

MODULE 5

Towards an ASEAN Regional Instrument on Migrant Workers

Module 4

The ASEAN Commission For The Protection Of Human Rights Of Women And Children (ACWC)

Module 4.1

The ACWC Terms of Reference

- Handout Material 4.1.1
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Introduction to CEDAW and CRC

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Inter-linkage of ACWC with AICHR

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ACWC Procedures

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MODULE 5.1

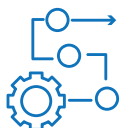
Towards an ASEAN Regional Instrument on Migrant Workers

**Objectives:**

- » To be updated on the progress of the establishment of an ASEAN Migrant Workers' mechanism.

**Knowledge Acquired:**

- » Knowledge on the state of the establishment of an ASEAN mechanism on migrant workers.

**Time:** 1 hour**Material:** Overhead projector**Procedures:**

1. Show the slideshow on the progress of the regional instrument on migrant workers until the ASEAN Consensus.
2. Open the floor for discussion with participants.

**Debriefing:**

- » All issues must start with advocacy at the national level.
- » What are the ways of networking with other similarly affected communities in ASEAN on a regional-level advocacy on common issues?

**Conclusion:**

- » Local and national NGOs must start recognising that AICHR, ACWC, and to a certain extent ACMW are mechanisms that can and should be used as advocacy targets with its limitations.

Handout Material 5.1.1.

2007 January - ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 12th ASEAN Summit, January 2007 at Cebu, Philippines tasks the relevant ASEAN bodies with following up on the Declaration and developing an ASEAN instrument on the protection and promotion of the rights of migrant workers.

2007 July - Manila. AMM-ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) first met. ACMW reports to SLOM (Senior Labor Official Meeting) which supports the ALMM (ASEAN Labour Ministers Meeting). Unlike AICHR and ACWC, this Committee comprises any Ministry of Labour's official from each AMS as appointed by the Ministry.

2008 September - ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) Work Plan prioritises the work along four "thrust areas":

- Step up protection and promotion of the rights of migrant workers against exploitation and mistreatment.
- Strengthen protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries.
- Regional cooperation to fight human trafficking in ASEAN.
- Development of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

2009 (2004 VAP)- "elaboration of an ASEAN instrument of the protection and promotion of the rights of migrant workers," which is replaced by the ASEAN Socio-Cultural Community (ASCC) Blueprint, 14th ASEAN Summit, Cha-am, Thailand.

- Purpose/functions:
- To ensure effective implementation of the commitments made under the Declaration.
- Facilitate/work towards the development of an ASEAN instrument on Migrant Workers.
- Composition: 10 member states.

2009 Drafting Committee - Two sending countries (Indonesia and the Philippines) and two receiving countries (Malaysia and Thailand)

- 1st meeting in Thailand, April 2009.
- 2nd meeting in June, Bali 2009.
 - » TOR/work plan of the Drafting Committee adopted.
 - » Indonesia/Philippines to draft.
- Zero Draft - Preamble, Scope, Obligation of the ASEAN countries, Consultation and evaluation mechanism, General provisions.

ASEAN Forum on Migrant Labour

- ASCC Section C2.ii “institutionalise and convene on a regular basis the ASEAN Forum on Migrant and Labour as a platform for broad-based discussions on migrant labour issues under the auspices of the ACMW”
 - » The 1st AFML was held with the Department of Labour and Employment, Philippines from 24 to 25 April, 2008 in Manila, Philippines.
 - » The 2nd AFML was held with the Task Force on ASEAN Migrant Workers’ (TFAMW) to discuss the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers from 30 to 31 July 2009 in Bangkok, Thailand.
 - » At the 3rd AFML six recommendations were made with emphasis on enhancing awareness and information services to protect the rights of the migrant workers. It took place from 19 to 20 July 2010 in Hanoi, Vietnam.
 - » The 4th AFML made recommendations on the promotion of a positive image, the rights and dignity; and the promotion of strategies for effective return and reintegration, as well as sustainable alternatives for migrant workers. It was held from 24 to 25 October 2011 in Bali, Indonesia.
 - » The 5th AFML was held with the theme “Protection and Promotion of the Rights of Migrant Workers: Towards Effective Recruitment Practices and Regulations” from 9 to 10 October 2012 in Siem Reap, Cambodia.
 - » The 6th AFML carried the theme “Enhancing Policy and Protection of Migrant Workers through Data Sharing, and Adequate Access to the Legal and Judicial System During Employment Including Effective Complaints Mechanisms”. It was held from 26 to 27 November 2013 in Bandar Seri Begawan, Brunei Darussalam.
 - » The 7th AFML carried the theme “Towards the ASEAN Community by 2015 with enhanced measures to protect and promote the rights of migrant workers”. It was held from 20 to 21 November 2014 in Nay Pyi Taw, Myanmar
 - » The 8th AFML carried the theme: ‘Empowering the ASEAN Community through Protection and Promotion of the Rights of Migrant Workers’. It was held from 26 – 27 October 2015 in Kuala Lumpur, Malaysia.
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 - » The 10th AFML carried the theme “Towards Achieving Decent Work for Domestic Workers in ASEAN” and was held from 25 to 26 October 2017 in Manila, the Philippines.
 - » The 11th AFML carried the theme “Digitalization to Promote Decent Work for Migrant Workers in ASEAN” and was held from 29 to 30 October 2018 in Singapore.
 - » The 12th AFML carried the theme “Future of Work and Migration” and was held from 25 to 26 September in Bangkok, Thailand.

- » The 13th AFML with the theme: “Supporting Migrant Workers during the Pandemic for a Cohesive and Responsive ASEAN Community” was held in a hybrid way (offline in Viet Nam, and online with non-Vietnamese delegates) on 10th and 12th November 2020.

2016 - ASEAN Labour Ministers (ALM) Work Programme for 2016-2020 is attuned to the strategic measures of ASEAN Socio-Cultural Community blueprint 2025. Its work programme is focused on two key results areas with corresponding intermediate targets by 2020. These areas are:

Productive Employment, has one thematic area: Governing mechanisms of labour mobility (e.g. recruitment, job placement, reintegration programme).

Expanded Social Protection, has three thematic areas:

Social protection of migrant workers in ASEAN.

Protection and promotion of the rights of migrant workers.

Labour dimension of trafficking in persons.

2017 - The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (ASEAN Consensus) was signed by the ASEAN Leaders during the 31st ASEAN Summit in November 2017. The ASEAN Member States have identified and agreed on the core principles on how to achieve ASEAN’s vision of a caring and sharing community, and the need for concrete interventions by the ASEAN labour ministers to realise the ASEAN Consensus.

2018 November - Action Plan (2018 – 2025) was adopted by the ASEAN Labour Ministers Meeting (ALMM) at the 33th ASEAN Summit. The Action Plan adopted to implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, which has five categories:

- Education/Information
- Protection
- Enforcement
- Recourse
- Reintegration

(Source: Sinapan Samyodrai. Moving Forward: ASEAN Declaration of the Promotion and Protection of the Rights of Migrant Workers. Jakarta. August 24, 2009; The 2008 ACMW Work Plan; The Work Plan of ACMW 2016-2020; The ASEAN Consensus, The Action Plan 2018-2025, [ILO The ASEAN Forum on Migrant Labour \(AFML\)](#))

Handout Material 5.1.2.

**ASEAN CONSENSUS ON THE PROTECTION AND PROMOTION
OF THE RIGHTS OF MIGRANT WORKERS (14 November 2017)**

- Chapter 1** General Principles
- Chapter 2** Definitions
- Chapter 3** Fundamental Rights of Migrant Workers and the Members of Their Families
- Chapter 4** Specific Rights of Migrant Workers Chapter 5 Obligations of Sending States
- Chapter 6** Obligations of Receiving States
- Chapter 7** Commitments of ASEAN Member States
- Chapter 8** Amendments

RECOGNISING further the responsibilities of stakeholders within the entire migration process to the societies and economies of both Receiving and Sending States of ASEAN.

CHAPTER 1**GENERAL PRINCIPLES**

1. To implement the Consensus, ASEAN Member States will act in accordance with the following general principles:
 - (a) Respect for the principles of ASEAN as embodied in Article 2 of the ASEAN Charter;
 - (b) Strengthen the political-security, economic and social-cultural 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 States;
 - (c) Recognise that migrant workers have fundamental rights as stipulated in the applicable international and regional treaties which ASEAN Member States are parties to, in accordance with the prevailing national laws, regulations and policies of ASEAN Member States;

- (d) Uphold the fundamental rights and dignity of migrant workers without undermining the application by the Receiving States of their laws, regulations and policies;
- (e) Uphold fair treatment with respect to gender and nationality, and protect and promote the rights of migrant workers, particularly women, in accordance with the obligations of ASEAN Member States under appropriate international instruments to which they are parties;

In Article 44 concerning family members of migrant workers already residing with them, the obligations of ASEAN Member States under appropriate international instruments to which they are parties shall apply; and

- (f) Pursue a constructive, non-confrontational and cooperative approach to enhance the protection and promotion of rights of migrant workers.
2. This Consensus only covers migrant workers who are documented and those who become undocumented through no fault of their own.

CHAPTER 2

DEFINITIONS

3. “Migrant worker” refers to a person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in a remunerated activity in a State of which he or she is not a national. The applicability of the Consensus to different categories of migrant workers shall be subject to the laws, regulations, and policies of respective ASEAN Member States.
4. For the purpose of this Consensus, an “undocumented migrant worker” is a person who fails to comply with the conditions provided for him or her to legally enter the Receiving State and to stay legally for the duration of employment pursuant to the applicable laws, regulations and policies of the Receiving State. This definition includes a migrant worker who has recently been in employment but is no longer legally employed in a remunerated activity.

This definition of an “undocumented migrant worker” is applied to Articles 56 and 57 of this Consensus.

5. “Sending State” refers to the ASEAN Member State of which the migrant worker is a national.
6. “Receiving State” refers to the ASEAN Member State which hosts migrant workers.
7. “Fair treatment” refers to just and reasonable treatment applied to migrant workers in the workplace with respect to working conditions, safety, and access to recourse in the event of employment subject to the prevailing national laws, regulations and policies of the Receiving State.

CHAPTER 3

FUNDAMENTAL RIGHTS OF MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES

Pursuant to the prevailing national laws, regulations and policies of ASEAN Member States:

8. Migrant workers may be visited by their family members for purposes and length of time that the national legislations, regulations and policies of the Receiving State may allow.
9. Migrant workers have the right to hold their own passports and original government issued work and personal documents subject to laws, regulations, and policies of the Receiving State.
10. Subject to national laws, regulations and policies of the Receiving states, migrant workers have the rights no less favourable than those applied to nationals of the Receiving States when they are committed to prison or placed in custody pending trial or while detained for any other reason.
11. Migrant workers have the right to file their grievances with the relevant authorities of Receiving States and/or seek assistance from their respective embassies, consulates, or missions located in Receiving States.
12. Migrant workers have the right to freedom of movement in the Receiving State, subject to laws, regulations and policies of the Receiving State.

CHAPTER 4

SPECIFIC RIGHTS OF MIGRANT WORKERS

Pursuant to the prevailing national laws, regulations and policies of ASEAN Member States:

13. Migrant workers have the right to access information on matters pertaining to their employment and employment-related conditions from relevant authorities, bodies and/or recruitment agencies of Sending and Receiving States.
14. Migrant workers have the right to be issued an employment contract or proper documentation by relevant authorities/bodies and/or employers with clear and basic terms of employment subject to national laws, regulations, and policies.
15. Subject to national laws, regulations, and policies of the Receiving State, migrant workers have the right to fair treatment in the workplace.
16. Migrant workers have the right to adequate or reasonable accommodation subject to national laws, regulations and policies of the Receiving State.
17. (a) Migrant workers, regardless of gender, have the right to fair and appropriate remuneration and benefits in accordance with the laws, regulations, and policies of the Receiving State.

- (b) If migrant workers leave the Receiving State, they should not lose their rights to benefits arising from their employment in accordance with the national laws, regulations, and policies of the Receiving State.
18. Migrant workers have the right to transfer their earnings and savings in any modes of transfer in accordance with laws and regulations on currency transmission in the Receiving and Sending States.
 19. (a) Migrant workers shall have the right to file a complaint or make a representation under the law relating to labour dispute in the Receiving State against termination of employment and/or breach of an employment contract in the Receiving State and, subject to the national laws, regulations, and policies relating to immigration, be allowed to continue staying in the Receiving State pending the disposal of his or her case.
 - (b) If the decision on appeal is favourable to the migrant worker, he or she shall be entitled to any relief for loss of his or her rights arising from the employment contract.
 20. Migrant workers have the right to join trade unions and associations subject to the national laws, regulations and policies of the Receiving State.

CHAPTER 5

OBLIGATIONS OF SENDING STATES

Pursuant to the prevailing national laws, regulations and policies of the respective Sending States:

21. The Sending State, in close coordination with the Receiving State, will organise a pre departure orientation/education programme, including human and labour rights, general working and living conditions, laws, policies, regulations, culture, norms, and practices of the Receiving State, avenues of assistance in the Receiving State and such other matters as will enable them to comply with administrative or other formalities of the Receiving State.
22. The Sending State will ensure that migrant workers are informed and aware of the terms and conditions of their work through a written employment contract or proper documentation and in language that they understand.
23. (a) The Sending State will set reasonable, transparent, and standardised fees for passport issuance and other relevant documents.
 - (b) The Sending State will likewise take necessary actions to prohibit overcharging of placement or recruitment fees by any parties chargeable to migrant workers in the Sending State.
24. The Sending State will take all necessary actions to simplify the administrative processes for overseas placements such as, but not limited to, "one stop service centre" where appropriate.

25. The Sending State will ensure migrant workers meet the health requirements of the Receiving State before departure.
26. The Sending State will develop a comprehensive reintegration programme for returned migrant workers and their families as well as an employment programme for returned migrant workers taking into account their skills obtained overseas.
27. The Sending State will take the necessary measures to promote better local employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers.
28. The Sending State will ensure the right of returned migrant workers to establish associations, participate in policy making and programmes affecting migrant workers, and to access services for returned migrant workers and their family members in accordance with the national laws, regulations and policies of the Sending State.
29. The Sending State will take appropriate actions against any parties within its territory who willfully destroy, mutilate, tamper, or forge travel, work, or personal identity documents of migrant workers issued by the Sending State.

CHAPTER 6

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing national laws, regulations and policies of the respective Receiving States:

30. The Receiving State will, in accordance with its national legislations, regulations, and policies, protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers.

In doing so, the Receiving State will take necessary and appropriate measures to:

- (a) Ensure fair treatment towards migrant workers; and
 - (b) Prevent abuses, exploitation and violence towards them.
31. The Receiving State will make every effort to issue authorisation for migrant workers to stay and engage in employment for at least the same period of time as they are authorised to engage in the remunerated activity where separate authorisations to stay and engage in employment are required by national laws and regulations.
 32. The Receiving State will in accordance with its national legislations, regulations, and policies:
 - (a) Undertake employer education programmes to explain the procedure for legally hiring a migrant worker;
 - (b) Take appropriate actions against employers who illegally detain migrant workers;

- (c) Take appropriate actions against employers who willfully destroy, mutilate or confiscate a migrant worker's passport and work permit issued by any government agency; and
 - (d) Take appropriate actions against employers who illegally employ migrant workers¹.
33. The Receiving State will take necessary actions to prohibit overcharging of placement or recruitment fees chargeable to migrant workers by any parties in the Receiving State.
- 1 The term "take appropriate actions" in Article 32.b, 32.c, and 32.d was understood by ASEAN Member States as a broader term that may include "penalisation."*
34. The Receiving State will, through its relevant authorities or bodies, ensure that migrant workers are provided with adequate information within a reasonable timeframe among others of their rights and responsibilities, occupational safety and health measures, avenues of assistance after their arrival in accordance with the labour laws, policies and regulations, and customs and traditions of the Receiving State.
35. The Receiving States will promote harmony and tolerance with the view of providing the conditions under which migrant workers are able to integrate with local communities as well as their religions, and customs and traditions subject to the national legislations, regulations and policies.
36. (a) The Receiving State will issue regulations or guidelines prescribing the terms and conditions of employment that must be included in employment contracts or proper documentation for migrant workers in accordance with the legislations, regulations, and policies of the Receiving State.
- (b) The Receiving State will ensure that migrant workers are provided with a copy of employment contracts or proper documentation for their work in accordance with the applicable legislations, regulations, and policies of the Receiving State.
- (c) The Receiving State will regulate the employment of migrant workers by ensuring that clear employment terms and conditions, such as wages, employment benefits, working conditions, health and safety, employment dispute mechanisms and repatriation are provided in national laws, regulations, contracts of employment, or other appropriate documentation.
37. The Receiving State will ensure that migrant workers are provided with fair and appropriate remuneration and other benefits in accordance with the applicable national legislations, regulations, and policies of the Receiving State.
38. The Receiving State will in accordance with its national legislations, regulations, and policies, provide migrant workers the right to join trade unions and associations.
39. The Receiving State will, in accordance with its national legislations, regulations, and policies, ensure that migrant workers are provided with adequate or reasonable accommodation.
40. The Receiving State will, in accordance with its applicable national legislations, regulations and policies, provide fair treatment to migrant workers in respect of:

- (a) Working condition and remuneration;
 - (b) Occupational safety and health protection;
 - (c) Protection from violence and sexual harassment; and
 - (d) Gender and nationality in the workplace.
41. The Receiving State will provide migrant workers with access to adequate medical and health care in accordance with the applicable laws, regulations and policies of the Receiving State.
 42. (a) The Receiving State will facilitate migrant workers with access to legal recourse and assistance, including language interpretation if necessary, when they become victims of discrimination, abuse, exploitation and/or violence in accordance with the national laws, regulations, and policies;
 - (b) The Receiving State will facilitate the exercise of consular functions by consular or diplomatic authorities of the Sending States when a migrant worker is arrested or committed to prison or custody or detained in any other manner under the laws, regulations, and policies of the Receiving State and in accordance with the Vienna Convention on Consular Relations of 1963.
 43. The Receiving State will protect the employment rights of migrant worker during repatriation including ensuring the compliance with the applicable/relevant repatriation processes of the Receiving State upon termination of employment contract/work pass.

CHAPTER 7

COMMITMENTS OF ASEAN MEMBER STATES

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member States in accordance with the national laws, regulations, and policies, will:

44. 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;
45. Consult and cooperate with a view to promoting decent, humane, productive, dignified and remunerative employment for migrant workers;
46. Endeavor to recognise an employment contract containing the terms and conditions of employment;
47. Collaborate in promoting human resources and skills development of migrant workers;
48. Collaborate to take concrete measures to prevent and eliminate any illegal or clandestine movement involving migrant workers and employment of migrant workers in an irregular situation, with due regard to the safety, welfare, and access to justice of migrant workers;

49. Collaborate to raise public awareness and disseminate accurate information on labour migration;
50. Enforce laws, regulations and policies related to the protection of migrant workers including those related to labour intermediaries within the jurisdiction of each ASEAN Member State;
51. Licence, regulate, and supervise public and private recruitment agencies with a view to eliminating recruitment malpractices and to ensuring compliance with the law, regulations, and policies of the respective ASEAN Member States. In doing so, ASEAN Member States will adopt effective measures to eliminate malpractices in the recruitment system;
52. Take measures to ensure effective prevention and suppression of smuggling and trafficking in persons, establishment and implementation of systems to identify victims, stiffer penalties for those who are involved in these activities, and provision of support for victims;
53. Facilitate information sharing through development or strengthening of their respective database and information systems on matters relating to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both Sending and Receiving States;
54. Enhance cooperation aiming at:
 - (a) Building capacity and sharing of information including on laws, regulations, policies, and practices in relation to protection and promotion of migrant workers' rights and welfare;
 - (b) Encouraging constructive dialogue, consultation, cooperation, and regular exchange of information, for the purpose of effective enforcement of policies and programmes concerning migrant workers;
55. Cooperate and coordinate to extend assistance to migrant workers who are caught in conflict or crisis situations in the Receiving States through the services of Embassies and Consular Offices of the Sending States and authorities in the Receiving State;
56. For humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;

Nothing shall be interpreted as implying the regularisation of the situation of undocumented migrant workers;
57. Take measures to prevent and curb the flow of undocumented migrant workers and explore cooperation and coordination among ASEAN Member States in providing assistance to those who are in need of protection subject to prevailing national laws, regulations and policies of ASEAN Member States;
58. Encourage collaboration with ASEAN Dialogue Partners and other countries, international organisations, and other stakeholders in respecting the principles and taking measures to protect and promote the rights of migrant workers as contained in this Consensus;
59. Develop, through the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), an action plan

based on consensus to protect and promote the rights of migrant workers as reflected in the Consensus, report the progress of implementation of the Consensus and its action plan to the ACMW, and may share best practices including those from the existing bilateral engagements between ASEAN Member States. The progress of the implementation of this Consensus and its corresponding action plan will be subject to review by ACMW;

60. Endeavour, through ACMW, to resolve peacefully all disputes which concern the interpretation of this Consensus in a timely manner through good offices and consultation in the spirit of the ASEAN Charter.

CHAPTER 8

AMENDMENTS

61. Any Member State may propose amendments to this Consensus.
62. Proposed amendments to this Consensus shall be submitted by the ASEAN Coordinating Council by consensus to the ASEAN Summit for its decision.

Handout Material 5.1.3.

The ASEAN Forum on Migrant Labour

The ASEAN Forum on Migrant Labour (AFML) is a regional tripartite platform to discuss issues faced by women and men migrant workers from and within ASEAN.

The ASEAN Forum on Migrant Labour (AFML) is an open platform for the review, discussion and exchange of good practices and ideas between governments, workers' and employers' organisations, and civil society on key issues facing migrant workers in Southeast Asia. Each year the Forum develops recommendations to advance the implementation of the principles of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. AFML is hosted by the current chair of ASEAN with support from the ASEAN Secretariat, and inputs from ILO, IOM, UN Women and the Task Force on ASEAN Migrant Workers (TF-AMW). TF-AMW comprises trade unions, human rights and migrant rights non-governmental organisations, and migrant worker associations. It is aimed at supporting the development of a rights-based framework for the protection and promotion of the rights of migrant workers, in line with ASEAN's Vientiane Action Plan.

As a background, one of the four areas of cooperation identified during ACMW's first meeting in Singapore in 2008 is the strengthening protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries. One activity recommended to realise this is to organise an "ASEAN Forum on Migrant Labour".

Thus far there have been 13 AFMLs, the last held on 12 November 2020 in a hybrid offline and online forum discussing the theme of "Supporting Migrant Workers during the Pandemic for a Cohesive and Responsive ASEAN Community". Previous AFML events include:

[The 12th AFML](#) carried the theme "Future of Work and Migration" and was held from 25 to 26 September in Bangkok, Thailand.

[The 11th AFML](#) carried the theme "Digitalization to Promote Decent Work for Migrant Workers in ASEAN" and was held from 29 to 30 October 2018 in Singapore.

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The 4th AFML made recommendations on the promotion of a positive image, the rights and dignity; and the promotion of strategies for effective return and reintegration, as well as sustainable alternatives for migrant workers. It was held from 24 to 25 October 2011 in Bali, Indonesia.

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The 1st AFML was held with the Department of Labor and Employment, Philippines from 24 to 25 April, 2008 in Manila, Philippines.

(Source: International Labour Organization, Triangle in ASEAN. Accessible at: https://www.ilo.org/asia/WCMS_214213/lang-en/index.htm)

MODULE 5.2.

Introduction to the Convention on the Protection of Migrant Workers and Their Families (CMW)



Objectives:

- » To familiarise participants with the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO resolutions/conventions.
- » To identify various levels of ASEAN members' commitment to international instruments on the protection of migrant workers.



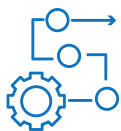
Knowledge Acquired:

- » Familiarisation with relevant international documents on migrant rights.



Time: 1.5 hours

Material: Overhead projector



Procedures:

Part 1: (40 minutes)

1. Divide the participants into three groups.
2. Each group will depict through roleplay a story of migrant workers in a different industry:
 - (i) Construction
 - (ii) Domestic help
 - (iii) Factory
3. Give each group 10 minutes to prepare their short three minute drama on the human rights violations that occur regularly in these sectors.
4. Each group's presentation should be able to elicit questions from the audience about the reality in the country or area they come from.
5. To close the discussion, reiterate how vulnerable migrant workers have become in their destination countries due to lack of legal protection. Because of this, they are easy targets of exploitation.

Part 2: (45 minutes)

6. Each participant is given a copy of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
7. Participants then look at international standards that are in place to protect migrant workers. List as many as possible.
8. After completing the list, distribute the Status of Ratification table to see how many countries in ASEAN are party to this convention.
9. Discuss the importance of all governments ratifying this convention and ask participants to identify reasons why some countries do not want to ratify this treaty.



Debriefing:

- » Migrant workers' issues are a major human rights issue affecting millions in ASEAN.
- » CSOs must be familiar with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



Conclusion:

- » The exploitation of migrant workers is deeply rooted in the socio-economic and political structures of the country and the world. It is important to be aware of this analysis.
- » As there is no hierarchy human rights, national CSOs cannot feign ignorance or lack of resources in not being involved in migrant workers issues

Handout Material 5.2.1.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families : <http://www2.ohchr.org/english/law/cmwh.htm>

Status of ratification: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&_mtdsg_no=IV-13&chapter=4&lang=en

Ratification of CORE Labour Standards

The problem is ineffective implementation!

Country	FOA/CB		Forced Labor		Discrimination		Child Labor	
	Conv.87	Conv. 98	Conv.29	Conv. 105	Conv. 100	Conv.111	Conv.138	Conv.182
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006
Indonesia	1998	1957	1950	1999	1958	1999	1999	2000
Laos			1964		2008	2005	2005	2005
Malaysia		1961	1957	den.	1997		1997	2000
Myanmar	1955		1955				2020	2013
Philippines	1953	1953	2005	1960	1953	1960	1998	2000
Singapore		1965	1965	den.	2002		2005	2001
Thailand			1969	1969	1999	2017	2004	2001
Viet Nam		2019	2007	2020	1997	1997	2003	2000

Source: Sinapan Samydorai. Moving Forward: ASEAN Declaration of the Promotion and Protection of the Rights of Migrant Workers. Jakarta. August 24, 2009.

What are the Human Rights of Migrant Workers?

All persons, regardless of their nationality, race, legal or other status, are entitled to fundamental human rights and basic labour protections, including migrant workers and their families. Migrants are also entitled to certain human rights and protections specifically linked to their vulnerable status.

- The human rights of migrant workers and their families include the following universal, indivisible, interconnected and interdependent human rights:
- The human right to work and receive wages that contribute to an adequate standard of living.
- The human right to freedom from discrimination based on race, national or ethnic origin, sex, religion or any other status, in all aspects of work, including in hiring conditions of work, and promotion, and in access to housing health care and basic services.
- The human right to equality before the law and equal protection of the law particularly in regard to human rights and labour legislation, regardless of a migrant’s legal status.
- The human right to equal pay for equal work.
- The human right to freedom from forced labour.

- The human right to protection against arbitrary expulsion from the State of employment.
- The human right to return home if the migrant wishes.
- The human right to a standard of living adequate for the health and well-being of the migrant worker and his or her family.
- The human right to safe working conditions and a clean and safe working environment.
- The human right to reasonable limitation of working hours, rest and leisure.
- The human right to freedom of association and to join a trade union.
- The human right to freedom from sexual harassment in the workplace.
- The human right to protection during pregnancy from work proven to be harmful.
- The human right to protection for the child from economic exploitation and from any work that may be hazardous to his or her well-being and development.
- The human right of children of migrant workers to education.
- The human right of migrants and their families to reunification.

Source: <http://www.pdhre.org/rights/migrants.html>

MODULE 5.3.

Understanding Government Resistance to UN CMW in ASEAN



Objectives:

- » To map government reservations or opposition in implementing the human rights standards for migrant workers.
- » To develop/formulate CSO responses to government resistance towards human rights protection.



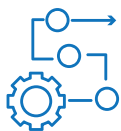
Knowledge Acquired:

- » To familiarise oneself with the political manoeuvres of governments protecting the rights of migrant workers.
- » To generate critical ideas on how to effectively respond to government tactics.



Time: 1.5 hours

Material: About 400 pebbles or similar small objects



Procedures:

1. Divide participants into four groups: migrant workers, local workers, employers and government. Migrant workers are given 10 pebbles each, local workers 30 pebbles, employers 150 pebbles and the government 200 pebbles. The pebbles represent money. The rule of the game: no one is allowed to take any pebble apart from the ones given to them.
2. The groups will then trade in a “market place”, starting with employers trying to employ workers, with local workers being a bit more expensive than migrant workers. The government regulates this trade by making rules, and using its money. It can also make more money from taxes.
3. Let the activity go on for 10 minutes and then at the end, see who is working for whom, and how much money each group made.
4. In the plenary ask
 - Who got a raw deal and who benefited the most?
 - What was the role of the government in addressing difficulties?
5. Then list on a flipchart the economic and political reasons of governments in opposing the protection of migrant workers.
6. Ask the participants for creative ideas that can help penetrate the defensive shields of government and to better address migrant workers issues.



Debriefing:

- » There are profit-based economics behind the decision to rely on migrant workers.
- » There is a need to understand the region better and ask why many workers are leaving their country and family in search of better jobs.
- » Over time, the migrant workers’ labour force has become increasingly integrated into society, which the government also relies upon.



Conclusion:

- » Despite government refusal, CSOs must coordinate their efforts nationally and regionally to highlight the plight of the migrant communities.
- » There is a need to find more innovative ways to get the government to protect migrant workers.

Handout Material 5.3

Obstacles to Ratification

The obvious question is why, in comparison with other UN Conventions, the ICMW took so long to come into force and still does not enjoy widespread support among UN member states. Few states have provided explicit reasons for their stance but several general reasons have been suggested by recent analysts:

- The ICMW is seen very much as a successor to the ILO Conventions which themselves have not enjoyed universal support.
- Within the UN, the Convention was always seen as marginal since it did not relate easily to any of the six core UN Conventions.
- Some migrant-sending states were concerned about the treatment of their citizens in other countries and could see advantages in ratification. Mexico, Morocco and the Philippines all quickly ratified. Migrant-receiving states almost unanimously failed to ratify.
- The distinction between ratifying and non-ratifying states broke down along developed developing country lines. No developed countries ratified the Convention and none of the major industrial states of Europe and North America.
- Migrants have rarely been seen as a marginal group in need of the same kinds of protection as other vulnerable groups (children, refugees, torture victims etc.).
- Migrants are generally seen in negative terms more as a threat to citizens' rights than as people in need of protection from citizens, employers and receiving states.
- The increase in undocumented or irregular migration worldwide has become a major focus of attention among many states. Many states view undocumented migrants as criminals, if not a direct threat to social order and the provision of services to citizens. Xenophobia is growing worldwide and this is not a conducive climate in which to argue for or make commitments to, as the ICMW recommends, rights for migrants of any kind, let alone rights for undocumented migrants.
- Countries that did not send or receive many migrants have obviously had little interest in the ICMW. That situation has begun to change with the globalisation of migrant movements.
- The Convention is sometimes seen as outdated, even by its supporters. As Pecoud and de Guchteneire (2004) note: "the Convention was thought of in the seventies, drafted in the eighties and was open for ratification in the nineties." However, a good convention should stand the test of time and become more, not less, relevant.
- Migration has become ever-more globalised with more and more states sending or receiving migrants or both. Sending states that might once have ratified the ICMW are less likely to do so as they become recipients of migrants. Indeed, rather than seeing the ICMW as more necessary, states seem increasingly threatened by it.

- While many states have diasporas, many migrants have gone as individuals rather than under organised recruitment schemes. States have not traditionally seen those who leave as a positive light and have not been concerned about what happens to them after they leave.
- The ICMW is viewed by some states either as offering rights that are either contradictory to those well-established in domestic law and constitutions, or as simply duplicating rights that are already well-entrenched.
- Some states might be in agreement with parts, or even the larger part, of the ICMW but do not wish to ratify certain principles. The Convention, by nature, is an all or nothing package. In other words, some states undoubtedly rejected the package because they disagreed with some of its principles.

(Source: Vincent Williams, Jonathan Crush, Peggy Nicholson. Southern African Migration Project, The UN Convention on the Rights of Migrant Workers: The Ratification Non-Debate. Policy Brief No. 21 Series Editors: Jonathan Crush and Vincent Williams. September, 2006.)