

## Mekong Migration Network Statement

22 November 2017

### **Mekong Migration Network (MMN) cautiously welcomes the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, signed by the Heads of ASEAN States during the 31<sup>st</sup> ASEAN Summit.**

MMN is a sub-regional network of civil society organisations (CSOs) working to protect and promote migrants' rights in the Greater Mekong Subregion (GMS). Given the significant impact that ASEAN policies on the protection of migrant workers will have in the GMS, MMN has actively engaged in ASEAN policy dialogues wherever possible.

MMN recalls the optimism and excitement among CSOs at the signing of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. Although the scope of the Declaration was limited, it nonetheless conveyed the expectation that ASEAN was intent on protecting and promoting the rights of migrant workers. With a commitment to contribute constructively to the follow-up process, various migrants' rights networks, including MMN, joined forces to formulate the "Civil Society Proposal: ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers".<sup>1</sup> Our joint proposal was submitted to ASEAN in 2009 and was warmly welcomed by Dr. Donald Tambunan, the then head of the Social Welfare, Women, Labour and Migrant Workers Division of the ASEAN Secretariat.<sup>2</sup>

Since then, in preparation for the formulation of an effective instrument, countless CSO and government meetings have been held, including the annual ASEAN Forum on Migrant Labour (AFML).

The Consensus is a result of these decade-long efforts. On a positive note, the instrument recognises the contribution of migrants to both sending and receiving countries, and reaffirms the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance.

While we are disappointed that the Consensus has practical limitations, since it is not legally binding and the clauses are subject to national laws, regulations and policies, we nonetheless hold out optimism in the positive spirit and moral principles expressed within the Consensus. We sincerely hope that Singapore, the next chair of ASEAN, will display progressive leadership in developing the follow-up action plan.

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<sup>1</sup> Task Force on ASEAN Migrant Workers (TF-AMW), 2009.

[http://www.workersconnection.org/resources/Resources\\_72/book\\_tf-amw\\_feb2010.pdf](http://www.workersconnection.org/resources/Resources_72/book_tf-amw_feb2010.pdf)

<sup>2</sup> *Ibid*, page 9.

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In particular, we urge ASEAN states to consider the following areas in developing its action plan:

1. **Mediation** - While the responsibilities of receiving and sending countries are spelled out within the Consensus, greater clarity is required in terms of how respective countries will resolve situations where there is a contradiction or inconsistency in policies between sending and receiving countries. We urge ASEAN to develop an effective system of mediation whereby disputes and policy incoherence can be discussed and resolved in a constructive, non-confrontational and cooperative manner.
2. **Monitoring** - While the responsibilities of ASEAN states are elaborated within the Consensus, no mention is made as to how they will work towards fulfilling their commitments. We urge ASEAN to establish effective monitoring mechanisms to oversee the progress made by member states on issues such as changes made to prevailing laws, regulations and policies to reflect the spirit of the Consensus. As implementation of the Consensus is subject to national laws, regulations and policies, there is an urgent need to develop a coherent approach to implementation to avoid ad hoc application. Furthermore, given the relatively weak negotiation position of sending countries, we urge ASEAN to pay special attention to the challenges faced by sending countries, while encouraging receiving states to facilitate efforts made by sending countries to protect the rights of their citizens overseas.
3. **Meaningful Dialogue with CSOs** - In pursuance of the people-oriented community described in *ASEAN 2025: Forging Ahead Together*, we urge ASEAN to continue an informed and meaningful dialogue with CSOs, including trade unions and migrant-led associations, throughout the follow-up process, notably in relation to the formulation of its action plan and subsequent monitoring and reporting of its implementation.
4. **Inclusive Approach to Rights Protection** - In the GMS, where countries share long land borders and where migration is characterised by its mixed nature, it is difficult to identify migrant workers “who become undocumented through no fault of their own”. We urge ASEAN states to take the reality of migration in the region into consideration, avoid criminalising undocumented migrants, and be inclusive in its approach to applying rights protection, such as by recognising migrant workers’ right to a family life. Moreover, given notable absence of ASEAN policies on refugee protection, we urge ASEAN to adhere to the principle of *non-refoulement* and provide protection to the most vulnerable members of the migrant population who are in need of protection.
5. **Uphold the Principle of Non-discrimination** - We welcome the fact that the Consensus undertakes to adhere to the principle of fair treatment with respect to gender and nationality. We urge ASEAN to take pro-active steps to ensure that this principle of non-discrimination is upheld broadly, including, but not limited to, at the time of recruitment, in workplaces, when accessing social services and when accessing justice systems. For example, we would urge Member States to pay special attention to the principles of fair

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treatment and non-discrimination in relation to meeting mandatory “health requirements” of receiving states. Such screening should be carried out with the sole purpose of protecting public health by preventing the spread of communicable diseases and not for the purpose of discriminating against certain populations, including, but not limited to, pregnant women and people living with HIV.

Finally, MMN wishes to reiterate the significant contribution made by migrant workers - both professional and low paid workers - in the region. While ASEAN is moving towards easing restrictions on the movement of professional workers in the region, migration policies for low paid workers, who are the majority of the work force in the region, remain restrictive. We would like to highlight the findings from the recent World Bank report, *Migrating for Opportunities*, which states that easing restrictions on labour migration in ASEAN can boost workers’ welfare and deepen regional economic integration.<sup>3</sup> We hope that ASEAN will take this finding into consideration when formulating migration policies and work towards easing restrictions on labour migration. After all, we hope that ASEAN is moving towards achieving the “caring and sharing” community to which all members of society, including migrant workers and their families, feel they belong.

Mekong Migration Network (MMN), launched in 2003, is a network of civil society organisations and research institutes promoting and protecting the rights of migrant workers and their families in the Greater Mekong Subregion. MMN currently has over 40 member organisations, and carries out collaborative research, policy monitoring, advocacy and capacity building. For more information about MMN, visit: [www.mekongmigration.org](http://www.mekongmigration.org)

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<sup>3</sup>Mauro Testaverde, Harry Moroz, Claire H. Hollweg, and Achim Schmillen, *Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia*, World Bank, 2017, page 5.

<https://openknowledge.worldbank.org/bitstream/handle/10986/28342/9781464811067.pdf?sequence=22&isAllowed=y>

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