

Civil Society and Commission on Human Rights Statement on the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers

October 2017

We, migrant workers and members of their families, migrants' rights advocates, trade unions, representatives of the academe, international organizations, civil society and the Commission on Human Rights of the Philippines¹ welcome the consensus arrived at by the Drafting Team of the ASEAN Committee on Migrant Workers (ACMW) on the protection instrument for migrant workers in their August 2017² meeting in Manila. Dubbed as the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, it was immediately endorsed by the Ministers of the ASEAN Socio-Cultural Community (ASCC) Council³ for signing by the ASEAN heads of States during the 31st ASEAN Summit in November 2017 in Manila. The ASEAN Consensus fulfills paragraph 22 of the 10-year old ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers which tasked relevant ASEAN bodies to develop an instrument of protection for migrant workers⁴.

While we welcome the initiatives of the ASEAN in establishing, at last, a sectoral mechanism that will particularly respond to the human rights situations of migrant workers in the ten member countries, we remain concerned about its profoundly limited coverage: that the ASEAN Consensus will not be legally-binding; vague terms on who are considered and included as "family members" of migrant workers in the countries of destination; that undocumented migrant workers as agreed are only those who come in legally and become undocumented due to no fault of their own and because of abuse or violation; and that only migrants workers from the ten ASEAN countries are covered.

We remain positive that the Philippines, being the Chair of ASEAN in 2007 when the Cebu Declaration was adopted and now again for 2017 as ASEAN marks in 50th foundation anniversary, will make an informed decision that will place the rights of all migrant workers and members of their families at the heart of the ASEAN Consensus.

The Philippines has the largest percentage share of migrant workers amongst member States of the ASEAN from 53% in 2007 to more than 70% in 2014.⁵ The ASEAN may not be the top destinations of our OFWs but they remain concentrated in jobs that are vulnerable to abuse and exploitation like migrant domestic workers, cleaners, laborers and other services sectors.

1 Center for Migrant Advocacy, Commission on Human Rights of the Philippines, De La Salle University, International Labour Organization (ILO), ECMI-CBCP/Scalabrini Lay Association, UNDP-JMDI, Migrant Forum in Asia (MFA), Women's Legal Bureau (WLB), Bicol OFW Family Circles, Kanlungan/Kabadang, Bannuar La Union, Unlad Kabayan, SERDEF, Kaagapay OFW, LEARN, MCG-Western Visayas, Batis Center, Patnubay, Sentro-MARINO, Ateneo de Manila University, PSSC, Women and Gender Institute – Miriam College, Kanlungan ng mga Migranteng Manggagawa, Kampi, Lawyers Beyond Borders-Philippines, Migrante International, Quezon City Public Employment Service Office (PESO).

2 https://www.facebook.com/pg/TFAMW/posts/?ref=page_internal

3 The ASCC Council met in Tagaytay City on September 2017. <http://asean.org/asean-to-protect-and-promote-rights-of-migrant-workers/>

4 The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was adopted by the ASEAN Heads of States on January 2007 during the 12th ASEAN Summit in Cebu City, Philippines

5 Asia Pacific Migration Network, <http://apmigration ilo.org/asean-labour-migration-statistics>, from Decent Work Country Diagnostics: Philippines 2017, http://www ilo.org/manila/country/WCMS_546210/lang--en/index.htm

In the final month before the signing of the ASEAN Consensus, we urge the Philippine Government to consider the following recommendations for the ASEAN Plan of Action that will concretize the ASEAN Consensus:

On employment contract and recruitment reform

1. ASEAN States should properly implement and monitor compliance of recruitment agencies in accordance with national laws and policies and international human rights and labor rights standards;
2. A standardized, binding employment contract should be recognized and enforced in both countries of origin and destination; contracts should be reviewed periodically in response to changing economic and labor market trends and needs of migrant workers.
3. Urge ASEAN countries to ratify the relevant ILO Conventions on decent work.

Pre-departure and post-arrival

1. Pre-departure and post-arrival seminars should be tailored to the particular occupation and cultures of the countries of destination of migrant workers.
2. The rights of migrant workers should be included in the orientation, including laws and policies in both origin and destination countries, which are explained in the language the migrant worker understands.
3. Information on redress mechanism and access to justice should be included in the orientations.
4. Pre-departure and post-arrival orientations should benefit the migrant workers instead of catering to the interests of businesses such as banks and recruitment agencies.

Social protection

1. A pension should be provided for migrant workers that would cover premature termination of contract, retrenchment, health, accident and death insurance, in consideration of the 2013 ASEAN Declaration on Social Protection.
2. Maximize existing social security mechanisms to cover migrants in regular and irregular status.
3. The insurance should not go through the recruitment agency but instead through insurance providers of the migrant worker's choosing.

Consular and diplomatic support and services

1. An online complaint system and hotline services should be made available or improved so migrant workers in distress can have options to report issues and violations.
2. Bilateral agreements on labor protection and promotion of the rights of migrant workers and members of their families should be established between ASEAN Member States.

Women migrant workers / domestic workers

1. Recognize domestic work as work; dialogue with other ASEAN Member States to ratify ILO Convention 189 on Decent Work for domestic workers and apply the provisions to their national laws and policies.
2. Respect the rights of women migrant workers, including domestic workers to equal pay, mandatory days-off and paid leaves, right to sexual and reproductive health, and right to privacy.
3. Strengthen access to justice mechanisms for women migrant workers who are victims of gender-based violence.

Return and reintegration

1. Adopt policies and programs that anticipate and address issues and needs in all stages of the migration cycle -- from pre-departure to return and reintegration. Both governments and migrant workers and their families should have a plan for the migration cycle. The government should gather its experience on the needs of migrants and translate them to policy in coordination with the OFWs and their families.
2. OFWs should save, invest and obtain insurance. The government should proactively offer social protection. Map social protection in the host countries and convince these countries to offer social safety nets to migrant workers. The State should learn from good practices of countries of destination in ASEAN where they provide protective and health services for all not just for their citizens.
3. OWWA/NRCO should actively offer and promote entrepreneurial literacy integral to migrant worker education. Enable migrant workers to make informed decisions on income, savings, and investment.