruments that have been voluntarily adopted by the Government.

Laws, policies and regulations should be quickly and effectively harmonized with these international standards, and resources (in terms of personnel and finances) provided to ensure the effective enforcement of these laws, policies, and regulation.

Policies and procedures for recruitment of Cambodian migrant workers to work outside the country

6. In our work as NGOs and civil society organizations working closely with migrant workers, we have identified a number of important problems related to recruitment that need urgent solutions.

7. We have seen the failure by the relevant authorities to effectively disseminate information about Government policies on labor migration, despite claims about the value that Government agencies place on effective collaboration with NGOs and civil society groups. Compounding these information failures is the fact that between Government agencies, there has too often been weakness in cooperation between agencies. In turn, this results the inability of Government to effectively implement policies and programs. Added to these problems are the very serious issues of the malpractice of various recruitment agencies and the apparent inability of Government regulators to take meaningful action against these violators. High recruitment fees for placements are another important problem. These costs, which often must be borne by the migrant worker, are further compounded by the relatively high cost to issue a Cambodian passport and secure a visa. Another problem is that often employers decline to provide detailed employment contracts, meaning that they refuse either to set out what the work is to be done by the migrant worker or to provide details about the other terms and conditions of work.

8. Solutions to the problems of migrant workers leaving Cambodia through the formal recruitment process must involve three parties at all stages: the migrant worker, representatives of the Royal Government of Cambodia (both in Cambodia and in the RGC Embassy in the receiving country), and the representatives of the labor recruitment company in Cambodia.

9. In general, we have also observed that many of the Cambodian people are unaware of the procedures and mechanisms that govern the recruitment of migrant workers to go overseas. The Government must do a much better job at publicizing these procedures and mechanisms. It should also support effective partnerships with NGOs and civil society groups to ensure that its messages about migration reach the grass-roots level where the potential migrant workers are making their decisions about whether to migrate.

10. Sub-Decree 57, which governs the sending of Cambodian workers to work abroad, was promulgated in 1995. Many of the provisions are overly vague and no longer compatible with today's requirements for the effective protection of the rights of migrant workers. Therefore, we recommend that the Government should immediately amend Sub-Decree 57 in a comprehensive way to ensure that it better protects the rights of migrant workers.

11. Article 14 of Sub-decree 57 should be revised to clearly require that the recruitment company is responsible for organizing/arranging the pre-departure training for migrant workers according to a standard curriculum to be developed by the MOLVT with the participation from civil society organizations and key stakeholders.

12. Article 16 of Sub-decree 57 is particularly worrisome and must be changed. This Article provides that the recruitment companies must pay the costs of MOLVT officials who are going to inspect the conditions of Cambodian workers overseas. This creates a potential conflict of interest that can jeopardize the independence of the regulatory process. In order to ensure the independence of the MOLVT regulatory process, the MOLVT should set out its own budget for inspection

and cease receiving money from recruitment companies for monitoring and follow-up of the conditions of migrant workers overseas.

13. We recommend that the Government should reduce obstacles posed by the highly bureaucratic system that now exists in the process of recruiting migrant workers, and it should take concrete actions to reduce placement fees that are charged to migrant workers. The Government should undertake consultations with NGOs, civil society organizations, and representatives of intending migrant workers in order to find ways to set recruitment fees that are significantly lower and more appropriate for migrant workers.

14. As an important protective measure, the Government should negotiate and conclude an effective bilateral MOU/agreement with a receiving state before allowing Cambodian migrant workers to migrate to work in that country. In this way, the MOU/agreement forms an established framework that can help ensure protection of the migrant worker by the Cambodian authorities.

15. The Government should develop a standard employment contract that contains sections that specify the core rights of migrant workers, and mechanisms to protect those rights. Each contract must also include a clear and detailed job description and relevant information on working and living conditions that that migrant worker will face in the receiving country.

16. The process of issuing passports for migrant workers is facing great difficulties. The Government must take immediate action to clear up these problems. There are many different 'unofficial' prices charged for the passport as well as different periods of time that an applicant must wait to receive their passport. Moreover, it is quite clear that the passport office in Phnom Penh does not have the resources and capacity to do its job in a timely way. H.E. Prime Minister Samdech Hun Sen stated publicly on February 19, 2008 that passports should be provided for free to Cambodian migrant workers. We agree with His Excellency. We demand that the Government immediately start providing passports for free to intending migrant workers.

17. We believe that it is not acceptable for the Government to continue to fail to provide passports to its citizens in a timely way. The Government must adopt a policy and procedures that set a clear time period that an applicant must wait to receive a passport – and this waiting period should be set at no more than 30 days from the day that a passport application is submitted until the day that the passport is issued.

18. We do think it is fair or practical to force citizens from all over the country to make expensive and time consuming trips to Phnom Penh to apply and receive their passport. The Government must open passport offices in major provincial cities and provinces where many migrant workers are originating from, such as Battambang, Siem Reap, Kompong Cham, Svay Rieng, and Kompong Thom.

19. According to Government officials who addressed the national consultation on September 11, 2008, there is a recognition that many of Cambodia's education institutions are producing graduates who have degrees or certificates that are not in line with the demands for workers in overseas labor markets. Therefore, we recommend that the state education curriculum should be reviewed and revised in accordance with the needs of the labor markets. In general, the Government should increase its budget for vocational training and make sure that unskilled or lowly skilled persons are given the opportunity to receive appropriate training that can open the doors to greater employability in the future.

20. We strongly believe that mandatory testing for HIV should not be required for migrant workers by the destination countries. In accordance with the National Law on HIV/AIDS Prevention, the Government should not permit such requirements to be imposed on Cambodian migrant workers as a pre-condition of employment. Rather, following a right-based approach, migrant workers should be provided with information and the opportunity to access voluntary testing services and be assured that they have the opportunity to receive counseling and treatment depending on the result.

Policies on economic development

21. While recognizing the important role of migration in Cambodia's economy, we believe that the Government should set as its priority economic strategy to enlarge the local labor markets rather than seek to export more labor to destination/receiving countries. We believe that it is particularly important for the Government to seek to expand markets for local products produced by Cambodian farmers.

Protection for migrant workers overseas

22. As the number of Cambodian workers overseas increases, it is increasingly critical for Cambodia's Embassies to play a more important and central role in advocating for the protection of our migrant workers' rights and helping migrants who need assistance. Therefore, we recommend that the Government must set up a comprehensive labor attaché system as soon as possible. Labor attachés must be placed in every country where there are a significant number of Cambodia migrant workers employed. These labor attachés should receive all appropriate training and be supported with adequate personnel and financial resources so they are in a position to effectively address migrant workers' issues in destination countries. Officials in diplomatic missions should be clearly instructed by the Ministry of Foreign Affairs that the protection of the rights of migrant workers is a core part of their duties and regular work -- and they should be held accountable if they fail to provide effective assistance to Cambodian migrant workers in need of help.

23. Just as the Government has signed the CMW (and therefore should offer protections in that Convention to migrant workers in Cambodia) so should it also demand similar protections for its migrant workers outside the country. The Government should insist that Cambodian migrant workers shall not be discriminated against in any way. The Government should also insist and actively work to ensure that all Cambodian migrant workers are treated equally before the law in receiving countries.

24. In order to bring clarity to the Government's policy on migrant workers and ensure the rights of Cambodian workers are respected, the Government should negotiate and conclude bilateral Memorandums of Understanding (MOUs) or agreements with all of the countries which receive Cambodian migrant workers. Civil society should be consulted throughout the process of negotiations for these MOUs. The MOUs should contain provisions that are in accordance with the CMW, including providing migrant workers with unfettered consular access to Cambodian authorities in the receiving countries; ensuring national treatment for wages and other conditions of work; enabling access to basic services such as medical care; and ensuring migrant workers the right to bring grievances to an effective dispute-resolution and/or legal system that provides enforceable protection of migrant workers' rights in the destination country.

25. Effective monitoring and enforcement systems should be set up for all bilateral MOUs/agreements between Cambodia and receiving states, with a clear focal point established in the Cambodian Government for each bilateral MOU so that appropriate follow-up and enforcement actions can be undertaken by the Government. The Government focal points for each bilateral MOU/agreement should be open to engaging with NGOs/civil society groups on the issues and problems of migrant workers in the receiving country covered by that particular MOU/agreement.

Pre-departure training and safe migration

26. The Government, the MOLVT, and recruitment companies should provide training that will equip migrant workers with appropriate skills so that the workers have the knowledge and skills to effectively perform the jobs for which they are being recruited.

27. The Government has set out that there shall be pre-departure training provided to all Cambodians who are leaving the country to be migrant workers. This policy is contained in Sub-Decree 57 which states the MOLVT and recruitment companies are "*responsible for preparing and conducting training course on work system, life style, custom, tradition, and common laws of the receiving country*" to which the worker will be sent. While the Government is to be commended for recognizing the importance of pre-departure training, the policy in Sub-decree 57 is too vague in its requirements and the types of specific information to be provided to future migrant workers. Therefore, we recommend that the pre-departure training should be further revised and clarified.

28. For the actual orientation process for migrant workers, the Government should standardize the program for migrant workers as much as possible. There should be greater definition of what topics and information must be conveyed to the migrant workers in accordance with the requirements of Sub-decree 57. We recommend that it is important to include lessons that promote greater cross-cultural knowledge, include comprehensive information about the employment policies and labor laws in destination countries, and provide a catalogue of existing services (and ways to access those services) for migrant workers in destination country. There should also be information about contact points/information systems where they can seek assistance or support in case of emergencies. The training can also emphasize the importance of migrant workers maintaining regular contacts with their family members back in Cambodia. The new training program should use a rights-based perspective to educate migrant workers, thereby helping to empower them and promote their ability to

understand and take actions to effectively protect their rights.

29. We believe that safe migration approaches offer important information and understanding to intending migrant workers which can help them protect themselves when they depart the country to work. Therefore, safe migration principles should be taught to migrant workers, and should be combined with practical information (tailored to the situation in the country to which the migrant is going) as part of the pre-departure curriculum. Safe migration information should also be widely disseminated to the communities where migrant workers originate.

30. The curriculum for pre-departure training should also contain detailed information about the provisions of the bilateral MOU/agreement between Cambodia and the receiving country to which the migrant worker will be going. In this way, the migrant worker will be more familiar with the mechanisms that s/he can access under the bilateral agreement to ensure the protection of rights.

31. The curriculum must also contain detailed information about each of the key provisions of the standard migrant worker contract which should be developed by the Government as part of the reform of the recruitment processes for migrant workers. Migrant workers should leave the pre-departure program fully cognizant of all the elements in the employment contract that protect their rights and have a clear idea of the ways to seek assistance in the receiving country to protect those rights.

32. The Government should establish a program of awareness raising for migrant workers about all the relevant details and risks of working outside of the country and ensure that this information is spread in communities where migrant workers originate, and re-emphasized to migrant workers before their departure.

Protection of Migrant Workers in Cambodia

33. Cambodia is also a nation which receives migrant workers from neighboring countries. Unfortunately, many of these migrant workers are routinely discriminated against and denied protection of the rights as migrant workers. Just as the Royal Government of Cambodia expects the citizens of Cambodia should be protected when they travel to other countries, then so then must all the stakeholders in Cambodia do their part to ensure the protection of the rights of migrant workers who come to our country.

34. As a signatory to the CMW, Cambodia is bound by the principles of that Convention. Article 7 of that Convention explicitly states that *“States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”*

35. We wish to remind the Government that when it voluntarily signed the CMW, it committed to provide a number



of important rights to migrant workers in its national territory. Among the rights provided under the CMW which are particularly relevant to the situation faced by migrant workers living and working in Cambodia are: right to life of migrant workers and their families (Article 9); freedom from inhuman or degrading treatment (Article 10); protection from forced labour and servitude (Article 11); freedom of thought, conscience, and religion (Article 12); freedom of expression (Article 13); freedom from arbitrary interference in privacy, family, home and correspondence (Article 14); freedom from arbitrary deprivation of property (Article 15); “effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions” (Article 16); and “the right to equality with nationals of the State concerned before the courts and tribunals” and right to a fair and public hearing (Article 18). Moreover, Article 20 of the CMW explicitly bars State Parties from imprisoning a migrant worker, or denying the migrant worker continuing residence and a work permit, for failing to fulfill a contractual obligation, while Article 22 makes it unlawful to confiscate or destroy, or attempt to destroy migrant workers identification, travel, or work documents.

36. We further wish to remind the Government that by signing the CMW, it has agreed to abide by Article 25 of that Convention, which clearly requires that “Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms; and (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work...” Article 26 of the CMW also requires the Government to recognize the right of migrant workers to join any trade union or association established under law.

37. We also remind the Government that CMW Article 28 states “have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.” CMW Article 30 guarantees the children of migrant workers the right to birth registration, nationality, and access to education on the same basis as nationals of the country.

38. In light of these commitments made by the Government, we strongly recommend that the Government must fully apply all provisions of the labor law to migrant workers in Cambodia.

39. Cambodia correctly expects that domestic migrant workers from Cambodia should be covered by the labor law (and therefore legally protected) when they go overseas. Therefore, Cambodia should also amend its labor law to classify domestic work as one of the forms of work in the formal definition of “employment”, and ensure that all provisions of the labor law are applied to domestic workers in Cambodia.

40. We further recommend that the Government should strictly prosecute, and apply penalties under law, against those persons who violate the rights of migrant workers living and working in the Kingdom.

41. The Government should ensure the effective implementation of the Immigration Law and Nationality Law.

42. The Government should set out a migration management system which will enable a more accurate determination of the number of migrant workers who are present in Cambodia, and ascertain their country of origin.

43. We recognize there is a need to establish and strengthen the management mechanisms for migrant workers at all levels. Therefore, we recommend that the Government should establish a Task Force on Migrant Workers, composed of Government agencies and NGOs/civil society organizations, to build better understanding about the rights of migrant workers and engage in follow up actions to ensure the protection of migrant workers. This Task Force should be part of an ongoing effort to strengthen the relationship between Government and NGOs/civil society organizations on issues related to migrant workers, including the regular sharing of all data and information about migrant workers.

44. We recommend that this Task Force could also serve as a national committee which would have the duty to help build good relations between Cambodia and the sending countries who have their nationals living and working as migrant workers in Cambodia. The Task Force should also engage closely with personnel of the Phnom Penh-based Embassies of the countries sending migrant workers.

Trafficking in Persons

45. As a founding member of the Coordinated Mekong Ministerial Initiative on Trafficking (COMMIT), the Cambodian Government must do more to protect its migrant workers from becoming victims of human trafficking, and prevent human trafficking from occurring to migrant workers who are coming into Cambodia.

46. First and foremost, the Cambodian Government must ensure that all its officials, both inside Cambodia and those working at Cambodian Embassies overseas, fully understand that human trafficking is a crime that is committed against all persons – women, children, and men – and for all end purposes, including trafficking into forced labour. The Government should actively promote this understanding in its engagement with other Governments in ASEAN, at the regional level in ASEAN, and among civil society organizations in receiving countries.

47. Second, the Cambodian Government should actively review the implementation of existing bilateral MOUs on human trafficking and should take all appropriate steps to ensure that MOUs are being executed. The Thai-Cambodia MOU on *Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking* is out of date, and should be immediately revised now that both Cambodia and Thailand have passed anti-trafficking laws that criminalize the trafficking of men, as well as women and children.

48. Where significant numbers of Cambodians are traveling for work, such as to the countries of Malaysia, South Korea and Taiwan (China), the Government should seek to negotiate and sign bilateral MOUs supporting protection of workers against all forms of human trafficking.

49. Regarding the newly adopted anti-trafficking law in Cambodia, which has been much criticized in its implementation by both domestic and international groups, it is critical that the Government (working closely with the NGOs and civil society groups) produce clear guidelines that effectively clarify how the new anti-trafficking law is to be interpreted and applied. Once those guidelines are developed, the Government should undertake awareness building and training to build understanding of the law among the Cambodian people and officials from the grass-roots level on up. Building correct understanding of the law and the implementation guidelines is one way to ensure that the new anti-trafficking law is used in a manner that does not violate the principles of human rights. To ensure that there is follow-up and the guidelines are continuously applied, the Government should establish an independent body (which should include representatives of NGOs/civil society groups) to monitor the implementation of the law and make public reports and interventions when cases of abuses occur.

50. In Cambodia, the Government should find resources and make arrangements to provide proper training on basic knowledge on human trafficking to police authorities, with a special focus in assisting police be able to effectively identify victims of trafficking. Police reforms should also be considered, such as formation of a truly independent, professional, and non-corrupt police authority at the borders, to improve anti-trafficking response. Prosecution of the crime of human trafficking must be carried out, and when perpetrators are found guilty, severe punishment according to law must be meted out regardless of the guilty person(s)' high positions or membership in privileged and powerful groups.

51. The Government should ensure that there is effective legal protection for victims of human trafficking. The Government should take all steps required to ensure that persons who are victims of human trafficking are not held responsible for criminal offenses that they are force or coerced to commit while being held in trafficking situation. The Government should also insist on such protections for its citizens who are trafficked overseas and make bilateral representations to all Governments inside and outside of ASEAN which do not abide by this core international standard practice.

52. Cambodian trafficking victims overseas should be provided with an appropriate place/center to guarantee their personal safety, such as a temporary shelter like the ones frequently developed by the Government of the Philippines at its Embassies in receiving countries where there are significant numbers of Philippines nationals present. The Government should also ensure that there is a budget allocation to pay for the repatriation of Cambodian trafficking victims back to Cambodia.

53. The Cambodian Government should strengthen cross-border cooperation among national police authorities and the courts to improve chances for the successful cross-border prosecution of trafficking cases. With regards to the countries of the Greater Mekong Sub-region, this collaboration can take place under the auspices of the COMMIT Sub-regional Plan of Action and associated activities, or with Thailand, through the provisions of the bilateral MOU. For similar cooperation with other ASEAN nations, Cambodia should lead the way in finding methods and mechanisms of effective collaboration to ensure effective prosecution of cross-border human trafficking cases.

54. Finally, regarding the recent controversy about the marriage of Cambodian women with foreigners (and the potential connections to human trafficking), the Government must develop both a clear policy and a mechanism to ensure (in a timely and effective way) that each new marriage proposal with foreigners is legitimate. This is especially the case when that marriage involves the immediate emigration of a Cambodian national to another country. The Government should engage with NGOs and civil society groups to develop the appropriate oversight mechanisms, which could be monitoring bodies developed as a result of bilateral agreements with countries where significant numbers of Cambodians are traveling

to get married.

Recommendations to ASEAN

55. We strongly believe that the regional Instrument on the Protection and Promotion of the Rights of Migrant Workers (which will be developed by the ASEAN Committee to Implement the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers) should be legally binding on all ten ASEAN states.

56. We recommend that the Cambodian Government should conclude bilateral MOUs/agreements (with focal points established to ensure effective implementation of the agreement) with key nations. These bilateral MOUs/agreements should be in accordance with the principles and provisions of the above-mentioned regional agreement, and should be understood to supplement the regional agreement and to address bilateral issues that are outside the scope of the regional agreement. It must be clear that the bilateral MOUs/agreements of any sort must be in accordance with international human rights and labor standards

57. One of the major problems in coordinating policy on migration in ASEAN is the lack of effective inter-agency coordination between Government agencies on the issue of migration. This is one of the major problems that has delayed the formal operation of the ACI for more than a year. We call for the immediate establishment of the ACI and the holding of its first meeting before the ASEAN Leaders Summit in December in Bangkok. To ensure that effective coordination of policies and negotiations on migration occur between ASEAN member nations in the future, each national Government should be required to establish an Inter-Agency Task Force to coordinate all aspects of each Government's work on migrant workers. The effective model of the COMMIT Task Force used on human trafficking is a potential 'best practice' model to be emulated by these Inter-Agency Task Forces.

58. There should be an effective information sharing agreement, using appropriate information technologies (IT) and systems, to enable the member Governments of ASEAN to exchange information on migration trends, and conduct follow up actions on the situation of specific migrants as needed.

59. We recommend that there should be an agreement on a "standard medical package" of services that will be provided by receiving states (in cooperation with sending states) to migrant workers wherever they are in ASEAN. The provisions of this package would have to be negotiated, but it should contain elements of preventative as well as curative care, access to public hospitals, reproductive health and family planning, and public health and hygiene information. A core element of the plan would be a requirement for the employers of the migrant workers to pay costs associated with the medical package, and a strict prohibition against employers making deductions from migrant workers' pay for medical costs.

60. Under no circumstances should an ASEAN Government be permitted to involuntarily deport or detain a migrant woman simply because she is pregnant. This is a fundamental human rights violation that cannot be allowed. Procedures should be developed to allow the woman to remain and work in the receiving country and, as her condition requires, to change jobs to do lighter work as her pregnancy advances.

61. All ASEAN nations must adopt regulations that permit documented migrant workers to change employers without losing their work permit status or their right to continue to work and reside in the receiving country. These regulations should neither be burdensome nor should they require any additional expenditure by the migrant worker to change the employer listed on the work permit.

62. There must be a clear and absolute prohibition on seizure of passports or migrant workers' documents, or the destruction of those documents, by Government officials, employers, brokers, agents, recruitment agencies, or any other persons in the receiving country. There should be severe penalties imposed against persons who seize and/or destroy migrant workers' documents.

63. In accordance with international core labour standards, the CMW and other international human rights instruments, all ASEAN states should allow for migrant workers to form and/or join trade unions in the receiving nation.

64. Embassies of labor sending countries should maintain close relationships with migrant workers from their country in the destination country and develop a set of tools and services to help protect migrant workers, such as a hot line/emergency phone number, a migrant help desk, a dedicated labor attaché or Embassy personnel to help migrants, and other

mechanisms. The Embassy should regularly inspect working conditions of migrant workers from their country, and it should also build a network of contacts with NGOs, unions, and civil society groups who are helping migrant workers in the receiving country.

65. Representatives of the migrant sending country should develop an effective and accurate monitoring system to regularly check the numbers, work and residence locations, and types of work that their migrant workers are engaged in the receiving country.

66. ASEAN member nations should be required to establish effective systems to track visas given to documented migrant workers as they enter the country so that in the case the worker's passport is stolen or seized by another person, there is evidence that they have entered the country legally and they are not held as an undocumented migrant.

67. No ASEAN country should criminalize undocumented migrant workers nor use corporeal punishment (such as caning) against migrant workers.

68. ASEAN should set out a no-tolerance policy towards use of violence against migrant workers, and should ensure that all its member nations provide migrant workers with the same rights to access to justice as the national of the receiving country. Migrant workers who return to their country of origin shall have the right to file a legal complaint against an abuser in the receiving country. A system should be developed where the migrant worker can file a legal complaint through the Embassy of the receiving country, and this Embassy would then be required to transmit the complaint back to the receiving country for action by the receiving country's courts. The Cambodian Embassy in the receiving country should be required to monitor the progress of the migrant worker's case filed in the receiving country's court, and provide regular updates.

69. Finally, we commend the Task Force on ASEAN Migrant Workers for its support for this National Consultation process. We expect to receive continuing updates from the Task Force on the progress of work in other ASEAN countries, and look forward to working closely with the Task Force, and CIDA/SEARCH, in the future.

ASEAN Civil Society Organizations (CSOs)- Trade Unions Consultation on Protection and Promotion of the Rights of Migrant Workers

Jakarta, Indonesia

12 May 2007



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.

Recognizing the importance of developing pro-active measures to deal with the challenge of migration in the ASEAN region, the Leaders of the ASEAN nations set out a provision in the Vientiane Action Plan (adopted in November 2004) 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 this work forward. To ensure a transparent and consultative process that will develop the best possible recommendations to ASEAN, the Task Force on ASEAN Migrant Workers (TF-AMW) was established at a consultation held in Singapore in April 2006. This TF-AMW is composed of civil society organizations, trade unions, and migrant worker associations.

The TF-AMW is committed to engage with civil society groups and trade union bodies 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 Plan, the TF-AMW will study and offer recommendations for practical steps forward to implement the ASEAN Declaration by drafting an ASEAN Framework Instrument for the Protection and Promotion of the Rights of Migrant Workers.

The TF-AMW holds as a central principal 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.

The TF-AMW believes that developing the ASEAN Framework Instrument must and will 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 TF-AMW believes labour mobility can help reduce the development gap now present 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 help reduce gaps in the level of economic development within ASEAN.

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 May 12, 2007 at the Millennium Hotel in Jakarta, Indonesia, make the following recommendations to ASEAN, and to the Government of Indonesia:

Recommendations to Member States of ASEAN

1. The TF-AMW 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 TF-AMW further urges the Member States of ASEAN to immediately ratify ILO Conventions 97, 143 and 181 (concerning migrant workers) as well as the UN International Convention on the Protection of the Rights of Migrant Workers and Their Families (UN CMW).
3. The TF-AMW recommends the national Ministries of Labour decide 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. The ASEAN Labour Ministers Meeting to be convened in 2008 should accept that recommendation.
4. The ASEAN Framework Instrument which is devised should have a practical, workable mechanism for solving cases of migrant workers facing difficulties, with uniform standards and transparent procedures in place to ensure quality response.
5. The TF-AMW 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. ASEAN is urged to create an independent Commission of senior persons from the Member States who shall be 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.
6. 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 TF-AMW as it develops the draft ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.
7. 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.
8. The right of citizens of all 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.
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 Govern-

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

ment. 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 TF-AMW 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 TF-AMW 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. Recognizing the important need for increased awareness and information among migrant workers and their families, the Member States of ASEAN are urged to actively support education on and dissemination of international labour standards (especially concerning migrant workers) as embodied in the core ILO Conventions, ILO migrant worker conventions, and UN CMW to intending, current and returning migrant workers.

17. 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); 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.

Recommendation to the Government of Indonesia

At the outset, the TF-AMW commends the Government of Indonesia for having ratified the eight core ILO Conventions, and for signing the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, the Task Force believes that much more needs to be done to ensure the practical application of these standards in a way that improves the day to day lives of Indonesian migrant workers.

1. The Government of Indonesia 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 to which Indonesia is a party.

2. The Government of Indonesia is requested to take the next step after its signature of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and immediately ratify this Convention before the end of 2007.

3. The Government of Indonesia 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 as called for by ILO Conventions 143 and 181.

4. The Government of Indonesia should seek urgent solutions for the wide set of threats to the physical and mental well-being of Indonesian migrant workers in other ASEAN nations where they have sought work. The Government could

benefit from collaborating with civil society organizations and trade unions in the TF-AMW to find solutions to these problems faced by migrant workers.

5. The Ministry of Manpower and the Ministry of Foreign Affairs are urged to develop more effective mechanisms to monitor Indonesian migrant workers toiling in foreign countries, such as a database of workers, and ensure that these systems are kept up to date.

6. In countries where there are significant numbers of Indonesian migrant workers, the Government of Indonesia is urged to establish shelters to protect Indonesian migrants in crisis (especially women), staffed with personnel with appropriate counseling and other support skills. Systems could also be established to provide support to injured workers. For this work, it is important that the Government of Indonesia provide clear authority, and adequate budgetary and personnel support to the effort of Embassies to reach out to and protect Indonesian migrant workers.

7. The Government of Indonesia is urged to support the establishment of “migrant help desks” in countries where Indonesia migrants work, composed of all key stakeholders such as Embassy officials and/or Indonesian labour attaches, representatives of trade unions, civil society organizations, and migrant worker associations.

8. Indonesian migrant workers, regardless of their status, deserve nothing less than the full support of the Embassy of Indonesia in the country where they work. The Government of Indonesia should make it clear that Indonesian diplomats caught colluding with brokers, agents, or employers to cheat or otherwise harm a migrant worker will be immediately investigated, and if their involvement is found, they will be terminated from Government service. Such diplomats should be held accountable to face appropriate criminal and civil proceedings.

9. The Government of Indonesia should consider setting up a “one stop service center” at both the district and provincial levels, placing under one roof personnel from all the relevant Ministries, with all the required forms and applications needed for a worker to go overseas. Costs for required procedures could therefore be kept at a reasonable, affordable level.

10. The Government of Indonesia is urged to set up a system to provide low-interest, ‘soft credit’ loans to intending migrant workers to help defray the costs of going overseas and prevent them from having to incur high levels of debt to secure an overseas placement.

11. The Government of Indonesia should earnestly consider developing job creation, social protection, and decent work programs that will have the effect of promoting sufficient livelihoods that allow Indonesians to remain in their homes, thereby reducing the need for migration to survive economically.

12. The Government of Indonesia would benefit from establishing a comprehensive capacity building program for migrant workers, concentrating on building of skills and competence, teaching language, and providing information about basic laws, culture, and working/living practices of the destination country where the migrant worker is going to work. It is also important that information be provided that ensures that workers more thoroughly know their rights.

13. The Government of Indonesia must immediately take action against the monopolistic abuse of power and corrupt practices in the Terminal III at the Sukarno-Hatta International Airport, and close Terminal III. The system at Terminal III should be replaced with an inter-Ministerial/agency “one stop service center” with adequate monitoring and safeguards to prevent the kind of abuses seen at Terminal III from re-occurring.

14. The Government of Indonesia is urged to expand its partnership with the Task Force on ASEAN Migrant Workers, the ILO, UNIFEM 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.

15. The Government of Indonesia is requested to raise the findings and conclusions of this Jakarta Statement of the TF-AMW for discussion at the forthcoming meeting of the ASEAN Senior Labour Officials Meeting (SLOM) to be held in Jakarta on May 16-17, and support more systematic engagement between the SLOM and the Task Force in the lead up to the ASEAN Labour Ministers Meeting in 2008.

Agreed in Jakarta, Indonesia

May 12, 2007

Lao PDR National Consultation on the Protection and Promotion of the Rights of Migrant Workers

Vientiane, Lao PDR

October 2-3, 2008



Background

The National Consultation of the Lao PDR was held on October 2-3, 2008 at the Dokmaidaeng Hotel in Vientiane, and was attended by more than 75 participants from mass organizations, civil society organizations, trade unions, and Government ministries. The work of ASEAN on creation of an instrument to protect and promote the rights of migrant workers started in Vientiane, with the adoption of the Vientiane Action Programme in 2004 that called for this Instrument. The National Consultation is proud about the important role the Lao PDR played in collaboration with its fellow ASEAN member states in adopting the VAP. We reaffirm the importance of creating of a regional agreement in the form of an Instrument and we believe that when it is negotiated, this Instrument should be enforceable throughout ASEAN. Labour migration will play a very critical role in the plans of ASEAN to bring about economic regional integration by 2015 and protection of the migrant workers is vital for ASEAN to reach its vision of a “sharing, caring community” that has been affirmed by our leaders.

We note that all ten ASEAN countries have ratified both the UN Convention on the Elimination of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC). Therefore, we reiterate the central importance of the Lao PDR and all ASEAN member nations to take all appropriate measures to eliminate all forms of discrimination against women migrant workers who are becoming a larger and more significant proportion of migrants in our region, and ensure that all provisions of the rights of migrant workers and their children are implemented in receiving countries.

Our recommendations are as follows:

To the Government of the Lao PDR

1. Government policies on migrant workers should be more developed in a participatory framework, such as a National Committee, in order to tap the knowledge and expertise of the many partners and stakeholders at the national level. Migration is often wisely considered as a cross-cutting issue which affects many aspects of human existence – family and home life, work, economic resources, social engagement – and therefore we recommend the issues also requires special attention. We recommend that all partners which should be formally included in the determination of policies and priorities include the representatives of youth, trade unions, women, civil society organizations, local community representatives, and others. Clear focal points should be established by all national partners to work on issues of overseas migration. We also recommend that the Government should convene at least once a year a consultation on the situation of migrant workers and the policies affecting them, and invite all partners, including civil society representatives.
2. The Government should place important priority on job creation and employment in the country, including support for small and medium level enterprises (SMEs), in order to promote more sustainable livelihoods that will provide an alternative to migration for employment.
3. The Government should ensure that all intending migrants are provided with comprehensive pre-departure education and support in order to better prepare them to understand their rights, and the employment and living situations they will encounter while abroad. The types of assistance and education that should be practical and easy to understand by the workers. This support should be provided by Government agencies, with the support from donors, mass organizations, civil society organizations and associations, and private labor recruitment companies.
 - a. From the beginning of the recruitment process, assistance should be provided in preparation of all documents that are necessary for the workers to complete. Information should be provided about all key details of written employment contracts being offered to intending migrant workers so that they fully understand the wages, conditions, and circumstances of their work before they formally agree to the recruitment.
 - b. Once the intending migrant worker has agreed to be recruited, pre-departure training and orientation should be provided about labor laws and immigration regulations of the receiving country to which they will be going; the cultural norms and practices of the receiving country; and the rights and duties of foreign workers in the receiving country.
 - c. As part of the recruitment process, information should be provided to the migrant worker about the contact details of Lao PDR Embassy in the receiving country. Contact information about the representative(s) of the recruiting company both in Lao PDR and in the receiving country should also be given. Where there are local civil society and trade union organizations in the receiving country who can assist migrant workers facing difficulties, the contact information for these groups should also be provided to the intending migrant worker.
 - d. The appropriate officials of the Lao PDR Government should also provide basic information to the migrant workers on practical aspects of health care as well as methods to prevent communicable diseases.
 - e. Information should also be provided about procedures about how migrant workers can most easily and affordably transmit financial remittances from the receiving country back to their families in the Lao PDR.
4. In order to ensure quality of the pre-departure training, the Government and its partners should develop a hand-book in the Lao language that details key aspects of pre-departure knowledge that the migrant workers should know, and contact information for migrant workers who need to call for assistance while in the receiving country. This hand-book should be small and handy enough that it can be easily taken by migrant workers to the receiving country, where they can use it as an important reference for continuing education and dealing with abuse or emergencies.
5. The Government, in collaboration with the labor recruitment companies, should develop a basic curriculum on pre-departure training which covers all key areas, and uses the above-mentioned hand-book as a resource book.
6. The Government should promulgate a guideline that clearly sets out common procedures in securing documentation (such as passports) and sets uniform fees that are applied throughout the country, and should take prompt action against those who violate that guideline.
7. The Government should implement a policy that allows application interviews for passports to be conducted in all three parts of the nation. In the North, passport interviews should be conducted in Luang Prabang. In the South, interviews should be conducted in Champassak, while for the central region, interviews should continue to take place in Vientiane.
8. The Government should strictly monitor and regulate the labour recruitment companies to make sure that they proceed

with the labour recruitment processes in a timely way, and do not violate any laws or regulations. Fees charged by labour recruitment companies should be reasonable and not exceed legal limits.

9. As part of the migrant worker mobilization process, the Government should require that a representative of the recruitment firm should physically accompany migrant workers to their overseas placement/employment, and ensure that dependable and safe transport is arranged to convey the worker to their work assignment abroad and on return back to Lao PDR. The recruitment firm should provide in each case a report to the Ministry of Labour and Social Welfare on the working conditions in each case.

10. For overseas workplaces where a group of Lao workers are present, a process should be encouraged (by the Government and recruitment agencies) to support workers' organizations through which a senior Lao worker would be assigned to provide leadership, support and assistance to the other Lao workers.

11. The Government should set out more effective procedures and arrangements for regular monitoring by Government officials of the implementation of bilateral and multilateral Memorandums of Understanding (MOUs) on sending of Lao workers abroad. These officials should provide regular reports and recommendations for corrective action in cases where implementation practices are contrary to the terms of the MOUs or fail to protect and promote the rights of Lao migrant workers.

12. In instances where an overseas employer does not comply with the contractual obligations made to the Lao workers, or the receiving country's national labour law, processes should be put in place which enable the workers to easily contact and seek assistance from representatives of the Lao recruitment company, and consular officers in the Lao PDR Embassy in that receiving country.

13. The role of the Embassies and/or Consulates of the LPDR in each country which receives Lao migrant workers is critical in ensuring the protection of those workers. Each Embassy should be set up a Committee to Protect Migrant Workers, and should pro-actively perform the duties to protect the migrant workers. The Ministry of Foreign Affairs should ensure that there is a clear assignment of responsibility for migrant workers to personnel at each Embassy, and should make arrangements for adequate personnel and financial resources to be made available for the work of the Committee.

14. The Government of the Lao PDR should set up a system of sending Labour Attachés to be stationed in each Lao Embassy in the receiving countries where there are a significant number of Lao workers present. These Labour Attachés would be supported in their work by the Embassy's Committee to Protect Migrant Workers. The Labor Attachés should collaborate with the Government and local organizations in the receiving country to monitor the situation of Lao migrant workers in that country.

15. For migrant workers that come from other countries to work in Lao PDR, the Government should improve the legal framework to make it more suitable for those migrant workers. The Government should also set out more detailed arrangements and regulations for migrant workers who cross the border daily to work in the Lao PDR and return across the border to their homes at night. Appropriate actions should be taken by the Government against those migrant workers which violate the laws and regulations of the Lao PDR.

16. For the undocumented Lao workers who are returning from working abroad after departing Lao PDR through informal channels, the Government should ensure that all levels (village, district, and province) strictly comply with the Office of Prime Minister's directive that prohibits collecting financial "penalties" or "fees" from returning migrant workers.

To the Governments of Lao PDR and Thailand

17. There should be a process of regular follow-up on the implementation of the bilateral Memorandum of Understanding between the Royal Thai Government and the Government of the Lao PDR on Employment Cooperation, and appropriate steps should be taken to ensure that this MOU functions to effectively protect the rights of Lao migrant workers in Thailand.

18. The Government of Lao PDR should simplify the nationality verification process and lower the cost of obtaining temporary passports. The Thai Government should also simplify the work permit application process and lower costs to the migrant workers.

19. The Governments of the Lao PDR and Thailand should consider domestic work as an important area of work that Lao women workers are doing in Thailand, and should consider raising this matter in their next Senior Labour Officials Meet-

ing.

To ASEAN

20. ASEAN should promote efforts by its member states to jointly formulate policies on the protection and promotion of the rights of migrant workers. In order to manage this process, we see the need for a special committee on migrant workers issues to be established at the ASEAN level to manage all aspects of this work. For this reason, we strongly welcome the creation of the ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers, and we recommend that this Committee be made operational before December 2008 (as pledged by the ASEAN Labour Ministers Meeting held in Bangkok in May 2008).

21. The final ASEAN level MOU which should be adopted (as the Instrument on the Protection and Promotion of the Rights of Migrant Workers) should be reached by consensus and should be effectively implemented.

22. We recommend that ASEAN should establish effective measures that will promote better, more humane management of migrant workforces by employers. ASEAN should also take all necessary steps, in coordination with the Governments of its member states, to ensure that employers respect the rights of migrant workers.

23. ASEAN should work with its member nations to develop a standard Employment Contract for migrant workers that acknowledges the principles of decent work and rights at work, and has provisions that are based on core labour standards set by the ILO.

24. ASEAN should encourage all ten ASEAN nations to consider domestic work as “employment” that is included in their national labour laws.

25. We recommend that ASEAN should develop a program to support vocational trainings in sending countries for workers planning to migrate to work abroad, and in this way, upgrade the quality of the migrant work force who are prepared to go overseas.

26. We recommend that ASEAN should also develop a program of capacity building on the topics of migration management and prevention of human trafficking which can be provided to Lao PDR Government officials that will enable them to more effectively carry out their duties.

27. In line with the Bali Concord II, ASEAN should understand recognize the importance of migration to the economic development of CLMV countries. Therefore, we recommend that there should be a discussion at ASEAN about how to recognize the priority for placement of migrant workers from the CLMV countries.

28. We believe that ASEAN should play an important role in developing information about migrant workers in the region, and supporting the dissemination of information regarding the situation and circumstances faced by migrant workers in different countries. This information should be regularly updated and should be translated into the different languages of migrant workers, and should be done for all countries of ASEAN. For example, the regulations, laws and other information about migration in Thailand should be translated into the Lao language and the other languages of migrant workers who are living and working in Thailand.

29. ASEAN should play an important role in encouraging and facilitating research about the situation of migrant workers and the problems they face, and support appropriate pilot projects to conduct this research.

To the International Community

30. We greatly appreciate the support and assistance of the Task Force on ASEAN Migrant Workers for their continuous engagement and technical assistance for this National Consultation, and to the member organizations of the Local Organizing Committee.

31. We commend the SEARCH project, and CIDA, for their support for this important National Consultation. We recommend to the international community that they should continue to provide financial and technical support for capacity building for the Lao partners so that we can more effectively promote and protect the rights of Lao migrant workers in the future.

Adopted in Vientiane, Lao PDR, 3 October 2008.

National Statement Malaysia National Consultation on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

Quality Inn, Shah Alam, Selangor

August 13-14, 2008

1. As representatives of civil society organizations and trade unions, we have gathered in Shah Alam, Selangor, on August 13-14, 2008 to conduct this National Consultation on the Protection and Promotion of the Rights of Migrant Workers under the auspices of the Task Force on ASEAN Migrant Workers mechanism. We recognize very clearly that Malaysia must play a central role in the deliberations and determinations of the framework of to protect and promote the rights of migrant workers in ASEAN because it is the destination country for the largest number of migrants in Asia. The economy and society of our country is integrally connected with the fate of these migrant workers since as many as 1/3 of the workers in our country are migrants. Yet for the major role that migration plays in the daily lives of Malaysians, we acknowledge that the policies of the Government of Malaysia towards migrant workers and their families have often been detrimental towards the rights of these migrants. Unfortunately, to date, the history of Malaysia's treatment of migrants can best be characterized by the continued existence of many laws regulating migrant workers which remain largely unimplemented. We also see that there remain significant failures in good governance among civil servants at all levels when actions are taken to regulate migrant workers.

2. We believe that the fundamental problem that runs like a thread through Government migrant policy is the focus on treating migration as a matter of "security" rather than an issue that is more appropriately handled as a matter concerning "labour" by the Ministry of Human Resources. Migrants are invited to come to Malaysia to work and significant sectors of economy of our country remain dependent on their labour. Yet the Government continues to view migrants as a national security threat, and accordingly provided the leading role to the Ministry of Home Affairs (MHA). In our view, the MHA has continuously mismanaged the policy towards migrant workers, setting out systems that provide the green light for employers to restrict workers' rights and systematically exploit their vulnerability, which in turn ultimately drives migrant workers to flee their employers and join the swelling numbers of undocumented migrants. By creating a climate of fear among migrants, MHA has made the country less secure by undermining the kinds of policy initiatives need to effectively manage migration for the mutual benefit of migrant workers, employers, and Malaysian society at large.

3. In spite of its ratification of CEDAW, and the concluding comments of the Committee on the Elimination of Discrimination against Women in 2006, the Government continues to fail to recognize the multiple sites and forms of discrimination experienced by migrant women, in particular domestic workers, including violations of employment rights, right to a life free from violence, right to reproductive rights, and the right to redress in cases of abuse and violations.

4. Malaysia has been the subject of sometimes severe criticism from neighboring nations in ASEAN about the treatment accorded to their nationals working in our country. In the spirit of a "sharing, caring ASEAN" to which we all aspire, we feel it is important that the Government of Malaysia receive this criticism positively, and take immediate steps to address the myriad problems that has been surfaced in these interventions. As representatives of Malaysian civil society and trade unions, starting from today we renew our commitment to do whatever we can to ensure Malaysia will play a much more positive role in ASEAN in promoting regional policies and mechanisms that respect and promote the rights of all migrant workers.

5. At the same time, it is also important to recognize that many of the NGOs, community-based organizations, and trade unions in Malaysia have worked diligently and selflessly to protect migrant workers, assist them with their needs, and intentionally involve them in discussions and actions aimed at empowering them to better defend their rights. Tens of thousands of migrants have benefited from this important work. Accordingly, we pledge to redouble our efforts, in cooperation with all stakeholders in Malaysia as well as diplomatic representatives and international organizations present in our country, to continuously work to build an atmosphere of acceptance and respect for the rights of migrant workers and their families.

6. Regarding the current situation of immigrants in Sabah, we believe that the Government's current forced deportation of migrant workers, refugees and stateless persons constitutes intense human rights violations and will not resolve the root causes of the situation. Real solutions must come with recognition that the undocumented migrant workers, refugees and stateless persons in Sabah are deeply rooted in the fabric of local society and make major contributions to the economic growth of the state. Only by recognizing and legitimizing the presence of these persons will this serious situation be effectively and sustainably addressed.

Recommendations to the Government of Malaysia

Policy Principles

7. As a leading country in ASEAN that is receiving migrant workers, Malaysia should effectively implement its commitment in article 8 of ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which states that Governments shall "promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers."

8. The Government should adopt a rights-based approach to migrant worker policy which adheres to the core principle of non-discrimination in all aspects of law and policy implementation.

9. With regards to terms and conditions of employment for migrant workers, Government policy should maintain "national treatment" as its core premise, meaning that migrant workers shall receive treatment no less favorable than that accorded to Malaysian workers.

10. To ensure that these principles are infused throughout all aspects of policy, the Government should immediately sign and ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and take all necessary steps to harmonize national laws with this Convention.

11. As a leading member of the ILO in the region, the Government of Malaysia should ensure that its treatment of migrant workers conforms with the ILO's Decent Work Principles that call for respect for basic human rights, access to employment, safe and healthy working conditions, and social security.

12. We commend the Government for ratifying many of the core ILO Conventions, including Convention 29 (Forced Labour), 98 (Collective Bargaining), 100 (Equal Remuneration), 138 (Minimum Age), and 182 (Worst Forms of Child Labour).

13. We call on the Government to immediately ratify the remaining core ILO Conventions, including 87 (Freedom of Association) and 111 (Discrimination), and to reverse its decision to denounce its ratification of Convention 105 (Abolition of Forced Labour). We also call on the Government to undertake to ratify ILO Conventions 97 (Migration for Employment) and 143 (Migrant Workers).

14. As a member of the UN Council on Human Rights, we believe that it would be an important signal to the people of Malaysia, the migrant workers, and the international community for Malaysia to ratify without delay the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Policy Determination, Management and Coordination

15. Jurisdiction for formulation and implementation of policies focusing on migrant workers should be transferred immediately from the MHA to the Ministry of Human Resources (MHR) which has the necessary expertise to oversee migrant

workers policy as part of the overall labour policy. We believe that the MHR is best positioned to determine demands by employers for foreign labour, conduct workplace assessment and inspections, and to investigate and address complaints raised by migrant workers alleging problems at their workplace.

16. A new inter-ministerial coordination system on policies and practices towards migrants is needed to ensure effective implementation of migrant workers policy. This inter-ministerial/departmental body must be chaired by representative of the MHR and it should set up systems (coordinated by the MHR) to direct all matters pertaining to the recruitment, placement, and employment of migrant workers, and set out a clear policy outlining practical steps to be taken to increase the protection and promotion of the rights of migrant workers. Representation from the following Ministries will be required for this new inter-ministerial/department body – Human Resources (chair), Home Affairs, Health, Foreign Affairs, Women’s Affairs, and Education. This body should also actively reach out to civil society organizations and trade unions as it develops its policies.

17. MHA’s role should be restricted to handling the aspects of entry and exit of migrant workers only.

Recruitment and Placement

18. The Government of Malaysia should immediately abolish the system of “outsourcing” under which 226 outsourcing companies have been issued licenses by the MHA but have operated with impunity in exploiting migrant workers and abusing their rights. Based on our experience, the “outsourcing” system has significantly fueled grievous abuses by creating bonded labour arrangements and effectively encouraging human trafficking for purposes of labour exploitation. This system serves to enrich only a select few brokers and their cronies while sullyng the reputation of our country throughout the region.

19. In place of this system, the Government should negotiate bilateral agreements with labour sending countries based on a standardized agreement (developed in a transparent consultation process with Malaysian civil society and trade unions) that is in accordance with international labour standards. These agreements should contain clear information about sectors of work, and terms and conditions of work in those sectors. Direct employers would then be empowered to work through the MHR and these bilateral agreements to recruit the workers they need. Any recruitment fees should be paid by the employer.

20. We recommend that the Government insist that as part of these arrangement, standardized migrant worker contracts would have to be signed in the sending country, specifying all terms and conditions of work, and made in both the migrant’s native language and English. These contracts should be developed in line with guidelines set by the MHR, and these guidelines should conform to international labour standards and set out minimum wages and conditions of work. Upon arrival, the Government should oversee the attestation of the contracts, and ensure that the contracts are recognized by employers and enforced. Government polices should be developed to severely punish cases of contract substitution by employers.

21. The Government should abolish the Foreign Worker Levy, which is a failed policy that further impoverishes migrant workers. The monies accumulated from the levy are not being provided for benefits or services for the migrant workers, and it has not had the intended effect of deterring employers from seeking foreign labour. Since the costs of the levy are passed to the worker, the levy has contributed to the deepening of debt bondage among workers.

22. The Government should mandate the creation of a pre-employment orientation program (in migrant workers’ native language) for migrant workers when they arrive in Malaysia, focusing on ensuring that migrant workers are aware of their rights and responsibilities under all relevant laws and policies concerning migrant workers and receive information about avenues to seek support and assistance in difficult situations. The Government must ensure that the costs of this orientation are borne fully by the employer and not passed on to the worker.

23. Our experience with numerous cases of migrant workers show that the tying of a migrant worker to one employer by contract, with provisions providing for immediate deportation if the worker is dismissed or otherwise unable to work, creates ideal conditions for exploitation of that worker. Therefore, we strongly recommend that the Government review and revise the Work Permit procedure, and provide workers the right to change employers through institution of a “portable” Work Permit registration system. The Government should also hold accountable those employers who negligently fail to renew their employees’ work permits.

24. The Government should consider amending the regulations for the Special Pass to provide longer periods of validity,

and provide the Special Pass as a method of regularizing undocumented migrant workers who have lost their jobs through termination or other circumstances. The Special Pass could bridge the period of time while the migrant worker seeks and finds a new employer, and provide an avenue to seek a new Work Permit.

Working and Living Conditions

25. Migrant workers in Malaysia currently suffer from a wide variety of difficult, dangerous and dirty conditions in their work, and face significant challenges in earning sufficient wages to support themselves and provide support to their families back in labour-sending countries. In our experience, among the litany of abuses suffered by workers are long work hours and no days off, shifting placements, requirements to do multiple jobs, poor wages, lack of benefits, restrictions on the mobility and/or confinement to the workplace, poor housing conditions (connected to overcrowding, lack of proper food preparation and sleeping areas, lack of hygienic facilities for bathing and toilets), restrictions on seeking medical treatment, withholding of passport or other ID documents, denial of access to family and friends, prohibitions on practicing religion, and restrictions on their right to form associations or unions that can protect their rights. Migrant workers often suffer from contract substitution on arrival, compounded by employers' failure to fulfill even the terms of the substituted contract – yet they can not leave their employer without fear of being fired and then immediately be deported.

26. The Government should implement a national minimum wage of 900 RM per month, supplemented by a 300 RM cost of living supplemental payment, and ensure that all migrant workers are paid no less than the minimum wage.

27. The Government should immediately revise the MHA policy connected to issuance of work permits which contains a prohibition on migrant workers joining associations of any kind. This policy is in violation of the Trade Union Act of 1959 and the Industrial Relations Act of 1967, both of which place no restrictions on the right of migrant workers to join unions. The Government should similarly take punitive action against employers inserting clauses into employment contracts that restrict or prohibit migrant workers from joining trade unions.

28. The Government should pro-actively proclaim its recognition of the right of migrant workers to establish, join, and hold positions in trade unions and should strongly enforce provisions in the law prohibiting harassment and dismissals of migrant workers for trade union activity.

29. The Government should revise the Employment Act to ensure that domestic work is covered under the law and that domestic workers have recourse to redress under that law. Policies should be established to ensure that domestic workers have at least one day off with pay per week, and that employers do not interfere in any way with migrant domestic workers' right to communication with family members.

30. The Government should strictly enforce the provisions of the Passports Act of 1955 and sanction employers who seize and hold migrant worker's passports. Furthermore, the Government should issue standard documentation (for example, migrant ID cards) for migrant workers, which can then be used by migrant workers to prove legal presence even in cases where they have had their lost their passport, or had their passport seized and held by the employer.

31. The Government has an obligation to safeguard the living and housing conditions of migrant workers and ensure that migrant workers are provide hygienic conditions and not subject to overcrowding. Migrant worker accommodations should comply with all applicable public health and housing regulations, as well as the Housing and Amenities Act. The MHR should play a leading role in coordinating with other Ministries and agencies to ensure that migrants are provided with appropriate accommodation and to penalize employers who continue to flout the requirement for safe and healthy housing for their workers.

32. The Government should insist that employers be responsible for the provision of nutritious food at reasonable cost in sufficient quantities to ensure continued good health of migrant workers, or provide sufficient and hygienic facilities, and opportunities to purchase raw ingredients, so that migrant workers can prepare their own food.

33. The Government should strictly apply and enforce the Occupational Safety and Health Act to protect the health of migrant workers. Workers injured in workplace accidents should have the right to compensation from their employer and from the Government. Compensation for injured migrant workers should be paid for the Social Security Act and not the Workman's Compensation Act.

34. In terms of use of violence and sexual harassment against migrant workers, the Government should develop a Sexual Harassment Act which provides guidelines on stopping sexual harassment/violence. The Act should also include provisions

that mandate effective education of employers about sexual harassment. The legislation should be developed in a participatory way with the involvement trade unions, employers and NGOs to ensure that the Act is both practical and can be effectively implemented. For migrants who suffer from violent attacks either inside or outside of the workplace, provision should be made to make counseling available to them.

Trafficking in Persons

35. The Government is to be commended for the passage of the Anti-Trafficking in Persons Act (ATIP) which criminalizes trafficking in persons for all end purposes, but there are still significant problems in enforcement of the law that must be addressed. We are prepared to work closely with the Government to achieve effective implementation of the law, but this requires the commitment of key Government agencies to work with us in a transparent, sincere and honest manner as respected partners who have the interests of the victims at heart.

36. The Government should provide effective training to key officials of the agencies mandated under the Act to ensure they understand the procedures of implementation and enforcement of the Act, methods of identification of victims, and use of appropriately gender sensitive procedures which will protect victims.

37. The Government should also educate its personnel on the issues surrounding trafficking for labour exploitation so that law enforcement personnel are able to understand trafficking occurs in many forms and for many end purposes, and not only just sex trafficking.

38. In cases where corruption among Government officials is reasonably suspected to have occurred in relation to human trafficking, the Government must take strict, fast and effective measures to identify those responsible and take appropriate actions, including dismissal and action against them under law.

39. To provide adequate support for victims of human trafficking, the Government should dedicate resources and personnel to open shelter(s) in each State.

40. In order to ensure effective enforcement of the ATIP Act and the root causes that facilitate trafficking in persons, the Government must enact a Whistleblowers/Witness Protection Act.

41. The Government should pay special attention to the protection of highly vulnerable groups, such as stateless persons, asylum seekers, and refugees to ensure that they do not fall victim to trafficking.

Law Enforcement and Access to Justice

42. Arrest and detention of undocumented migrant workers should be treated as an administrative offense, and not a criminal matter.

43. The Government should immediately disband RELA because the original rationale for their existence is no longer valid, they poorly trained in law and law enforcement, and as a unit, they are responsible for significant abuses of their powers and human rights abuses which have brought much criticism against Malaysia from the international community. Moreover, there is little indication that they are screened in hiring, their authority is ill-defined and arbitrary, and methods of oversight and accountability are not sufficiently transparent to inspire our confidence. Accordingly, RELA's entire resources should be re-allocated to official law enforcers like the police, and to building up the capacity and personnel (possibly through new hires) of the police.

44. The Government's use of whipping to penalize workers arrested for immigration offences must immediately be stopped, and the Government should ratify the UN Convention Against Torture to ensure that these practices cease permanently.

45. We believe the Government is responsible for ensuring that migrant workers are given an avenue to access and pursue justice. The current dysfunctional system of the "Special Pass" needs significant attention and reform. The duration of the Special Pass (one month) is too short, and the criteria for granting it are unclear and should be clarified. Therefore, the Government should endorse and implement the proposal of the Malaysian Bar Council "Memorandum Relating to Special Pass", dated 16 July 2008, and immediately implement the following policies contained in that memorandum:

- Allowing migrant workers in legal procedures to work – by creating a process to allow a migrant worker to pursue legal remedies by issuing workers with a "special pass" followed by a "visit pass." The special pass provides would provide

the opportunity for the worker to stay in Malaysia and seek employment while their court case is proceeding, and then if they locate employment, the visit pass could be issued to allow the migrant to work until the final resolution of the migrant worker's court case;

- A policy decision should be taken to allow the “visit pass” to be issued to migrants for temporary employment but to waive the requirement for the visit pass to only be given to a foreigner who is outside the country when applying;
- Eliminate unreasonable requirements – such as the need to secure a letter from a Court – before the special pass can be issued;
- Waive the 100 RM a month cost for the special pass;
- Fast-track applications of migrant workers when processing the special pass and the visit pass.

46. Migrant workers, regardless of status, should have the right to access justice. The Government should recognize the continuum of legal rights of a migrant worker, regardless of his/her immigration status, and make provisions to enable them to realize this right.

47. The Government should provide resources to extend legal aid to migrant workers, thereby supplementing the efforts of NGOs and the Malaysian Bar Council.

48. Access to justice requires that migrant workers understand the legal proceedings which they are involved in. The Government must develop effective and practical mechanisms to provide translation and interpretation services for migrant workers with cases before the Courts.

49. The Special Courts set up in detention centers remain isolated from provisions such as legal aid/right to legal representation, interpretation services, access to prepare a defense, and other requirements required for the realistic delivery of justice. The Government should immediately integrate immigration cases into the main legal system, and end use of Special Courts in detention centers.

50. The Government should immediately establish and empower an independent Commission of Inquiry to investigate the prevailing conditions and treatment of migrant detainees in detention centers. The Government should provide the Commission with resources and personnel sufficient to conduct a full inquiry and ensure the full cooperation of all Government officials with the Commission. The final report should be made public and the recommendations fully considered for implementation by the Government.

51. The Government should adhere to the United Nation Basic Principles for the Treatment of Prisoners 1990 and end punishment/whipping of migrant workers in detention centers.

52. Finally, to counter well-documented allegations of continuing corruption among law enforcement officials, the Government should establish an Independent Commission for the Police.

Health, Safety, Education and Social Dimensions Affecting Migrants

53. Mandatory health testing shall not be a pre-condition for employment. The Government should employ a rights-based approach towards the testing of the health of migrant workers, including voluntary testing, with provision of counseling and access to treatment for migrant workers.

54. The Government should cease mandatory testing for HIV and other treatable diseases for migrant workers while also providing access for treatment for migrant workers through the public health system so that they can recover their health. Workers who wish to change employers to enable them to better recover their health (such as moving to less physically challenging job, or moving to a job closer to the hospital/health facility where they are being treated) should be permitted to do through the use of “Special Pass” until they find a new job and receive a new Work Permit.

55. In line with the principles of non-discrimination, and to support better and more effective public health response for Malaysian society (since migrants compose one-third of the work force), it is imperative for the Government to allow migrant workers access and enjoyment of the same medical benefits that Malaysian citizens are entitled to in the public health system. Health care service should be provided to migrants irregardless of status, and special attention should be placed on provision of gender sensitive health care information, and reproductive health information and services for all migrants. One alternative that the Government should consider is to create a high quality, portable health care insurance scheme –

with the proviso that it should not be prohibitively expensive and employers should pay the costs for migrants.

56. Migrant workers being held in detention centers face significant challenges to their health as a result of overcrowding, unhygienic conditions, and maltreatment. Current access to detention centers is quite limited, with treatment usually only available through a medical orderly based at the detention centers and some access by NGOs to operate mobile clinics. The Government should provide significantly increased access to detention centers by international agencies and NGOs so as to enable them to provide additional support for health care in the centers. More nutritious food should be provided, and efforts made to address other conditions deleterious to good health in the centers.

57. In light of its commitment as a signatory to CEDAW, the Government should end its policy of deporting pregnant migrant workers.

58. In line with its commitment as a signatory of the UN Convention on the Rights of the Child, the Government should provide free education for all including for children of migrant workers, refugees, asylum seekers and stateless persons, and should ensure that children of migrants are provided with documents that allow them equal access to the same health care services that are received by a Malaysian child.

59. The right to love and marry should be inviolable, and the Government should end policies that penalize marriage with loss of employment. For foreign workers who marry a Malaysian citizen, the person should be able to independently apply for, receive, and renew a spouse visa.

Refugees and stateless persons

60. The Government of Malaysia should immediately ratify the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, and recognize the status of those persons screened and accepted as refugees by the Office of the United Nations High Commission for Refugees (UNHCR). The Government should scrupulously respect the principle of non-refoulement and set out appropriate procedures with UNHCR to ensure that refugees are not deported.

61. The Government should ensure civil servants and law enforcement officials at federal, state and local levels respect the inviolability of UNHCR documents issued to refugees, and issue directives forbidding confiscation or destruction of said documents. We recommend that directives be made by the Government to officials at all that levels that in cases where a person carrying UNHCR issued documents is detained, the office of UNHCR shall be immediately informed and arrangements made for the release of the person into the care of UNHCR.

62. The Government should provide UNHCR-recognized refugees with the right to work under the applicable laws and regulations governing the employment of migrant workers in Malaysia.

63. The Government should provide access to detention centers by UNHCR officials to allow them to screen for asylum seekers.

64. In line with Malaysia's commitments as a signatory to the CRC, all children in Malaysia should be given birth registration regardless of the status of their parents.

65. Government shall publicly recognize the right of stateless persons, especially children, to access social services such as education, healthcare, and other important services.

Recommendations to the Malaysian Parliament

66. We recommend that the Parliamentarians of Malaysia should play a leading role in forming a new Labour and Migration Caucus at the forthcoming meeting of ASEAN Inter-Parliamentary Assembly (AIPA) which will be held in Singapore on September 18, 2008. This Caucus should be tasked with intervening with the national Governments and the ASEAN Secretariat to ensure follow-up action is taken to fully implement the commitments made by the ASEAN governments in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Recommendations to Suhakam

67. We applaud the Declaration of Cooperation in Bali made on June 26-28, 2007 between the four national human rights institutions established in ASEAN, which includes Suhakam and the national human rights institutions of Indonesia, the Philippines, and Thailand. One of the areas of work to be undertaken under that Declaration is “protection of human rights of migrants and migrant workers.” Leadership in this area has been assigned to Suhakam. We believe that it is critical for Suhakam to play a dynamic leadership role on human rights of migrants, and we call for Suhakam to immediately convene a workshop in Malaysia, hosting its fellow national human rights institutions, to launch a campaign of closer cooperation among these institutions on the issue of migrant worker rights in ASEAN. We believe that Suhakam and its fellow national human rights institutions should deepen the regional commitment to protect and promote the rights of migrant workers. The proposed meeting should set out a plan of action for the four national human rights institutions to move forward on common activities on the portfolio of migrant workers rights in ASEAN. These activities should be planned and implemented in coordination with civil society organization and trade unions, and the members of the Task Force on ASEAN Migrant Workers.

Recommendations to ASEAN

Policies Affecting Migrant Workers and their Families

68. We urge the Member States of ASEAN to immediately ratify all eight core ILO Conventions², and ensure that their national labour laws, especially those laws governing migrant workers, are harmonized with the standards contained in those core ILO Conventions.

69. We further urge 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.

70. We strongly recommend that the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers shall be considered to apply to all migrant workers present in ASEAN countries, regardless of their country of origin.

71. The ASEAN Governments should collectively ensure the implementation of the Vientiane Action Program concerning human rights matters.

72. ASEAN should play a critical role in consultation with the member Governments of both labour sending and receiving countries to ensure that intending migrant workers are not charged exorbitant recruitment fees to secure foreign employment. Excessively high recruitment fees only serve to deepen the debt of a migrant worker, contributing to vulnerability to debt bondage and trafficking.

73. The Governments of ASEAN should recognize the phenomenon of “statelessness” in the region, and seriously consider the fact that lack of status greatly increases the vulnerability of stateless migrant workers to exploitation. Accordingly, the Governments should publicly acknowledge the right of all persons to health and education services and acknowledge and recognize birth certificates issued by any ASEAN Government.

74. The right of all citizens of ASEAN countries to hold their own passports and Government-issued identity documents should be considered inviolable. This principle contrasts with the reality 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.

75. The Member States of ASEAN are urged to ensure that migrant domestic workers are specifically included in coverage of the national labour law.

76. All the member Governments 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). Therefore, in compliance with the

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

provisions of the CRC and CEDAW, each Government must ensure that all children born to migrant workers should be provided with birth registration and access to education and health care.

77. Since all ASEAN Governments have ratified CEDAW, they should ensure the rights of migrant women, particularly domestic workers, are protected and that in cases of violations and abuse that there are viable avenues of redress, including effective laws, policies and programs which are in accordance with the principles of equality and non-discrimination.

78. Since it is clearly recognized that there is a trend of increasing feminization of migration in ASEAN, we strongly believe that 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.

79. Each Government of a labour-sending countries should clearly designate a focal point within their Embassy in each labour-receiving country to handle complaints and problems faced by their nationals who are migrant workers. Shelters or safe house arrangements should be made by each Embassy to support their migrant workers in serious distress.

80. 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.

81. 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, we recommend that the Member States of ASEAN create an effective scheme of high quality, portable health care insurance for migrant workers

82. ASEAN should develop a regional system, in coordination with civil society and representatives of migrants, which steps away from the current emphasis on mandatory testing of migrant workers for HIV. The new system would be based on voluntary testing of migrant workers and ensure universal access to treatment for those who test positive.

83. 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.

84. All ASEAN countries should publicly acknowledge international migrant's day (December 18) and grant a public holiday to migrant workers to celebrate this important day for affirming their rights.

ASEAN Processes and Steps Forward

85. We recommend the ASEAN Member Governments 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.

86. The National Consultation strongly encourages the ASEAN Secretariat to take pro-active and immediate steps to encourage each member Government of ASEAN to immediately appoint their national focal point to the ASEAN Committee to Implement (ACI) the Declaration on the Protection and Promotion of the Rights of Migrant Workers, as called for in the resolution adopted by the ASEAN Foreign Ministers on July 30, 2007.

87. When constituted, the ASEAN Committee to Implement (ACI) should take immediate steps to formulate the ASEAN Instrument for the Protection and Promotion of Migrant Workers (as called for in Article 22 of the ASEAN Declaration on Migrants), and should ensure the Framework Instrument contributes directly to the harmonization of national labour laws of ASEAN members with the eight ILO core Labour Conventions and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Member States of ASEAN should give those focal points the necessary authority, and task them to engage substantively with the Task Force as it develops civil society's draft ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.

88. Reflecting the fact that migration frequently involves movement across borders, ASEAN should develop an effective regional collaborative mechanism to work on issues of labour migration and human trafficking focusing on the predicament of undocumented migrant workers and their families, and stateless persons.

Statement Adopted by the Participants of the ASEAN Manila Consultation on the Promotion and Protection of the Rights of Migrant Workers

Manila, Philippines

September 24, 2007

We, the 130 participants representing migrant workers, community groups and NGOs, churches, trade unions and the academe from Luzon, Visayas and Mindanao, after intensive discussions and consultations, hereby:

ACKNOWLEDGE the success of the 12th ASEAN Summit in Cebu, Philippines in agreeing to an ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which takes important steps in moving ASEAN towards compliance with existing UN conventions and treaties, and gives due recognition to the need to share responsibilities regionally for the protection of migrant workers while also acknowledging both the differences and similarities of concerns of the ASEAN member-states;

RECALL that the Philippines has ratified several UN human rights conventions, including the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families where many of the provisions were already enshrined earlier in a national law (RA 8042);

RECALL further that the Philippines has more than three decades of significant experience in overseas employment, and in advancing the interests and welfare of overseas Filipino workers and their families, and therefore, would be in a position to evaluate the strengths and weaknesses of policies, laws, programs and services for migrant workers and their families;

RECOGNIZE that there are many critical aspects of migration that have been regrettably excluded from the ASEAN Declaration, including the protection for undocumented workers, the rights of family members accompanying migrant workers, the right of migrant workers' children to citizenship in accordance with the UN Convention on the Rights of the Child, and the recognition of the human rights of women migrants, particularly reproductive rights, as provided for by the UN Convention on the Elimination of All Forms of Discrimination Against Women;

STATE unreservedly that more than three decades of labor export policies by the Philippine government have not brought meaningful human development and real sustainable national development to our country; and,

RAISE our very urgent concerns about the increasing violations of the rights and wellbeing of women and men migrant workers and their families, the unprotected and informal nature of women migrants' work, and the failure of the Philippine government and other ASEAN governments to take appropriate steps to address gender and human rights issues in migration;

DO HEREBY FORMALLY DECLARE THAT

While we support the first three "General Principles" enumerated in the ASEAN Declaration, we register our strong

objection to the fourth General Principle contained in the Declaration which denies the human rights of undocumented migrant workers;

We strongly believe that labor is not a commodity and migrant workers must not EVER be considered as a commodity for export and exploitation;

We state with conviction that all migrant workers have inherent, inalienable, and indivisible rights as human beings and as workers;

We firmly maintain that all migrant workers and members of their families deserve recognition and protection, irrespective of their legal status;

We clearly affirm that all children of migrant workers have the right to citizenship, irrespective of the status of their parents, as provided for in the UN Convention on the Rights of the Child which has been ratified by all ASEAN states;

We assert that the universal human rights and dignity of migrant workers must be given preeminence over geo-political and national security considerations;

We deem it self-evident and, therefore, compulsory that appropriate recognition be given and policy steps taken to address gender considerations in connection with employment, social relations and processes, benefits and entitlements for migrant workers;

We believe that firm action must be taken to address problems faced by women migrant workers such as informalization and low valuation of domestic work and entertainment, exclusion from legislation and grievance mechanisms, and discrimination, particularly in the form of violence and denial of their reproductive rights;

We affirm that human trafficking in all its forms must be firmly opposed and responded to using human rights and gender perspectives, locating the needs and rights of survivors at the center of anti-human trafficking policies, programs and services;

We therefore strongly recommend the following policies to the Government of the Philippines, and to the Member-States of ASEAN:

Recommendations to the Government of the Philippines

A. Addressing Root Causes of Outmigration

- We strongly urge the Philippine government to create an enabling environment for the productive utilization of OFW remittances that will result in sustainable livelihoods and vibrant local economies, thereby reducing poverty, and providing alternatives to overseas employment.
- Evaluate the impact of free trade agreements on the socio-economic conditions of the people. Available data from civil society would show that such agreements have exacerbated, rather than reduced poverty. In this respect, we strongly urge the Philippine Senate not to ratify the Japan-Philippine Economic Partnership Agreement because it is an unfair treaty that will benefit Japan more than the Philippines.

1. Develop a coherent policy framework on socio-economic reintegration of overseas Filipino workers.
2. Ensure that development policies truly reflect the interests of returning OFWs and a clear understanding that remittances should be used for authentic poverty reduction, consistent with the UN Millennium Development Goals.
3. Allocate adequate financial, human and social resources for effective reintegration.
4. Institutionalize the representation of OFWs and their family members in local government units and in local development councils.
5. Provide returning workers with economic incentives and assistance such as such as tax holidays, simplified business registration and regulatory systems, provision of marketing assistance to help them set up economic enterprises to secure their livelihoods.
6. Provide capacity-building/training in livelihood development, financial literacy, and entrepreneurship for OFWs and their families.

7. Provide local NGOs with funding to support sustainable local development programs to assist OFWs achieve quality livelihoods upon return.
8. Institutionalize financial literacy and reintegration program planning in Pre-Departure Orientation Seminars (PDOS) and Pre-Employment Orientation Seminars (PEOS) to be given NOT only to OFWs but to the members of the OFW and would-be OFW families.

B. Reducing Vulnerabilities of Women Migrant Workers

- We call on the Philippine Government to comply with its commitment to the UN CEDAW, and fully operationalize its avowed recognition of gender equality and adherence to gender-sensitivity as a principle (Sec. 2d, R.A. 8042) in its policies, programs and services.
1. Adopt the recommendations pertinent to Filipina migrant workers of the UN Committee on the Elimination of Discrimination against Women in its 36th session in 2006, to wit:
 - 1.1. Undertake measures to “bring about changes in traditional patriarchal attitudes and in gender stereo-typing” that are a root cause of violence against women and “the disadvantaged position of women in a number of areas, including in all sectors of the labour market and in political and public life.”
 - 1.2. “Continue conducting enforceable bilateral agreements and memorandums of understanding framed on protection and promotion of the rights and welfare of migrant workers with countries and regions where Filipino women go to in search of jobs.
 - 1.3. Take a coherent and comprehensive approach to addressing the root causes of women’s migration including through the creation of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or employment.”
 2. Recognize domestic work and entertainment as formal work.
 3. Extend quality and gender-responsive medical care and psycho-social care/counseling for survivors of all forms of violence and discrimination.
 4. Create a “one-stop shop” to process applications for overseas work and for seeking redress to grievances. This is meant to streamline the bureaucracy, and cut down on red tape and avenues for corruption. Adequate and competent personnel and financial resources should be provided to the “one-stop shop.”
 5. Transform Philippine embassies, consular offices and Philippine Overseas Labor Offices (POLOs) into centers of care and service for overseas workers.
 6. Ensure that frontline agencies and personnel are adequately oriented and trained on rights-based and gender-responsive approaches and processes.
 7. Develop and implement an effective feedback mechanism to monitor and evaluate the performance of government agencies addressing labor migration, including Philippine embassies, consulates and POLOs, and impose sanctions where and when appropriate. OFWs should be involved in this process.
 8. Evaluate the effectiveness of TESDA as the Skills Training Center for OFWs, especially women migrant workers.
 9. Undertake a serious review and audit of OWWA structure and operations, with the objective of instituting transparency and effective management of the OFW Trust fund that can enhance the protection and welfare of OFWs during and after the migration process.

C. Curbing Illegal Recruitment, Trafficking and Irregular Migration

- We strongly urge the Philippine government to exercise political will in addressing the problems of illegal recruitment, human trafficking and irregular migration, specially the socio-economic and political conditions that give rise to them.
1. Adopt the recommendations of the UN Committee on the Elimination of Discrimination against Women in its 36th session in 2006, to wit:

- 1.1. “Further strengthen bilateral, regional and international cooperation with countries of origin, transit and destination so as to address trafficking in women more effectively.”
- 1.2. “Pursue a holistic approach aimed at addressing the root causes of trafficking and improving prevention.”
- 1.3. “Take appropriate measures to suppress the exploitation of prostitution of women, “
- 1.4. Provide rehabilitation, social integration and economic empowerment programmes to women and girls who are victims of exploitation and trafficking.
- 1.5. Provide financial support to NGOs that assist in the rehabilitation of women and girls in prostitution.
- 1.6. “Prosecute and punish traffickers and those who exploit the prostitution of women and provide protection to victims of trafficking.”
- 1.7. “Develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights.”
2. Strengthen the monitoring mechanism of the Philippine Overseas Employment Administration (POEA) by giving it stronger regulatory and enforcement powers with corresponding human and financial resources to curb illegal recruitment, human trafficking and other forms of irregular migration.
3. Develop the Pre-Employment Orientation Seminars (PEOS) and Pre-Departure Orientation Sessions (PDOS) which are designed according to the country of destination to which the worker is going, and the sector/type of work that s/he will be undertaking.
4. Provide financial resources to and competent professionals in the Inter-Agency Council on Anti-Trafficking.
5. Ensure the full and consistent implementation of legally mandated labor standards in the recruitment process.
6. Forge bilateral labor agreements with destination countries to ensure harmonization of recruitment policies and procedures, prevent illegal recruitment, human trafficking and irregular migration, and protect the rights of all migrant workers, regardless of legal status.

D. Addressing the Social Costs of Labor Migration

- We recommend that the Philippine Government undertakes measures to prepare families for overseas employment, and provide OFWs and their families with social security and protection.
1. Devise PDOS and PEOS for families of OFWs that uses a curriculum that includes ideas, values, and strategies to strengthen families (on topics like dealing with strains faced by OFW families, ideas on solo parenting, building understanding and ways to hold the family together), and creative and innovative IEC materials to reach the youth to supplement these sessions. Publicity and support for these orientation sessions can also be supplemented by outreach strategies like setting up e-groups and forums, and joint organizations.
 2. Coordinate with NGOs and community organizations and other other stakeholders from national to barangay on programs and services meant to provide structures of care for children with migrant parent/s, and mitigate adverse effects of migration.
 3. Allocate financial assistance for communities to train professionals to address family problems arising from the migration of one or both parents.
 4. Conduct pro-active information dissemination on PhilHealth programs and services among OFWs and their families. PhilHealth should develop a system for up-to-date collection of membership payment, simplify membership payment and requirements as well as availability of benefits.

E. Building and Strengthening Migrant Organizations, Self-Representation, Political and Electoral Representation

- We strongly urge the Philippine Government to improve and broaden current mechanisms and processes to ensure genuine representation and participation of OFWs in governance.

1. Increase the representation of migrant workers and civil society organizations working with migrants on the decision-making bodies of key agencies working with migrants, such as the POEA, the Overseas Workers Welfare Administration, PhilHealth, Social Security System, PAG-IBIG in order to institutionalize consultations with migrants, transparency in operations, and collaboration with civil society.
2. Institutionalize a broad and democratic process whereby organizations of OFWs themselves choose their sectoral representatives to the government boards related to labor migration. Gender equity should be a guiding principle in said process.
3. Institute legislative and executive measures to improve R.A. 9189 (Overseas Absentee Voting Law) to respond to the particular situation of overseas voters, especially seafarers;
4. Make representations with governments of destination countries of Filipino workers to ensure that fundamental human rights such as the right to organize, are recognized and respected.
5. Set up a network of “maritime attaches”, especially in countries such as Norway, Greece, and Japan where there are a high number of ship owners/employers who are employing Philippines seafarers, to effectively address the issues and concerns of seafarers.

Recommendations to ASEAN Member States

1. We urge the Member States of ASEAN to immediately ratify all eight core ILO Conventions³, and ensure that their national labour laws, especially those laws governing migrant workers, are harmonized with the standards contained in those core ILO Conventions, keeping in mind that migrant workers make real and substantial socio-economic contributions to both origin and destination countries, and as key stakeholders, it is in their interests to ensure that migrant workers are fully protected and assisted in every way possible.
2. Since the Philippines has already ratified ILO Convention 143 as well as the UN Convention on the Protection of the Rights of Migrant Workers and Their Families, we urge all other ASEAN Member States to immediately ratify these Conventions. We further urge that all ASEAN member states should ratify ILO Convention 97 and 181.
3. We recommend the national Ministries of Labour decide 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. The ASEAN Labour Ministers Meeting to be convened in 2008 should accept that recommendation.
4. The ASEAN Framework Instrument on the Promotion and Protection of the Rights of Migrant Workers should have a practical, workable mechanism for solving cases of migrant workers facing difficulties, with uniform standards and transparent procedures in place to ensure quality response by the Governments and other stakeholders. Once a regional human rights mechanism is established in ASEAN, a grievance system where migrants can file complaints should be established under that human rights mechanism.
5. We advocate 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. ASEAN is urged to create an independent Commission of experts from the Member States who shall be 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.
6. Undocumented migrants contribute significantly to the economies of receiving countries. Thus, we strongly urge all ASEAN Member-States, specially Malaysia, to recognize and protect their rights and well-being, stop criminalizing them, and consider regularization of their status.
7. The right of citizens of all 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.

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

8. The Member States of ASEAN are urged to intensify their actions to eliminate all forms of discrimination and violence against migrant workers, specially women, and set out clear policies that state that ‘national treatment’ in employment standards and benefits shall be provided for all migrant workers, regardless of status.
9. The Member States of ASEAN are urged to ensure that migrant domestic workers are specifically included in coverage of the national labour law and grievance mechanisms.
10. 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. Further, Member-States are urged to repeal policies on automatic contract termination and deportation of women migrant workers on the basis of pregnancy, and health-related conditions .
11. Recognizing that migrants in ASEAN are increasingly female, we believe the Member States of ASEAN should set out clear gender-sensitive policies, processes and practices on migration.
12. 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, we recommend that the Member States of ASEAN create an effective scheme of high quality, portable health care insurance for migrant workers.
13. Given the importance of migrant worker remittances to the economy of the migrant’s origin country, a dependable, accessible, and inexpensive system for transmitting remittances in ASEAN is vital. The Member States of ASEAN, and specifically their central banks, are urged to undertake serious studies and measures, to support the creation of such a remittances system, whether implemented by the private sector, trade unions and civil society organizations, or Government agencies.
14. Recognizing the important need for increased awareness and information among migrant workers and their families, the Member States of ASEAN are urged to actively support education on and dissemination of international labour standards (especially concerning migrant workers) as embodied in the core ILO Conventions, ILO migrant worker conventions, and UN Convention on Migrant Workers to intending, current and returning migrant workers and their families.
15. In close cooperation with the ASEAN member states and academics, ASEAN should closely examine procedures, policies, and practices for effective and just integration of migrant workers entering the work force of a receiving country, and study mechanisms for re-integration of migrant workers when they return to the sending country. These studies should be made public, and consultative dialogues organized with ASEAN civil society organizations to discuss the findings and make further recommendations.
16. We believe that workers’ organizations are a vital element in protecting migrant workers. In close consultation with all sections of the national trade union movements, the ASEAN counties should make necessary legal and policy changes to allow for portability of trade union membership, thereby allowing migrant workers who are members of their own national trade union to be effectively and legally represented by trade unions in the receiving country.
17. ASEAN should investigate the problems and abuses that exist in the current systems of labour recruitment in the sending countries and engage systematically with all stakeholders (migrant workers, NGOs, trade unions, local, provincial, and national government officials, and recruitment agency trade associations) to develop just and realistic solutions to issues of exorbitant recruitment fees, contract substitution, abusive oversight and maintenance of migrant workers being mobilized or “trained”, deception and human trafficking, and other abuses against migrant workers.
18. ASEAN should establish a Civil Society Advisory Council to institutionalize meaningful multi-sectoral representation, as well as constructive dialogue and consultation on labor migration issues and concerns.

Done in Manila, September 24, 2007.

National Statement Singapore National Consultation on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

**April 16-17, 2009,
Peninsula Excelsior Hotel**

As representatives of civil society organizations and trade unions, we are 38 participants who gathered at the Peninsula Excelsior Hotel, Singapore on April 16-17, 2009, to conduct this National Consultation on the Protection and Promotion of the Rights of Migrant Workers under the auspices of the Task Force on ASEAN Migrant Workers.

The Government of Singapore is to be commended for its actions to protect the well-being of migrant workers residing and working in Singapore, including through provision of labour legislation such as the Employment Act, the Employment of Foreign Manpower Act, and the Workmen's Compensation Act. We appreciate the newly established Ministerial Steering Committee to address issues and seek ways to enable migrant workers and local communities to live in harmony. MOM has also taken the laudatory step of forming a Task Force in January 2009 to monitor employers of migrant workers who have salary arrears outstanding to the workers, default payment of the foreign worker levy, and fail to comply with regulations related to migrant worker accommodation. We note also, the actions that MOM has taken over the years to bring errant employers who abuse and exploit migrant workers to task. We look forward to working closely with the Government of Singapore and MOM, especially as ASEAN moves towards regional economic integration by 2015. In this spirit of mutual respect and commitment to work together for a common purpose, we have the following recommendations from our two-day consultations to propose to the Government of Singapore, and to ASEAN, which address a wide range of migration policies, including stepping up enforcement of laws to protect and promote the rights of migrant workers.

To the Government of Singapore, we recommend the following:

Recruitment of Migrant Workers

1. The Government should develop an independent multi-stakeholder review and assessment body to monitor both the criteria for accreditation of labour recruitment agencies in Singapore and compliance with those criteria. This body should be comprised of NGOs, employer groups, trade unions, consumer organizations, migrant worker organizations, and community based organizations. However, the body should not include for-profit agencies that have a direct financial or economic interest in decisions on accreditation.
2. As a matter of policy, MOM should actively encourage employers to progressively move to direct recruitment of the migrant workers they require and avoid use of middlemen such as labour recruitment agencies, which add unnecessary costs

and may not be fully able to provide workers that fit employers' needs in terms of skills and competence.

3. Singapore benefits when intending migrants are fully informed on the conditions that they will experience when they come to country as a migrant worker. In order to ensure accurate information reaches intending migrant workers while they are still in the country of origin, MOM should develop and make available information on wages and conditions of work, terms of employment under Singapore laws, regulations on migrant registration, the cost of living, and other basic information. This information should be posted on the website of MOM, as well as other appropriate Government and civil society websites in Singapore and overseas, and be produced in pamphlets, posters, and other media for distribution in countries of origin. MOM should ensure distribution of this information to its counterparts in the Governments of the labour-sending countries, and to civil society organizations assisting migrant workers. Importantly, this information should be translated into the languages of the migrant workers coming to Singapore so they are able to make better informed decisions. This information should be updated on a regular basis and be publicized at Singapore Embassies overseas.

4. The current system which requires registered migrant workers to remain with a single employer, and the ease with which an employer can unilaterally terminate a migrant's work permit, has unfortunately opened up avenues for abuse of migrant workers' rights and violations of labour laws by unscrupulous employers. While the MOM has done a commendable job in investigating and penalizing a number of these employers, a better system would allow migrant workers to change employers without requiring permission from their current employers. By guaranteeing migrant workers freedom of movement in their employment, labour market forces would encourage greater compliance by employers with labour laws and regulations since unscrupulous employers would find it difficult to maintain their migrant work force. Moreover, coupled with a policy of direct recruitment by employers, the policy would place a premium on finding qualified and capable migrant workers and treating them well, in accordance with the laws, so as to retain their services.

5. Unfortunately, despite MOM's efforts, there continue to be instances where employers are illegally charging migrant workers for an extension of their work permits, and labour recruitment agents are adding financial charges to migrant domestic workers seeking authorization to transfer from their old employer to a new employer. MOM should establish and strictly enforce stiffer penalties for employers and labour recruitment agencies that are engaging in these illegal practices.

6. Reports from migrant workers also continue to point to unscrupulous agencies deducting more money than allowed for agency fees. The MOM should pro-actively monitor and effectively enforce the requirement that the one-off payment of agency fees shall not account for more than 10% of the migrant worker's first month of salary as stipulated in the Employment Agencies Act.

7. Labour recruitment companies in Singapore should not be allowed to misrepresent or masquerade themselves as legitimate employers with full-time, adequate work in their own facilities when they are in fact acting as labour supply companies that seek to deploy those workers on daily or weekly basis to other companies. MOM should seriously crackdown on these types of businesses who account for a significant amount of the labour abuses against migrant workers.

Post-arrival Orientation/Training for Migrant Workers

8. We recognize MOM's commitment to ensure that migrant workers are fully aware of their rights and responsibilities while working in Singapore, and commend MOM for arranging a training and orientation program as one of the first activities for migrant workers must undergo immediately after they arrive in Singapore. Community groups, trade unions and NGOs should be consulted and directly involved in the delivery of these training programs. The program should instill knowledge about the rights of migrant workers, conditions governing their work and stay in Singapore according to laws and regulations, methods to seek redress from the MOM and other organizations, and other useful information for migrant workers to ensure they are treated in accordance with the law. Post-arrival orientation should not be left to the employment agencies charged with placing migrant workers with employers.

9. As part of the post arrival training/orientation program, workers should be required to register their presence in Singapore with the Embassy of their Government, and must keep their contact information at the Embassy up to date during the entire time they are working in Singapore. As part of a closer collaborative information-sharing and coordination relationship to protect migrant workers, the Embassies of migrant workers should share information about their citizens with MOM when requested to do so. Equally important, MOM should provide information to Embassies when diplomatic representatives request information about their own citizens working in Singapore.

Repatriation of Migrant Workers

10. Regrettably, despite the efforts of the Government to prevent the practice of forced repatriation, reports from migrant workers indicate that intimidation and forced repatriation of workers is still being carried out by repatriation service companies, some of whom use extrajudicial violence and wrongful confinement to compel migrant workers' compliance. These companies, which are hired by employers, should not be allowed to operate in Singapore. Repatriations should only be planned and carried out by duly appointed Government officials.

11. As a preventive strategy, the Government should provide additional training and sensitization to immigration officials, airport, police, and airport staff based at Changi Airport on detecting and preventing forced repatriation. The Government should also introduce a system of selective exit interviews by trained immigration officers to monitor the repatriation process and ensure that it is fair and voluntary.

12. In order to ensure that immigration officers have the resources at hand to ensure effective regulation of departing and arriving migrant workers, quality translators able to speak languages of the major migrant worker groups coming to Singapore should be recruited and be available as needed.

Training in Language and Skills for Migrant Workers

13. In order to upgrade the skills of migrant workers and make them more efficient and effective in performing their work, the Government should provide appropriate opportunities and facilities for language training (especially in the English language) for migrant workers. Possible avenues that should be considered to deliver these programs include subsidizing training costs, allocating resources for training costs, and giving financial support to NGOs and other service providers to migrant workers to deliver such training. Resources to be tapped could come from the Foreign Worker Levy.

14. Given the major importance of occupational safety and health for workers, employers, and Singapore society as a whole, there is a need for compulsory orientation programs on occupational safety and health that involve training (and, as needed, refresher trainings) for migrant workers.

Terms and Conditions of Work, and Rights of Migrant Workers

15. Analysis by the participants at the National Consultation found that many migrant workers in Singapore are unaware of their rights and fearful about raising complaints or concerns about treatment accorded to them by unprincipled employers. There are concerns that workers also sometimes lack knowledge about protecting themselves, for example in areas of occupational safety and health, and ensuring they are treated in accordance with the national labour laws.

16. In addition to the post-arrival training for newly arrived migrant workers, a number of additional steps are recommended to address this situation. First of all, standard employment contracts should be developed by the MOM (in consultation with trade unions, employer groups, and NGOs) on a sector-by-sector basis, with the contracts taking into account the particular circumstances of each sector of work. All standard contracts must comply with all provisions of Singapore law. A standard Singapore contract issued by MOM should be signed by the migrant worker as a condition of admittance into the country to work, and only a standard Singapore contract should be considered as valid hiring document.

17. Currently, all migrant domestic workers and non-domestic workers are covered under the Employment of Foreign Manpower Act and must fulfill various Work Permit conditions. We recommend the Singapore Government should extend the coverage of the Employment Act to include migrant domestic workers as "workers" for the purposes of the law so that they can enjoy all the provisions of that law, especially the requirement for one day of leave every week, public holidays, annual leave, and medical leave. Once this is done, a comprehensive education effort should also be undertaken through public relations – such as radio, TV, and newspapers – to ensure that employers understand and respect migrant domestic workers rights under the Act. Migrant domestic workers should also be covered under the Work Injury Compensation Act.

18. MOM should closely monitor employers' procedures for payment of salaries to migrant workers and ensure that an actual wage slip is produced, showing information on all wages, hours of work, overtime, and deductions, and provided on no less than a monthly basis to each migrant worker. This wage slip should be printed on forms issued by the company that contains the name, logo, and business license number of the company.

19. We believe that migrant workers can play an important role in ensuring the protection of their own rights and compliance by employers with the national labour laws and regulations. For this reason, we recommend that the Government should amend the appropriate laws to allow registered migrant workers to have the right to form a registered society in Singapore, and to serve as leaders of such an organization. In this way, they can work closely with MOM and Government agencies, trade unions, civil society groups and other organizations to further promote the Government's agenda of effective regulation of migrant workers. The Government should also immediately ratify ILO Convention no. 87 on Freedom of Association.

20. In line with the principle of national treatment, migrant workers should be permitted by the Government to peacefully exercise the right to freedom of expression without having to apply for a permit in advance.

21. Singapore is to be commended for its ratification of the UN Convention on the Elimination of Discrimination against Women (CEDAW). Women migrant workers are covered by this Convention, and in accordance with Article 11 (2) (a), Singapore should repeal discriminatory policies and regulations whereby migrant workers found to be pregnant are automatically deported. Instead, pregnant migrant workers should be given a choice to return to their home country or remain and receive maternity leave under the provisions of the Employment Act. Recognizing that most migrant workers come to work, and that pregnancies may result from a lack of knowledge or services, Singapore should expand sex education programs provided to migrant workers.

22. In line with Article 16 of CEDAW, MOM should end discriminatory regulations which prohibit work permit holders from marrying while in Singapore. Similarly, MOM should eliminate the work permit condition on migrant domestic workers that provides for punishment, including blacklisting, for workers found to have taken actions under the vague category of "breaking up Singaporean families." Where an investigation of allegation(s) against migrant workers is undertaken, especially when said investigation could result in the barring of the worker from future employment, there should be arrangements made to secure testimony from the worker and witnesses identified by the worker, thereby ensuring a fully fair and transparent investigation.

23. We believe that there is an important role for Singaporean civil society organizations to play in supporting migrant workers. Accordingly, there should be closer collaboration and coordination of efforts between trade unions and NGOs on behalf of migrant workers. A strong trade union/NGO network can serve as constructive partners with MOM, other Singaporean Government agencies, and representatives of the sending Governments who based at Embassies in Singapore.

Assistance to Migrant Workers

24. There are nearly 800,000 migrant workers holding work permits who reside in Singapore. The Government could play a bigger part in providing financial support (from the Foreign Worker Levy and other appropriate budget sources) for services to be provided to them. Such support could increase productivity, ensure better relations and closer integration between migrant workers and local communities, and assist Government officials providing help to migrants. For instance, among projects that should be considered for support should be creation and operation of shelters for migrant workers facing difficulties, counseling services, operation of helpdesks/hotlines, translation services, trainings, production of information materials, and support for social and recreational activities.

25. A collaborative Government/NGO phone helpline should be established which operates twenty-four hours a day, seven days a week. This helpline should be supplemented by innovative techniques to receive complaints, such as ability to receive SMS messaging from migrant workers. Appropriate translation services to receive phone calls, and referral systems to Government agencies and civil society groups will have to be developed to support this helpline service.

26. The Government should review existing standards for migrant worker housing and take all necessary steps to continue to improve efforts to enforce the laws and regulations concerning accommodation provided to migrant workers. Recognizing the special needs of migrant domestic workers, who are often vulnerable young women, there should also be set minimum standards for privacy (such as a room with a door than can be locked from inside) and adequate personal space for a domestic worker's living arrangement and storage of possessions.

27. Recognizing the importance of healthy workers to Singapore's productivity, the Government should be praised for its institution of hospitalization insurance benefits for migrant workers. However, it is important that appropriate reviews of the policy be undertaken to assess the adequacy of the level of support provided. Furthermore, the Government should reinstate the entitlement of migrant workers to receive subsidized outpatient medical treatment.

28. Migrant workers who are diagnosed with a disease should be provided to access to basic medical care and necessary social support and counseling. Treatment should be provided on a humanitarian basis, and laws and regulations which call for immediate and automatic deportation of a migrant worker on health grounds should be re-examined and revised in line with this principle.

Actions Against Human Trafficking

29. In accordance with the ASEAN Declaration Against Trafficking In Persons Particularly Women and Children, adopted by the leaders of the ASEAN Member Governments in Vientiane in 2004, Singapore should systematically screen undocumented migrant workers who are detained by the authorities to ascertain whether they are victims of human trafficking. In doing so, Singapore should use the international definition of human trafficking contained in the Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime (the Palermo Protocol). Those migrants who are found to be victims of human trafficking should not be caned or jailed, but should be provided with support to services in line with international standards of protection for such victims.

Mechanisms and Avenues for Redress by Migrant Workers

30. MOM correctly encourages migrant workers to raise complaints and file cases when they receive treatment from their employer which is not in compliance with the labour laws. However, too often, unprincipled employers unilaterally cancel the work permits of a worker as soon as they learn that worker has filed a complaint to MOM. In order to ensure that migrant workers are not intimidated in this way and that MOM can receive accurate and timely information from migrant workers about employer's actions, the MOM should issue a regulation which prohibits unilateral cancellation of a worker's permit from the time a complaint from a migrant worker is formally received by MOM until the grievance is officially resolved. During the period of the dispute, the employer should be held responsible for providing financial support to the migrant worker for accommodation and meals

31. Migrant workers often turn to MOM for redress in cases of problems with their employers but they face difficulties in knowing when their complaint can be resolved. Therefore, in the interest of transparency, the MOM should issue guidelines, developed in coordination with trade unions and civil society, which set approximate time periods for resolving various types of complaints filed by migrant workers with MOM. For example, under this system, resolving a case of wage arrears might take approximately 30 days.

32. The Immigration and Checkpoint Authority (ICA) and MOM should be commended for operationalizing a Special Pass system and Temporary Job Scheme (TJS) that enables migrant workers to remain in Singapore while waiting for resolution of their disputes with employers. However, rather than limiting it to prosecution witnesses only, we recommend that the TJS system should be extended to cover all migrant workers who are seeking remedies in the complaint and resolution process at the MOM until their cases are resolved. MOM should also provide appropriate incentives to companies to join the TJS program, and consult with trade unions, employer federations, and civil society organizations to improve the efficacy of the TJS.

33. MOM should put in place a policy which requires advance notice to a migrant worker of not less than 14 working days before unilateral cancellation of the work permit by an employer. MOM should not allow terminations of work permits of migrant workers in retaliation against those workers using their rights to file grievances, or on other unlawful and unfair grounds.

34. Migrant workers who take their complaints to the Labour Courts often face a significant barrier in compelling employer compliance with Labour Court orders. It is not uncommon that a lawyer must be retained to ensure enforcement of the order, but such an expense is well beyond the reach of the average migrant worker. Accordingly, the Government should provide free legal support to migrant workers seeking to enforce Labour Court orders.

35. The Singapore Police Force should develop and issue guidelines in the handling of cases of physical abuse against migrant workers which includes receiving and reporting all cases at the time of the migrant worker's report to them. These guidelines should also set out processes for investigation and inter-agency coordination in the follow-up on the case. As a matter of practice, migrant workers should not be required to produce a medical certificate attesting to the abuse as a pre-

condition for a statement to be taken by the police.

36. In order to support their citizens who are working in Singapore, all Embassies of labour-sending Governments should appoint a designated labour attaché and open a labour affairs office, and should ensure these labour offices are open and available for consultation and provision of services during the days that migrant workers have off from work (often on a weekend).

37. There is a relatively small group of actors involved in most of the legal cases concerning migrants, leading to overburdened service providers and frustrated migrant workers. The Law Society of Singapore should be allowed to extend their pro bono services to non-citizens. Furthermore, a joint strategy should be developed to support more legal training on migrant workers' legal matters for Government officers, NGOs and trade union representatives, which could also include greater support for paralegals willing to be involved in migrant worker cases.

Regional Recommendations

We make the following recommendations on regional issues to the Government of Singapore and ASEAN:

38. The Government of Singapore should actively pursue negotiations for bilateral agreements with major labour sending states whose nationals are coming to work in Singapore. These bilateral agreements should, among other things, set out limits for fees that can be charged to migrant workers by labour recruitment agencies in countries of origin that are sending workers to Singapore. Other topics to protect the rights of migrant workers should similarly be included, such as use of standard contracts, requirements for compliance with the national laws of the sending and receiving states, and other areas and procedures for cooperation between the Government of Singapore and the government of the labour-sending nation. Where standards covering employment can be agreed between Singapore and other Governments, possibilities for Government-to-Government recruiting mechanisms which eliminate private recruitment agencies should be explored. As part of these bilateral agreements, Singapore should expand its effective vocational and skills training programs for citizens of less developed ASEAN countries who are prepared to work in Singapore.

39. There should be a code of conduct promulgated by ASEAN that encourages ethical and transparent practices for labour recruitment agencies operating in ASEAN states. The code should outline expected standards in operations that protect and promote migrant worker rights, ensure transparency and accountability, and incorporate best practices. The code should be developed in a participatory manner by representatives of Governments, labour unions, employer federations, and NGOs, with the ASEAN Secretariat serving as the coordinator for this process. This code of conduct should be the first step in the development of a regional procedure for accreditation of labour recruitment agencies that can be implemented by ASEAN.

40. Singapore should work closely with ASEAN to develop an effective system of accreditation of skills and education, sector by sector, at the regional level. This work should begin with a Singapore-supported study of all aspects of developing such a regional skills and education accreditation system, done in close consultation with the ASEAN Secretariat, other ASEAN Member Governments, employers, trade unions and civil society organizations.

41. As an important step towards regional integration, ASEAN should develop an effective portable health and social insurance scheme for migrant workers originating from ASEAN nations which would ensure coverage for migrant workers across the region, no matter what country or sector the workers are engaged in. ASEAN should consider developing, in close consultation with its Member Governments, a regional migrant workers ID, which would have encoded on it the relevant biodata of the worker. At the appropriate time, this regional migrant worker ID could be linked to portable health and social insurance scheme.

42. The management of migration between sending and receiving states in ASEAN is a complicated and complex process. ASEAN should work with international organizations with technical expertise to support capacity building efforts for Governments, trade unions, NGOs, and other civil society groups so they can fully participate in efforts to protect and promote migrant workers' rights.

43. ASEAN should actively encourage all labour-sending states to develop and effectively implement pre-departure programs which educate workers about the laws, the regulations, the customs and culture, and other relevant information about the country to which those workers will be traveling to work. There should be special attention given to skills accreditation and ensuring OSH knowledge.

44. ASEAN should adopt a policy that holds as a central principle the inviolability of migrant workers' passports and other Government-issued documents which identifies them. Migrant workers should have the right to hold said documents at all times.

45. As a receiving state with significant interests in eradicating human trafficking, Singapore should work closely with its fellow ASEAN Member Governments to develop substantive regional efforts to combat human trafficking. The ASEAN Declaration Against Trafficking adopted in Vientiane in 2004 should serve as a starting point, but much more should be done to reach a common agreement on prevention, protection and prosecution efforts to counter human trafficking.

46. At the regional level, in line with the General Principle 2 of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the practice of using corporeal punishment and jail terms against migrant workers who, through no fault of their own, have subsequently become undocumented should be brought to an end.

47. We support the regional civil society campaign for one-day off per week for domestic migrant workers, and believe that all ASEAN Member States should concur with this reasonable demand. Domestic work should be considered as work under the labour laws of all ASEAN countries.

48. The Government of Singapore should advocate for a regional wage determination process that ensure that sufficient wages are paid to migrant workers in all receiving countries to allow them to earn sufficient income to live and send remittances to their families. In payment of wages, there should be an insistence on the principle of "national treatment", meaning that migrant workers are paid no less than legal wages given to national workers.

49. There should be a Subcommittee on Migrant Workers established under the ASEAN Human Rights Body, with the Subcommittee empowered to conduct promotional human rights activities concerning migrant workers, receive complaints of rights violations, conduct research and investigations, and issue reports of its findings.

50. ASEAN should develop a supervisory body, composed of representatives from civil society organizations, trade unions, employers associations, and governments, which will play a leading role (under the umbrella of the ASEAN Secretariat) in ensuring effective implementation of regional standards included under the Instrument on the Protection and Promotion of the Rights of Migrant Workers which is developed by the ASEAN Committee on Migrant Workers (ACMW) and ultimately adopted by ASEAN. The Instrument which is concluded should be considered legally binding on all ASEAN states.

51. Singapore should play a leading role in encouraging the full participation of civil society and trade union representatives in person at ASEAN-level events related to migrant workers, such as the meetings of the ACMW.

52. Singapore should also support the request of the Task Force on ASEAN Migrant Workers to make a presentation to the upcoming ASEAN Senior Labour Officials Meeting to be held in Vientiane, Lao PDR, on May 12-14, 2009, at which time the Task Force will present civil society's proposal for a Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.

Done in Singapore on April 17, 2009

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

18. The Task Force urges the Member States of ASEAN to immediately ratify all eight core ILO Conventions⁴, and ensure that their national labour laws, especially those laws governing migrant workers, are harmonized with the standards contained in those core ILO Conventions.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

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

financial and other resources, and authority, to undertake this important work.

24. 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.

25. 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.

26. 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.

27. 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.

28. The Member States of ASEAN are urged to ensure that migrant domestic workers are specifically included in coverage of the national labour law.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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

July 31, 2007

Vietnam National Consultation on the Protection and Promotion of the Rights of Migrant Workers

**March 3-4, 2008,
Hanoi, Vietnam**

We, the participants of the Vietnam National Consultation on the Protection and Promotion of the Rights of Migrant workers, recognize the responsibility that every state has to protect, promote and fulfill the rights of migrant workers. We agree that ASEAN, as a self-proclaimed caring and sharing community, should act in a clear and concrete way so that the people of ASEAN who wish to migrate can benefit from a new arrangement that ensure their rights as migrant workers will be protected.

ASEAN has set forth plans for full economic integration of its ten member nations by the year 2015. Clearly, a new arrangement for migrant workers should reflect the fact that in the future a regionally integrated Southeast Asian market means the divisions that continue to separate the work forces of the ASEAN countries will be difficult to maintain. Like all ASEAN states, Vietnam will face an important challenge to protect its own people in an increasingly globalized world where movement of people across borders becomes the norm rather than the exception.

As ASEAN countries continue to grow more economically interdependent, we believe that it is increasingly important for states to adopt people-centered policies and agreements that create opportunities for greater acceptance of the principles of decent work, and respect for economic, social and cultural rights for all workers and their families. We note that national consultations on the protection and promotion of the rights of migrant workers have already been held in Indonesia, the Philippines, and Thailand, and sub-regional consultations have been conducted in Singapore and Malaysia, and we appreciate the value of this important ASEAN regional solidarity in the protection of migrant workers

We note that Vietnam and the Governments of ASEAN, UN agencies, and other stakeholders in the international community have been engaged in preparations to accommodate the challenges of this increasingly integrated and developed ASEAN region. Accordingly, we commend our Government, and the other Governments of ASEAN for promulgating the ASEAN Declaration on the Protection and Promotion of the Rights of the Migrant Workers in January 2007. By this action, ASEAN has demonstrated its commitment to provide a new regional arrangement that is fair and just to all workers.

Although we recognize that the ASEAN Declaration is not a legally binding instrument, it clearly paves the way for new regional framework agreement for migrant workers. We particularly note that Article 22 of the Declaration requires the harmonization of national labour laws with ILO core Conventions, which is also in line with the ILO's Fundamental Principles and Rights at Work. The harmonization of labour laws with ILO standards presumes that legal provisions will be applicable to all persons irrespective of their nationality, thereby providing the principle of national treatment. As a leading member in the United Nations, Vietnam is playing an important role to ensure there is continued priority placed on build-

ing respect for the core ILO Conventions by Governments and civil society alike.

We further reiterate our belief that immediate implementation of the ASEAN Declaration is vitally important for ASEAN. For this reason, we support the decision of the ASEAN Foreign Ministers on July 30, 2007, to set up an ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. However, we are concerned that the progress of the national Governments in establishing focal points to serve on this important ASEAN Committee has been quite slow, since we believe that the earliest possible functioning of this Committee is in the interest of all ASEAN members. We believe that this Committee has very important work that it must take up and therefore the members of the Committee should be named as soon as possible.

We also express our appreciation for the continuous efforts of the CSO-TU Task Force on ASEAN Migrant Workers to assist the efforts to fulfill the promise of this Declaration. We strongly support the efforts of the CSO-TU Task Force on ASEAN Migrant Workers to move forward with its mandate under ASEAN's Vientiane Action Plan to draft a model Framework Instrument on the Protection and Promotion on the Rights of Migrant Workers which will be proposed later to ASEAN for consideration.

We also wish to express our thanks to the Canadian International Development Agency (CIDA) and the CIDA-funded SEARCH regional project for supporting this National Consultation workshop and for their commitment to assisting the Task Force on ASEAN Migrant Workers in its work to expand the protection and promotion of the rights of migrant workers in ASEAN.

We call on the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers to work jointly with the CSO-TU Task Force on ASEAN Migrant Workers, thereby answering the call of the new ASEAN Secretary-General, H.E. Surin Pitsuwan, to support the greater participation and involvement of ASEAN civil society in important matters that affect the welfare of the peoples of ASEAN.

Reflecting this important spirit of cooperation between the Government, trade unions, national organizations, and civil society representatives, we the participants of this Vietnam National Consultation have come together to work on common ideas and recommendations that we hope will inform the Government's agenda to protect and promote the rights of migrant workers.

This National Consultation is particularly valuable because it provides the opportunity for dialogue on common concerns regarding migrant workers between the Government and all key stakeholders. We sincerely hope that this consultation will open more doors for increased communication and exchanges in the future among stakeholders in civil society groups and the Government about the importance of providing decent work and life for all migrant workers.

We sincerely hope that our efforts during this National Consultation will assist the Government in building a manageable and transparent safe-migration process that includes specific steps and procedures for pre-departure training in Vietnam, services and assistance provided in the country of destination by Vietnamese government officials, and policies that will assist returning migrant workers to successfully re-integrate back into Vietnamese society. In both Vietnam and in the ASEAN region, we also believe it is important that existing measures to protect rights of migrant workers will be strengthened and new measures introduced.

We note that all member Governments of ASEAN are now members of the ILO, and as a condition of membership, must recognize the ILO Declaration on Fundamental Principles and Rights at Work. This Declaration obliges recognition of the concept of core labour standards, and many of the Governments in ASEAN have already included a number of these standards in their national labour laws. We encourage all countries in ASEAN to bring their laws into harmony with all of the ILO's core labour standards. We also urge all Governments of ASEAN to ratify the two ILO Conventions (97 and 143) concerning migrant workers. Furthermore, we urge all ASEAN Governments to sign and ratify the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Situation in Vietnam

In 2006, Vietnam's workforce was a total of 45.2 million persons. Vietnam's economy has been creating additional employment opportunities for many of our citizens. During 2006, there were approximately 1.5 million new jobs created that year, of which approximately 60,000 consist of Vietnamese citizens seeking overseas employment in that year.

The total number of Vietnamese migrant workers overseas increased to 300,000 between the years of 2001 to 2005. Now

in 2008, there are more than 500,000 Vietnamese migrant workers who are living and working overseas, deployed in over 40 countries and territories. These workers provide important support for their family members who have remained behind in Vietnam and help contribute to the development of our nation. However, since the number of Vietnam citizens working overseas has increased, we believe there is a need for improved laws, regulations, procedures and systems to protect them.

We recognize and appreciate the fact the government has ratified 5 of the 8 ILO Core labour standards and encourage the government to ratify the remaining conventions. Vietnam has ratified conventions no. 29, 100, 111, 138 and 182. The core ILO Conventions are:

- Freedom of association and collective bargaining (C. 87 and C. 98)
- Elimination of forced and compulsory labour (C. 29 and C.105)
- Elimination of discrimination in respect of employment and occupation (C.100 and C.111)
- Abolition of child labour (C.138 and C.182)

We also appreciate and support the efforts made by Government to place strict limits on recruitment agency fees charged to migrant workers. We also support Government efforts to provide increased skill development for intending migrant workers and to design a credit program for Vietnamese migrant workers. We sincerely hope that the Government will make continuous efforts to expand its important work to protect the rights of migrant workers now and into the future.

Challenges faced by overseas Vietnamese migrant workers:

We note that the ILO Tripartite Committee of Experts meeting in 1997 found that Asian migrant workers were suffering and described their plight as follows: “Malpractices exist where the treatment of migrant workers and members of their family is not in accordance with national legislation or ratified international standards and where such treatment is recurrent, deliberate and involves groups of people rather than merely individuals. Exploitation exists where such treatment incurs very serious pecuniary or other consequences, such as when migrants are charged fees bearing little resemblance to actual recruitment or placement costs, have remittance transfers imposed on them without their voluntary consent, are enticed into employment under false pretences, are made to sign work contracts by go-betweens who know that the contracts will generally not be honoured upon commencement of employment, have their passports or other identity documents confiscated, are dismissed or blacklisted when they join or establish workers’ organizations, suffer deductions from wages without their voluntary consent which they can recuperate only if they return to their country of origin, or are summarily expelled without regard to their rights arising out of past employment, stay or status.”



First Vietnam National Consultation, 3-4 February 2008, Hanoi

In the decade since that statement was made by this highly respected meeting, little has changed in the situation of most migrant workers in the ASEAN region.

Unfortunately, Vietnamese migrant workers are not an exception to this common situation faced by migrant workers from countries all over Asia. We have found some of the following challenges are faced by Vietnamese and other migrant workers in the region:

- weak and limited protection of the rights of migrant workers;
- non-payment of salaries, or workers being paid significantly less than specified by the written contract;
- unsafe working conditions, resulting in frequent injuries, and unhygienic living conditions;
- harassment and abuse specifically directed at women migrant workers;
- high recruitment fees in both the sending and receiving countries, leaving workers with significant debts and impoverishing their families because migrant workers cannot send home sufficient remittances;
- cases of labour contracts being unilaterally changed by the final employer in the country of destination -- but the workers still must pay the recruitment agency high compensation fees or face alleged “breach of the labor contract” if they choose to leave the job;
- frequent seizure of workers’ passport and personal documents by employers or agents;
- in desperation workers are forced to become undocumented, leaving them more vulnerable to becoming victims of trafficking.

RECOMMENDATIONS

To the Government of Vietnam:

The government should take appropriate and prompt measures to ensure the protection of the migrant workers and to meet their basic needs (on the basis of the ILO principles on decent work) in the following ways:

Policies and Actions to Protect Migrant Workers Before Departure from Vietnam

Recruitment of Migrant Workers

- We agree that MOLISA shall continue to be the administrative agency for migrant workers. However, we recommend that local authorities should be empowered particularly in relation to preventing deceptive recruiting practices at the village and commune level.
- The process of granting labor recruitment licenses must be serious and strictly managed.
- There should be continuous monitoring of the activities of migrant recruitment enterprises and prompt action to withdraw licenses of those enterprises which violate the law, or who are judged to not have mandate and capacity to effectively carry out their recruitment activities.
- MOLISA should maintain and continually update a list of recruiting company owners and administrators who have been found to be involved in deceiving and cheating workers. These owners and administrators on this list should not be allowed to be involved in any way with any company licensed to be involved in labor recruitment.
- The Government should ensure that information on the legal process of recruitment, associated procedures, recruitment fees allowed to be charged, and other related information is widely publicized at all levels of society.
- Information on the legal status of labour recruitment agencies, including their mandate, responsibilities and authority should be publicized throughout Vietnam.
- The Government should carry out a study of the experience of other ASEAN countries in adopting and implementing the “one stop service center” approach (meaning to consolidate procedures and services related to registration and administration of migrant workers in one service center, where representatives of all relevant Government agencies are

present).

- A study should be undertaken to develop comprehensive and factual information on the functioning and current practices of the formal and informal labor recruitment agencies in Vietnam. A prominent part of this study should examine the degree to which these recruitment agencies comply with the law.
- The Government should consider establishing a mechanism to record and update data derived from the registration and employment of migrant workers, and maintaining relevant paper-based information and documents as archives. Specifically, the Government should develop a plan that included designating a focal point for this work, identifying the resources needed, providing for training on basic skills for the persons responsible for this work, and ensuring the sustainability of this work.

Contracts of Migrant Workers

- The Government should ensure that all migrant workers receive and agree to a written contract with the employer in the receiving country and that contract should be in both the local language of the receiving country and in Vietnamese. The recruitment agency should be required to provide a copy of each worker's contract to MOLISA so that these contracts can be verified by the Government.
- Each worker contract should include at least the following information:
 - Specific provisions on the type of job, the salary, the position, hours of work, occupational safety and health, and other terms of employment, and other relevant binding provisions designating the rights and responsibilities of the worker and the employer.
- All contracts must be strictly in conformity with both the laws of Vietnam and the laws of the receiving country.
- The terms and conditions of the contracts should be in accordance with ILO core labor standards.

Policies and Support for Migrant Workers

- The Government should ensure that migrant workers are provided with pre-departure training (at no cost to the worker) and an information package before departing Vietnam to work overseas. This training and information package should include at least the following:
 - Information about all relevant laws and regulations in the receiving country
 - Information about the cultural and social customs of the receiving country
 - Contact information about the focal points/complaint desks where migrant workers can file a complaint and receive assistance
 - Information about basic knowledge and skills required in emergency situations
 - Other information, as deemed necessary by the Government
- There should be a system of effective legal aid that specifies measures that should be taken to assist the migrant workers when they lodge complaints about ill treatment and violations of the law.
- The Government should be aware of the vulnerability of female migrant workers in jobs known to have a high level of potential exploitation and sexual harassment such as service sector jobs and domestic work. Special measures should be taken to protect women who choose to enter such employment.
- There should be efforts to increase the resources and strengthen the capacity of agencies (such as the Committee on Managing Vietnamese Workers Overseas) which represents the interests and protect the rights.
- The Government should consider the possibility of creating a "safe migration for employment" program and incorporating this into the teaching curriculum at the University on Labor and other universities.

Agreements between Vietnam and Labor-Receiving Countries in ASEAN

The Government should integrate provisions to protect the rights and interests of migrant workers in the bilateral and multilateral MOUs and agreements that are concluded between Vietnam and other countries.

The Government of Vietnam and the Governments of receiving countries should conduct a training needs assessment among intending migrant workers that will support the development of pre-departure training programs that are practical

and relevant to the workers' needs.

National Laws and Regulations in Vietnam

- For the sake of effective implementation, the Law on Contract-Based Workers Abroad should be further clarified through additional Ministerial decrees and regulations. Ministerial regulations must be simple and specific in order to guide effective implementation of the labor laws regarding the activities of the migrant recruitment agencies.
- There should be Ministerial regulations that specify measures on the protection of migrant workers.
- There should be increased monitoring to ensure the effective implementation of Chapter 3 of the Law on Contract-Based Workers Abroad, and that Law should be strengthened with more severe sanctions against those who violate the Law.
- Further studies should be undertaken to inform next steps that the Government should take to harmonize national labor laws with the ILO core labor standards.
- The Government should conduct a study on the feasibility and desirability of ratifying the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. As part of this process, the Government should conduct consultations with representatives of trade unions, NGOs and mass organizations.

Protection and Support for Vietnam Migrant Workers in Receiving Countries

- There should be a clear focal point to provide prompt protection measures for Vietnamese migrant workers in the receiving countries so that it is clear where and from whom the migrant can ask for support.
- There should be efforts to build effective collaboration among all stakeholders in the receiving country -- representatives of the Vietnam labor recruitment enterprises, the Vietnam Embassy, trade unions and civil society organizations from the receiving country, and the migrant workers -- so that it is clear on the responsibility and procedures to handle cases/issues related to the migrant workers.
- Officials at Vietnamese Embassies and Consulates should receive training and clear policy guidance on the importance of faithfully and diligently implementing policies to protect the rights of migrant workers. These officials should be provided with resources and information so that they can effectively intervene and provide support to migrant workers facing difficulties. Specifically, these officials should be required to reach out to representatives of trade unions, NGOs, and mass organizations in receiving countries to ensure that Vietnamese migrant workers receive prompt and practical support. The Government should establish a system to enable the posting of representative of the Vietnam trade unions overseas in Embassies to help protect the rights of migrant workers.
- The Government should continually request the Governments of receiving countries to implement provisions to protect the rights of the migrant workers that the receiving Governments have committed to protect.
- The Government and the receiving countries with which the Government concluded migrant labor agreements should negotiate general provisions on skill training for Vietnamese migrant workers which grant mutual recognition of skills possessed by the workers.
 - As part of these agreements, the Government and the Government of the receiving country should negotiate and reach a consensus on certain fundamental standards for providing skill training for workers.

To the ASEAN and the Member Governments of ASEAN

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers is an important milestone. To fully realize its goals, the National Consultation firmly believes that there is a need for continued broad based consultations at national and sub-regional levels, especially involving trade unions and civil society organizations.

The National Consultation also believes that ASEAN should take immediate steps to encourage each member Government of ASEAN to immediately appoint their national focal point to the ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers, as called for in the resolution adopted by the ASEAN Foreign Ministers on July 30, 2007. We recommend that these focal points shall be appointed no later than the ASEAN

Labor Ministers Meeting (May 6-9, 2008, in Bangkok, Thailand), and that the full membership of the Committee be formally announced as one of the results of the ALMM.

We urge the ASEAN Senior Labor Officials Meeting (SLOM) and ASEAN Labor Ministers Meeting (ALMM) to also raise for discussion the statements and recommendations of the National Consultations conducted by the Task Force on ASEAN Migrant Workers in 2007 and 2008.

We believe that ASEAN must recognize that there must be a new deal that affords rights to migrant workers regardless of their origin or current documented status. We recommend that this new deal shall be set out in a binding framework and be based on the principle that migrant workers shall be guaranteed national treatment in their conditions of work and life outside of work. We recommend that ASEAN consider using the model Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers (being developed by the Task Force on ASEAN Migrant Workers through the national consultations process) as the basis for developing the binding framework discussed above.

The formulation of the above-mentioned ASEAN Framework Instrument should be done in a way that contributes directly to the harmonization of national labour laws with the eight ILO core Labour Conventions and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

We also believe that because of the very serious problem of human trafficking in ASEAN, especially affecting women and children but also now extending to impact men, we reaffirm the importance of ASEAN's Vientiane Declaration against Trafficking in Persons, Especially Children and Women, adopted in November 2004. Specifically, the National Consultation believes that ASEAN should now firmly implement its decision to "establish a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region", and urge that the network be given the support required to coordinate with governments, employers, trade unions, and NGOs to ensure effective implementation of that Declaration.

In addition, we have the following specific recommendations for ASEAN, and the member Governments of ASEAN:

- ASEAN should establish an office at the ASEAN Secretariat that is responsible for the supervision and evaluation of the implementation of laws and policies relating to the rights of migrant workers.
- ASEAN member governments should sign bilateral and multilateral treaties on migrant workers' rights and establish mechanisms to effectively oversee the implementation of those treaties.
- ASEAN migrant-sending countries should encourage the establishment of networks composed of labor export companies, trade unions, NGOs, and Government offices for the purposes of sharing experiences and helping each other to protect migrant workers.
- ASEAN countries should develop and reach an agreement on the content of a common model labour contract that would be applicable for employment of all migrant workers in all ASEAN states.
- ASEAN countries negotiate and reach agreement on common standard procedures for recruitment, pre-departure, transit, post-arrival briefing, dispute mediation and settlement, and repatriation and reintegration of migrant workers.
- ASEAN countries should agree that the principle of "national treatment" will be applied to all migrant workers.
- ASEAN nations should accord special attention to issues of occupational safety and health affecting migrant workers, and take preventive measures to ensure that workers' health and lives are not endangered as a result of their work.
- ASEAN receiving countries set up socio-cultural community centers for migrant workers in order to improve their lives.

To Trade Unions and NGOs in the ASEAN region

- Trade unions in ASEAN should actively engage and play the key role in the protection of migrant workers regardless their citizenship. They should accomplish this by working to establish effective links and building cooperative relationships between trade unions, NGOs, and community based organizations in the region.
- Trade unions in countries of ASEAN that receive migrant workers should establish units to assist migrant workers, and

set up mechanisms to carry out concrete activities to protect migrant workers working in their countries. Activities should include educating their trade union members to not discriminate against migrant workers, helping build greater social acceptance for migrant workers, and supporting migrant workers in cases where they suffer maltreatment from employers and are involved in labor disputes.

- The Vietnam General Confederation of Labor (VGCL) should work with the Government to ensure that VGCL representatives are posted to countries that receive significant number of Vietnam migrant workers, and ensure that Vietnam migrant workers know that VGCL's support covers workers who may not be VGCL members.
- NGOs and civil society organizations in ASEAN should use their close relationship with local communities to play an important role in the protection of migrant workers, through carrying out activities such as disseminating relevant information and providing them with legal and social education, and working to diminish discrimination by receiving communities against migrant workers.
- NGOs and civil society organizations should link and cooperate closely with each other and with trade unions for the protection of migrant workers in their own countries and other ASEAN countries.
- NGOs and civil society organizations in ASEAN countries that are receiving migrant workers should set up action plans for the protection of migrant workers that include (among other things) providing migrant workers with free legal aid and access to justice, supporting them to raise their voice, assisting migrant workers to organize to protect themselves, and helping them to access to local services..
- For their part, trade union and NGOs in Vietnam should become more actively involved in the activities of regional mechanisms and pro-actively engage with organizations working at the regional level for the protection of migrant workers.

To the Task Force on ASEAN Migrant Workers

- The Task Force should continue its role to coordinate the mechanisms linking trade unions and civil society organizations in ASEAN which are working in the field of protection of migrant workers. This work should include strengthening the capacity of trade unions, civil society organizations and other stakeholders in sending countries to work on the protection of migrant workers.
- The Task Force should expand its network to other trade unions and civil society organizations at the national and regional level in ASEAN countries and for this purpose, the Task Force should seek additional resources.



Second Vietnam National Consultation, Statement Drafting Team, 3-4 March 2008, Hanoi

Task Force on ASEAN Migrant Workers

Subcommittee on Migrant Workers

January 7, 2009

H.E. Sihakak Phuangketkaew
Chairperson
High Level Panel on the Establishment of the ASEAN human rights body
Ministry of Foreign Affairs, Thailand

RE: Forging an effective working relationship between the ACMW and the ASEAN Human Rights Body (AHRB)

Dear Excellencies,

On the important occasion of the meeting of the High-Level Panel in Brunei Darussalam on January 12-15, 2009, the Task Force on ASEAN Migrant Workers (TF-AMW) wishes to take this opportunity to send our sincere wishes for a highly successful consultation. As you may know, the TF-AMW serves as the platform for ASEAN civil society groups working for the effective implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. We strongly support the initiative of ASEAN to provide for the implementation of this Declaration through the operationalization of the ASEAN Committee on Migrant Workers (ACMW).

The reason that I am writing you today is to take the opportunity to sincerely offer some views from the TF-AMW on the importance of forging an effective working relationship between the ACMW and the ASEAN Human Rights Body (AHRB). We understand that this matter may come up for discussion during the meeting in Brunei Darussalam. Our views are based on over two years of work by the TF-AMW in developing a civil society version of the Instrument on the Protection and Promotion of the Rights of Migrants Workers, which we plan to present to ASEAN and the ACMW by May 2009. These issues have been discussed extensively in the TF-AMW process, which has so far held seven national consultations (Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Thailand, and Vietnam) and six regional consultations to encourage the sharing of views and experience of migrant workers and all national stakeholders involved with the migration process.

The TF-AMW sincerely hopes that the HLP will consider creating a Subcommittee on Migrant Workers to operate subordinate to the AHRB. Since the regional nature of intra-state migration in ASEAN is widely recognized (and migration is growing in the region as well as to other ASEAN dialogue partners outside the region), we believe it is important that migrant workers should receive specific recognition and special attention under the planned AHRB. The TF-AMW observes that designing a Subcommittee or other appropriate structure under the AHRB would also help build institutional capacity at the regional level to address migrant workers' issues and concerns.

Should the HLP decide to establish a Subcommittee on Migrant Workers, the TF-AMW would suggest that a clear division of duties for the ACMW and for the Subcommittee should be set out to avoid any duplication or confusion in the roles of these important respective bodies.

It is our understanding that the ACMW, as an inter-government committee, has as its primary role to direct efforts aimed at effective implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. This includes development of an Instrument (as called for in article 22 of the Declaration) that should set out policies and regional structures to protect and promote migrant worker rights. Since the ACMW has only recently held its first meeting in September, the TF-AMW expects that the role and responsibilities of the ACMW may continue to evolve as the Government representatives there undertake their work. The TF-AMW also expects that the ACMW may play a leading role in resolving disputes in interpretation and implementation that may arise between ASEAN member states.

The TF-AMW respectfully submits that a Subcommittee on Migrant Workers could play several important, yet different,

roles from the ACMW which would contribute significantly to building protection for migrant workers in line with the ASEAN Declaration. The TF-AMW recommends that some of the following responsibilities for a possible Subcommittee on Migrant Workers could be considered by the HLP:

1. In the view of the TF-AMW, the proposed Subcommittee on Migrant Workers should engage continuously with the ACMW, civil society groups, and all other relevant stakeholders. As part of this engagement, the TF-AMW believes the Subcommittee should be empowered to receive and send communications (including reports) with civil society organizations and other stakeholders on issues affecting the human rights of migrant workers. The Subcommittee should also be permitted to conduct research into issues facing migrant workers in ASEAN and, as appropriate, develop reports. Activities to promote improved understanding about the rights of migrant workers and the ASEAN Declaration might also be included under these informational and knowledge-sharing areas of work of the Subcommittee
 2. The TF-AMW also supports the concept that the Subcommittee should have the right to receive, review and investigate complaints filed in written communications from ASEAN-based Government departments, employment agencies/employers, trade unions, civil society groups, and of course, individual migrants. The TF-AMW believes it would be important to allow the Subcommittee to publicly issue reports and findings on cases it receives and make recommendations to the AHRB and others for corrective action(s), as appropriate. Of course, the TF-AMW recognizes that final action would have to be decided by the AHRB in any given case and that the Subcommittee would in all cases remain subordinate and beholden to the AHRB.
 3. The TF-AMW recommends that the HLP consider providing the Subcommittee with a role in reviewing reports provided by ASEAN Member Governments (under the reporting requirements of the ASEAN Declaration and Instrument) and making recommendations on Government compliance with the ASEAN Declaration and Instrument. The observations and recommendations made by the Subcommittee should be made in a positive, promotional way and could be conveyed to the ACMW to forward to the concerned Government.
 4. The TF-AMW recommends that Subcommittee could cooperate with relevant international organizations (such as the International Labour Organization [ILO]) with whom ASEAN has already concluded agreements on technical cooperation, to promote increased respect for international labour standards and human rights for migrant workers in the region.
- In terms of membership, the TF-AMW would like to respectfully recommend that the members of the Subcommittee could number between 10 and 14 nationals of ASEAN, experts representing the stakeholders – Government, Employers, Trade Unions and Civil Society, each serving in his/her individual capacity. But of course we also note that the modalities of the Subcommittee would be dependent on those of AHRB, under whose authority the Subcommittee would operate.
- The TF-AMW sincerely hopes that these suggestions are helpful to the HLP in its deliberations. We greatly appreciate your consideration of our views, and we would be happy to provide any additional clarifications or information on our views and our activities.

For more information on the TF-AMW visit: www.workersconnection.org

With sincerest regards and assurances of our highest respect,

Sinapan Samydorai
Convener, Task Force on ASEAN Migrant Workers
Email: samysd@pacific.net.sg
Tel: + 65 9479 1906
Website: www.workersconnection.org

No. 1201.2/ 131
Ministry of Foreign Affairs,
Sri Ayudhya Road,
Bangkok 10400

4 February B.E. 2552 (2009)

Re: Forging an Effective Working Relationship between the ASEAN Committee on Migrant Workers (ACMW) and the ASEAN Human Rights Body (AHRB)

Dear Mr. Sinapan Samydorai,

I would like to refer to your letter dated 7 January 2009, offering some views from the Task Force on ASEAN Migrant Workers (TF-AMW) on how to forge an effective working relationship between the ACMW and the AHRB.

On behalf of the Members of the High Level Panel on an ASEAN Human Rights Body (HLP), I would like to thank the TF-AMW for inputs and suggestions, especially on the creation of a Sub-Committee on Migrant Workers under the AHRB and the division of labour between the Sub-Committee and the ACMW.

I am pleased to inform you that the issue of relationship between the AHRB and other bodies in ASEAN dealing with specific issues of human rights, including the ACMW and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to be established in accordance with the Vientiane Action Programme (VAP), has been in the HLP's radar since the beginning of the drafting process of the TOR of AHRB.

In fact, the HLP have started discussing about the said relationship in the last couple meetings and in our last meeting in Brunei Darussalam on 14-15 January 2009 we had a dialogue with the Chairs and representatives from relevant sectoral bodies, namely the ASEAN Senior Labour Officials' Meeting (SLOM), the ASEAN Committee on Women (ACW) and the ASEAN Senior Officials' Meeting on Social Welfare and Development (SOMSWD), to discuss the possible relationship between them and the AHRB.

From such dialogue, we agreed that these sectoral bodies will closely coordinate with the AHRB in order to ensure the synergy and coherence of ASEAN's efforts for promotion and protection of human rights and for these bodies to ultimately align with the AHRB. Among these developments, please be assured that your inputs will be taken into account in our deliberation on the matter.

As a part of ASEAN's efforts to create a genuine people-centred Community, the HLP is trying to make the establishment of the AHRB as inclusive as possible. Your engagement with us in this process is, therefore, much appreciated and we hope the TF-AMW will continue to engage with the AHRB once it becomes operational.

Yours sincerely,

Sihasak Phuanketkeow

Chair of the HLP

Mr. Sinapan Samydorai,
Convener,
Task Force on ASEAN Migrant Workers,
SINGAPORE.

Task Force on ASEAN Migrant Workers (TF-AMW)

February 25, 2009

H.E. Sihasak Phuanketkeow
Chair, High-Level Panel on the ASEAN Human Rights Body
Ministry of Foreign Affairs, Royal Thai Government
Sri Ayudhya Road
Bangkok 10400, Thailand

Dear Ambassador Sihasak,

I write to sincerely thank you for your letter (No. 1201.2/131, 4 February 2009) to the Task Force, informing us of the developments of the HLP meeting in Brunei on January 14-15, 2009. The Task Force would like to express our sincere appreciation to you and the other members of the HLP for the consideration that our proposal received. We have just completed today a consultation as part of the annual meeting of the Solidarity for Asian People's Advocacies (SAPA) at which the proposal for a Subcommittee on Migrant Workers again received strong endorsement from all of the Task Force's ASEAN civil society and trade union partners.

There was agreement and support for the HLP's approach to involve the other ASEAN organizations handling human rights concerns. Certainly the ASEAN Committee on Migrant Workers (ACMW) should play an important role in helping determine the different duties and responsibilities between the ACMW and a potential Subcommittee on Migrant Workers under the AHRB. The Task Force's members expressed the view that the ACMW and the Subcommittee on Migrant Workers (as proposed by the TF-AMW) could provide complimentary services in protecting migrant workers' rights.

For our part, the Task Force also plans to engage with the ACMW at the appropriate time regarding our ideas on all aspects of the important ongoing task to ensure effective implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

We look forward to continuing our dialogue with the HLP on a potential Subcommittee on Migrant Workers, and answering any questions or providing further clarifications on our ideas regarding the Subcommittee.

I sincerely look forward to continuing this fruitful dialogue with you and the other members of the HLP.

With best wishes and assurances of my highest respect,

Sinapan Samydorai

Convenor – Task Force on ASEAN Migrant Workers

Task Force on ASEAN Migrant Workers (TF-AMW)

March 23, 2009

The Honorable Secretary Marianito D. Roque
Department of Labor and Employment
Manila, Republic of the Philippines

The Honorable Pornchai Yooprayong
Chairperson, ASEAN Committee
on Migrant Workers (ACMW)
Deputy Permanent Secretary
Ministry of Labour
Bangkok, Kingdom of Thailand

Dear Secretary Roque and ACMW Chairperson Pornchai,

On behalf of the Task Force on ASEAN Migrant Workers (TF-AMW), I write to sincerely offer my best wishes for a successful ACMW Workshop on the Scope and Coverage and Rights of Migrant Workers which we understand will be held in Manila on March 26-27. The Task Force would like to take this opportunity to sincerely offer our views to the ACMW for your consideration on this extremely important topic which will guide the work to develop the forthcoming Instrument on the Protection and Promotion of the Rights of Migrant Workers.

As you already know, the TF-AMW is a civil society coordinating mechanism comprised of the major networks of NGOs, trade unions, migrant associations, and community-based organizations working on migration issues at the regional and national levels in ASEAN. The TF-AMW has continuously engaged the ASEAN Member Governments and the ASEAN Secretariat since 2006 in a constructive partnership aimed at bringing forward the voices of ASEAN civil society in support of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. During this process, the TF-AMW has conducted 7 national consultations and 7 regional consultations. In all of the national consultations, representatives of the national Government have been invited and participated in the process. We are now preparing for the 8th national consultation which is tentatively scheduled to take place in Singapore in mid-April.

On the basis of our experience, we believe that to be effective, migration policy must be comprehensive. Specifically, the TF-AMW has found that the most effective policies and laws regulating migration are precisely the ones that include all migrant workers in their scope. This is because there are often barriers in language and comprehension which makes it difficult for migrant workers to fully understand the policies and laws regulating migration. Systems of regulation which cover some migrant workers but not others are frequently a source of serious confusion and difficulties. For this reason, we believe that the scope and coverage of the forthcoming Instrument should be made comprehensive and include all migrant workers and members of their families residing with them.

This principle was affirmed by the ten nations of ASEAN as well as other Asia-Pacific countries in 1999 in the Bangkok Declaration on Irregular Migration, which declared that "Regular migration and irregular migration should not be considered in isolation from each other" and added that "migration, particularly irregular migration, should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination." The Bangkok Declaration committed the signatory nations to an approach that underlines "comprehensive, coherent and effective policies on irregular/undocumented migration have to be formulated within the context of a broader regional framework based on a spirit of partnership and common understanding." We believe that the regional Instrument that the ACMW has been requested to draft should be that "broader regional framework" called for in the Bangkok Declaration.

The TF-AMW respectfully commends to the ACMW the definition of a migrant worker contained in Article 2 of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a

State of which he or she is not a national.” We submit to you that this definition is comprehensive, clear, and concise, and merits your serious consideration.

The TF-AMW respectfully submits that coverage of migrant workers by a regional Instrument should not be affected or determined by the type of work performed by the migrant worker, or the nature of the contract through which she or he is employed. We note that temporary workers, domestic workers, informal sector workers, and self-employed workers comprise a significant number of the migrant workers in the region. Therefore, we believe in order to develop a comprehensive policy, it is important to ensure that these categories of workers, who are often overlooked, are included in the coverage of a regional Instrument.

The TF-AMW also notes that all ten ASEAN Member Governments have ratified the UN Convention on the Rights of the Child (CRC). We further draw your attention to CRC General Comment 6, issued by the Committee of the Rights of Child for effective guidance to countries that have ratified the Convention, which states that all children present on the territory of a Government shall be extended the full protections under the CRC, regardless of status or origins of the child. Therefore, we respectfully state that we believe migrant children should be fully covered, along with the other members of their family, in the provisions of the Instrument to be developed by the ACMW.

Moving to the topic of rights and key principles to be covered by draft regional Instrument, the TF-AMW notes the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers makes the following prominent reference on the importance of international frameworks -- “Recalling also the Universal Declaration on Human Rights adopted and proclaimed by General Assembly Resolution 217(A)(III) of 10 December 1948, as well as other appropriate international instruments which all the ASEAN Member Countries have acceded to, in order to safeguard the human rights and fundamental freedoms of individuals such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.” The TF-AMW supports the vision of the drafters of the ASEAN Declaration because we consider the protection of the women migrant workers, and the children of migrant workers, as important central elements of a comprehensive and efficacious regional Instrument.

To this list, the TF-AMW further calls the attention of the ACMW to the fact that all ten ASEAN nations supported the ILO Declaration on Fundamental Principles and Rights at Work which was adopted unanimously by the ILO in June 1998. The ILO Declaration sets out that the human rights of all migrant workers, regardless of their status, should be promoted and protected in line with the eight core ILO Conventions. Accordingly, we respectfully submit the draft Instrument should be in harmony with these Conventions.

Beyond these core rights and protections, the ACMW respectfully adds that the principle of “national treatment” as exemplified in Article 25 of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families merits serious consideration by the ACMW as it moves forward with its very important work.

Finally, let me add that the Task Force is working closely with our national and regional partners to develop a comprehensive civil society model Instrument in support of the future efforts of the ACMW and the ASEAN Member Governments. We hope to finalize this draft Instrument and present it to the Senior Labour Officials Meeting (SLOM) in Vientiane, Lao PDR in May 2009, and to the ACMW. I will be in further contact with you about the TF-AMW’s draft Instrument in the coming days.

With assurances of my highest respects,

Sinapan Samyodorai

Convener, Task Force on ASEAN Migrant Workers

Task Force on ASEAN Migrant Workers (TF-AMW)

March 27, 2009

The Honorable Pornchai Yooprayong
Chairperson, ASEAN Committee
on Migrant Workers (ACMW)
Deputy Permanent Secretary
Ministry of Labour
Mit-maitree Road, Din Daeng
Bangkok, Kingdom of Thailand

Dear Deputy Permanent Secretary Pornchai,

On behalf of the Task Force on ASEAN Migrant Workers (TF-AMW), I write to express our support and best wishes for the successful efforts of the Drafting Committee of the ASEAN Committee on Migrant Workers (ACMW) which is now starting its all important work to draft an Instrument on the Protection and Promotion of the Rights of Migrant Workers for ASEAN. We greatly appreciate the opportunity to submit our views to the ACMW Drafting Committee meeting on April 1, 2009, in Bangkok, and look forward to holding a continuous dialogue with the ACMW and the Drafting Committee as the process moves forward.

As you already know, the TF-AMW is a civil society coordinating mechanism comprised of the major networks of NGOs, trade unions, migrant associations, and community-based organizations working on migration issues at the regional and national levels in ASEAN. The TF-AMW has continuously engaged the ASEAN Member Governments and the ASEAN Secretariat since 2006 in a constructive partnership aimed at bringing forward the voices of ASEAN civil society in support of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. During this process, the TF-AMW has conducted 7 national consultations and 7 regional consultations. In all of the national consultations, representatives of the national Government have been invited and participated in the process. We are now preparing for the 8th national consultation which is tentatively scheduled to take place in Singapore in mid-April. We are also preparing a regional consultation to take place in Vientiane, Lao PDR to take place around the time of the ASEAN Senior Labour Officials Meeting (SLOM) in May.

The purpose of the TF-AMW's national and regional consultations has been to garner inputs to develop ASEAN civil society's contribution to the ASEAN regional work to protect and promote the rights of migrant workers. The civil society "Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers" is now in its 5th draft, and I attach this for your review. However, let me stress that this draft Framework Instrument is not yet final since the TF-AMW is still incorporating additional recommendations from civil society partners and we anticipate there will be some additional revisions. The TF-AMW plans to finalize our Framework Instrument by May 1, 2009, and we will be requesting the opportunity to present this Framework Instrument at the meeting of the ASEAN SLOM in Vientiane.

While I am sure that the ACMW Drafting Committee will examine our draft Framework Instrument in depth at the appropriate time, kindly allow me to take a moment to provide a brief summary. There are four sections in our draft Instrument focusing as follows:

"Obligations of Labour Receiving Countries."

From the outset, a key recommendation include ensuring that migrant workers are treated in accordance with the core labour standards of the ILO. The Instrument calls for according "national treatment" to migrant workers in terms of wages and conditions of work, and instituting standard contracts for hiring migrant workers throughout the region. The Instrument reaffirms migrant workers' rights to hold their own passports and worker identification and calls for strong penalties against employers and others who seize these documents. Furthermore, the Instrument seeks special attention to the challenges faced by particularly vulnerable migrant domestic workers. Other areas where action is sought include ensuring provision of health care for migrant workers and their families, guaranteeing safe and hygienic accommodation and living

conditions, making certain there are effective systems of inspection, and providing migrant workers with effective access to legal systems and justice.

“Obligations of Labour Sending Countries.”

These are understood to include effective pre-departure training systems and programs. Efforts should also be focused on vocational training and capacity building, especially for the CLMV countries. These elements are part of a larger set of requirements related to deployment of effective systems to regulate migrant workers' departure to work in another country as well as their return and reintegration to their origin country. The Instrument also urges Governments to institute effective accreditation and regulation processes to oversee labour recruitment agencies in order to prevent abuses. Another area for action is to ensure systems of protection for migrant workers, through deployment and pro-active efforts of committed labour attachés or other staff at sending country Embassies in labour receiving countries.

“Joint Obligations of Labour Sending and Labour Receiving States.”

Among the areas where action is recommended is effective regulation of labour recruitment agencies; institution of practical and effective grievance systems that can be used by migrant workers; development of schemes to facilitate the migration of skilled labourers and recognition of their skills; effective suppression of human trafficking; and setting up easy-to-access systems to facilitate transfer of workers' remittances and creation of safe institutions where migrant workers can save their money. Finally, and importantly, the section calls for member states to harmonize their national labour laws with international labour standards.

“Commitments by ASEAN.”

This section discusses administrative requirements, such as reporting and encourages participatory systems that include ASEAN civil society, both at the national and regional level. The Instrument also explores some of the possibilities for future ASEAN systems to protect migrant workers (such as an ASEAN worker ID, hotline, portable insurance). Concerning the forthcoming ASEAN Human Rights Body, the Instrument recommends the creation of an AHRB Subcommittee on the Rights of Migrant Workers. The Instrument lays out systems that could be further developed by ASEAN to manage the responsibility (set out in the ASEAN Declaration on Migrant Workers) for mutual cooperation among ASEAN countries in assisting migration workers from ASEAN when they are toiling in countries that are outside ASEAN.

Obviously, this is just a short summary of civil society's Instrument on the Protection and Promotion of Migrant Workers, which now stretches to 36 pages and 184 articles.

As a representative of ASEAN civil society organizations working on migration matters, the Task Force on ASEAN Migrant Workers looks forward to a process of continuous engagement with the ACMW and the Instrument Drafting Committee. We greatly appreciate the opportunity to present our views, and we stand ready to work closely with you in the coming months to help forge an Instrument that will truly provide the protections to migrant workers throughout ASEAN. Of course, please do not hesitate to contact me if you have any questions about the TF-AMW or the 5th draft of the Framework Instrument that we are presenting today.

With assurances of my highest respects,

Sinapan Samydorai

Convener, Task Force on ASEAN Migrant Workers

Tel: + 65 9479 1906 Fax: + 65 6425 0709

Email: samysd@yahoo.com

<http://www.workersconnection.org>

cc: Members, ASEAN Committee on Migrant Workers

H.E. Surin Pitsuwan, Secretary-General, ASEAN

Task Force on ASEAN Migrant Workers (TF-AMW)

May 12, 2009

Mr. Khamkhane Phinsavanh
Chairman, ASEAN Senior Labour Officials Meeting (SLOM)
Director-General, Labour Management Department
Ministry of Labour and Social Welfare
Vientiane, Lao PDR

Dear Director-General Khamkhane,

The Task Force on ASEAN Migrant Workers (TF-AMW) has the great honor to present to you today the ASEAN civil society Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers for the consideration of the ASEAN Member States and the ASEAN Secretariat. Our proposal is based on the proceedings of two years of intensive consultations that include 8 national consultations and 7 regional consultations in ASEAN with trade unions, NGOs, mass organizations and civil society organizations. We are particularly proud of this effort because the Framework Instrument is derived from a participatory, bottom-up and nationally focused approach. Many of the provisions of the Framework Instrument had their genesis, in whole or in part, in specific recommendations made in national statements resulting from the national consultations conducted by the TF-AMW and its partners.

The TF-AMW strongly supports the commitment of ASEAN to fully implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and pledges to continuously engage with ASEAN as partners on all efforts to bring the promise of the Declaration to full fruition. We view the appointment of an Instrument drafting committee by the ASEAN Committee on Migrant Workers (ACMW) as yet another positive indication of the dedication of the ASEAN Member States to substantively address the need for greater protections for migrant workers. We support the timely drafting of the Instrument by the ACMW and give you our assurance that we will actively participate and engage in this process.

As ASEAN moves towards its goal of economic integration by 2015, it is both important and timely that these processes of protection for migrant workers are now moving rapidly forward. We believe that a mutually beneficial agreement can be reached between the labour sending and labour receiving nations of ASEAN which will ensure that migrant workers are given a fair deal which includes respect for their rights and effective protection mechanisms, in accordance with the vision of ASEAN as a sharing and caring community in which all persons are valued.

The TF-AMW supports an Instrument that encompasses all migrant workers, regardless of documented or undocumented status, sector of work (i.e. informal work and domestic work), or origin. We also recognize that migrant workers often have children and other family members accompanying them, and note that all ASEAN Governments have ratified the UN Convention on the Rights of the Child (CRC) and Convention on the Elimination of Discrimination Against Women (CEDAW). Therefore, we respectfully submit that all migrant workers and their families should be covered by the forthcoming Instrument. The TF-AMW views that the alternative -- which would be an agreement that essentially divides migrant workers into groups of people who are protected and people who are not protected -- is a recipe for confusion and a regulatory morass that will be compounded by the challenges of cross-border engagement to protect their rights. The TF-AMW has the opinion that it is far better to craft an Instrument that offers one clear and comprehensive set of protections to all migrant workers.

In accordance with the ASEAN Charter which sets out the status of ASEAN as a legal organization, the TF-AMW believes that the final Instrument on the Protection and Promotion of the Rights of Migrant Workers which is adopted by the ASEAN Governments should be a legally binding document.

In developing the ASEAN civil society Framework Instrument, which we are proposing today, the Task Force and its national partners have attempted to develop a comprehensive set of ideas and proposals for the consideration of the national officials of the ASEAN Member Governments. We recognize that the document that we have prepared is long and detailed

but this reflects the seriousness with which we have approached this important task to provide the best, most thorough proposal to ASEAN. We entrust our work today to the ASEAN Senior Labour Officials Meeting to provide to the ASEAN Committee on Migrant Workers (ACMW), and other relevant national and regional bodies considering the protection of migrant workers, and look forward to a process of continuing dialogue and engagement with you.

With my highest respect,

Sinapan Samydorai
Convener, Task Force on ASEAN Migrant Workers
Tel: + 65 9479 1906 Fax: + 65 6425 0709
Email: samysd@yahoo.com
Website: www.workersconnection.org

cc: H.E. Surin Pitsuwan, Secretary-General, ASEAN
National Focal Points, ASEAN Committee on Migrant Workers

Task Force on ASEAN Migrant Workers (TF-AMW)

Recommendation to the ACMW meeting in Chaing Rai, Thailand, 28-29 September 2009

Task Force on ASEAN Migrant Workers (TF-AMW) make the following recommendations at the 2nd ASEAN Forum on Migrant Labour (July 30-31), Bangkok, for further deliberation by the ACMW during the Chiang Rai Meeting, 29-31 September 2009.

1. The TFAMW civil society proposals on the the ASEAN Framework Instrument on the protection and promotion of the Rights of Migrant Workers.

The civil society national consultation processes, involving national working groups and continuing interactive feedback from national stakeholders. The processes provided a national platform on issues relating to migrant workers and led to **192 recommendations be considered by the ACMW drafters of the regional instrument.** The recommendations reiterates the value of the human rights approach and respect for ILO core labor standards in the treatment of documented and undocumented migrant workers.

Urged the ACMW to consider and acknowledge the CSO proposal for a comprehensive legally binding instrument.

2. Harmonization of national labour laws and policies to correspond to ILO core Labour standards and UN human rights standards and the need to give attention to specific groups of workers, including domestic workers, to be recognized under national laws.

3. Strengthen social protection mechanisms to be reinforced in work undertaken under the three ASEAN pillars and calls for systematic processes and consultations with Civil Society organizations, including the migrant workers representatives and their organizations.

4. ACMW to consider civil society as partners in the drafting process, to recognize the value of CSO in supporting, monitoring and evaluating the implementation of the framework instrument. Transparent and inclusive processes will further increase the understanding on the value of ASEAN cooperation.

5. ACMW to consider the critical need to protect many migrant workers in vulnerable employment. More needs to be done to recognize their rights to fully protect, to regularize the status of many migrant workers, and to lower the costs of legal migration. Public awareness is essential to create an environment to protect and promote the rights of migrant workers.

Recommendation on Scope and Coverage of the regional instrument

1. All migrant workers and their families, regardless of status and regardless of place of origin, including migrant workers in transit, should be covered by the proposed regional instrument
2. All ASEAN countries should protect their nationals working in countries outside the region
3. Seafarers already covered by the Maritime Labour standards do not need to be covered by the proposed regional instrument but fisher folks that are not covered by the Maritime Labour standards should be covered by the regional instrument
4. The proposed regional instrument should meet the fundamental human rights and labour standards in relevant UN and ILO conventions.

Processes to develop a regional instrument

1. January-March 2010 ACMW Drafting Team to distribute the copy of the first draft to civil society. National consultation on the first draft with the TF-AMW and Civil Society groups.

2. April – May 2010 The Drafting Team to take into consideration the inputs of the national consultations for the second draft. Regional consultation on the second draft with the TF-AMW and Civil Society groups.
3. May 2010 Drafting team to report the second draft and its process anticipating to the SLOM/ALMM
4. 3rd ASEAN Forum on Migrant Labour to focus on the Draft Framework Instrument on the protection and promotion of the rights of migrant workers.
5. September 2010 Drafting team to submit the final draft to ACMW
6. October 2010 The adoption of the framework instrument ASCC meeting + 16th ASEAN Summit (Vietnam)

ASEAN Migrant Labour Forum

1. TF-AMW appreciates the role of the ASEAN Migrant Labour Forum for several contributions:
 - (a) Institutionalization of “broad consultation processes” now reflected in the ASEAN Blueprint on the Social-Cultural Community;
 - (b) Engage a greater number of civil society organizations both national and regional in the processes.
 - (c) Recommend to have a designated regular date and timing for the Forum.
2. TF-AMW as civil society partner will support and facilitate the participation of civil groups especially from national level to engage the ACMW at the ASEAN Migrant Labour Forum.

Yours Sincerely,

Sinapan Samydorai
Convenor – Task Force on ASEAN Migrant Workers
<http://www.workersconnection.org>
Email: samysd@pacific.net.sg, samysd@yahoo.com
Mobile: + 65 9479 1906

Task Force on ASEAN Migrant Workers (TF-AMW)

Taskforce on ASEAN Mechanisms on the Rights of Migrant Workers

CIVIL SOCIETY POSITION PAPER ON AN ASEAN INSTRUMENT ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF MIGRANT WORKERS

10 December 2006

Introduction

Despite more than a decade of talk and commitments on paper, the Association of South East Asian Nations (ASEAN) has yet to establish a regional human rights mechanism which would promote and protect the human rights of all persons in the ASEAN region. Nor does ASEAN have a regional framework to protect the rights of migrant workers and members of their family who are living and working in the region. While accurate numbers of migrants in the ASEAN region are hard to come by, there are an estimated 50 million documented migrants in Asia as a whole (in addition to the undocumented or irregular migrants who rarely appear on official statistics, the often uncounted millions of internal migrants, as well as Asians who move to other continents).

In July 2005, the ASEAN Ministers sought the assistance and support of the Working Group for the ASEAN Human Rights Mechanism in implementing various components of the Vientiane Action Programme (VAP) which focuses on human rights including the “elaboration of an instrument for the promotion and protection of the rights of the migrant workers”. The commitment of ASEAN member States to this instrument was recently re-affirmed at the fifth Workshop on the ASEAN Regional Mechanism on Human Rights in Kuala Lumpur, Malaysia. Importantly, the Workshop asserted “the need to encourage governments to ratify all relevant UN conventions and protocols related to migrant workers, refugees and asylum seekers, and to act on commitments made.”

While it is important to recognize the particular and special protection needs of refugees and asylum seekers who are fleeing serious human rights violation in their countries of origin, the fact remains that in this region refugees and migrants move together in search of security, safety from persecution, economic opportunity, and protection from deficits of development. In the cycle of movement, migrants can be in refugee-like situations as conditions in their home countries deteriorate, and refugees will require the same protections against abusive employers and unsafe conditions at their places of work as migrant workers. Victims of trafficking, whether trafficked for forced prostitution or forced labour, will require protection from and redress for the abuse they have suffered.

Migrants are individual human beings, they have families, and they come from communities. The diversity of migrant populations must be respected and reflected in policy responses to migration, including through providing specific protection to vulnerable, disadvantaged and marginalized groups of migrants, and ensuring that the fundamental principle of non-discrimination guides all policy and practice in relation to all migrants, regardless of their legal status.

Civil society groups propose the following fifteen elements to be included in the ASEAN instrument on migrant workers:

Elements for the Instrument

1. Asserting the fundamental human rights and human dignity of all migrants

All migrants are entitled to protection of their fundamental human rights by the States that they originate from, transit

through and seek to live in. ASEAN states should ratify and effectively implement all conventions that comprise the international bill of rights. These are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This last instrument provides a comprehensive framework to protect the human rights of all migrant workers and their families, irrespective of their legal status.

The fundamental principles of non-discrimination and equality before the law should be at the core of all State policy and practice relating to migrant workers. Migrant workers and their families must be able to enjoy their human rights without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. Any legally permissible distinctions made in the treatment of migrant workers and their families must not interfere with the right of the individual to respect for his or her human rights.

The principle of respect for the dignity of migrants requires states to ensure that all migrants on their territory are able to enjoy their economic, social and cultural rights, including the rights to adequate housing, adequate food and water, health-care, and social security.

ASEAN member States should provide sufficient and practical human rights training to all officials and personnel who will be responsible for the treatment of migrant workers and members of their families.

2. Protecting labour rights and decent work standards for migrant workers

All migrant workers are entitled to protection of their core labour rights regardless of their status in the country of employment. The International Labour Organisation has designated 8 Conventions as core to the protection of the rights of all workers (these are Conventions No.100: Equal Remuneration Convention; No.111: Discrimination (Employment and Occupation) Convention; No.138: Minimum Age Convention; No.182: Worst Forms of Child Labour Convention; No.87: Freedom of Association and Protection of the Right to Organise Convention; No.98: Right to Organise and Collective Bargaining Convention; No. 29: Forced Labour Convention, and No.105: Abolition of Forced Labour Convention.) In addition, ILO Conventions No. 97 Migration for Employment Convention (Revised) and No. 143 on Migrant Workers (Supplementary Provisions) Convention provide specific protection to migrant workers. Convention No. 181: Private Employment Agencies Convention, 1997 is also of relevance to the protection of migrant workers. ASEAN member States should ratify and effectively implement all instruments that provide protection of the labour rights of migrants.

Access to decent work is an essential element of protecting the human rights of migrant workers, and ASEAN member States are urged to provide opportunities to all migrant workers to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

3. Addressing the root causes of non-voluntary migration

Many decisions to migrate for employment are made not truly voluntarily, but as a result of pressures arising from severe economic deprivation, protracted conflicts, environmental crisis, and/or deficits in development. Recognizing this reality, ASEAN member States must address insecurity, discrimination, poverty and maldevelopment, within ASEAN countries and the wider neighbourhood. In particular, ASEAN member States should ensure that adequate plans are put in place, in both rural and urban areas, in a timely manner to achieve poverty reduction and development aims, including the achievement of the targets provided by the Millennium Development Goals.

Migratory movements should be the result of an informed and truly voluntary decision on the part of the individual rather than the result of direct or indirect coercion, including through the denial of fundamental human rights. While a specific protection regime exists for the protection of refugees and asylum seekers, there is a need to recognize that forced displacement in the ASEAN region is often part of broader migratory movements. Countries that produce refugees have the primary responsibility to remove the causes that give rise to forced displacement. ASEAN member States should ensure that they have adequate legislative and administrative systems in place to provide protection of the human rights of refugees and asylum seekers, and should ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

Countries of origin should refrain from policies and practices that seek to “export” migrants en masse without protection of their human rights in order to generate remittance flows or profit from fees. Sustainable development in countries of origin should inter alia be premised on job creation and economic opportunities in the home country, not on compelling people to migrate abroad.

Countries of origin should provide food security, adequate housing and decent work for their citizens, so that they are not forced to migrate as a survival strategy to escape deficits in development, extreme poverty and associated violations of their rights.

ASEAN member States should ensure that migrant workers are provided with information on their human rights, and relevant protection mechanisms to ensure that they are able to enjoy their rights. This information should be provided to them, in a language they understand, prior to their departure.

4. Protecting migrant workers from abuse and exploitation at work

All migrant workers, regardless of their legal status, should be protected from discrimination in employment and occupation. Domestic labour legislation should apply to all migrant workers, in particular in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work.

Specific protections should be established in domestic legislation to protect the labour rights of migrant workers in certain sectors, including agriculture, construction, mining, and the tourism and hospitality industry.

ASEAN member states should ensure that all migrant workers, irrespective of their legal status, are protected from conditions of forced labour, including debt bondage and trafficking. Lack of formal permission to work is a strong indicator of vulnerability to exploitation.

ASEAN member States should put an end to the common practice on the part of employers of arbitrarily and unlawfully withholding, in part or whole, the salaries of migrant workers.

All migrant workers, regardless of their status, should have effective protection of their right to work and should obtain legal recognition and protection as workers. All migrants, regardless of their status should have access to decent working conditions, including humane workload and work hours, safe and healthy work environment, adequate salaries and compensation, and sufficient leisure time and annual leave. ASEAN member States should institute legislative and administrative measures aimed at preventing harassment or violence in the workplace, restriction of movement, debt bondage, forced labour.

ASEAN member States should ensure labour inspection of all workplaces that employ migrant workers, in order to effectively monitor their working conditions and supervise compliance with employment contracts.

5. Holding accountable recruiters and employers of migrant workers

Employers of migrant workers include large transnational corporations and small sub-contractors, factories that employ thousands of irregular migrant workers and private individuals who employ domestic migrant workers in their homes. Recruitment agencies are also important private actors that are involved in violating the human rights of migrant workers. Transnational companies engage sub-contractors to recruit migrant workers, and often turn a blind eye to the human rights situation in which these migrants live and work, using a legal fiction to distance themselves from responsibility for this abuse. Migrant workers often pay significant sums of money to sub-contractors and recruitment agencies for jobs and salaries that do not exist; and on arrival in the country of destination are forced to work off their debt in highly abusive conditions without legally enforceable contracts or work visas.

ASEAN member States should ensure that all employers of migrant workers are effectively held accountable for abuse of the human and labour rights of migrant worker employees. ASEAN member States should practice due diligence to ensure that private actors are not able to violate the rights of migrants with impunity. States should ensure that employers of migrant workers are effectively prohibited from engaging in abusive practices, including holding the passports/identity documents of migrant workers, denying migrant workers the right to freedom of movement, and illegally confining workers in inadequate and abusive living conditions.

ASEAN member States should monitor the practices of recruitment and brokerage agencies to ensure protection of the rights of migrant workers. In particular, recruitment agencies should not be permitted to recruit, place or employ migrant workers in jobs where they will be subject to unacceptable hazards and risks or human rights abuse. Fees or other charges for recruitment and placement should not be borne, directly or indirectly, by migrant workers. Recruitment agencies that violate the human rights of migrant workers should be effectively prohibited from operating, and sanctions should be placed on abusive agencies, including the permanent suspension of operating licences and individual criminal sanction where appropriate.

Corporate codes of conduct that voluntarily bind private corporations to upholding fundamental human rights standards should pay due attention to the needs and particular circumstances of migrant workers employed, directly or indirectly, by the corporation. ASEAN member States should ensure that robust legislation is put in place to protect migrant workers from abuse by employers, whether transnational corporations or national companies.

6. Recognising and protecting migrant domestic workers

The particular vulnerabilities of migrant domestic workers (especially women and children domestic workers) require specific attention, including the fact that their workplace is in the private sphere and, consequently, they live and work in isolation. In addition, the fact remains that there is currently no standard definition of 'domestic work' that is agreed upon by the international community, and consequently limited protection tools have been created specifically for the protection of domestic workers.

ASEAN member States should recognize, in law and practice, domestic work (household work) as work, and accord migrant domestic workers the protection of the law as provided in international labour and human rights standards. Without legal recognition and protection, domestic workers are vulnerable to exploitation and discrimination.

Governments should ensure fulfilment of the specific needs of women migrant domestic workers, including: the right to integrity of their body and soul, free from all forms of physical, psychological, and sexual violence in their workplace and residence; the right to obtain reproductive health services and the right to obtain aid, assistance, and empowerment when they experience violence.

7. Protecting the right of migrant workers to freedom of association and expression

Protection of the right to freedom of association can enable migrant workers collectively to expose human rights abuses perpetrated against them, and to seek redress for such abuses. Freedom of expression is also of fundamental importance to migrants. Many migrants, because of the precarious nature of their situation, are too afraid to speak out for themselves. It is therefore also vital to safeguard the right to freedom of expression for human rights defenders who speak out for migrant workers and their families.

All migrant workers, regardless of their status or sector of work, should be guaranteed their right to freedom of association in both formal and informal networks. Migrant workers should be allowed to form and join trade unions. Those who join trade unions should have the right to hold office and to participate without discrimination in all of the activities of the trade union.

Employers of migrant workers and workers' organizations should ensure that the needs and concerns of migrant workers are effectively integrated into collective bargaining processes and social dialogue.

8. Protecting vulnerable migrants

In the ASEAN region, there are many groups of migrants and individual migrant workers who are particularly vulnerable to human rights abuse, due inter alia to who they are, the work that they do, or their legal status in the country of destination.

Up to half of all global migrants are women, and in some ASEAN countries women constitute more than 70% of migrant workers who are leaving their countries of origin. While for many women, as for men, migration can be an important empowering or emancipating experience, the fact remains that migrant women are particularly at risk of discrimination,

exploitation and abuse, because of their status as women, as migrants, and often as workers in non-regulated and gender-segregated labour markets.

ASEAN member States should ensure that all women migrant workers are protected from abuse, including harassment and intimidation, economic and sexual exploitation, poor working conditions, trafficking, debt bondage and involuntary servitude. States must practice due diligence to protect migrant women against violence and abuse by non-state actors, including hate speech.

Migrant children are especially vulnerable to deception and exploitation, due inter alia to their age or lack of education.

ASEAN member States should ensure that migrant children are not forced into employment, and they should effectively prohibit the worst forms of child labour in relation to migrant children, including trafficking and forced labour.

Ensure that all children of migrant workers, regardless of their status or the status of their parents, are accorded the right to be registered immediately after birth and the right to acquire a nationality, particularly if they would otherwise be stateless.

All children of migrant workers, regardless of their status or the status of their parents, should be guaranteed access to education, particularly free and universal primary education, healthcare, and social services as appropriate.

9. Defending migrants in an irregular situation

Migrants who do not have adequate documentation or find themselves in an irregular situation are at increased risk of human rights abuse. The vulnerabilities of irregular migrants arise principally from a lack of legal status and the fact that most are employed in unregulated informal sectors of the economy. Those committing abuses against irregular migrants are often able to operate with impunity, knowing that these individuals are unable or unwilling to contact the authorities or seek legal redress. In the ASEAN region, there is an inadequate understanding of the scale and complex dynamics of undocumented and irregular migration. There is no dependable statistical data on the numbers and situation of irregular migrants. Compelling persons to migrate in an irregular situation makes them vulnerable to abuse by traffickers and those involved in transnational organized crimes.

ASEAN member States should ensure that the human rights of all migrants on their territory are promoted, protected and respected, irrespective of the legal status of the migrant.

Any deportations of migrants must only be carried out lawfully, in a safe and dignified manner and in humane conditions. All efforts should be taken to prevent migrants being pushed back and forth from one country to another, without being able to access the protection of their national authorities or to access international protection. Penalties for remaining in an irregular manner on the territory of an ASEAN member State must be proportionate, and must in no circumstances subject migrants to torture or cruel, inhuman and degrading treatment including whipping, caning and stoning.

ASEAN member States should adopt and implement legislation and policies to ensure that migrants are not compelled to utilize irregular and dangerous channels of migration. Measures should be instituted to ensure that irregular migrants are not abused or kept silent by threats of denunciation of their presence to the authorities.

10. Protecting the health rights of migrant workers

Health status serves as one of the most tangible indicators of the well-being of migrant populations. Yet, migrants, particularly vulnerable migrants, often live and work in conditions that do not protect their right to the highest attainable standard of physical and mental health. Rather than applying a “surveillance paradigm” that places the blame for her health status on the migrant, ASEAN member States should institute a framework of protection, based on fundamental human rights standards, to ensure the health rights of all migrants, regardless of their status.

ASEAN member States should ensure accessible, affordable and quality health care, counseling and legal services for migrants. States should recognize that mandatory HIV testing is abusive of individual human rights, and should ensure confidentiality of the HIV status of migrant workers and members of their families. Migrant workers and their families should not be obliged to undergo discriminatory or abusive medical examinations.

11. Ensuring the social integration and inclusion of migrants in host countries

ASEAN member states should promulgate robust anti-discrimination legislation in relation to all migrants, including refugees, asylum seekers and irregular migrants. Specialised government departments should be established to promote equality and non-discrimination of migrants. All migrants should be effectively protected, in law and practice, from racism and xenophobia, including violence and hate speech.

The media in ASEAN countries should be provided with training and sensitization to ensure the provision of an accurate and balanced portrayal of migrants. Public education and awareness-raising campaigns regarding the contributions of migrants would aid their integration into the host country.

An important way to facilitate the social integration of migrants in their countries of employment is to enable them to maintain family unity *inter alia* through facilitating family reunification and guaranteeing access to the right to family unity.

12. Linking migration and development

The contribution of migration to the development, including as a priority human development, of countries of origin, transit and destination should be recognized and maximised. At the same time, migrants should not be treated solely as “agents of development” and encouraged or even coerced to migrate in the absence of protection of their human rights. The use of migrants as cheap and unprotected labour, particularly through the guide of schemes such as “trainee”, “cultural exchange” or “seasonal worker” schemes must be avoided. Such methods are not a viable development plan, and leave migrants vulnerable to abuse and exploitation. Remittances are the private money of migrants, often earned at a high individual cost. Any use of remittances for the economic development of the country of origin can only happen with the full and prior informed consent of the migrants themselves. Care must be taken to ensure that the remittances sent home by women migrant workers are not appropriated or misused by their husbands and/or families. Therefore adopting a gender lens in the analysis of remittances’ impact on development is imperative, especially when women are fast becoming a predominant force among migrant workers.

ASEAN member States should ensure a common system of recognition and accreditation of migrant workers’ skills and qualifications to ensure that migrants are able to migrate in dignity across the region, are able to contribute effectively and with dignity to the economy and society of the host country, and are not forced into using irregular migration channels. The system should integrate an appeals process for migrant workers who are denied recognition or accreditation.

ASEAN member States should ensure that temporary labour schemes for migrant workers respond to established labour market needs and are not merely designed to facilitate the movement of expendable migrant labour. Migrant workers employed in temporary labour schemes should be able to enjoy all their human rights, including the right to family life. Host countries should ensure that migrant workers employed under temporary schemes are able to remain on the territory of the state in order *inter alia* to claim unpaid dues or obtain effective legal remedies to violations suffered in the course of their employment.

ASEAN member States should develop financial regulations regarding remittances, including by facilitating accessible financial services, reducing transaction fees, providing tax incentives and promoting greater cooperation between financial institutions that are handling remittances.

13. Ensuring the promotion and protection of rights within migration management

There is an urgent need to address critical gaps in the management of migration, and this requires primarily concerted efforts and cooperation on the part of all key stakeholders; including state agencies (government and law enforcement agencies), independent human rights institutions, civil society organizations, especially those formed by migrant workers themselves and their families and including advocacy NGOs, private agencies involved in the recruitment and placement of migrant workers, as well as employers of migrant workers including transnational corporations. Governments must ensure that migration management regimes do not prioritise bureaucratic interests over the rights of migrants, or further marginalise, exploit and exclude migrants.

All agreements, whether bilateral, regional or multilateral, related to the management of migration, must ensure that they promote, protect and respect the human and labour rights of all migrants. ASEAN member States should ensure that they formulate and implement comprehensive and coherent national migration policies which are in accordance with interna-

tional principles and standards on the protection of migrant workers and members of their families.

ASEAN member States should ensure that all bilateral and regional Free Trade Agreements (FTAs) and Preferential Trade Agreements (PTAs) integrate obligations to protect the human and labour rights of migrant workers and members of their families. ASEAN member States should ensure that the text of all agreements are available in a public depository to ensure transparency and accountability.

Data on migrants and on violations of their human rights remains limited. This lack of information, including the absence of comprehensive and authoritative statistics, has been an obstacle to policy development as well as to effective campaigning for the protection of migrants' rights. There is a need to accurately measure the high market demand for irregular migrant workers in the region. ASEAN member States should attempt to gain accurate data on the presence of migrants on their territories in order to protect and promote the human rights of these individuals. Due attention must be paid to international data protection standards and obligations to protect the right to privacy.

14. Putting in place adequate legislation, administrative measures to protect migrants

ASEAN member States should ensure that effective remedies are available to migrants who have suffered violations of their rights. In particular, states should eliminate impunity for all state and non-state actors who violate the human rights of migrants.

Employers should put in place appropriate and accessible complaints channels through which migrant workers can seek remedies without discrimination, intimidation and retaliation.

ASEAN member States should ensure that embassies and consulates of the country of origin of migrant workers protect the rights, welfare and well-being of all migrants, including ensuring that migrants, regardless of their status, are not subjected to prolonged or indefinite detention.

National Human Rights Institutions, in countries of origin as well as destination, should conduct regular reporting on the human rights of all migrants. National Institutions should establish a dedicated unit within their structures to provide research and analysis on the situation of migrants, and to respond to complaints and inquiries about the national human rights situation of migrants.

ASEAN member States should establish adequate structures and mechanisms to provide facilities for psycho-social recovery, compensation and where appropriate reintegration in their places of origin of abused migrant workers.

15. Establishment of a regional monitoring and complaints mechanism

ASEAN member States should establish an effective monitoring and complaints mechanism within the proposed instrument for the promotion and protection of the rights of migrant workers. Such a mechanism could incorporate regular reporting by States Parties to a body of independent experts on progress and challenges on the implementation of the instrument. The monitoring mechanism would set out benchmarks for measuring progress in the implementation of the different areas covered by the instrument. Clear guidelines should be elaborated regarding the content of reports, in consultation with States Parties. States Parties should elaborate their reports through an open and transparent process, in consultation with relevant national governmental and non governmental bodies.

The monitoring mechanism would be entitled, on the basis of the information received through the reporting system, to issue comments, observations or recommendations on the implementation of the convention, including the identification of capacity building and technical assistance needs. The mechanism could conduct regular fact-finding missions and could include a provision enabling it to receive individual and collective communications and complaints and establishing a procedure to that effect.

In addition, ASEAN member States should consider establishing the office of a Special Rapporteur or Ombudsperson on the Human Rights of Migrants to conduct advocacy and public-awareness activities on the protection and promotion of the rights of migrant workers and their families.

List of Focal Points of the Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

BRUNEI DARUSSALAM

Ms. Hajjah Rosliah Haji Hasbollah
A. Commissioner of Labour
Department of Labour
Ministry of Home Affairs
Bangunan Imigresen dan Buruh, Jl. Menteri
Besar, Bandar Seri Begawan
Phone : +673-2-382 258; 380 256 ext.5100
Fax : +673-2-383244
Email : puteh770@yahoo.com.sg;
wana8505@hotmail.com

CAMBODIA

Mr. Choup Narath
Deputy Director
Department of Employment and Manpower
Ministry of Labor and Vocational Training
#3 Russian Federation Blvd, Phnom
Penh, Cambodia
Phone : +855 16 888 078
Fax : +855 23 72 3592
Email : narathchuop@yahoo.com

Mr. Heng Saroeun
Deputy Chief of Office
Department of International Cooperation
Ministry of Labor and Vocational Training
#3 Russian Federation Blvd, Phnom
Penh, Cambodia
Phone : +855 12 750 832
Email : saroeun_heng@yahoo.com

INDONESIA

Ms. Roostiwati
Head Division of International Cooperation,
Directorate General of Manpower Placement and
Development
Ministry of Manpower and Transmigration
Jl. Jend. Gatot Subroto Kav.51, Jakarta 12950
Phone : +62 21 525 0991
Fax : +62 21 529 02045
Email : roostiwati@nakertrans.go.id

LAO PDR

Mr. Chomyaeng Phengthongsawat
Chief of International Relation and
Cooperation Division
Office of Permanent Secretary
P.O.B.347, Pang Kham Road, Vientiane ,
Lao PDR
Phone : +856 21 911502
Fax : +856 21 213 287
Email : chomyaeng@yahoo.com

Mr. Sourisack Souphanthong
Technical Staff, Division of Employment
Department of Skill Labour and
Employment Department
Ministry of Labour and Social Welfare
Phangkam Rd, PO Box. 347, Vientiane
Phone : +856-21-911502; +856-21-911
505; +856 21 213011
Fax : +856-21-212 387
Email : sourisack@hotmail.com

MALAYSIA

Mdm. Junaidah Kamaruddin
Undersecretary, International Division
Ministry of Human Resources
Level 6-9, Block D3, Complex D
Federal Government Administration Centre
62450 Putrajaya, Malaysia
Tel : +60 3 88865041
Fax : +60 3 88892380
Email : junaidah_k@mohr.gov.my

Mdm. Grace Dairiam
Principal Assistant Secretary
Ministry of Human Resources
Labour Policy Division
Level 6-9, Block D3, Complex D
Federal Government Administration Centre
62450 Putrajaya, Malaysia
Tel : +60388865040
Fax : +60388892380
Email : grace@mohr.gov.my

List of Focal Points of the Committee

MYANMAR**Dr. Than Win**

Deputy Director General
Ministry of Labour
Nay Pyi Taw, Myanmar
Fax : +95-67-404345
Email : dol@mpmail.net.mm

PHILIPPINES**Administrator Rosalinda D. Badoz**

Philippine Overseas Employment Administration
Blas Ople Building, EDSA Cor Ortigas Avenue
Tel : (632) 722 1159
Fax : (632) 724 3724
Email : administrator@poea.gov.ph

SINGAPORE**Ms Jacqueline Poh**

Divisional Director
Workplace Policy and Strategy Division
Ministry of Manpower
Singapore

Tel : +65- 63171001
Fax : +65 - 65340559
Email : jacqueline_poh@mom.gov.sg

THAILAND**Mr. Supat Gukun**

Director, Bureau of International
Coordination Bureau
Ministry of Labour
Mitmairi Road, Din Daeng, Bangkok 10400
Tel : +662-232 1329
Fax : +662-2482027
E-mail : supatg@hotmail.com

(Copy to)

Mrs. Prapaipan Lumchan

Labour Officer
Tel : +662-2321326
Fax : +662-2482027, 6434462
E-mail : prapaipan44@hotmail.com

Ms. Pimpaporn Thitayanun

E-mail : pthitayanun@yahoo.com

VIET NAM**Ms. Le Kim Dung**

Deputy Director General
International Cooperation Department
Ministry of Labor, Invalids and Social Affairs
(MOLISA)
12 Ngo Quyen str., Hoan Kiem, Hanoi
Tel : +84-4-8250653
Fax : +84-4-8254728
Email : ird-molisa@fpt.vn ;
lekirdunqlaw@yahoo.com

Mr. Nguyen Thanh Hai

International Cooperation Department
Ministry of Labour, Invalids and Social Affairs
12 Ngo Quyen street, Hanoi, Vietnam
Tel. +84-4-8250653/8264222/8269532
Fax. +84-4-8254728
Email: nthai1973@yahoo.com

Task Force on ASEAN Migrant Workers

www.workersconnection.org

The Civil Society initiative facilitates engagement and participation in the elaboration of the Instrument on the Protection and Promotion of the Rights of Migrant Workers [VAP 2004-2010] and the implementation of the ASEAN Declaration on the protection and promotion of the rights of the migrant workers [13 January 2007].

The TF-AMW in cooperation with interested Civil Society Organizations and Trade Unions works for the effective implementation of core labour standards, decent working and living standards, and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The Task Force engages in national and sub-regional consultation with space for dialogue among Civil Society, Trade Unions, Employment Agencies, Government officials and Inter-governmental Agencies. The national and sub-regional consultations results in concrete recommendations for national governments, sub-regions, and the ASEAN.

The Task Force through the consultation process facilitates the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers established by the 10 ASEAN member countries. The ASEAN Declaration sets obligation for both the sending and receiving countries, and ASEAN as a region. The implementation of the ASEAN Declaration will overcome exploitation of migrant workers.

Objective:

The Civil Society initiative is set up with the objective to facilitate the promotion, implementation and monitoring of the elaboration of the Instrument on the Protection and Promotion of the Rights of Migrant Workers[VAP 2004-2010] and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers [13 January 2007].

Starting with drafting the civil society ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

Through:

Follow-up the work of the ASEAN Committee for the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

- In cooperation with Civil Society and Trade Unions working on migrant workers' rights through national and sub-regional consultations raise awareness and bring forward recommendations to national governments, ASEAN Committee for Migrant Workers, and the ASEAN Secretariat to consider
- Facilitating the flow of information on the rights of migrant workers through "bottom-up" consultation process that provides space for grass-root participation.

Regional and National Partners - Civil Society Focal Points:

The Civil Society and Trade Union initiative aims at facilitating the protection, promotion, implementation and monitoring of the rights of the migrant workers

Partners and Focal Points agree with the following principles:

1. Are non-governmental / civil society organization / Trade Unions/Mass Organization
2. Agree with the objectives of the Task Force and commit to work towards achieving them
3. Support the effective implementation of the Core Labour Standards, decent working and living standards, and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

4. Support the drafting and implementation of the CS ASEAN Framework Instrument on the protection and promotion of the rights of migrant workers
5. Work on the protection and promotion of the rights of migrant workers through relevant mechanisms.

Regional Partners of the Task Force:

1. Asian Forum on Human Rights and Development
2. Union Network International Asia-Pacific Regional Organization
3. Migrant Forum in Asia
4. Mekong Migrant Network
5. Coordination of Action Research on AIDS and Mobility
6. Asia Pacific Women, Law and Development
7. Southeast Asia Migrant Workers Initiative - Think Centre

National Focal points:

8. Indonesia: HRWG/CIMW/ASPEK
9. Philippines: Center for Migrant Advocacy
10. Thailand: Thai Migrant Working Group
11. Vietnam: Vietnam Lawyer's Association
12. Malaysia: Tenaganita / Aliran
13. Cambodia: Caram-Cambodia
14. Laos: LFTU/GDG/LYU
15. Singapore: Think Centre/HOME/TWC2

The Task Force on ASEAN Migrant Workers is convened by:

Mr. Sinapan Samydorai

Convenor - Task Force on ASEAN Migrant Workers

Website: <http://www.workersconnection.org>

Email: samysd@pacific.net.sg

Mobile: + 65 9479 1906

Task Force on ASEAN Migrant Workers

TF-AMW National Focal Points

Cambodia

Mr. Navuth Ya
Executive Director
CARAM Cambodia
#193 AE0, Street 63, Sangkat Boeung Keng Kang 1,
Khan Chomcar Mon, Phnom Penh, Cambodia 2625
Tel : +855-23-218065
Fax: +855-23-218065
Email: caram.cam@online.com.kh

Indonesia

Mr. Rafendi Djamin
Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG)
Jiwasraya Building Lobby Floor
Jl. R.P Soeroso No 41 Gondangdia, Menteng
Jakarta 10350, Indonesia
Tel: +62-21-3143015, +62-21-70733505
Fax: +62-21-3143058
E-mail: hrwg@hrwg.org
<http://hrwg.org/en>

Laos

Mr. Vongphet Xaykeuyahongtoua
President
Lao Federation of Trade Unions (LFTU)
87 Thanon Lane Xang, Ban Hatsadi Neua,
Muang Chanthaburi, Vientiane, Lao PDR
Tel: 856 (0) 21 212753-4
Fax: 856 (0) 21 212750
Contact Person: Mr. Vilay Vongkhasuem
Email: <Vilay_V@hotmail.com>

NGO Contact person:

Ms. Boutsady Khounnouvong
Gender and Development Group (GDG)
Ban Haisok, PO Box 10820, Vientiane Lao PDR

Tel: +856 021 263 349 or +856 020 7710894

Fax: +856 021 263 349

Email: <boutsady_kh@yahoo.com>

Malaysia

Dr. Irene Fernandez

Executive Director

Tenaganita

Penthouse, Wisma MLS

No.31, Jalan Tuanku Abdul Rahman

50100 Kuala Lumpur, Malaysia

Telephone: (603) 2691.3691/2697.3671

Fax: (603) 2691.3681

Email: <tenaganita@yahoo.co.uk>

<http://www.tenaganita.net>

Philippines

Ms. Ellene A. Sana

Executive Director

Center for Migrant Advocacy

72-C Matahimik Street,

Teachers Village, Q.C. Philippines

Telephone: (632) 920-5003

Fax: (632) 433-0684

Email: cmaphils@pltdtssl.net

<http://www.pinoy-abroad.net>

Singapore

Mr. Sinapan Samydorai

Chairperson

Singapore Working Group on ASEAN

Think Centre Singapore

P.O. Box 640, Teban Garden Post Office,

Singapore 916002

Tel: +65 9479 1906

Fax: +65 6425 0709

Email: samysd@pacific.net.sg

<http://www.thinkcentre.org>

Thailand

Migrant Working Group (MWG) - Bangkok:

Mr. Adisorn Kerdmongkol
Action Network for Migrants
328 Phayathai Road
Rajthavee, Bangkok 10400
Thailand
Tel: +66 8 7887138
Fax: +66 2 216 4463
Email: <adisorn.keadmongkol@gmail.com>

Mekong Migrant Network - Chiang Mai:

Ms. Laddawan Tamafu
MAP FOUNDATION
P.O. Box 7 Chiang Mai University,
Chiang Mai 50202, Thailand
Tel: +66 8 1595 1364
Tel/Fax: +66 (0) 53 811 202
Email: map@mapfoundationcm.org

Burmese Migrants based in Thailand:

Mr. Tin Tun Aung
Federation of Trade Unions – Burma (FTUB)
P.O. Box 1270, General Post Office, Bangkok 10501, Thailand
Phone: 66 2 632 8832
Fax: 66 2 632 8832
Email: tta230@yahoo.com
<http://www.ftub.org>

Viet Nam

Mr. Pham Quoc Anh
President
The Vietnam Lawyers Association
4 Nguyen Thuong Hien Street, Hanoi, Viet Nam
Tel: + 84 4 25 36 71/ 22 89 08
Fax: + 84 4 22 92 22
Email: vla@fpt.vn

NGO contact person:

Vu Cong Giao
School of Law, Vietnam National University
E1 Building, No.144 Xuan Thuy Road
Cau Giay District, Hanoi, Vietnam
Tel: +84.4.37547787
Fax: +84.4.37547086
Email: <giaovc@yahoo.com>
Website: www.vnu.edu.vn/law/

Task Force on ASEAN Migrant Workers

Mr. Sinapan Samydorai

Convenor -Task Force on ASEAN Migrant Workers

Asian Forum for Human Rights and Development (Forum Asia)

Times Square Building, 12 Fl., Room 12-01,

246 Sukhumvit Road, Between Soi 12-14,

Klongton, Klongtoey, 10110 Bangkok, Thailand

Tel: + 65 9479 1906

Fax: + 65 6425 0709

Email: samysd@pacific.net.sg

[http:// www.workersconnection.org](http://www.workersconnection.org)



At the International Conference on Human Rights of Migrants and Multi-cultural Society (Seoul, Korea, 10–12 November 2008. Photo by National Human Rights Commission of Korea).

Dr Bertrand G. Ramcharan Ph.D. Professor of International Law, former Acting UN High-Commissioner for Human Rights (Left) and Mr. Sinapan Samydorai, Convenor, Task Force on ASEAN Migrant Workers (Right).

ASEAN DECLARATION ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS

WE, the Heads of State/Government of the Member Countries of the Association of Southeast Asian Nations (hereinafter referred to as ASEAN), attending the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines:

RECALLING the Declaration of ASEAN Concord II adopted at the 9th ASEAN Summit in Bali, Indonesia, which stipulated the establishment of an ASEAN Community resting on three pillars: an ASEAN Security Community, an ASEAN Economic Community and an ASEAN Socio-Cultural Community;

RECALLING also the Universal Declaration on Human Rights adopted and proclaimed by General Assembly Resolution 217(A)(III) of 10 December 1948, as well as other appropriate international instruments which all the ASEAN Member Countries have acceded to, in order to safeguard the human rights and fundamental freedoms of individuals such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;

RECALLING further the Vientiane Action Programme adopted at the 10th ASEAN Summit in Vientiane, Lao PDR, which provides for, inter alia, the promotion of human rights and obligations to realise an open, dynamic and resilient ASEAN Community;

CONFIRMING our shared responsibility to realise a common vision for a secure and prosperous ASEAN Community by improving the quality of life of its people and strengthening its cultural identity towards a people-centered ASEAN through, among others, measures on the protection and promotion of the rights of migrant workers;

RECOGNISING the contributions of migrant workers to the society and economy of both receiving states and sending states of ASEAN;

RECOGNISING further the sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain;

ACKNOWLEDGING the legitimate concerns of the receiving and sending states over migrant workers, as well as the need to adopt appropriate and comprehensive migration policies on migrant workers;

ACKNOWLEDGING also the need to address cases of abuse and violence against migrant workers whenever such cases occur;

REITERATING that ASEAN should make further progress as a cohesive and caring society committed to enhancing the quality of life and well being of its people, especially those in the vulnerable and disadvantaged sectors;

HEREBY DECLARE AS FOLLOWS:

GENERAL PRINCIPLES

1. Both the receiving states and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries;
2. The receiving states and the sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;
3. The receiving states and the sending states shall take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies; and
4. Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:

5. Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
6. Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
7. Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;
8. Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
9. Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
10. Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

OBLIGATIONS OF SENDING STATES

Pursuant to the prevailing laws, regulations and policies of the respective sending states, the sending states will:

11. Enhance measures related to the promotion and protection of the rights of migrant workers;
12. Ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers;
13. Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin; and
14. Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.

COMMITMENTS BY ASEAN

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:

15. Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
16. Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
17. Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;
18. Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
19. Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;
20. Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;

21. Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and

22. Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

DONE at Cebu, Philippines, this Thirteenth Day of January in the Year Two Thousand and Seven, in a single original copy in the English Language.

For Brunei Darussalam: HAJI HASSANAL BOLKIAH, Sultan of Brunei Darussalam

For the Kingdom of Cambodia: SAMDECH HUN SEN, Prime Minister

For the Republic of Indonesia: DR. SUSILO BAMBANG YUDHOYONO, President

For the Lao People's Democratic Republic: BOUASONE BOUPHAVANH, Prime Minister

For Malaysia: DATO' SERI ABDULLAH AHMAD BADAWI, Prime Minister

For the Union of Myanmar: GENERAL SOE WIN, Prime Minister

For the Republic of the Philippines: GLORIA MACAPAGAL-ARROYO, President

For the Republic of Singapore: LEE HSIEN LOONG, Prime Minister

For the Kingdom of Thailand: GENERAL SURAYUD CHULANONT (RET.), Prime Minister

For the Socialist Republic of Viet Nam: NGUYEN TAN DUNG, Prime Minister

ASEAN Committee on the Implementation of the ASEAN Declaration on Migrant Workers

Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

WE, the Ministers of Foreign Affairs of the Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, Member Countries of the Association of Southeast Asian Nations (ASEAN), hereinafter referred to individually as "Member Country" and collectively as "Member Countries";

RECALLING the purposes of, and the commitments contained in, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Declaration) signed by the Heads of State / Government of the ASEAN Member Countries at the 12th ASEAN Summit in Cebu, Philippines, specifically the mandate to task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community;

RECALLING also the relevant international instruments on the protection and promotion of the rights of migrant workers, which can serve as a basis for enhancing international cooperation in this area;

DO HEREBY STATE AS FOLLOWS:

Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

There shall be established an ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers hereinafter referred to as the Committee.

Purpose of the Committee

The Committee, in accordance with the national laws, regulations, and policies of Member Countries, will serve as the focal point within ASEAN to coordinate the following:

1. Ensuring the effective implementation of the commitments made under the Declaration; and
2. Facilitating the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

Structure of the Committee

The Committee shall:

1. Be composed of one senior representative from each of the Member Countries, as well as a representative from the ASEAN Secretariat;
2. Be assisted by representatives from the concerned government agencies of each member Country;
3. Report to the Senior Labor Officials Meeting (SLOM);
4. Be chaired by the representative of the country that holds the Chairmanship of the ASEAN Standing Committee; and
5. Be provided secretarial support by the ASEAN Secretariat.

Functions of the Committee

Subject to the national laws, regulations, and policies of the Member Countries, the functions of the Committee will be as follows:

1. Explore all avenues to achieve the objectives of the Declaration;
2. Facilitate sharing of best practices in the ASEAN region on matters concerning the promotion and protection of the rights of migrant workers;
3. Promote bilateral and regional cooperation and assistance on matters involving the rights of migrant workers;
4. Facilitate data sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes to protect and promote the rights of migrant workers in both sending and receiving countries;
5. Encourage international organisations, ASEAN Dialogue Partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in the Declaration;
6. Promote harmonisation of mechanisms between both sending and receiving countries that promote and protect the rights of migrant workers to implement the ASEAN commitment reflected in paragraph 17 of the Declaration;
7. Work closely with the ASEAN Secretariat in the preparation of the report of the Secretary-General of ASEAN to the ASEAN Summit; and
8. Work towards the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

ADOPTED in Manila, Philippines, this Thirtieth Day of July in the Year Two Thousand and Seven.

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