

## **ASEAN Community Should Ensure Human Rights Protection of People in Migration**

**Statement issued by the 8<sup>th</sup> Regional Consultation on ASEAN and Human Rights: Migration and Human Rights in ASEAN  
Kuala Lumpur, 17 & 18 August 2015**

In Malaysia's term as the chair of ASEAN, civil society organizations in the ASEAN region met for the 8<sup>th</sup> Regional Consultation on ASEAN and Human Rights, in Kuala Lumpur on 17 & 18 August 2015. At least 60 participants from civil society organizations from national, regional, and international organizations met to discuss a specific topic, dedicated this year to Migration and Human Rights in ASEAN.

The discussion covered a range of issues surrounding migration in the ASEAN region, including sharing of advocacy initiatives towards ASEAN institutions, particularly those relevant to human rights and migration, namely: the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), and the ASEAN Committee on Migrant Workers (ACMW).

The meeting was organized with the following key objectives: to identify and map the scope of the human rights issues which migrants and refugees in ASEAN currently face; and to provide a platform for human rights dialogue among CSOs, the existing ASEAN human rights mechanisms namely the AICHR and the ACWC, National Human Rights institutions, and other relevant actors which roles are important in ensuring better promotion and protection of human rights in the ASEAN region.

Workers, farmers, including migrant workers, who produce food and generate the products and services that enable the ASEAN member countries to live and thrive, compose the great majority of people of ASEAN. In contrast, the community blueprints of ASEAN are predominantly promoting the business and investment agenda, free trade agreements and the use of workers, particularly migrant and women workers, to provide cheap and flexible labour. This model has resulted in the individual ASEAN countries' unsustainable and unjust wages, unsafe and unhealthy working conditions, abuses, violence, and mistreatment of workers, particularly migrants/refugees and women workers.

The policies of globalization, advanced by ASEAN, have also driven increasing numbers of Southeast Asian women to migrate in search of economic and/or personal security and to seek refuge. Women comprise approximately 50% of migrant workers in ASEAN. Majority of the women migrant workers come from Philippines, Indonesia and Laos. Women in migration are more likely to migrate into exploitable, low-paid, informal work, with domestic work being a large form of employment for women migrant workers in the region. They are also more likely to be vulnerable to human trafficking and modern day slavery.

ASEAN member states have failed to provide women and workers in general with decent work and livelihoods in their own communities and instead encourage policies that drive down wages and provide unsafe working conditions. This endless pursuit of cheap labour for the growth of profits for the world's obscenely wealthy and corporate elites, maintains an unequal balance of power, which has to be condemned. Despite repeated commitments by all member states to respect, and protect the full the rights of women migrant workers, they are denied equal labour rights, decent living wages, safe working conditions, time off, sick leave, maternity leave and other relevant rights and fundamental freedoms; instead they are often enslaved through debt and denied the right to change employers or industries.

These restrictions are clear attempts to ensure a supply of exploitable labour and deny decent work for all who live in ASEAN.

It is incumbent to acknowledge the risks involved in marriage migration, which poses significant socio-economic challenges, especially when women migrate and find themselves in vulnerable situations with risks of abandonment, abuse and violence, even creating a situation of dependency and exploitation and the risk of becoming undocumented. Often women, spouses, and family of migrants, particularly children, are unaware of their rights and this is compounded by their denied access to legal and protection services.

The consultation also discussed the human rights of forced migrants/asylum seekers and refugees and the complexity of mixed migration in this context. Southeast Asia hosts a large number of refugees, asylum seekers, internally displaced persons (IDPs) as well as stateless persons. On-going and emerging conflicts, as well as discrimination and persecution in Southeast Asia and outside the region, are the primary drivers of displacement and forced migration, leaving people vulnerable to being exploited and trafficked.

The ASEAN region is also characterised by increasingly complex mixed migration flows – labour migrants and forced migrants increasingly make use of the same routes and means of transport to get to an overseas destination. The desperation and lack of safe migration channels drives people into the hands of people smugglers/human traffickers and puts them at risk of taking dangerous journeys. ASEAN is a key region to understanding the elements of modern day slavery and human trafficking but also a key region where we can provide leadership in combatting and .

The on-going state sponsored persecution of the Rohingya in Myanmar that has led to this population undertaking risky journeys, highlights the urgent and immediate need to address root causes of forced migration rather than merely the symptoms of it. This includes bringing an end to systematic discrimination against Rohingya in Myanmar, lifting restrictions on basic freedoms including the freedom of movement, and ensuring immediate and unfettered access to humanitarian aid, as well as implementing longer term strategies achieved through dialogue with affected communities themselves and CSOs working in partnership with them. If this is not made a priority, the consequences will be catastrophic for the region and highlight ASEAN's unwillingness or inability to forstall a preventable humanitarian disaster..

In host and destination countries, there is a gap of legal frameworks that puts forced migrants in a legal limbo leaving them vulnerable to arrest, deportation and immigration detention as well as prevents them from accessing their basic rights. The majority of the ASEAN states have not ratified international refugee law instruments (such as the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol) nor do they have any national frameworks in place. To date, there is also no regional framework that manages forced migration flows and provides adequate protection. States continue to increasingly look at protection from a border control, national security and criminalisation perspective.

### **Recommendations**

Based on the assessment above, in order to mitigate the impact on migration trends and also to ensure the human rights of people in migration are protected, the 8<sup>th</sup> Regional Consultation on ASEAN and Human Rights come out with several recommendations as follow:

#### **To ASEAN:**

1. Through the work of the High Level Task Force (HLTF) on the ASEAN Post 2015 Vision, ASEAN needs to ensure that the interlink between migration and human rights are translated in the ASEAN 2025 Vision

2. To put in place a review mechanism that is accountable and transparent to allow for the recall or legal challenge of investment agreements, free trade agreements (FTAs) or economic policies adopted by ASEAN or its member-state in ASEAN's economic integration agenda.
3. To translate the 2013 ASEAN Declaration on Strengthening Social Protection into a binding instrument and institute effective implementing mechanisms.
4. To put in place regional mechanism to eliminate illegal/abusive recruiters, and make employers accountable for labour violations.
5. To recognize substantive participation and proper representation of migrant workers and forced migrants and their organizations, of CSOs and trade unions in key policy and decision making bodies in ASEAN that pertain to migrant concerns and human rights.
6. To protect the right of refugees and asylum seekers to seek asylum and obtain legal status and protection within ASEAN member states.
7. To ensure migrants, particularly forced migrants, children, the sick, and the elderly, are subject to detention, which includes confinement in shelters, in only exceptional circumstances and following an individualized assessment of protection concerns.

Concerning the serious situation of Rohingya refugee in ASEAN region, the meeting also recommend ASEAN:

8. To actively engage Myanmar in ending the on-going persecution of the Rohingya, and to encourage the amending of the 1982 citizenship law, which denies equal access to citizenship for Rohingya and has rendered many Rohingya stateless.
9. To show that it is a moral and humanitarian force in the world by allowing boats with refugees and asylum seekers to disembark as well as providing asylum to those seeking refuge and where necessary take punitive action against the perpetrators if the situation continuous to worsen.

**To the ACMW**

10. ASEAN, through the work of the ACMW needs to urgently translate the Declaration on Protection of Migrant Workers into a binding, effective legal instrument adhering to international standards, including ensuring protection for all migrant workers and their families in ASEAN, including domestic workers, undocumented migrants, children who accompany their parent to work, and migrants who come from outside ASEAN.

**To the AICHR**

11. To continue their work plan on the thematic study on migration and engage as well as consult people in migration whose rights are under threat and CSOs working alongside them
12. To use its mandates in providing advisory services<sup>1</sup>, and/ or to obtain information from ASEAN members state<sup>2</sup>, in order to address the root causes and human rights violations in countries of origin that force people to move on and drive them into the hands of abusive recruiters, people smugglers and traffickers

**To the ACWC**

13. To ensure that the work of National Social Service Agencies (NOSSA) will also give focus on the rights of migrants and refugees and their families.

**To the AICHR and the ACWC**

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<sup>1</sup> Article 4.7 of the TOR of the AICHR

<sup>2</sup> Article 4.10 of the TOR of the AICHR

14. To encourage ASEAN countries to step up and ratify the fundamental UN and ILO treaties, as well as the key treaties for migrants (C143, C181, C183, C189, Palermo Protocols, Refugee Convention, Statelessness Convention, Maritime Labour Convention, etc.).
15. To encourage ASEAN countries to develop national laws that are in line with international standards and provide legal status to forced migrants.
16. To assess national laws in ASEAN countries in ensuring the rights of people in relation to trans-national marriage and their families, including children in migration.
17. To assess existing national laws and encourage ASEAN member states to repeal legislations which directly and indirectly: criminalize diverse sexual orientations, gender identities, gender expressions, and identities; and freedoms, including freedom of association, expression, assembly, speech perpetuate or reinforce gender inequality and further restrict the participation of migrant workers in public spaces freely without fear.

The participants also reiterated their commitment to redouble efforts in strengthening and expanding alliances, solidarity, partnerships and joint action, and build stronger and more effective migrants' and civil society movement that can engage ASEAN and its member-states and win victories for the human rights of migrants and peoples in ASEAN.

**Endorsed by.**

- 1) Amnesty International Malaysia
- 2) ASEAN SOGIE Caucus
- 3) ASEAN Services Employees Trade Union Council (ASETUC)
- 4) Asian Forum for Human Rights and Development (FORUM-ASIA)
- 5) Asia Pacific Refugees Rights Network (APRRN)
- 6) Asia Pacific Forum on Women, Law and Development (APWLD)
- 7) Asylum Access Malaysia
- 8) Brunei Welfare Council, Brunei Darussalam
- 9) Cambodian Civil Society Working on ASEAN (CEWA), Cambodia
- 10) The Cambodian Human Rights and Development Association (ADHOC), Cambodia
- 11) The Commission for the Disappeared and Victims of Violence (KontraS), Indonesia
- 12) Coordination of Action Research on AIDS and Mobility (CARAM Asia)
- 13) Foreign Spouses Support Group, Malaysia
- 14) Fortify Rights
- 15) Health Equity Initiatives
- 16) Human Rights Watch (HRW)
- 17) International Initiatives Dialogue (IID), Philippines
- 18) International Women Rights Action Watch Asia Pacific (IWRAP-AP)
- 19) Malaysian Bar Council, Malaysia
- 20) Migrant Care, Indonesia
- 21) Migrant Forum in Asia (MFA)
- 22) Penang Stop Human Trafficking Campaign, Malaysia
- 23) People Empowerment Foundation (PEF), Thailand
- 24) PROHAM Malaysia
- 25) Pusat KOMAS, Malaysia
- 26) Right to Redress Coalition, Malaysia
- 27) SAPA Task Force on ASEAN and Human Rights (SAPA TFAHR)
- 28) Suara Rakyat Malaysia (SUARAM), Malaysia
- 29) South East Asian Committee for Advocacy (SEACA)
- 30) Task Force for Detainee of The Philippines (TFDP), Philippines
- 31) Task Force on ASEAN Migrant Workers (TFAMW)

- 32) Tenaga Kita, Malaysia
- 33) Think Centre, Singapore

The 8<sup>th</sup> Regional Consultation on ASEAN and Human Rights – Migration and Human Rights in ASEAN was co-organized by:

SAPA Task Force on ASEAN and Human Rights  
Asian Forum for Human Rights and Development (FORUM-ASIA)  
Asia Pacific Refugees Rights Network (APRRN)  
CARAM Asia  
Migrant Forum in Asia (MFA)  
Pusat KOMAS, Malaysia  
Suara Rakyat Malaysia (SUARAM), Malaysia  
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Task Force on ASEAN Migrant Workers (TFAMW)

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