

# LABOUR LAWS AND PRACTICES IN ASEAN

A Comparative Study on Gender Equality, Employment of Persons with Disabilities, Youth Employment and Social Dialogue

VOLUME II

At the 14th ASEAN Summit on 1 March 2009, the heads of state adopted the Declaration on the Roadmap for ASEAN Community (2009-2015) based on three pillars including the ASEAN Political-Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community. Labour sector issues are central to the ASEAN Charter and figure in all three Community Blueprints of ASEAN's 2009-2015 roadmaps. ASEAN Labour Ministers through the adoption of the ASEAN Labour Ministers' Work Programme 2010 – 2015 target to build towards the vision of a better quality of life, productive employment and adequate social protection for ASEAN peoples.

Labour laws are a new area of work under the ASEAN community blueprints. In its journey of regional integration, the ASEAN Community is expected to move forward in reaching common regional standards of labour laws with reference to ILO conventions.

With this understanding, a series of comparative studies of labour law and practices among the ASEAN Member States, led by the Ministry of Labour, Invalids and Social Affairs (MoLISA) Viet Nam in order to create a reference basis for governments, trade unions, employers' associations, legal experts, and other relevant partners to cooperate more closely towards fulfilling the ASEAN vision in the field of labour.

This book – Labour Laws and Practices in ASEAN – A Comparative Study (Volume II) will cover 4 pertinent topics of Gender Equality, Employment for Persons with Disabilities, Youth Employment as well as Social Dialogue. The findings will be presented in a comparative manner with the emphasis on their convergence and divergence modalities as well as in relation to the related international conventions. It also concludes with specific recommendations and issues for future discussions by decision makers ASEAN Labour Ministers and Senior Labour Officials, social partners and other relevant stakeholders in a bid to truly an ASEAN Community 2015.

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VOLUME II



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A Comparative Study on Gender Equality, Employment of Persons  
with Disabilities, Youth Employment and Social Dialogue

## VOLUME II

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# Executive Summary

This study presents a comparative analysis of labour laws and other related labour and social legislations pertaining to the employment of three specific groups of workers – women, youth or young people, and persons with disabilities – and industrial relations, in particular social dialogue, among the 10 Member States of the Association of Southeast Asian Nations (ASEAN), using conventions of the International Labour Organization (ILO), the United Nations (UN), and other similar international bodies. Through case studies of selected good practices, this Volume shows how equal opportunities for employment of the three specific groups of workers and social dialogue can be enhanced at the enterprise, industry and national levels. Finally, the recommendations presented in this Volume and addressed to the ASEAN Senior Labour Officials Meeting Working Group (SLOM-WG) may provide useful information and insights in coming up with an ASEAN labour platform through which an action plan can emanate.

## THE LEVEL OF PROGRESS IN PROMOTING GENDER EQUALITY IS UNEVEN IN ASEAN.

The magnitude and extent of gender inequality varies widely in ASEAN. The level of achievement among ASEAN countries in improving women's economic participation and opportunity, educational attainment, health and survival, and political empowerment remains uneven.

With the exception of the Philippines, women in the ASEAN region suffer, in varying degrees, from vertical job segregation by gender at workplaces. Job segregation is more pronounced in Indonesia, Cambodia, Thailand and Viet Nam. Nonetheless, narrowing the wage gap between men and women remains a challenge all over ASEAN.

## GAPS EXIST BETWEEN THE INTENTS OF ILO CONVENTIONS ON GENDER EQUALITY AND THE ASEAN LABOUR LAWS.

In most ASEAN countries, the labour law prohibits direct discrimination based on sex. In practice, however, women continue to encounter both direct and indirect (hidden) forms of discrimination in their workplaces. Occupational segregation is linked to wage discrimination suffered by women, an outcome of undervaluing the jobs traditionally held by them.

Even though all ASEAN countries ratified Convention 100, the concept of "work of equal value" is not defined in the labour laws. Although ILO Convention 111 requests national legislations to reflect the definition and prohibition of direct and indirect discrimination, labour laws in all ASEAN countries do not clearly define these terms. Nonetheless, some ASEAN countries (i.e. of Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, and Viet Nam) have identified, in varying degrees, specific grounds or bases (e.g. race, colour, sex, marital status, disabilities, creed, religion, political opinion, birth, social origin, socio-economic status, membership in workers' union or the exercise of union activities) upon which discrimination is prohibited.

Nonetheless, it is important to review some of provisions of the labour laws in a number of ASEAN countries, as in practice they may actually hamper equality at work and put women at a disadvantage in the labour market. In Malaysia, Thailand and Viet Nam, for example, legal restrictions or prohibitions hinder women from overtime work and night work and from holding occupations deemed unsuitable to them. While legal provisions can be based on gender, they should not disadvantage either sex.

### **SOME ASEAN COUNTRIES HOWEVER HAVE POLICIES PROMOTING WORK-LIFE BALANCE AND SHARED FAMILY RESPONSIBILITIES.**

Although no ASEAN country has to date ratified the ILO Convention 156 (Workers with Family Responsibilities), many ASEAN countries (i.e. Brunei Darussalam, Cambodia, Malaysia, the Philippines, Singapore and Vietnam) have adopted policies aimed at enhancing work-life balance and promoting shared family responsibilities. Similarly, most countries in ASEAN have their own systems of maternity protection, despite none of them ratifying ILO Convention 183 (Maternity Protection). These systems vary significantly in terms of their scope and coverage. In most countries in the region, employers bear the entire costs of maternity leave.

### **A 'THICK' PUBLIC POLICY ON GENDER EQUALITY CAN SUBSTANTIALLY NARROW GENDER GAPS.**

As shown in the case studies, the considerable progress attained by the Philippines and Singapore in promoting gender equality has been substantially achieved through a combination of various laws and social policies and, especially in the case of Singapore, through social dialogue and partnership among the employers' organization, the national trade union, and the government.

### **THE RATE OF RATIFICATION OF THE UNCRPD AND ILO CONVENTION 159 IS LOW IN ASEAN.**

As of November 2012, six ASEAN Member States, i.e. Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, and Thailand have ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), while four countries, i.e. Brunei Darussalam, Cambodia, Singapore, and Viet Nam are only signatories<sup>1</sup> to the CRPD.

Among the 10 ASEAN Member States, only five ratified the ILO Convention 111: Cambodia, Indonesia, Lao PDR, Philippines, and Viet Nam. Meanwhile, only two countries (i.e. the Philippines and Thailand) ratified the ILO Convention 159 (Vocational Rehabilitation and Employment of Disabled Persons). The CRPD and the ILO Convention 159 are considered the key international treaties regarding rights protection and promotion for PWDs.

### **DEFINITION OF DISABILITY VARIES WITHIN ASEAN.**

Within ASEAN, the definition of disability or a person with disability (PWD) varies from country to country. In general, disability basically includes physical, sensory, mental, and intellectual impairment. Among the ASEAN countries, Thailand's Persons with Disabilities Empowerment Act 2007 provides the most comprehensive definition of disability (i.e. impairment in vision, hearing, mobility, communication, mind, emotion, conduct, intellect, learning, or any other impairment/disabilities).

Six ASEAN countries (i.e. Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Viet Nam) have national laws and regulations specific to PWDs. Lao PDR has recently drafted a decree on the rights of PWDs. The definition of disability or a person with disability is found in these disability-specific national laws. What is common among these national laws is that the term disability pertains to physical or mental impairment which hinders or restricts a person to perform his or her daily activities and effectively participate in society.

### **ASEAN LABOUR LAWS AND OTHER NATIONAL LAWS PROMOTE EQUAL OPPORTUNITY FOR PWDS AND PROHIBIT DISCRIMINATION BASED ON DISABILITY.**

It is only the labour law of Viet Nam which specifically includes disabilities among the prohibited grounds for discrimination. Nonetheless, in ASEAN, the national laws and regulations specific to PWDs specifically stipulate the right of PWDs to have equal employment opportunities and to be employed without discrimination. These laws and regulations are found in seven ASEAN countries: The Protection and the Promotion of the Rights of Persons with Disabilities 2009 (Cambodia); Disabled People 1997 (Indonesia); Draft Decree on the Rights of Persons with Disabilities (Lao PDR); Persons with Disabilities 2008 (Malaysia); Magna Carta for Disabled Persons 1992 (Philippines); The Persons with Disabilities Empowerment Act 2007 (Thailand); and Ordinance on Disabled Persons 1998 (Viet Nam).

A majority of ASEAN countries apply, in varying degrees, a quota scheme to guarantee employment opportunities for PWDs.

In seven ASEAN countries (i.e. Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Thailand and Viet Nam), there are specific state bodies and agencies tasked to monitor the enforcement of the compulsory employment measures for PWDs, particularly the quota scheme. However, the effectiveness of implementing the quota scheme is unknown. Moreover, data and statistics on PWDs are still wanting.

<sup>1</sup> There are no legal obligations imposed on a signatory State after the treaty is signed. This merely means that the States indicates its intention to take steps to be bound by the treaty at a later date. Signing also creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.

### **THERE ARE GOOD PRACTICES IN ASEAN AT THE NATIONAL POLICY LEVEL AND AT THE ENTERPRISE LEVEL THAT PROMOTE EMPLOYMENT OF PWDs.**

At the policy level, although many ASEAN countries apply quota scheme to promote employment opportunity of persons with disabilities in formal labour markets, additional measures have been adopted to enhance effective implementation of related laws and policies. In Thailand, the penalties accorded to non-compliance to the PWD employment quota scheme (i.e. one of person with disability to every 100 regular employees) are balanced out by the tax incentives provided to employers that hire PWDs.

Although Singapore has not yet ratified to the CRPD and the ILO No. 111 and 159 Conventions, there are various regulations and programs in the country that deal with discrimination in employment issues and encourage fair employment practices among employers (e.g. The Tripartite Guidelines on Fair Employment Practices). Singapore's Enabling Masterplan Implementation Committee (EMIC), which is comprised of representatives from voluntary welfare organisations (VWOs), as well as the private and public sectors, serves to facilitate feedback and dialogue among stakeholders and members of the disabled community on the implementation of the Masterplan.

At the enterprise level, there are different good practices of employers that promote equal opportunities for PWDs. From the case studies presented, some key factors that led to the effectiveness and success of these practices are identified: partnership between the company and an expert NGO on employment of persons with disabilities; construction of accessible workplace facilities and work re-design for PWDs; appropriate job matching; pre-employment and on-the-job training programs; existence of a peer support group for PWDs; flexible work hours for PWDs; and the conduct of disability sensitivity training at the workplace.

### **MANY ASEAN COUNTRIES HAVE ACCEDED TO ILO CONVENTIONS PROHIBITING CHILD LABOUR AND PROMOTING EMPLOYMENT OPPORTUNITIES FOR YOUNG PEOPLE.**

All ASEAN countries, except Myanmar, have ratified both the ILO Convention 138 (Minimum Age) and ILO Convention 182 (Worst Forms of Child Labour). All ASEAN countries have ratified the UN Convention on the Rights of the Child.

The UN defines youth as those individuals aged 15-24 years. In ASEAN, the definition of youth however varies from country to country. In the labour laws of nine ASEAN Member States, the minimum age of employment varies between 14 and 18 years. Myanmar's labour law does not specify the minimum age of employment. In Brunei, Lao PDR and Singapore, the minimum age of employment is 14. In Cambodia, the Philippines, Thailand and Viet Nam, it is 15. In Malaysia, it is 16, while in Indonesia it is 18.

The labour laws of most ASEAN countries however provide exceptions to the regulation on minimum age of employment. These exceptions cover the following: work done for general, vocational or technical education and approved and supervised by a designated authority (Brunei, Cambodia, Singapore, and Viet Nam); and participation in artistic performances (Thailand) under the direct supervision of their parents (Indonesia) and in accordance with a license granted by the Director General of Labour (Malaysia).

Most ASEAN countries provide appropriate penalties, in varying degrees, on violations of laws and regulations protecting working children and young persons. Malaysia and Singapore provide general penalty provisions applicable to any violation of pertinent labour law provisions, while Indonesia and Thailand specify corresponding penalties to violations of specific legal provisions. Brunei and Cambodia use a combination of general and specific penalties.

### **GOOD PRACTICES IN PROMOTING YOUTH EMPLOYMENT HIGHLIGHT THE IMPORTANCE OF COOPERATION AND COLLABORATION AMONG ALL STAKEHOLDERS.**

The relative success of Cambodia's Children's Empowerment Through Education Services (CHES) can be attributed to several factors, namely: the multi-faceted structure of the program that addressed poverty and low quality education, the two key barriers to poor children's schooling; massive use of various types of media to raise awareness on the need to address child labour; involvement of parents and the community; and the involvement and participation of international bodies (UN agencies), local partners, NGOs and other civil society organizations.

Like Cambodia's CHES, the relative success of Indonesia's Education and Skills Training for Young Employment (EAST) may be attributed to the involvement of various stakeholders, such as various government agencies, UN agencies, trade unions, NGOs, and private training providers.

The relative success of Singapore's Institute of Technical Education (ITE) has been made possible through the institutional cooperation among the Ministry of Manpower, the Ministry of Education, and the trade unions. Also, a strong and timely labour market information system has facilitated the implementation of the program.

## **IN ASEAN, THE RIGHT OF WORKERS TO FORM UNIONS AND NEGOTIATE A COLLECTIVE AGREEMENT IS RECOGNIZED IN THE LABOUR LAWS.**

In practice, the collective commitment to social dialogue varies across the region, as there is a great deal of disparity in the development of industrial relations in each of the Member States.

Only four of the 10 ASEAN countries – Cambodia, Indonesia, Myanmar and the Philippines – have ratified ILO Convention 87 (Freedom of Association and the Right to Organize). Five ASEAN countries, namely, Cambodia, Indonesia, Malaysia, the Philippines and Singapore, have ratified ILO Convention 98 (Right to Organize and Collective Bargaining). Six ASEAN countries, namely, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore and Viet Nam, have ratified ILO Convention 144 (Tripartite Consultation on International Labour Standards). Brunei Darussalam and Thailand have not ratified any of these three ILO Conventions. In contrast, both Indonesia and the Philippines have ratified all three Conventions. Nonetheless, all countries in ASEAN recognize the right of workers to form unions as a basic right as reflected in their labour laws.

## **SOCIAL DIALOGUE AT THE ENTERPRISE AND NATIONAL LEVELS IS PRACTICED ASEAN-WIDE.**

Tripartite and bipartite social dialogue is practiced ASEAN-wide. Some countries, such as Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam, resort heavily to social dialogue during crisis periods.

All countries in the ASEAN have been promoting not only tripartism in labour policy formulation and dispute settlement but also bipartism in securing peace and productivity at the workplace.

In all ASEAN countries, the labour laws provide a definition of collective agreement. In many of these countries, the process of collective bargaining is also defined. This process varies across countries in the region. In Malaysia, the Philippines, Thailand and Viet Nam, the labour laws enumerate the issues covered by a collective bargaining agreement (CBA). In Singapore, the Industrial Relations Act specifies the matters that are excluded.

## **GOOD PRACTICES ON TRIPARTISM AND SOCIAL DIALOGUE SUPPORT EMPLOYMENT STABILITY AND INDUSTRIAL PEACE.**

The case studies on how social dialogue yielded in positive outcomes at the workplace (HERO Supermarket in Indonesia) and the industry level (Banco de Oro/Bank Industry Tripartite Council in the Philippines), underscore the importance of the following critical factors: management that is open to dialogue and discussions with the union; constant communication between management and trade unions; the role of global union federations in facilitating social dialogue at various levels and scales; and the continued development of trust and respect between all parties involved.

Singapore's long tradition of tripartism are embedded in various tripartite institutions and structures dealing with many aspects of employment and workforce development, namely: review of Employment Act, retirement age, retrenched workers, executives joining rank and file unions, portable medical benefits, company restructuring, family- friendly practices, flexible work schedules, employability of older workers, fair employment practices, community engagement at workplaces, managing economic downturn, and others.

## **THERE ARE SOME COMMONALITIES IN THE LABOUR LAWS AND POLICIES IN ASEAN, AND ILO CONVENTIONS SERVE AS BENCHMARKS FOR CONVERGENCE AND HARMONIZATION.**

Despite the general lack of convergence of labour laws in ASEAN, which can be largely explained by the diverse historical, geographical political, cultural and socio-economic context within the region, some commonalities have been identified among ASEAN member states in terms of labour laws and/or policies that specifically addressed the employment issues of the three specific groups of workers and in terms of social dialogue.

- Employment and gender equality: While only Viet Nam has a specific Law on Gender Equality, five member states have defined national action plans, strategies, policies, and institutions for women (Brunei Darussalam, Malaysia, Philippines, Singapore, and Viet Nam).
- Protection against child labour, promotion of employment of young persons: Four member states have specific (albeit not comprehensive) laws or regulations (Indonesia, Malaysia, Myanmar, Singapore). Two ASEAN countries, namely Cambodia and Indonesia, have defined national action plans on the elimination of the worst forms of child labour (Cambodia, Indonesia).
- Equality of opportunities in employment for PWDs: Seven Member States have specific legislation regarding PWD (Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Viet Nam).
- Social dialogue and industrial relations: Here, there is notably uneven development of the relevant labour legislation. Six Member States have established tripartite institutions and mechanisms (Cambodia, Indonesia, Lao, Malaysia, Philippines, Singapore). Singapore has further established an environment conducive to deeper social dialogue and has developed the capacity of the key stakeholders to widely practice social dialogue in industrial relations.

ILO Conventions are relevant benchmarks for comparison of labour laws. Ratification of a convention indicates a country's commitment to uphold the principles and standards stipulated in the Conventions and to translate into national laws, policies and practices these standards. Thus, the extent of ratification by ASEAN member states of relevant ILO Conventions provides an indication of the potential for convergence and harmonization of labour laws and/or policies and practice in ASEAN.

However, there is currently no strong relationship between ratification of ILO conventions and the existence of comprehensive legislation reflecting the ILO standards in the four focal areas studied. There is also a common challenge regarding effective implementation and enforcement of laws.



**AREAS FOR COOPERATION CAN BE APPROPRIATELY TAKEN UP BY ASEAN LABOUR MINISTERS' MEETING (ALMM) AND SENIOR LABOUR OFFICIALS' MEETING (SLOM) IN THE ALMM WORK PROGRAMME 2010–2015, AND BY EMPLOYERS AND TRADE UNIONS IN THEIR RESPECTIVE INSTITUTIONS AND PROGRAMMES FOR REVIEW AND STRATEGIC PLANNING.**

1. Informational workshops – to share experiences among Member States and with social dialogue and cooperation partners.
2. Collection of baseline information with regard to labour sector attributes such as laws and regulations, policies, institutional performance, social partners' organization and actions, workforce development, and labour markets permits benchmarking of labour sector performance within the region. In addition, tracking of benchmark and progress indicators allows the ALMs and their officials, employer organisations and trade unions to monitor labour sector evolution over time and track cooperation progress accomplishments and perhaps even outcomes.
3. Analysis of labour sector performance in ASEAN Members States (AMS) with regard to benchmark information and good practice experiences may lead to the identification of strategic initiatives with the goal of reducing the most disruptive gaps among Member States.
4. Continuation of the on-going efforts among AMSs based on consultation and consensus on possible policy convergence on labour areas.
5. Capacity-building (training) of AMSs' labour ministries' officials, employer organisations and trade unions raises awareness of good labour sector practices and helps Members States to incorporate such practices within their own country contexts.
6. Outreach by ASEAN labour ministries in their respective countries and through the ASEAN Secretariat, enables civil society, stakeholders, and the general public to appreciate ASEAN progress made toward achieving its overall objective of ASEAN cooperation on labour.
7. Establishing a scorecard is important in monitoring progress in the implementation of strategies and actions in the ASCC Blueprint towards achieving the vision for an ASEAN Community, and the ASEAN Labour Ministers' Work Programme (2010-2015). This Volume has proposed several indicators of progress that merit further study by SLOM and ASEAN Secretariat: Human Development Index (human development); quantitative data on trade union and employer organizations, scope of collective bargaining that provide the foundation for social dialogue (social welfare and protection, social justice and rights), and Gender Gap Index and quantitative data on employment of persons with disabilities in the mainstream workforce (narrowing the development gap).



# Introduction and Methodology

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## 1.1 INTRODUCTION

In *A Fair Globalization – Creating Opportunities for All*, the World Commission on the Social Dimension of Globalisation (WCSDG), convened by the International Labour Organization (ILO) in 2002, emphasized that the current process of globalisation is unfair and exclusive, and generates unbalanced outcomes both between, and within countries. The WCSDG seeks a globalisation process with a social dimension, a globalisation as seen through the eyes of women and men as regards to the opportunity it provides for decent work, amongst others. It stresses the urgency of nation states to strengthen regional and sub-regional cooperation as a major instrument or a stepping stone for a stronger voice in the governance of globalisation (WCSDG 2004). In short, nation states are called upon to reinforce the social dimension of integration.

Almost at the same time that the WCSDG was doing its broad-based consultation and dialogues in many parts of the world, the heads of Member-States of the Association of Southeast Asian Nations (ASEAN) adopted the Declaration of ASEAN Concord II (the Bali Concord II) on 07 October 2003. This Declaration called for the establishment of an ASEAN Community by 2020. This vision of an ASEAN community is comprised of three pillars, namely political and security community, economic community, and socio-cultural community. The three pillars are envisaged to be “closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability, and shared prosperity in the region” (ASEAN Secretariat 2009: 1).

In the 12th ASEAN Summit on 13 January 2007 in Cebu, the Philippines, the ASEAN leaders adopted the Cebu Declaration on the Acceleration of an ASEAN Community by 2015. In the 13th ASEAN Summit held in Singapore on 20 November 2007, the leaders emphasised their commitment to fast-track the establishment of an ASEAN Socio-Cultural Community (ASCC) by developing an ASCC Blueprint.

At the 14th ASEAN Summit on 01 March 2009, the heads of state adopted the Declaration on the Roadmap for ASEAN Community (2009-2015) based on the three pillars mentioned above. Labour issues are central to the ASEAN Charter and figure in all three Community Blueprints of ASEAN's 2009-2015 roadmaps. In this regard, the ASEAN Labour Ministers, through the adoption of the ASEAN Labour Ministers' Work Programme 2010 – 2015, target to build towards the vision of a better quality of life, productive employment, and adequate social protection for ASEAN people. This vision is best articulated in ASCC.

The establishment of ASCC addresses the social dimension of integration within and beyond the ASEAN region. ASCC's primary goal is “to contribute to realising an ASEAN Community that is people-centred and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the peoples are enhanced” (ibid). To this end, six components of ASCC have been identified to which the ASEAN Member-States are committed to collectively and cooperatively promote and undertake: (i) human development; (ii) social welfare and protection; (iii) social justice and rights; (iv) ensuring environmental sustainability; (v) building the ASEAN identity; and (vi) narrowing the development gap.<sup>2</sup> An ASCC Blueprint has been prepared to serve as a

roadmap in fulfilling and tracking the progress towards achieving the objectives and actions of ASCC. The ASEAN Socio-Cultural Community Council was established to oversee the overall implementation of the ASCC Blueprint.

### 1.1.1 THE ASCC BLUEPRINT, ILO CONVENTIONS AND LABOUR LAWS

Amongst the six components or dimensions of ASCC, labour and employment-related issues are best addressed in the following:

- *Human development*: advancing and prioritising education; investing in human resource development; and promoting decent work.
- *Social welfare and protection*: social safety net and protection for the negative impacts of integration and globalisation.
- *Social justice and rights*: promotion and protection of the rights and welfare of women, children, the elderly, and persons with disability; and protection and promotion of the rights of migrant workers.
- *Narrowing the development gap*: reduce the development gap in particular the social dimensions of development between the ASEAN-6 and the CLMV countries and within ASEAN.

There are several strategies that can help address, in varying degrees, the four dimensions of ASCC listed above. One such strategy is the use of international labour standards, particularly the ILO conventions which oblige ILO Members to guarantee minimum rights and conditions of work to their workers. However, member States are bound to these conventions only upon ratification, which is not mandatory. Moreover, ratification does not result in a uniform application of the conventions across countries. In fact, the application of these conventions varies at the national level, and the breach of a convention is internationally reprimanded only through moral sanctions. Nonetheless, there is international consensus on the importance of ILO conventions in protecting workers' fundamental rights. And in regions such as the ASEAN “where labour challenges are difficult to characterise because of the region's diversity of history, culture, social structure and economic development” (Bronstein 2009: 4), the importance of ILO conventions gain more prominence.

The United Nations Universal Declaration of Human Rights is another international instrument that establishes a minimum standard of treatment of human beings. These minimum standards are conceived as universal, equal and inalienable rights, deriving from the inherent dignity of human beings and necessary to the peace and friendly relations of nations. The Universal Declaration of Human Rights prohibits discrimination, and slavery, and upholds the rights to freedom of association and to form and join trade unions, the right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment, equal pay for equal work, just and favourable remuneration sufficient to ensure an existence worthy of human dignity, leisure, a reasonable limit on working hours, paid vacation, and a standard of living adequate for the health and well-being of the individuals and their families.

Various international treaties and covenants such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child were forged from the Universal Declaration of Human Rights.

<sup>2</sup> For details of each of these components, see: ASEAN Secretariat (2009) ASEAN Socio-Cultural Community Blueprint. Jakarta: ASEAN Secretariat.

Based on the UN Universal Declaration of Human Rights and these international treaties, the ILO identified four widely recognised fundamental labour rights or labour standards. These are covered by eight Core ILO Conventions dealing with: freedom of association and collective bargaining, prohibition against discrimination, prohibition against forced labour and prohibition against child labour. These fundamental labour rights protect the freedom and well-being of workers around the world.

At the nation-state level, there are two basic sources of legislation - the Constitution and the labour laws - these enshrine the principles and provisions that promote and protect labour rights, and address employment-related issues. In the Constitution, one finds the expression of general principles, including, but not limited to, individual liberties or freedoms and the rights of citizens in a particular country.

The labour laws, meanwhile, give substance to provisions in the Constitution by defining these rights, identifying the persons who may invoke these rights, identifying the extent of exercising these freedoms, and providing penalties and/or sanctions for noncompliance or subjugation of these rights.

The Constitution is considered the supreme law of many countries and lawmakers take pains to ensure that secondary laws are created in consonance with the Constitution. Unfortunately, as the experience of workers reveal, this is not always the case. Labour laws may be in conflict with each other or with the Constitution. Labour laws may also be interpreted in different ways by different and opposing groups to support their respective positions. Likewise, the enactment of labour laws does not automatically translate into implementation. Indeed, in many instances, a labour law may be good, but its implementation may be limited.

Of course labour laws are not the only means of promoting fundamental principles and rights at work. A collective bargaining agreement is a tool that can be used by workers to effect improvements in working conditions. International standards such as Social Accountability 8000 (SA 8000), if demanded by the market and consumers, may raise the quality of labour standards in an enterprise. And in a country like Singapore, tripartite agreements made by the National Trades Union Congress (NTUC), the Singapore National Employers' Federation (SNEF) and the government figure as much in the regulations as do the labour laws.

Unfortunately, not all countries have a strong tradition of collective bargaining or a strong trade union movement, for that matter. Nor do all enterprises benefit from a discriminating and socially-oriented export market. Fewer perhaps are countries with an effective tripartite system. For these reasons, labour legislation is and remains important in ensuring that fundamental rights and principles at work are protected. According to the ILO, labour laws that are adapted to the economic and social challenges of the modern world fulfil three crucial roles (ILO n.d.; cited in Serrano et al 2004: 14-15):

- It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- By providing a framework within which employers, workers and their respective representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance, and establishes the processes through which these principles and rights can be implemented and enforced.

In light of the above, labour laws are critical to the achievement of the strategies and actions listed in the ASCC Blueprint. This is because, firstly, labour laws are “an integral part of an overall system of social justice and industrial democracy” (Bronstein 2009: 1), among the principles that underpin ASCC. Secondly, it is widely recognised that “the relationship between international trade and labour law must be considered so that global competition does not override workers’ rights and overall living and employment conditions” (ibid: 5). With the unprecedented growth in trade between countries with different labour standards and labour costs, this link becomes even more important.

### 1.1.2 ASEAN COOPERATION ON LABOUR LAWS

Labour laws are a new area of work under the ASEAN community blueprints. In its journey of regional integration, the ASEAN Community is expected to move forward in reaching common regional standards of labour laws in reference to ILO conventions with regard to employment, working conditions, occupational safety and health, employment creation, skills development and other relevant issues.

#### Comparative Study on ASEAN Labour Laws and Practices: Phase I

At the 6th Senior Labour Officials Meeting (SLOM) Working Group in Vientiane, Lao PDR in 2009, Viet Nam proposed the conducting a comparative study on labour laws and practices in the region as a road map towards building the ASEAN community to the ASEAN. This study is envisaged to accelerate the harmonisation of labour laws in the region. Specifically, the first phase of the study aims to compare labour legislations in ASEAN through the lens of the ILO conventions as a step towards narrowing the gap in the development of labour laws between the developed and less developed countries in the region.

In the Comparative Study on ASEAN Labour Laws and Practices, Volume I which was undertaken between January and April 2010, the areas covered include:

- employment contracts;
- temporary work;
- individuals dismissals;
- collective bargaining agreement; and
- labour standards inspection.

**Phase I** of the study focused solely on legal documentation. How the laws were implemented and the practices relating to their implementation were not covered in this phase. In this regard, it is expected that the succeeding phases of the study should give more focus on practices, that is how laws have been implemented, particularly best practices, and come up with recommendations that would encourage the developing and less developed countries in ASEAN to improve labour laws in order to narrow the gap of labour legislations development between them (particularly the CLMV group – Cambodia, Lao PDR, Myanmar and Viet Nam) countries in the ASEAN.

#### Comparative Study on ASEAN Labour Laws and Practices: Phase II

In March 2012, the second phase of the comparative labour law study commenced. Again, Cambodia, Lao PDR, Myanmar and Viet Nam are the lead countries in this study. This phase endeavours to facilitate the

understanding of labour laws among ASEAN member states by identifying commonalities and differences. It aims to gather specific terms and clauses in the labour laws of ASEAN countries which address four topics or areas, namely:

- employment of women;
- employment of youth;
- employment of persons with disabilities; and
- industrial relations, with focus on social dialogue.

Specifically, **phase II** of the study seeks to:

1. Identify common labour standards relevant to the four topics with the ILO conventions as the foundation for comparison;
2. Find out how the intention of the ILO standards are reflected in national labour legislations;
3. Identify and document good practices; and
4. Come up with recommendations addressed to the ASEAN Labour Ministers Meeting (ALMM), SLOM and other labour officials that may provide useful information and insights in coming up with an ASEAN labour platform through which an action plan can emanate. This action plan should aim, among others, to narrow the gap between CLMV labour legislation and ILO standards.

On 22-23 March 2012, the Ministry of Labour, Invalids and Social Affairs (MoLISA) of the Socialist Republic of Viet Nam, the ASEAN Services Employees Trade Unions Council (ASETUC), and the Friedrich Ebert Stiftung Office for Regional Cooperation in Asia, convened a methodology workshop that involved international experts and researchers from the ASEAN region and the Senior Labour Officials (SLO) of Cambodia, Myanmar and Viet Nam. The workshop finalised the scope and methodology of phase II of the study.

1. Researchers who would do comparative analysis of labour laws pertaining to three groups - women, youth, and persons with disabilities – and also to social dialogue were identified.
2. The chapter on industrial relations, in terms of social dialogue, is expected to focus on the enhancement of employment and mainstreaming of the vulnerable groups.
3. At minimum, labour laws of the 10 ASEAN Member-States are the focus of comparison.
4. The benchmarks which were used in comparing labour laws are the following:
  - a. ILO Conventions and Recommendations and UN Conventions and treaties
  - b. ASEAN declarations, blueprints, documents, etc.
5. A questionnaire was designed by the organisers of the workshop and the researchers. This questionnaire was used to gather relevant data needed for the comparative analysis of labour laws.
6. Two or more cases of good practices per topic or area were chosen by the researcher. As an initial criterion of selection, a good practice covers the most number of ILO conventions.

The workshop also identified two important areas where recommendations may be made:

1. As labour laws might not be encompassing, particularly on the issues affecting the vulnerable groups, the study should highlight such limitations.
2. In the light of the above, there may be a need to take further studies and steps or actions which would effectively address the employment-related needs and issues of the vulnerable groups.

In terms of coordination and research topic assignment, the workshop participants came up with the following:

Chapter/Topic	SLOM Focal Point	Researchers
Executive Summary Introduction Methodology		Melisa R. Serrano
Employment and Gender Equality	(Myanmar) Mr. U Myo Aung	Nguyen Thi Dieu Hong & Yamada Kazuyo
Equal Opportunities in Employment for Persons with Disabilities	(Viet Nam) Ms. Tran Thanh Minh	Saowalak Thongkuay & Wilaiporn Kotbunkair
Youth Employment and Child Labour	(Cambodia) Mr. Heang Veasna	Magdalene Kong & Cheng Li
Social Dialogue and Industrial Relations	(Lao PDR)	Rene E. Ofreneo & Marianne Nguyen Xuan Hong Mai
Conclusion: Analysis and Recommendations		Evelyn S. Wong



### 1.1.3 LINKING THE COMPARATIVE LABOUR LAW STUDY AND THE ASCC BLUEPRINT

The ASEAN comparative labour law and practice study may be considered as an initial and critical input into several measures identified by the ASEAN Secretariat which will ensure the implementation of the ASCC Blueprint (ASEAN Secretariat 2009: 24-25). Firstly, by identifying commonalities and good practices in the field of labour law, the study will help in mainstreaming strategies, targets and actions of the ASCC Blueprint, particularly in human development, social welfare and protection, social justice and rights, and narrowing the development gap, and incorporate them in respective national development plans. Secondly, the results of the study may provide critical inputs to any ASEAN-wide agreement on labour and employment that may be forged in the future in accordance with the internal processes of each ASEAN Member State. Thirdly, the study may serve as an important contribution to the recognised need of implementing technical studies in the field of labour law, employment and human development. Fourthly, the involvement of SLOMs of the CLMV Member-States in the overall coordination and implementation of the study in a way strengthens their capabilities in doing research. Finally, the results of the study could provide relevant data and insights in the design and implementation of appropriate capacity-building programmes on labour and employment issues, and human development in the ASEAN to assist new Member States in enhancing the achievement of the ASCC.

To some extent, the study can also provide support to the review mechanism of the implementation of the ASCC Blueprint. It is to be noted that the ASEAN Secretariat is tasked to monitor and review the implementation of the ASCC Blueprint and to ensure that all the activities are responsive to the needs and priority of ASEAN. Accordingly, the ASEAN Secretariat is mandated to develop and adopt indicators and systems to monitor and assess the progress of implementation of the various elements and actions in the Blueprint. Thus, the results of the study can help the ASEAN Secretariat develop and adopt some indicators and systems to monitor and assess the progress of implementation of strategies and actions pertaining to human development, social welfare and protection, social justice and rights, and narrowing the development gap. At present, the ASEAN Secretariat has proposed the development of an ASCC Scorecard to assess the achievement of goals, targets and outcomes, and the ASCC Blueprint Implementation-focused Monitoring System to monitor the implementation of programmes, projects and activities. Relative to the ASCC Scorecard, of the four ASCC components or dimensions mentioned above, it is only on human development that an index (Human Development Index) has been identified to date.

## 1.2 METHODOLOGY

In the study, the comparative approach and the case study method are utilised. The comparative approach is the main methodology used. This method involves the systematic analysis of the labour laws and practices of the 10 ASEAN Member-States<sup>3</sup>, in relation to the four topical areas of the study, namely employment of women, employment of youth, employment of persons with disabilities, and industrial relations/social dialogue. The use of a comparative method deepens description and brings into focus suggestive similarities and contrasts of the labour laws from each of the ASEAN Member States.

The case study method is utilised in presenting and analysing good practices of each of the research topics.

<sup>3</sup> The 10 ASEAN Member States (AMS) are: Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Viet Nam, Cambodia, Lao PDR and Myanmar.

### 1.2.1 THE COMPARATIVE APPROACH

In the study, the labour laws and other related legislations in each of the ASEAN Member States that pertain or relate to each of the four topic areas were reviewed and analysed using, but not limited to, the following benchmarks, where applicable:

#### ILO Conventions

1. Convention 77 - Medical Examination of Young Persons (Industry) Convention (1946)
2. Convention 78 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention(1946)
3. Convention 79 - Night Work of Young Persons (Non-Industrial Occupations) Convention (1946)
4. Convention 90 - Night Work of Young Persons (Industry) Convention (Revised) (1948)
5. Convention 138 - Minimum Age of Employment (1973)
6. Convention 182 – Elimination of the Worst Forms of Child Labour (1999)
7. Convention 29 – Forced Labour (1929)
8. Convention 105 – Abolition of Forced Labour (1957)
9. Convention 89 - Night Work (Women) Convention (Revised) (1948)
10. Convention 100 – Equal Remuneration (1951)
11. Convention 103 - Maternity Protection Convention (Revised)(1952)
12. Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons) (1983)
13. Convention 111 – Discrimination (Employment and Occupation) (1958)
14. Convention 118 - Equality of Treatment (Social Security) Convention (1962)
15. Convention 122 - Employment Policy Convention (1964)
16. Convention 87 – Freedom of Association and Protection of the Right to Organise (1948)
17. Convention 98 – Right to Organise and Collective Bargaining (1949)
18. Convention 144 - Tripartite Consultation (International Labour Standards) (1976)

#### UN Conventions and other international treaties and covenants

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social, and Cultural Rights
4. Convention on the Elimination of All Forms of Discrimination Against Women
5. Convention on the Rights of the Child
6. Convention on the Rights of Persons with Disabilities

### 1.2.2 PROCEDURE FOR DATA GATHERING AND WRITE UP

The study followed a three-part procedure for comparing labour laws and their practice. For the first part, researchers per topic were tasked to:

#### Part 1

1. Determine which of the applicable ILO conventions, UN conventions and other international treaties and conventions have been ratified by the 10 ASEAN Member States.
2. Find out if several principles, elements or contents of these conventions and treaties are articulated in the respective Constitution of the ASEAN countries.

3. Determine and identify how these conventions and treaties have been translated in specific labour laws and related social legislations and policies in the ASEAN countries.

For first part of the study, the researchers came up with a matrix and a write-up on the areas identified above.

The second part of the comparative methodology involved the fielding of questionnaires. These questionnaires were designed by the researchers and the coordination team to collect the necessary data for each of the research topics. The in-charge senior labour officials who were the focal points of each topic, disseminated the questionnaires to respective partners of all 10 ASEAN member states. These partners assisted in forwarding the questionnaires to the concerned departments/ ministries.

After retrieving all the completed questionnaires, the researchers were again tasked to review and analyse the information received and do the write up, focusing on similarities and disparities. The chapters on employment of women, employment of youth, and employment of persons with disabilities, were expected to include the following:

#### Part 2

1. A comparison of basic statistics relating to the assigned topic.
2. Similarities and variations of the challenges faced by women workers/young workers/ persons with disabilities, including the factors that contribute to these challenges and efforts undertaken to address these challenges.
3. A comparison of the labour laws, decrees and international standards relative to the topic and their implementation and enforcement.
4. The various institutions involved in implementation.
5. The inspection mechanism.
6. Some positive outcomes of the labour laws and factors leading to these outcomes.
7. Some limitations of the labour laws and the factors leading to limited outcomes.
8. Countries' interest in following up related regional or international instruments and standards.
9. The existence of stakeholders advocating for the labour market and employment rights of the vulnerable groups of workers.
10. An assessment of possible reasons or factors why some ASEAN countries are more progressive or advanced in their labour laws pertaining to the research topic.
11. Challenges in the harmonisation of labour laws.

The questionnaires used in the study were expected to yield much of the information for the above listed sub-topics. However, as mentioned later in this section, the very low turn-out of completed questionnaires constrained the researchers to address many of the sub-topics listed above.

The third part of the study involved case studies of best or good practices for each of the four topics: (i) gender equality and equal opportunities for women in the labour market; (ii) equal opportunities in employment for persons with disabilities; (iii) equal opportunities for youth employment in the labour market; and (iv) the role of social dialogue and consultation among social partners and stakeholders in resolving important labour market and employment issues. In identifying a practice for case study, the researchers were guided by the pertinent data provided in the completed questionnaires. The last part

of the questionnaire for each of the research topics asked respondents to identify and provide necessary details of what they think is a best or good practice. Based on the data collected, the researchers were to select a practice for further case study. However, again, due to the very low turn-out of completed questionnaires, the researchers had to identify possible practices for the case study.

At the minimum, the case studies covered the following:

#### Part 3: Case study

1. A brief background on the selected practice (how it started, why it started, actors responsible, etc.)
2. The mechanisms involved in the implementation.
3. The actors or groups involved in implementation.
4. The specific or concrete favourable results or outcomes.
5. Important lessons learned related to the sustainability of the best practice or best program.

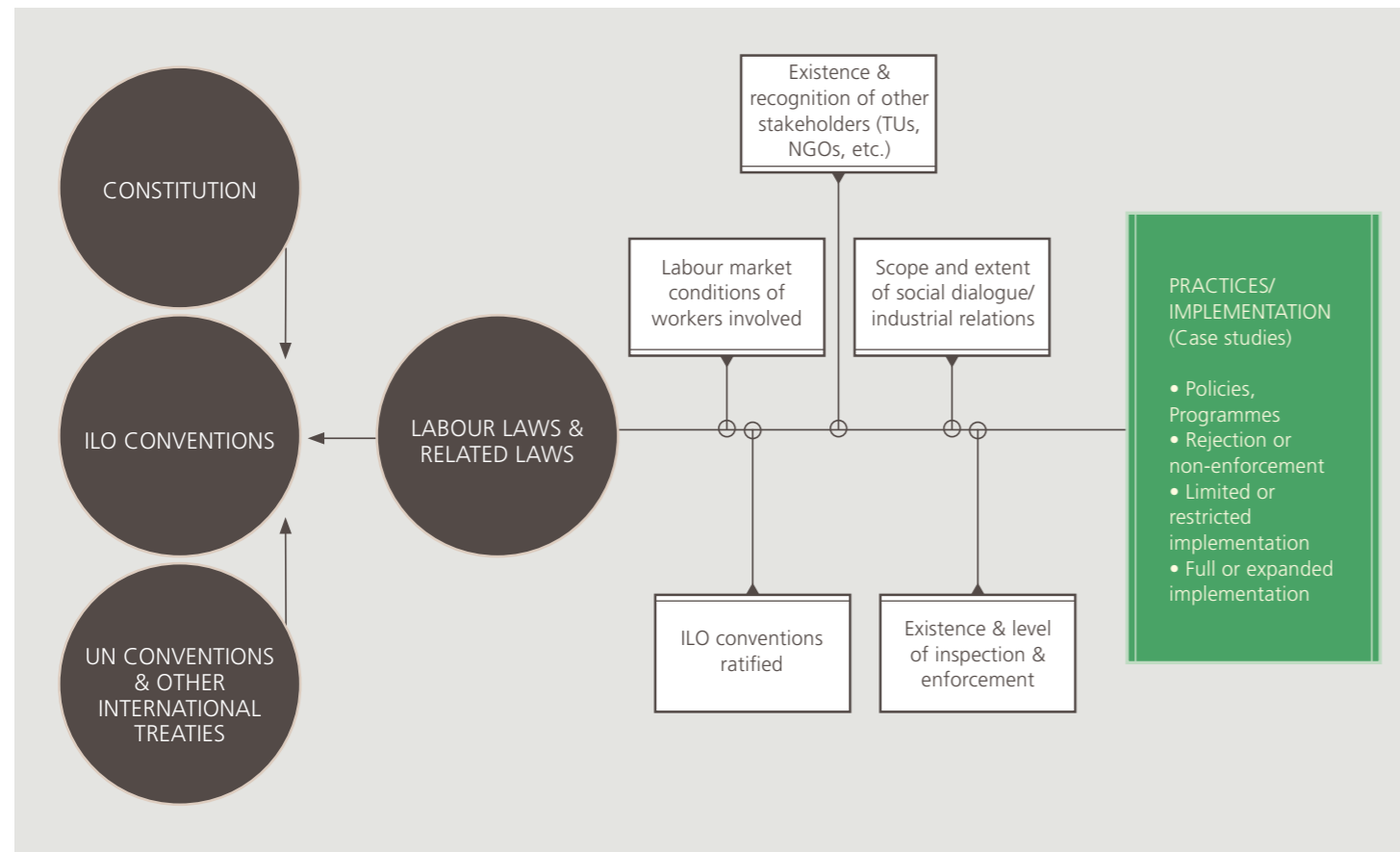
The researchers also used the study's proposed analytical framework (Figure 1 below) in their analysis of the practice case study.

The completion of all three parts discussed above make up the various chapters in this Volume.

### 1.2.3 THE ANALYTICAL FRAMEWORK

In analysing the relationship between ILO conventions, UN conventions and other international conventions and treaties on labour laws, on the one hand, and the factors influencing the extent of implementation or non-implementation of labour laws, on the other hand, the study was guided by an analytical framework illustrated in Figure 1.

It is posited that the existence and substance of labour laws covering the employment of women, the employment of youth, the employment of persons with disabilities, and industrial relations (focused on social dialogue) is related to, among others, the existence of related provisions in a country's Constitution, the ILO conventions ratified by a country, and the other international conventions and treaties recognised and ratified by a country. In terms of implementation (or non-implementation) of labour laws, aside from ratified ILO conventions, other factors such as labour market conditions of the workers involved, the existence and level of enforcement of labour laws, the scope and extent of social dialogue, and the recognition of the role of other stakeholders (e.g. trade unions, NGOs, etc.), may serve as push factors for a more expanded or full implementation of labour laws and the adoption and implementation of related policies and programmes. Corollary, the absence of these factors may result in the non-enforcement or limited or restricted implementation of labour laws, policies and programmes.



### 1.3 LIMITATIONS AND GAPS

Data gathered for this study relied heavily on existing secondary data written in the English language. As such, there may be more updated data available that were not considered as these may not be written in English. The fielding of questionnaires to gather primary data and fill gaps in existing data (including the non-availability in English of recent versions of labour laws of some ASEAN Member-States), particularly addressing the topics listed in Part 2 of the study, did not result in a substantial response rate. As such, there are gaps in this Volume that may require further study, such as the following:

- Comparison of basic labour market statistics relating to the four core topics
- Similarities and variations of the challenges faced by women workers/young workers/persons with disabilities, including the factors that contribute to these challenges and efforts undertaken to address these challenges
- The extent of monitoring and enforcement of labour standards affecting women, young workers and persons with disabilities
- Countries' interest in following up related regional or international instruments and standards
- The existence of stakeholders advocating for the labour market and employment rights of the vulnerable groups of workers
- A more thorough assessment of possible reasons or factors why some ASEAN countries are more progressive or advanced in their labour laws pertaining to the research topic

- A more thorough discussion and analysis of the challenges ASEAN Member-States face in the harmonisation of labour laws

Nonetheless, several of the case studies in this Volume provide useful information and insights into some of the gaps identified above, namely: (1) labour market characteristics of women workers, young workers, and persons with disabilities; (2) the similarities and variations of challenges faced by women, young workers and persons with disabilities in the ASEAN region; (3) the critical role of non-state actors in the promotion and implementation of laws and policies affecting these groups of workers; and (4) some measures to enhance the enforcement of labour laws and labour standards.

### 1.4 THE ORGANISATION OF THIS VOLUME

The findings of the second phase of the study, as contained in this Volume, are presented in a comparative manner with emphasis on their convergence and divergence modalities in relation to related ILO conventions. This study was completed in January 2013.

This Volume is comprised of six chapters. **Chapter 1** consists of this *Introduction* and a discussion of the methodology adopted in Phase II of the study.

**Chapter 2** provides a comparative analysis of labour laws and other related laws and social policy in ASEAN Member-States that promotes gender equality and equal opportunities for women. Several challenges and issues and concerns related to gender discrimination are identified and analysed as well. Case studies of good practices on the topic are included in the chapter. Chapter 2 highlights the need to take a multi-pronged approach to achieve gender equality.

**Chapter 3** presents a comparative analysis of labour laws and other relevant laws that protect the rights of young workers and enhance equal opportunities for them in the labour market. Several selected case studies of good practices that involve elimination of worst forms of child labour through education, education and skills for youth, and the integration of vocational training into the mainstream educational system, in some ASEAN countries are included in the chapter.

**Chapter 4** focuses on the comparison of labour laws and other related laws that seeks to expand employment opportunities for persons with disabilities. Several factors that impede access to employment of persons with disabilities are identified and analysed. The case studies in this chapter highlight, among others, the importance of a legislated quota scheme for the employment of these workers and the role of social dialogue and employer-NGO partnership to promote the hiring and integration of these workers in the labour market.

**Chapter 5** provides a comparative analysis of labour laws in the ASEAN region that promote social dialogue. Commonalities and differences in the exercise of freedom of association and collective bargaining among ASEAN Member-States are presented in this chapter. Also, structures and mechanisms for tripartite consultations in the region are compared. The case studies of good practices in this chapter focus on how effective social dialogue at various levels contributes to the transformation from confrontational to cooperative labour-management relations.

The last chapter, **Chapter 6**, brings together Chapters 2 to 5, provides an in depth analysis, highlights key findings and makes constructive recommendations from each of the core chapters, and raises insights from the study as a whole. Also, this chapter outlines several ways to move forward to further protect the rights, and promote and enhance equal employment opportunities for women, young workers, and persons with disabilities, as well as to promote social dialogue. Finally, issues for discussion and for further study are identified.





# Employment and Gender Equality

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## 2.1 INTRODUCTION

### 2.1.1 BASIC DATA ON EMPLOYMENT AND MIGRATION

This report looks at the situation of the 10 ASEAN countries with a focus on employment and occupation drawing upon two major global indexes used to measure the achievement of gender equality. To get an overall picture of employment trends among ASEAN countries, let us go over the basic data on employment and migration.

In terms of labour force participation rates (Table 1), Cambodia ranks the highest (82.8%), followed by Myanmar, Lao PDR, Viet Nam, and Thailand. Cambodia also ranked the highest in the female labour participation rates (79.3%), followed by Lao PDR, Myanmar, and Viet Nam, with the lowest in Malaysia (43.7%) and the Philippines (49.5%).

TABLE 1: POPULATION AND LABOUR FORCE PARTICIPATION RATES

Country	Population (in thousands)			Labour Force Participation Rates (LFPR) (2010)		
	Male	Female	Total	Male	Female	Total
Brunei Darussalam	205	201	406	76.8	55.7	66.3
Cambodia	7,003	7,303	14,305	86.6	79.3	82.8
Indonesia	120,819	121,507	242,326	84.2	51.0	67.4
Lao PDR	3,139	3,149	6,288	79.4	76.6	78.0
Malaysia	14,634	14,225	28,859	77.1	43.7	60.5
Myanmar	23,819	24,517	48,337	82.0	75.0	78.4
Philippines	47,567	47,285	94,852	79.4	49.5	64.3
Singapore	2,615	2,573	5,188	77.0	56.7	66.9
Thailand	34,157	35,361	69,519	80.2	63.8	71.7
Viet Nam	43,906	44,886	88,792	81.3	72.1	76.6

Source: Population Division of the Department of Economic and Social Affairs of the United Nations 2011, World population prospects: the 2010 revision, highlights and advanced tables, New York: United States, pp. 79-84. ILO, Economically active population, estimates and projections (6th edition, October 2011)

A look at the distribution of women's labour across sectors (Table 2) shows that Viet Nam had the highest percentage of women in "agriculture, hunting, and forestry" among all female workers (58.2%), which is also true of Thailand (39.7%) and Indonesia (39.5%). In Malaysia, manufacturing had the highest percentage of women workers among all women workers, while Thailand and Viet Nam had the second highest percentage of women workers in manufacturing next to agriculture. In a similar vein, around one-fifth of women in Indonesia, Malaysia, Thailand, and Viet Nam are in the manufacturing sector. By contrast, in the Philippines (29.6%) and Singapore (18.4%), wholesale and retail trade had the highest percentage of women workers among all women workers. The countries where the majority of women work in the services sector<sup>4</sup> were Brunei Darussalam (81.1%), Singapore (64.1%), and Malaysia (52.3%).

4 Categories H to Q in Table 2.

TABLE 2: PERCENTAGE OF EMPLOYMENT ACTIVITY (%)

Country	Brunei Darussalam <sup>1</sup> (2001)			Cambodia <sup>2</sup> (2004)			Indonesia <sup>1</sup> (2008)		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Total	100.00	100.00	100.00	N.A.	N.A.	100.00	100.00	100.00	100.00
A Agriculture	1.56	0.30	1.04	N.A.	N.A.	75.68	32.08	39.48	15.0
B Fishing	0.52	0.04	0.33	N.A.	N.A.	0.92	2.54	0.40	1.71
C Mining and Quarrying	3.70	1.28	2.70	N.A.	N.A.	0.12	1.47	0.34	0.65
D manufacturing	9.07	7.73	8.52	N.A.	N.A.	6.41	11.16	14.02	17.26
E Electricity, Gas and Water Supply	2.59	0.69	1.80	N.A.	N.A.	0.01	0.29	0.04	0.73
F Construction	13.25	1.54	8.41	N.A.	N.A.	0.26	8.31	0.33	13.35
G Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods	9.90	7.33	8.84	N.A.	N.A.	11.89	13.64	21.83	16.34
H Hotels and Restaurants	4.42	5.49	4.86	N.A.	N.A.	0.74	2.81	5.88	5.89
I Transport, Storage and Communications	3.96	2.32	3.28	N.A.	N.A.	0.15	8.55	1.85	7.11
J Financial Intermediation				N.A.	N.A.	0.09	0.71	0.61	1.96
K Real Estate, Renting and Business Activities	5.89	5.19	5.60	N.A.	N.A.	0.14	0.90	0.50	5.00
L Public Administration and Defence; Compulsory Social Security				N.A.	N.A.	0.51	3.13	1.35	7.83
M Education				N.A.	N.A.	0.97	2.33	4.65	3.30
N Health and Social Work				N.A.	N.A.	0.35	0.47	1.14	1.11
O Other Community, Social and Personal Service Activities				N.A.	N.A.	1.25	4.73	3.08	2.31
P Household with Employed Persons				N.A.	N.A.	0.43	0.82	4.41	0.43
Q Extra-Territorial Organisations and Bodies	-	-	-	N.A.	N.A.	0.09	0.01	0.00	0.01
X Not classified by economic activity	-	-	-	N.A.	N.A.	-	0.11	0.07	-

Source: Tabulated by the author using ILO Total Employment, by economic activity (thousands)

No data for Laos and Myanmar.

Notes:

1. Persons aged 15 years and over.
2. Persons aged 10 years and over.
3. Persons aged 15 to 64 years. Excluding armed forces.
4. Persons aged 15 years and over. Excluding regular military living in barracks.
5. The data refer to the residents (Singapore citizens and permanent residents) aged 15 years and over.
6. Persons aged 15 years and over. Excluding armed forces.

\*\* Included in Category A-C above.

TABLE 2: PERCENTAGE OF EMPLOYMENT ACTIVITY (%)

Country	Malaysia <sup>3</sup> (2008)			Philippines <sup>4</sup> (2008)			Singapore <sup>5</sup> (2006)		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
A Agriculture	15.00	8.88	12.81	22.37	22.37	31.11	1.59	0.79	1.25
B Fishing	1.71	0.12	1.15	0.84	0.84	4.18			
C Mining and Quarrying	0.65	0.26	0.51	0.09	0.09	0.46			
D manufacturing	17.26	20.01	18.24	9.93	9.93	8.58	18.46	14.52	16.79
E Electricity, Gas and Water Supply	0.73	0.27	0.57	0.15	0.15	0.38	**	**	**
F Construction	13.35	2.19	9.36	0.27	0.27	5.38	7.51	2.26	5.29
G Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods	16.34	16.01	16.22	29.55	29.55	18.91	15.54	18.42	16.76
H Hotels and Restaurants	5.89	9.98	7.35	3.95	3.95	2.80	5.97	8.80	7.17
I Transport, Storage and Communications	7.11	2.53	5.47	1.26	1.26	7.60	17.34	9.09	13.85
J Financial Intermediation	1.96	3.72	2.59	1.61	1.61	1.08	4.38	8.02	5.92
K Real Estate, Renting and Business Activities	5.00	5.53	5.19	2.51	2.51	2.80	11.17	13.35	12.09
L Public Administration and Defence; Compulsory Social Security	7.83	5.64	7.05	4.97	4.97	4.92	12.50	12.34	12.43
M Education	3.30	11.30	6.16	6.11	6.11	3.14			
N Health and Social Work	1.11	4.63	2.37	2.11	2.11	1.15	1.60	7.13	3.94
O Other Community, Social and Personal Service Activities	2.31	3.04	2.57	3.10	3.10	2.44	3.95	5.27	4.51
P Household with Employed Persons	0.43	5.87	2.37	11.17	11.17	5.07			
Q Extra-Territorial Organisations and Bodies	0.01	0.01	0.01	0.01	0.01	0.01			
X Not classified by economic activity	-	-	-	-	-	-	-	-	-

Source: Tabulated by the author using ILO Total Employment, by economic activity (thousands)

No data for Laos and Myanmar.

Notes:

1. Persons aged 15 years and over.
2. Persons aged 10 years and over.
3. Persons aged 15 to 64 years. Excluding armed forces.
4. Persons aged 15 years and over. Excluding regular military living in barracks.
5. The data refer to the residents (Singapore citizens and permanent residents) aged 15 years and over.
6. Persons aged 15 years and over. Excluding armed forces.

\*\* Included in Category A-C above.

TABLE 2: PERCENTAGE OF EMPLOYMENT ACTIVITY (%)

Country	Thailand <sup>6</sup> (2008)			Cambodia <sup>2</sup> (2004)		
	Male	Female	Total	Male	Female	Total
Total	100.00	100.00	100.00	100.00	100.00	100.00
A Agriculture	42.72	39.73	41.34	51.00	58.20	54.52
B Fishing	1.59	0.59	1.12	4.89	1.79	3.38
C Mining and Quarrying	0.22	0.06	0.15	0.84	0.54	0.70
D manufacturing	11.79	16.21	13.83	11.22	12.20	11.70
E Electricity, Gas and Water Supply	0.42	0.10	0.27	0.54	0.12	0.33
F Construction	8.34	1.78	5.32	8.19	0.88	4.62
G Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods	14.44	15.43	14.89	8.21	14.12	11.10
H Hotels and Restaurants	4.03	8.78	6.22	0.81	2.03	1.41
I Transport, Storage and Communications	4.49	1.00	2.88	5.21	0.80	3.06
J Financial Intermediation	0.88	1.24	1.05	0.37	0.38	0.38
K Real Estate, Renting and Business Activities	1.94	1.84	1.89	0.66	0.37	0.52
L Public Administration and Defence; Compulsory Social Security	4.18	2.58	3.44	2.38	0.88	1.65
M Education	2.13	3.80	2.90	1.66	3.99	2.80
N Health and Social Work	0.85	3.13	1.90	0.65	0.91	0.78
O Other Community, Social and Personal Service Activities	1.79	2.61	2.16	2.89	2.09	2.50
P Household with Employed Persons	0.10	1.00	0.52	0.45	0.70	0.57
Q Extra-Territorial Organisations and Bodies	0.00	0.01	0.00	0.01	0.01	0.01
X Not classified by economic activity	0.1	0.1	0.1	-	-	-

Source: Tabulated by the author using ILO Total Employment, by economic activity (thousands)

No data for Laos and Myanmar.

Notes:

1. Persons aged 15 years and over.
2. Persons aged 10 years and over.
3. Persons aged 15 to 64 years. Excluding armed forces.
4. Persons aged 15 years and over. Excluding regular military living in barracks.
5. The data refer to the residents (Singapore citizens and permanent residents) aged 15 years and over.
6. Persons aged 15 years and over. Excluding armed forces.

\*\* Included in Category A-C above.

With respect to international migration (Table 3), in 2010, the top sourced countries were the Philippines, Indonesia, Myanmar, Lao PDR, and Cambodia, in descending order, while Malaysia, Singapore, and Thailand were among the top recipient countries in descending order. A look at destination countries indicates that emigrants from Indonesia, Myanmar, Lao PDR, and Cambodia migrate within the ASEAN region. It is to be noted that in Singapore, 56.0% of immigrants were women.

TABLE 3: ASEAN MEMBER COUNTRIES' EMIGRATION AND IMMIGRATION (2010)

	emigrants (in thousands)	top three destination countries	immigrants (in thousands)	females as percentage of immigrants (%)	top three source countries	comparison of the number of emigrants and immigrants*
Brunei Darussalam			data not available			
Cambodia	350.4	United States, France Thailand	335.8	51.7	Viet Nam, Thailand China	>
Indonesia	2,502.3	Malaysia, Saudi Arabia Netherlands	122.9	44.5	China, United Kingdom	>
Lao PDR	366.6	United States, Thailand France	18.9	48.0	Viet Nam, China Thailand	>
Malaysia	1,481.2	Singapore, Australia Brunei Darussalam	2,357.6	45.2	Indonesia, Philippines China	<
Myanmar	514.2	Thailand, United States India	88.7	48.7	China, India Pakistan	>
Philippines	4,275.2	United States, Saudi Arabia Canada	435.4	51.1	United States, China United Kingdom	>
Singapore	297.2	Malaysia, Australia United Kingdom	1,966.9	56.0	Malaysia, China India	<
Thailand	810.8	United States, Cambodia Malaysia	1,157.3	48.4	China, Myanmar Lao PDR	<
Viet Nam	2,226.4	United States, Australia Canada	69.3	36.6	data not available	>

Source: World Bank <<http://www.worldbank.org/prospects/migrationandremittances>> [6 October 2012]  
Note: > indicates there are more emigrants than immigrants, whereas < indicates there are more immigrants than emigrants

### 2.1.2 GENDER INEQUALITY INDEX (GII) AND GENDER INEQUALITY INDEX (GII)

The United Nations Development Programme (UNDP) introduced the Gender Inequality Index (GII) in 2011 to replace the Gender Empowerment Measure (GEM). The GII is designed to reveal the extent to which national achievements in the following three dimensions of human development are eroded by gender inequality: reproductive health, empowerment, and the labour market. The health dimension is measured by two indicators: maternal mortality ratio and the adolescent fertility rate (number of births to women ages 15–19 per 1,000 women ages 15–19). The empowerment dimension is also measured by two indicators: the share of parliamentary seats held by each sex and secondary and higher education attainment levels. The labour dimension is measured by women's participation in the work force.

ASEAN countries' GII 2011 rankings varied widely with Singapore at 8th place, followed by Malaysia (43rd), Viet Nam (48th), Thailand (69th), the Philippines (75th), Myanmar (96th), Cambodia (99th), and Indonesia (100th) out of 146 countries. It was the highest ranking country in Asia, surpassing the Republic of Korea (11th) and Japan (14th) (Table 4).

TABLE 4: GII AND GGI AMONG ASEAN COUNTRIES<sup>5</sup>

Country	GII Ranking (2011, UNDP, out of 146 countries)	GGI Ranking (2011, WEF, out of 135 countries)	GGI Ranking (2007, WEF, out of 128 countries)
Brunei Darussalam	N.A.	76	N.A.
Cambodia	99	102	98
Indonesia	100	90	81
Lao PDR	N.A.	N.A.	N.A.
Malaysia	43	97	92
Myanmar	96	N.A.	N.A.
Philippines	75	8	77
Singapore	8	57	57
Thailand	69	60	52
Viet Nam	48	79	42

GII faces data limitations especially in the employment dimension, lacking information on incomes, employment and on unpaid work by women, to name a few. The Gender Gap Index (GGI) introduced in 2006 by the World Economic Forum (WEF) in contrast uses more variables in the employment dimension which prove useful for us to grasp the employment situations in each ASEAN country. The Index benchmarks national gender gaps and provides country rankings as calculated using data in the four fundamental categories: economic participation and opportunity, educational attainment, health and survival, and political empowerment. The Index is composed of these four sub-indexes and 14 variables whose scores range between 1 (full equality) and 0 (total inequality).

The gap in the area of economic participation and opportunity is captured through the difference in labour force participation rates, the ratio of estimated female-to-male earned income, wage equality for similar work, the ratio of women to men among legislators, senior officials and managers, and the ratio of women to men among technical and professional workers. In the category of educational attainment, the gap is captured through the ratios of women to men in primary-, secondary- and tertiary-level education as well as the ratio of the female literacy rate to the male literacy rate. For the category of health and survival, two variables are used: the sex ratio at birth and women's and men's life expectancy. The fourth category, political empowerment uses three variables: the ratio of women to men in minister-level positions, the ratio of women to men in parliamentary positions, and the ratio of women to men in terms of years in executive office (prime minister or president) in the last 50 years.

<sup>5</sup> Source: Hausemann, R, L. D. Tyson and S. Zahidi 2011, The global gender report 2011, World Economic Forum (WEF), United Nations Development Programme (UNDP) 2011, Human development report 2011, United Nations



ASEAN countries' GGI 2011 rankings varied widely with the Philippines at 8th place, followed by Singapore (57nd), Thailand (60th), Brunei Darussalam (76th), Viet Nam (79th), Indonesia (90th), Malaysia (97th), and Cambodia (102nd) out of 135 countries<sup>6</sup>. The Philippines surpasses by far the second ranked Singapore and together with Sri Lanka (31st) it was one of the two countries in Asia to hold places in the top 50 of the global rankings. While the Philippines and Singapore hold high positions globally on the economic participation and opportunity subindex [the Philippines (15th) and Singapore (16th)], Singapore suffered from persistent gaps in health (101st), education (100th), and government (83rd), unlike the Philippines, which ranked first on both education and health.

Here we will just give the top three among the 10 ASEAN countries which scored high on some of the sub-indexes in economic participation and opportunity. The top three countries to score high on wage equality for similar work were Malaysia (4th), Singapore (5th), and Thailand (17th), whereas Philippines, Singapore, and Thailand represented the top three in the ratio of women to men among legislators, senior officials and managers. Moreover, the Philippines, Thailand, and Viet Nam had the highest percentage of women professional and technical workers in the world.

In order to assess how each country has progressed in closing the gender gap, we will compare the GGI scores in 2007 and 2011<sup>7</sup> (Tables 4 and 5). Singapore was the only country among the ASEAN countries to have made improvements gaining 20 places from 77th in 2007 to 57th in 2011 in the rankings, particularly because of its performance in economic participation and opportunity. With the exception of Viet Nam, the rest of ASEAN countries considered here improved their scores but lost a few places in the rankings. Viet Nam fell as many as 37 places from 42nd in 2007 to 79th in 2011 and worsened in the field of economics, health and politics.

<sup>6</sup> Lao PDR and Myanmar were not among the 135 countries covered.

<sup>7</sup> Here we will exclude Brunei Darussalam from consideration in addition to Lao PDR and Myanmar all of which were not covered in the Gender gap report in 2007. For the sake of simplicity, we did not consider the data in between (the years 2008, 2009, and 2010).

TABLE 5: GGI SCORES AMONG ASEAN COUNTRIES<sup>8</sup>

GGI Scores	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
2007										
GGI score [out of 128 countries]	N.A.	0.635	0.655	N.A.	0.644	N.A.	0.763	0.661	0.682	0.689
GGI score/Economic Participation and Opportunity	N.A.	0.664	0.599	N.A.	0.567	N.A.	0.789	0.655	0.724	0.745
Labour force participation	N.A.	0.94	0.61	N.A.	0.57	N.A.	0.67	0.68	0.84	0.94
Income (PPP US\$)	N.A.	0.74	0.45	N.A.	0.36	N.A.	0.60	0.51	0.54	0.71
Wage equality for similar work (survey)	N.A.	0.73	0.84	N.A.	0.80	N.A.	0.82	0.82	0.8	0.77
Legislators, senior officials, and managers	N.A.	0.16	0.20	N.A.	0.30	N.A.	1.00	0.35	0.39	0.28
Professional and technical workers	N.A.	0.49	0.72	N.A.	0.67	N.A.	1.00	0.82	1.00	1.00
GGI score/Educational Attainment	N.A.	0.845	0.949	N.A.	0.985	N.A.	1.00	0.931	0.973	0.892
GGI score/Health and Survival	N.A.	0.980	0.972	N.A.	0.969	N.A.	0.980	0.958	0.980	0.970
GGI score/Political Empowerment	N.A.	0.053	0.101	N.A.	0.056	N.A.	0.283	0.101	0.050	0.148
2011										
GGI score [out of 135 countries]	0.679	0.646	0.659	N.A.	0.653	N.A.	0.769	0.691	0.689	0.673
GGI score/Economic Participation and Opportunity	0.755	0.632	0.564	N.A.	0.594	N.A.	0.763	0.758	0.709	0.711
Labour force participation	0.80	0.87	0.61	N.A.	0.57	N.A.	0.63	0.74	0.83	0.92
Estimated earned income (PPP US\$)	0.97	0.66	0.42	N.A.	0.43	N.A.	0.60	0.88	0.63	0.69
Wage equality for similar work (survey)	0.75	0.74	0.67	N.A.	0.81	N.A.	0.76	0.81	0.77	0.69
Legislators, senior officials, and managers	0.54	0.16	0.28	N.A.	0.32	N.A.	1.00	0.46	0.31	0.28
Professional and technical workers	0.58	0.48	0.81	N.A.	0.71	N.A.	1.00	0.82	1.00	1.00
GGI score/Educational Attainment	0.994	0.865	0.967	N.A.	0.991	N.A.	1.00	0.938	0.986	0.926
GGI score/Health and Survival	0.966	0.980	0.966	N.A.	0.974	N.A.	0.980	0.968	0.980	0.946
GGI score/Political Empowerment	0.000	0.11	0.140	N.A.	0.052	N.A.	0.331	0.101	0.083	0.111
GGI score difference (2007-2011)	*	0.011	0.004	*	0.009	*	0.006	0.030	0.007	-0.016
GGI difference/Economic Participation and Opportunity (2007-2011)	*	-0.032	-0.035	*	0.027	*	-0.026	0.103	-0.015	-0.034

<sup>8</sup> Source: Hausemann, R., L. D. Tyson and S. Zahidi. 2011. The global gender report 2011. World Economic Forum (WEF)

### 2.1.3 Equality in Economic Participation and Opportunity

The eight spider charts (Figure 1) compare the scores for the four indicators of equality in economic participation and opportunity for the eight ASEAN nations covered in the Gender Gap Report. The bigger the polygon, the higher the degree of gender equality. Accordingly, Philippines with the largest polygon and enjoys the highest level of gender equality. The Philippines performed particularly well in the percentage of female professional and technical workers and that of female legislators, senior officials, and managers; it got a perfect score. However, the Philippines, not to mention the other seven nations, have not succeeded in filling the wage gap between men and women.

These eight spiders also highlight the gender stereotypes within each member country. With the exception of the Philippines, the remaining seven countries suffer from vertical job segregation by gender at workplaces, with a low percentage of women among legislators, senior officials, and managers, which translates into the difference, in the shapes of the polygons. From the charts, we also see that Singapore may be able to achieve a higher degree of gender equality by overcoming job segregation. On the other hand, job segregation is more pronounced in Indonesia, Cambodia, Thailand, and Viet Nam. In any case, each member state could identify the causes of vertical job segregation and make efforts to eliminate them. This may be attributed to a single cause or it may result from a combination of factors. Possible causes include the standards which determine the assignment and promotion of workers, discriminatory management practices (i.e. statistical discrimination) by employers, forms of investment in human resources or technical training services, the type of educational investment and vocational training prior to employment, the years of service, and the burden of care work (consisting of household chores, child care, and care for the elderly and the sick), which have been shouldered by women because of the gender division of labour. Each member country needs to examine those possible factors and formulate appropriate measures within its social and cultural context.

Another distinct feature is that Cambodia, Indonesia, and Malaysia have a low percentage of female professional and technical workers. These nations need more concerted efforts to ameliorate the employment situations, as they are also confronted with a large gender pay gap and a low percentage of women in management, which manifests as a wider gender gap than the global average.

Thirdly, Thailand and Viet Nam have been successful in achieving full gender equality as measured by the percentage of female professional and technical workers, but have been unable to close the widening gender pay gap. The gender gap also exists in the amount of estimated income earned by men and women. Therefore, they need to tackle the gender gap not only in employment, but also outside the sphere of employment which gives rise to income gaps.

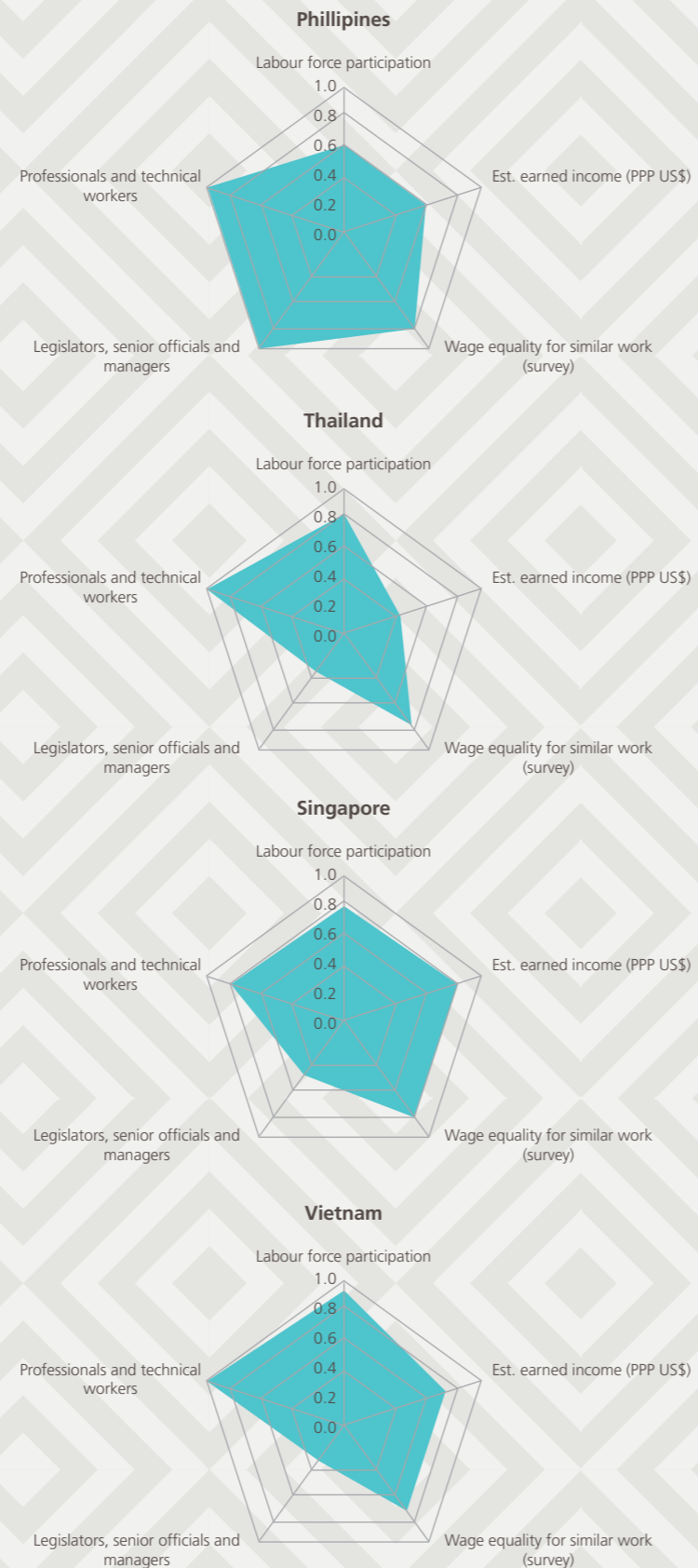
Fourth, a comparison of the shape of the polygon on the upper right hand side, where the scores for "labour force participation" and "estimated earned income" are plotted with the shape of the polygon, and on the lower left hand side where the scores for "wage equality for similar work," "legislators, senior officials, and managers," and "professional and technical workers" are plotted, demonstrates that Cambodia suffers from a significant gender gap in employment, but the gender gap as measured by estimated earned income is relatively small, which may be attributed to alternative sources of income other than wage employment available to women. Conversely, such alternative sources of income may result in greater gaps between men and women in general.

FIGURE 2: COMPARISON OF THE SCORES OF THE FOUR INDICATORS OF EQUALITY IN ECONOMIC PARTICIPATION AND OPPORTUNITY (GGI, 2011)



Tabulated by the author using the Gender Gap Index 2011.

FIGURE 2: COMPARISON OF THE SCORES OF THE FOUR INDICATORS OF EQUALITY IN ECONOMIC PARTICIPATION AND OPPORTUNITY (GGI, 2011)



Tabulated by the author using the Gender Gap Index 2011.

## 2.2 COMPARISON OF INTERNATIONAL STANDARDS WITH NATIONAL LAWS

### 2.2.1 AN OVERVIEW OF GENDER EQUAL POLICIES IN ASEAN

“Social justice and rights” is one of the key elements of the ASEAN Socio-Cultural Community Blueprint which constitutes the Roadmap for the ASEAN Community as the Cha-am Hua Hin Declaration on Roadmap for the ASEAN Community was adopted at the 14th ASEAN Summit in Cha-am, Thailand on March 1, 2009.<sup>9</sup> Based on its commitment to promote social justice and mainstream people’s rights into its policies and all spheres of life, including the rights and welfare of children and women, ASEAN set a strategic objective to “safeguard the interests and rights as well as provide equal opportunities, and raise the quality of life and standard of living, for women, children, ...” and identified several specific actions to be taken, including “to work towards the establishment of an ASEAN commission on the promotion and protection of the rights of women and children” (ASEAN 2009: 78). Fulfilling this strategic objective of protecting the rights of women necessitates the formulation of domestic laws in compliance with the international standards in employment, and the ratification of ILO Conventions and UN agreements on gender equality, followed by the enhancement of the effectiveness of these domestic laws and international agreements.

ASEAN countries are on the way to ratifying major international agreements related to gender equality. On one hand, all countries have either ratified or acceded to CEDAW, whereas eight countries, namely, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam, have ratified C100, of which Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, and Viet Nam have also ratified C111. However, no ASEAN country has ratified C156 and C183. Such being the case, the Philippines was the first ASEAN country to ratify CEDAW in 1981, C100 in 1953, and C111 in 1960.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international convention adopted in 1979 by the United Nations General Assembly. The Convention defines discrimination against women in the following terms: Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. All ASEAN countries have ratified this Convention with the Philippines as the first country and followed by Lao PDR, Viet Nam, Indonesia and Thailand, all of whom ratified in the early eighties. Cambodia, Malaysia, Singapore and Myanmar came in the nineties and Brunei Darussalam as the last country ratified it in 2006.

Meanwhile, the ILO 98th Session of the International Labour Conference held in June 2009 placed “gender equality at the heart of decent work” as its sixth agenda. As the report Gender Equality at the Heart of Decent Work, submitted to the Conference emphasises in its introduction, securing decent work has now become crucial for women and men, making it possible for society to achieve gender equality accompanied by sustainable economic growth, thereby reducing poverty among women and men and

9 ASEAN (2009) Roadmap for an ASEAN Community 2009-2015, ASEAN



upgrading the living standards of all people. (However, the reality is otherwise; the current situation is such that there continues to be an increasing feminization of poverty, persistence of gender pay gaps, a lack of formal employment opportunities for women, an over-representation of women in low-wage jobs or domestic work, and a much smaller percentage of women in administrative, executive, engineering and managerial posts compared to men, low-paying domestic work is often the only available option to women.) These grave problems as pointed out in the Report should be addressed by changing the status quo, where many women are deprived of the right to work and social protection and excluded from participating in social dialogues, in order to maintain employment opportunities, increase social protection, and guarantee human dignity.

The attainment of gender equality as a basis of social justice is closely connected to the achievement of decent work. Concrete measures necessary to reach this goal include reinforcing the policy to reconcile work and family life, narrowing gender pay gaps, respecting the principle of equal pay for equal work, offering opportunities for skills development and vocational training, supporting women entrepreneurship, and enabling women to take on leadership roles, which lead to the social and economic empowerment of women. The Report also urges governments to strengthen these measures through social dialogue and in partnership with the social partners.

### 2.2.2 THREE KEY ILO CONVENTIONS ON GENDER EQUALITY

With respect to discrimination at workplace and gender equality promotion, the International Labour Organisation has the most comprehensive Convention, namely Discrimination (Employment and Occupation) Convention, 1958 (**No. 111**). It provided that ratified member States are to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect to employment and occupation, with a view to eliminate any discrimination. The prohibited grounds for discrimination enumerated include sex as well as race, colour, religion, political opinion, national extraction or social origin. This Convention is among the most widely ratified, with 169 countries<sup>10</sup> having demonstrated their commitment to the principles embodied in this Convention through ratification. Among ASEAN countries, its ratification is less wide-spread with ratifications of Cambodia, Indonesia, Lao PDR, the Philippines and Viet Nam, as shown in Table 1.

Another fundamental Convention, the Equal Remuneration Convention (**No. 100**), adopted by the International Labour Conference in 1951, promotes equal pay for work of equal value between men and women. As such, the Convention addresses one form of discrimination (on the basis of sex) in the important but limited area of employment (remuneration). This Convention is also widely ratified by 168 member States as of August 2011 and 8 out of 10 member States in ASEAN, as shown in Table 1.

One other important Convention which has been acknowledged as being part of the key package of gender equality Conventions is the Maternity Protection Convention, 2000 (**No. 183**). The main contents of the provisions relate to the health protection, maternity leave, cash and health care benefits, breastfeeding entitlements and employment protection and non-discrimination (prohibition of dismissal due to pregnancy). None of ASEAN countries have ratified this Convention.

<sup>10</sup> As of August 2011.

TABLE 6: RATIFICATION STATUS OF ASEAN COUNTRIES ON CEDAW AND THREE ILO CONVENTIONS IN THE PROMOTION OF EQUAL EQUALITY

NO.	COUNTRY	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)	Equal Remuneration Convention, 1951 (No. 100)	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Maternity Protection Convention, 2000 (No. 183)
1	BRUNEI DARUSSALAM	24 May 2006 (acceded)	Not yet	Not yet	Not yet
2	CAMBODIA	15 Oct. 1992 (acceded)	23 Aug. 1999	23 Aug. 1999	Not yet
3	INDONESIA	13 Sept. 1984 (ratified)	11 Aug. 1958	07 Jun. 1999	Not yet
4	LAO PDR	14 Aug. 1981 (ratified)	13 Jun. 2008	13 Jun. 2008	Not yet
5	MALAYSIA	05 Jul. 1995 (acceded)	09 Sep. 1997	Not yet	Not yet
6	MYANMAR	22 Jul. 1997 (acceded)	Not yet	Not yet	Not yet
7	PHILIPPINES	05 Aug. 1981 (ratified)	29 Dec. 1953	17 Nov. 1960	Not yet
8	SINGAPORE	05 Oct. 1995 (acceded)	30 May 2002	Not yet	Not yet
9	THAILAND	09 Aug. 1985 (acceded)	08 Feb. 1999	Not yet	Not yet
10	VIET NAM	17 Feb. 1982 (ratified)	07 Oct. 1997	07 Oct. 1997	Not yet

All 10 ASEAN countries are among ILO member States (total 185 as of September 2012), but they differ widely as to the ratification of the four key ILO Conventions on Gender Equality: the Equal Remuneration Convention (C100), the Discrimination (Employment and Occupation) Convention (C111), the Workers with Family Responsibilities Convention (C156), and the Maternity Protection Convention (C183) (Table 6). Eight ASEAN countries, namely, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam, have ratified C100, among which five (Cambodia, Indonesia, Lao PDR, the Philippines, and Viet Nam) have ratified C111. As of September 2012, C100 has been ratified by 169 ILO member States, and C111 by 170 States. By contrast, C156 and C183 have not been ratified by any ASEAN country. The number of ratifications for C156 and C183 in the world remains small, with C156 by 41 States and C183 by 25 States.

All 10 ASEAN countries are the State Parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In terms of the year of ratification/accession and the number of ratifications/accessions, the Philippines was the first ASEAN country to ratify CEDAW in 1981<sup>11</sup>, C100 in 1953, and C111 in 1960.

### 2.2.3 EQUAL REMUNERATION CONVENTION (C100)

In most ASEAN countries the labour law prohibits direct discrimination based on sex. In practice, however, women continue to encounter both, the direct and more hidden forms of discrimination during their working lives in most countries. Occupational sex segregation is linked to wage discrimination suffered by women, which is the outcome of undervaluing the jobs traditionally dominated by them. The **gender pay gap**, that is, the pay difference between women and men, is considerable in ASEAN labour markets. Haspels and Majurin (2008:34) showed that women's income is less than or just half of men's income in Malaysia (0.47) and Singapore (0.51); to around 60% of men's income in the Philippines (0.59) and

<sup>11</sup> Lao PDR also ratified the CEDAW in 1981, the same year as the Philippines but was late in ratifying C100 and C111 in 2008.

Thailand (0.61); and to around two-third of men's income in Viet Nam (0.68). In manufacturing, women's wages as a percentage of men's are over 70% in the Philippines (80%) and Thailand (72%); and below 65% in Malaysia (63%) and Singapore (61%) (ibid, 2008:35).

As shown in Table 7, all ASEAN countries have no a concept of "work of equal value" in their labour legal provisions, even though they all ratified Convention 100. Only some countries, including Cambodia, Lao PDR, Thailand and Viet Nam, try to express this concept as equal remuneration for same or similar work. To eliminate gender-based pay discrimination against women at work, labour legislation should not only provide for equal remuneration for equal, the same or similar work, but also prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.

Discrimination in employment and occupation based on sex occurs when men and women have unequal opportunities or are treated differently in employment or occupation due to perceptions and prejudices on their biological and/or social gender roles in society. In many ASEAN countries, for example, women are assigned the main responsibility for looking after the family and household duties and this is considered to limit their job performance. Such ideas, expectations and norms about the roles, characteristics, abilities and behaviour of men and women exist in every society, and they form the root cause for discrimination on the grounds of sex.

Objective biological differences between women and men, most notably, differences in reproductive functions, may justify and sometimes even require differences in treatment between women or men. However, employment discrimination against women, and sometimes men, often does not derive from objective facts but is based on assumptions and generalisations on what each sex can and cannot, and should and should not do.

TABLE 7: THE PRINCIPLE OF EQUAL REMUNERATION FOR MEN AND WOMEN WORKERS FOR WORK OF EQUAL VALUE

C.	COUNTRIES	CONTENTS
1	2	3
Equal Remuneration Convention, 1951 (No. 100)		<p>Article 1. The term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.</p> <p>Article 2. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.</p> <p>Article 3. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.</p>
	Brunei Darussalam	No definition of equal remuneration for men and women workers for work of equal value.
	Cambodia	No definition of equal remuneration for men and women workers for work of equal value. But Article 106 of the Labour Code 1997 states that "for work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age".
	Indonesia	No definition of equal remuneration for men and women workers for work of equal value.
	Lao PDR	No definition of equal remuneration for men and women workers for work of equal value. But Article 45 of the Labour Law (amended) 2006 states that "all workers shall be entitled to receive equal salaries or wages for work of equal quantity, quality, and value, without any discrimination as to nationality, or ethnic origin, sex, age, religious, believe in, social-economic status".
	Malaysia	No definition of equal remuneration for men and women workers for work of equal value.
	Myanmar	No definition of equal remuneration for men and women workers for work of equal value. But in Myanmar Constitution law, Chapter VIII, Citizen, Fundamental Rights and Duties of the Citizens states that "Women shall be entitled to the same rights and salaries as that received by men in respect of similar work".
	Philippines	No definition of equal remuneration for men and women workers for work of equal value.
	Singapore	The Tripartite Guidelines on Fair Employment Practices state that employers should pay employees wages commensurate with the value of the job and that regardless of age, gender, race, religion and family status, employees should be paid and rewarded based on their performance, contribution and experience.
	Thailand	No definition of equal remuneration for men and women workers for work of equal value. But Section 53 of the Labour Protection Act 1998 states that "where the work to be performed is of the same nature, quality and quantity, the basic pay, overtime pay, holiday and holiday overtime pay shall be fixed pari passu by the employer regardless of whether the employee is male or female".
Viet Nam	No definition of equal remuneration for men and women workers for work of equal value. But Article 90 of the Labour Code (amended) 2012 states that "an employer must ensure to equally remunerate his/her employees for work of equal value without gender-based discrimination".	



2.2.4 Discrimination Convention (C111)

The Convention 111 requests that the definition and prohibition of direct and indirect discrimination should be reflected in national legislation. However, there is a lack of a clear definition of direct and indirect discrimination covering all the grounds and all the aspects of discrimination in employment and occupation as contemplated by Article 1 of the Convention in all ASEAN countries' labour legislations.

Some ASEAN countries have adapted to the contents of Convention No. 111 in a fairly comprehensive way (Table 3). Their comprehensive legal framework has been developed to help female workers in areas of health, time, and financial assistance to enable them to combine family responsibility and paid work and compete on a more level playing field with male counterparts, such as in Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Viet Nam. It is important for employers and workers in these countries that a strong foundation is provided in national laws that are in accordance with international norms which not only combat discrimination but also provide for special measures of protection and assistance. However, there is a need to review some of these legal provisions, because in real life scenarios they actually hamper equality at work and result in situations that are theoretically but not practically in compliance with Convention No. 111. Some measures are not reasonable and feasible, and especially some provisions provide too many entitlements and priority to female workers alone, which can be costly to employers and thereby serve as a disincentive to employers to hire, retain and promote women workers.

A balance needs to be achieved—between the extension of positive discrimination and the demands of employers—for women to positively benefit in the long term as the over extension of benefits for women workers can result in disadvantages for female workers in practice. In all cases, employers will not want to employ female workers if they have to pay for the higher cost incurred. As a result female workers will lose the chance to have a job and will end up more disadvantaged. Therefore, in order to create actual equality between female and male workers, the provisions must be reasonably developed and extended to both men and women. Legal provisions can be based on gender, but not so that they disadvantage either sex. Accordingly legal steps should be taken to create conditions for men to be able to share childcare and family responsibilities for women.

TABLE 8: THE PRINCIPLE OF NON DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

	COUNTRIES	CONTENTS
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Article 1		Article 1. 1. For the purpose of this Convention the term discrimination includes— (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination. 3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

1	COUNTRIES	CONTENTS
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Article 1	Brunei Darussalam	No definition of discrimination.
	Cambodia	No definition of discrimination. But Article 12 of the Labour Code 1997 states that "no employer shall consider on account of race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities to be the invocation in order to make a decision on hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract. Distinctions, rejections or acceptances based on qualifications required for a specific job shall not be considered as discrimination".
	Indonesia	No definition of discrimination. But Article 5 of the Act on Manpower 2003 states that "every person available for a job shall have the same opportunity to get a job without discrimination" and in Article 6 where "every worker has the right to receive equal treatment without discrimination from their employer"
	Lao PDR	No definition of discrimination. But paragraph 2, Article 3 of the Labour Law (amended) 2006 states that "labour shall ensure mutual benefits among workers and employers without discrimination on the basis of race, sex, religion, political opinion and social-economic status"
	Malaysia	No definition of discrimination.
	Myanmar	No definition of discrimination. But in Myanmar Constitution, Chapter VIII, Citizen, Fundamental Rights and Duties of the Citizens states that "Citizens shall enjoy equal opportunity in carrying out the following functions:- (a) public employment (b) occupation (c) trade (d) business (e) technical know-how and vocation (f) exploration of art, science and technology"
	Philippines	No definition of discrimination. But Article 135 of the Labour Code said that "it shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. The following are acts of discrimination: (a) payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employees as against a male employee, for work equal value; and (b) favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes"
	Singapore	According to the comments from Ministry of Manpower Singapore, Singapore does not condone discrimination in any form, including that against women of ethnic minority groups in the workplace. It adopts a promotional and educational tripartite approach (involving employers, unions and the government) in guiding employers on fair and responsible practices.
	Thailand	No definition of discrimination. But paragraph 1 of Article 8 of the Labour Protection Act 1998 stipulates that "an employer shall treat male and female employees equally in their employment, except where the nature or conditions of the work does or do not allow the employer to so do".
	Viet Nam	No definition of discrimination. But Section 15 of the Labour Code (amended) 2012 states that "discriminations on grounds of gender, nationality, colour, social background, marital status, belief, religion, HIV carrier, disabilities or on grounds of establishment, joining and participation in trade union's activities are strictly prohibited".

COUNTRIES	CONTENTS
	Article 2. Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.
Brunei Darussalam	No specific provisions.
Cambodia	- In Article 186 of Labour Code 1997, managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care-centre). If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer. - In Article 187, a Prakas (ministerial order) of the Ministry in charge of labour shall determine the conditions for setting up hygienic environment and supervising these nursing rooms and crèches.
Indonesia	- Entrepreneurs who employ female workers to work between 11 pm until 7 am are under an obligation: (a) to provide them with nutritious food and drinks; and (b) maintain decency/morality and security in the workplace. Entrepreneurs are under an obligation to provide return/roundtrip transport for female workers who work between 11 pm until 5 am . - Female workers who feel pain during their menstrual period and tell the entrepreneur about this are not obligated to come to work on the first and second day of menstruation .
Lao PDR	No specific provisions.
Malaysia	- In subsection (1) of section 34 of Employment Act, no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning or commence work for the day without having had a period of eleven consecutive hours free from such work. - In Section 35, no female employee shall be employed in any underground working.
Myanmar	No literature.
Philippines	- In Article 130 of the Labour Code, no woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation: (a) in any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day; or (b) in any commercial or non-industrial undertaking or branch thereof, other than agricultural, between ten o'clock at night and six o'clock in the morning of the following day; or in any agricultural undertaking at night-time unless she is given a period of rest of not less than 9 consecutive hours. - In its Article 32, the Secretary of Labour and Employment shall establish standards that will ensure the safety and health of women employees. In appropriate cases, he shall, by regulations, require any employer to (a) provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency; (b) to establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women; (c) to establish a nursery in a workplace for the benefit of the women employees therein; and (d) to determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like. - In its Article 136, it shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employment shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reasons of her marriage.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

COUNTRIES	CONTENTS
Singapore	The principle of equality of all persons before the law is guaranteed in the Constitution of the Republic of Singapore. Singapore does not condone discrimination in any form in the workplace.
Thailand	Under Section 38 of Labour Protection Act 1998, an employer is prohibited from requiring a female employee to perform any of the following work: (1) mining or construction work which must be performed underground, underwater, in a cavern, in a tunnel or in a crater of a mountain, except where the conditions of work are not hazardous to the employee's health or body; (2) work on scaffolding which is 10 meters or more above the ground; (3) production --or transportation of explosives or inflammable materials; (4) such other work as is prescribed by Ministerial Regulations.
Viet Nam	- In paragraph 7, Article 4 of the Labour Code (amended) 2012, the State's policies on labour is to ensure gender equality principles; to stipulate labour regimes and social policies for protection of female employees, employees with disabilities, elderly employees, adolescent employees. - Article 155 of Labour Code (amended) 2012, state policies for female employees are (1) to protect the female employee's right to work on a basis of equality; (2) to encourage employer to create conditions for female employees to have regular employment and to encourage employer to apply flexibly working hours, part-time, or home-based working regimes for female employees; (3) to provide measures on employment creation, working condition improvement, professional skill improvement, healthcare and to strengthen the material and spiritual welfare of female employees with aim to assist them in effectively performing their professional capacities and harmoniously combining their working and family lives; (4) to provide tax reduction policies to employers using a predominantly female labour force; (5) to devise diversified and convenient forms of training for female employees to provide them with skills for jobs other than their incumbent ones in a manner suitable to the physical characteristics of women as well as their maternal function; and (6) the State shall have plan and measures to organize day-care centres for children in workplaces where are dominated by female workers. - Article 156 states that an employer shall have the following obligations to female employees (1) to ensure gender equality principles and measures to promote gender equality in respect of recruitment, employment, training, working hours, resting hours, wages and other policies; (2) to consult with female employees or their representative when making a decision concerning women's rights and interests; (3) to ensure appropriate bathroom and toilet in the workplace; and (4) to assist and support in building day-care centres for children, or in partly covering cost incurred to the female employees in sending their children to day-care centres. - Article 162 prohibits work for female employees that are regularly immersed in water and regular underground in mines.

### 2.2.5 Workers with Family Responsibilities Convention (C156)

The expansion of employed work presents a challenge as to how to balance employed work and broadly define care work including household work and care for children, the elderly, and the sick, which has been traditionally assigned to women under the sex division of labour. Women have been primarily responsible for such work while men engage in employment.

However, as more women enter the labour market, there are cases where women are forced to bear the dual responsibilities of both employed work and care work, and cases where women are made to switch from full-time work to temporary work or even to withdraw from the labour market in order to care for their families. Still, some manage to continue their employment by hiring domestic workers.

ILO's No. 156 Convention aims to provide any protection and conveniences necessary to women and men workers with responsibilities in relation to their children as well as other members of their immediate family who clearly need their care or support, where such responsibilities restrict their career possibilities, so that they can make family and occupational responsibilities compatible. This Convention is preceded by the Employment (Women with Family Responsibilities) Recommendation, 1965 (R123), which covered only women. But family responsibilities are not to be borne only by women but should be shared by both sexes. Moreover, there is a growing recognition that changes in women's traditional roles are a prerequisite to achieving full gender equality. At the same time, the need is widely recognized to ensure social security for women and men workers with family responsibilities and equally important, equality of opportunity and treatment between such workers and other workers. This entails each ILO member to take measures to enable workers to balance their employment and family life.

As shown in Table 6, no ASEAN country has ratified the No. 156 Convention. Care work, which is fundamental to human reproduction, is needed on a daily basis but often disadvantages those who are engaged in such work because of the nature of care work. For example, child care cannot be completed within a matter of weeks or months but takes years of hardships, while the elderly and the sick may require care for an unexpectedly long duration. Furthermore, it is extremely difficult for those engaged in care work to maintain time for their leisure and community activities which can improve their quality of life while pursuing their career. Considering such adverse conditions, the present employment society should guarantee work and life balance for all workers. For this end, governments, employers, and employees should cooperate in introducing child and family care leave and adopt employment systems respecting workers' life stages, and further, improving employment security which protects leave takers from being disadvantaged when returning to their previous employment and creating a system to provide opportunities for vocational training.

Meanwhile, there is also the reality that the steadily rising proportion of female migrant workers are domestic workers in Asia, mostly from Bangladesh, Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, and Sri Lanka.<sup>12</sup> Many domestic workers are temporary workers and in some cases have to pay an exorbitant amount of fees to private temporary agencies. Worse still, they may even be coerced to take on an enormous debt and work under unfavourable working conditions or be exposed to violence and other forms of servitude at workplaces, all of which constitute human rights violations. In addition, while some workers, mainly women workers, who can afford to hire domestic workers to carry out care work for them, maintain their employment, those who cannot do so have no choice but to withdraw from the labour market and hence are deprived of employment opportunities, which means their job security and employment opportunities are not ensured. It has an effect of hampering the development of institutional design of a national support system for care for children, the elderly, and the sick. All these suggest that it is imperative for each nation to review the national labour legislation and employment system and improve and revise them where necessary in light of establishing decent work for domestic workers and facilitating the work life balance of workers in each country.

To see how each ASEAN tackles work-life balance issues, I have surveyed the documents in English issued by government agencies that deal with work-life balance and family obligations (Table 8), which resulted in several significant findings notwithstanding the scarcity of data. Although no ASEAN country has yet to implement a law on family responsibilities, some have adopted policy to enhance work life balance and/or have a provision touching on family responsibilities. For example, Brunei Darussalam's National Plan of Action for Women calls for measures for work-life harmony through a better working environment, breastfeeding rooms at workplaces, training for employees on time management, and programmes for citizens to learn about work-life balance. The Cambodian government offers day-care facilities through community preschools. In Malaysia, all public servants are offered the options of flexible working hours. In addition, women in Malaysia working from home have successfully created a network of support from many NGOs and the Ministry of Women, Family and Community Development. In the Philippines, the Magna Carta of Women provides that central government is to ensure "support services which enable women to balance family obligations and work responsibilities in the establishment of day care and breastfeeding stations" (SEC. 22). The Singapore Government encourages companies to introduce work-life programmes in the workplace through a one-time grant called the Work-Life Works! Viet Nam is also making efforts to achieve work-life balance as addressed in the Law for Gender Equality, wherein State policies are to promote sharing of housework by men and women (Article 7) and agencies and organisations are held responsible for promoting gender equality within, by setting up kindergartens (Article 32). The Law also obligates family members to teach the importance of sharing housework equally (Article 33). Moreover, Viet Nam's National Strategy on Gender Equality (2011-2020) sets up a specific target to shorten the time women have to spend in carrying out household duties.

<sup>12</sup> ILO 2011, Building a sustainable future with decent work in Asia and the Pacific, 15th Asia and the Pacific Regional Meeting, Kyoto, Japan, April 2011, ILO, p. 127. In terms of the number of immigrants, Malaysia and Singapore were among the top immigration countries in 2010, whereas the Philippines, Indonesia, and Viet Nam were among the top emigration countries (World Bank 2011, World Bank migration and remittances factbook 2011, World Bank, p. 1, p. 3).



TABLE 9: WORKERS WITH FAMILY RESPONSIBILITIES CONVENTION

Countries	Measures related to Work-Life Balance (WLB)
Brunei Darussalam	<p>No literature found in English on law on work-life balance.</p> <p>The Brunei Darussalam government undertakes several measures to ease the burden of the dual responsibilities of full-time working women to carry out traditional responsibilities.</p> <ul style="list-style-type: none"> <li>- The Maternity Leave Regulation 2011 enforced on January 1, 2011 entitles working mothers in both the public and the private sector to maternity leave of up to 105 days. *1</li> <li>- The National Plan of Action for Women includes measures for work-life harmony. This recommends a better working environment, family-friendly centres and breastfeeding rooms at work places, training for employees on time management and road shows to increase public awareness on work-life balance. *2,3</li> <li>- The provision of child care and crèche facilities at the work place is also emphasised in the Brunei Darussalam Development Plan 2007-2012. *2, 3</li> </ul> <p>The private sector also offers support programmes for working parents:</p> <ul style="list-style-type: none"> <li>-monthly educational allowances for children who attend private schools; entitlement for both men and women employees for paid leave including air transportation for themselves and their children to a neighbouring country every four years; special leave, on compassionate grounds, to working parents to look after their sick members of the family; and more quotas for employment passes for hired helpers for those caring for the elderly. *2, 3</li> </ul>
Cambodia	<p>No specific law on work-life balance.</p> <ul style="list-style-type: none"> <li>-Cambodia provides day care facilities through community preschools that are centre based, set up by Commune Councils (democratically elected local governments at the grassroots level). In addition, for one year from the date of child delivery, mothers who breastfeed their children are entitled to one hour per day during working hours to breastfeed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breastfeeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift. *4</li> </ul>

Workers with Family Responsibilities Convention, 1981 (C 156)

**Article 1**

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.
4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as workers with family responsibilities.

**Article 3**

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.
2. For the purposes of paragraph 1 of this Article, the term discrimination means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Indonesia	No literature found in English on law on work-life balance.
Lao PDR	No literature found in English on measures for work-life balance.
Malaysia	No literature found in English on measures for work-life balance.
Malaysia	No literature found in English on law on work-life balance.
Malaysia	-All government offices implement staggered working hours.
Malaysia	-Some large companies implement staggered working hours and “working from the home” policies.
Malaysia	-Has a good home working network for individual females to work from the home called eHome-makers with support from many NGOs and the Ministry of Women, Family and Community Development.
Malaysia	-The Ministry of Women, Family and Community Development encourages companies to set up crèches at the workplace by giving grants as well as community childcare centres.
Malaysia	-Employees in the public sector are eligible of 90 days maternity leave with full leave benefits by the government. *5
Myanmar	No specific law on work-life balance.
Myanmar	No literature found in English on measures for work-life balance.
Philippines	No specific law on work-life balance.
Philippines	No literature found in English on measures for work-life balance.
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Workers with Family Responsibilities Convention, 1981 (C 156)

Indonesia

No literature found in English on law on work-life balance.

Lao PDR

No specific law on work-life balance.

Malaysia

No literature found in English on law on work-life balance.

-All government offices implement staggered working hours.

-Some large companies implement staggered working hours and “working from the home” policies.

-Has a good home working network for individual females to work from the home called eHome-makers with support from many NGOs and the Ministry of Women, Family and Community Development.

-The Ministry of Women, Family and Community Development encourages companies to set up crèches at the workplace by giving grants as well as community childcare centres.

-Employees in the public sector are eligible of 90 days maternity leave with full leave benefits by the government. \*5

Myanmar

No specific law on work-life balance.

No literature found in English on measures for work-life balance.

Philippines

No specific law on work-life balance.

**Magna Carta of Women [Republic Act 9710] (2008)**

SEC. 22. Right to Decent Work. – The State shall progressively realise and ensure decent work standards for women that involve the creation of jobs of acceptable quality in conditions of freedom, equity, security and human dignity.

...(b) The State shall further ensure:...(2) support services which enable women to balance family obligations and work responsibilities in the establishment of day care and breastfeeding stations;...**Paternal Leave Act [Republic Act 8187] (1996)**

The right to paternity leave applies to every married male employed in either the public or private sector (SECTION 2).

Singapore

No specific law on work-life balance.

The Singapore Government implemented a wide range of policies and benefits to encourage working parents to have more children. It also supports businesses to introduce work-life programmes in the workplace by providing them with a one-time grant called the Work-Life Works! or WoW! Fund. \*6

Thailand

No specific law on work-life balance.

No literature found in English on measures for work-life balance.

Viet Nam

No specific law on work-life balance.

**The Law on Gender Equality (Law No. 73/2006/QH11)**

-Article 7. State policies on gender equality

2. To protect and support the mother during pregnancy, giving birth and upbringing her child; to facilitate man and woman in sharing housework.

-Article 18. Gender equality in family

5. Female and male members in the family have the responsibility to share housework.

-Article 32. Responsibility of other agencies and organisations within their own agencies and organisations

2. Depending on their capacities and circumstances, agencies and organisations shall be actively conduct or to coordinate in conducting following activities to promote gender equality:

e) To set up appropriate network of kindergartens so that male and female workers could harmonise productive labour and housework;

-Article 33. Responsibility of the family

2. To educate members of the family to be responsible for sharing housework and allocating housework to members of the family in an appropriate manner.

#### National Strategy on Gender Equality (2011-2020)

Objective 6: To ensure gender equality in family life, incrementally eliminating gender-based violence.

-Target 1: To shorten women's time of involvement in household duties by two times by 2012 and 1.5 times by 2020 as compared to men's.

## F) Maternity Protection Convention (C183)

Distinctions in the labour market based on **pregnancy** and **maternity** indirectly discriminate against women because only women become pregnant and give birth. Women of reproductive age often do not get a job because they may become pregnant. Or, when they are recruited their verbal or written labour contract stipulates that they should not get married or pregnant for several years or even an unspecified period of time. If they do, they breach their contract and face immediate dismissal. Although no ASEAN countries have ratified Convention No. 183, most of them have their own system of maternity protection (Table 4). These systems vary significantly in terms of their scope and coverage. In most countries in the region, the costs of the leave are borne entirely by employers except in the Philippines and Viet Nam, where the costs are covered entirely through social security. These differences are illustrated Table 4 below.

It should be noted that the scope of these systems can be limited and they may exclude a large number of women workers by regulation. For example, in Viet Nam, Social Insurance Law does apply to persons, who work under a labour contract with an indefinite term or with a definite term of at least 3 months. It means that a large number of irregular workers do not benefit from it.

Notes:  
 \*1 Maternity Leave Regulation 2011, 2011. Available from: <[http://www.pmo.gov.bn/pmo1/index.php?option=com\\_content&view=article&id=1021:maternity-leave-regulation-2011&catid=41:news&Itemid=337](http://www.pmo.gov.bn/pmo1/index.php?option=com_content&view=article&id=1021:maternity-leave-regulation-2011&catid=41:news&Itemid=337)> [6 October 2012]  
 \*2 Ministry of Women's Affairs, Royal Government of Cambodia 2011, 4th East Asia Gender Equality Ministerial Meeting "Building Resilience to Economic Crisis and Moving Forward," Angkor Century Hotel, Siem Reap, Cambodia, 17–18 November 2011, p. 27  
 \*3 APEC 2012, "Brunei Darussalam—Statement," High-Level Policy Dialogue on Women and the Economy, St. Petersburg, Russia, 30 June 2012  
 \*4 4th East Asia Gender Equality Ministerial Meeting "Building Resilience to Economic Crisis and Moving Forward "Annexes, Annex 24 "Work-life balance," Angkor Century Hotel, Siem Reap, Cambodia 17–18 November 2011, p. 110  
 \*5 Subramaniam, Geetha 2011 Flexible working arrangements in Malaysia and the participation of women in the labour force. Ph.D thesis, University of Wellington, pp. 80-85  
 \*6 4th East Asia Gender Equality Ministerial Meeting "Building Resilience to Economic Crisis and Moving Forward "Annexes, Annex 24 "Work-life balance," Angkor Century Hotel, Siem Reap, Cambodia 17–18 November 2011, p. 10

TABLE 10: MATERNITY PROTECTION CONVENTION (183)

COUNTRIES	CONTENTS
	Article 3. Each Member shall, after consulting the representative organisations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.
Brunei Darussalam	Any employer who knowingly employs a female employee at any time during the period of 4 weeks immediately following her confinement is guilty of an offence .
Cambodia	After the maternity leave and during the first two months after returning to work, female employees are only expected to perform light work .
Indonesia	- Entrepreneurs are prohibited from employing pregnant female workers who, according to a doctor's account, are at risk of damaging their health or harming their own safety and the safety of the babies that are in their wombs if they work between 11 pm until 7 am . - Whosoever violates what is stipulated under Article 76 shall be subjected to a criminal sanction in jail for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of a minimum of Rp10,000,000 and a maximum of Rp100,000,000 .
Lao PDR	Women during pregnancy or take care of infant shall not work on lifting or carrying heavy loads; work which entails standing continuously for long periods; and other works under Article 16 of the Labour Law. In such circumstances the employer shall assign women to other temporary duties. While performing these temporary duties, the workers concerned shall continue to receive their normal salary or wage for a maximum period of three months, after which they shall be paid the salary or wage corresponding to their new assignment. An employer shall not employ pregnant women or women with a child under one year of age to work overtime, or on a day of weakly rest or at night .
Malaysia	No specific provisions
Myanmar	No literature.
Philippines	No specific provisions
Singapore	-Dismissal on the grounds of pregnancy constitutes unfair dismissal. It is also an offence to terminate the employment of an employee when she is on maternity leave. -The Employment Act and Child Development Co-Savings Act further requires an employer who dismisses a pregnant female employee without sufficient cause within the last six months of her pregnancy to pay her maternity benefits that she would otherwise be entitled to. -Under the Employment (Female Workmen) Regulations, no female workman who is pregnant shall be employed to work during the night unless she has consented in writing and is not certified unfit by a medical officer. -Any employer who knowingly employs a female employee at any time during the period of 4 weeks immediately following her confinement shall be guilty of an offence .



Maternity Protection Convention, 2000 (No. 183)	Thailand	<p>- An employer is prohibited from causing a pregnant female employee to work between 10:00 pm and 06:00 am, or to work overtime, work on holidays, or perform any of the following: (1) work on plant or equipment that vibrates; (2) operate or go along with a mechanically propelled vehicle; (3) lift, carry or bear on her head or shoulders, or pull or push loads that weigh more than 15 kilograms; (3) work on water-going vessels; (5) such other work as is prescribed by Ministerial Regulations .</p> <p>- Where a pregnant employee is in possession of a certificate issued by a first class medical practitioner, stating that she is no longer able to perform her original duties, the employee shall be entitled to request her to change her work temporarily either before or after childbirth, and the employer shall consider changing her duties to such as are suitable for the employee<sup>45</sup>.</p>
	Viet Nam	<p>- An employer is prohibited to assign a female employee who is in the seventh month of her pregnancy onward or who is caring for her child of less than 12 months of age to nighttime work, overtime work or work involving significant travel.</p> <p>- From the seventh month of her pregnancy onward, the female employee performing heavy labour shall be assigned to a lighter job or shall have her work day reduced by one hour, while continuing to receive full pay<sup>46</sup>.</p>

TABLE 10: MATERNITY PROTECTION CONVENTION (183)

1	2	3
Maternity Protection Convention, 2000 (No. 183)	Article 4. 1. A woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks. 4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth. 5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.	
	Brunei Darussalam	Every female employee shall be entitled to absent herself from work (a) during: (i) the period of 4 weeks immediately before her confinement; and (ii) the period of 5 weeks immediately after her confinement; or (b) during a period of 9 weeks, as agreed to by her and her employer, commencing: (i) not early than 28 days immediately preceding the day of her confinement; and (ii) not later than the day of her confinement <sup>47</sup> .
	Cambodia	Female employees shall be entitled to a maternity leave of ninety days .
	Indonesia	Female workers are entitled to a 1.5 (one and a half) month period of rest before the time at which they are estimated by an obstetrician or midwife to give birth to a baby and another 1.5 (one and a half) month period of rest thereafter .
	Lao PDR	Before and after confinement, women workers shall be entitled to at least 90 days' maternity leave with their normal pay from their employers or from the social security fund, if contributions have been fully paid to this fund. Such period of 90-day maternity leave shall include post-maternity leave of at least 42 days <sup>50</sup> .
	Malaysia	Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days in respect of each confinement <sup>51</sup> .
	Myanmar	According to the Union Civil Services Board, (1) Female employees shall be entitled to a maternity leave of three months. In the new Civil Service rules and regulation which has been drafted now, Female employees shall be entitled to a maternity leave of maximum six months. If both the husband and wife are civil servants, the husband shall be entitled to a child care leave of one week (for Civil Servants only). (2) Other private workers shall be entitled according to their respective companies' or workplace's rules and regulations.
	Philippines	Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least 6 months for the last twelve months, maternity leave of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery or abortion <sup>52</sup> .
	Singapore	-Under the Child Development Co-Savings Act (CDCA), an employee is entitled to 16 weeks of paid maternity leave. Employees who are entitled to 16 weeks of paid maternity leave under the CDCA may absent themselves from work for 4 weeks immediately before and 12 weeks immediately after delivery. -Employees who are not covered by the CDCA but are covered by the Employment Act, will be entitled to 12 weeks of maternity leave. The first 8 weeks of maternity leave for the first 2 confinements will be paid if they fulfil the following conditions.
	Thailand	A pregnant female employee is entitled to maternity leave of not more than 90 days for each pregnancy <sup>53</sup> .
	Viet Nam	A female employee shall be entitled to prenatal and postnatal leaves, in total of 6 months. In case of twins or multiple births, the female employee shall be entitled to an additional leave of 30 days for each child from the second one. Prenatal leaves should not be longer than 2 months <sup>54</sup> .

1	2	3															
Maternity Protection Convention, 2000 (No. 183)	Article 5. On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.																
	Brunei Darussalam	No specific provisions.															
	Cambodia	No specific provisions.															
	Indonesia	- A female worker who has a miscarriage is entitled to a period of 1.5 (one and a half) months or a period of rest as stated in the medical statement issued by the obstetrician or midwife who treats her . - The female worker who uses her right to take above-mentioned period of rest shall receive her wages in full .															
	Lao PDR	In the event of illness resulting from confinement which is certified by a physician, the workers concerned shall be allowed to take a supplementary leave of at least 30 days at 50 per cent of their normal pay. In the event of miscarriage, entitlement to leave shall be determined on the advice of a physician, and the normal salary shall be paid during the entitled period .															
	Malaysia	No specific provisions.															
	Myanmar	According to the Union Civil Services Board (1) Any leave including earned leave, medical leave shall be entitled in the event of illness resulting from confinement which is certified by a physician (for Civil Servants only). (2) Other private workers shall be entitled according to their respective companies' or workplace's rules and regulations.															
	Philippines	The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the women unfit for work, unless she has earned unused leave credits from which such extended leave may be charged .															
	Singapore	An employee covered by the Employment Act is entitled to paid sick leave, including medical leave issued by a dentist if: i. The employee has served the employer for at least three months. ii. The employee has informed or attempted to inform the employer of his/her absence within 48 hours. Otherwise, the employee will be deemed to be absent from work without permission or reasonable excuse. iii. The sick leave is certified by the company's doctor, or by a government doctor (including doctors from approved public medical institutions).  The number of days of paid sick leave a new employee is entitled to depends on his service period: <table border="1" data-bbox="435 1391 1460 1632"> <thead> <tr> <th>No of months of service completed of a new employee</th> <th>Paid Outpatient non-hospitalisation leave (days)</th> <th>Paid hospitalisation leave (days)*</th> </tr> </thead> <tbody> <tr> <td>3 months</td> <td>5</td> <td>15</td> </tr> <tr> <td>4 months</td> <td>8</td> <td>30</td> </tr> <tr> <td>5 months</td> <td>11</td> <td>45</td> </tr> <tr> <td>6 months and above</td> <td>14</td> <td>60</td> </tr> </tbody> </table>	No of months of service completed of a new employee	Paid Outpatient non-hospitalisation leave (days)	Paid hospitalisation leave (days)*	3 months	5	15	4 months	8	30	5 months	11	45	6 months and above	14	60
	No of months of service completed of a new employee	Paid Outpatient non-hospitalisation leave (days)	Paid hospitalisation leave (days)*														
	3 months	5	15														
	4 months	8	30														
5 months	11	45															
6 months and above	14	60															
Thailand	No specific provisions.																
Viet Nam	- A female employee in her menstruation period shall be entitled to 30 minutes off in every working day <sup>59</sup> . - A female employee shall be entitled to a social insurance allowance during her leave for pre-natal examination, on account of a miscarriage, abortion, died fetus in the womb, contraceptive measures, tending a sick child under 7 years of age or an adopted new-born under 6 months of age <sup>60</sup> .																

1	2	3
Maternity Protection Convention, 2000 (No. 183)	Article 6. 1. Cash benefits shall be provided to women who are absent from work on leave. 2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. 3. The amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits. 7. Medical benefits shall be provided for the woman and her child. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.	
	Brunei Darussalam	- Every female employee shall be entitled to receive payment from her employer at her gross rate of pay for any of the following periods (a) of 4 weeks immediately before her confinement and of the first 4 weeks immediately after her confinement; or (b) during a period of the first 8 weeks of a nine-weeks period as agreed to by her and her employer. - A female employee who has served an employer for less than 180 days immediately preceding the day of her confinement shall not be entitled to any pay during the benefit period. - Where a female employee who has worked in her employment for any day during the benefit period before her confinement, she shall be entitled to receive in addition to her gross rate of pay for that day an amount that is equivalent to a day's pay at the gross rate of pay or to absent herself from work on another day at the end of the benefit period <sup>61</sup> .
	Cambodia	During the maternity leave as stipulated, female employees are entitled to half of their wage, including their perquisites, paid by the employer. Female employees fully reserve their rights to other benefits in kind, if any. Any collective agreement to the contrary shall be null and void. However, the wage benefits specified in the first paragraph of this Article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise .
	Indonesia	The female worker who uses her right to take a 1.5 (one and a half) month period of rest before and after her birth giving as specified by law shall receive her wages in full <sup>63</sup> .
	Lao PDR	Women workers shall, on giving birth to a child, be entitled to a benefit equivalent to at least 60% of the minimum wage established by the Government, to be paid by the employer or by the social security fund, if contributions have been fully paid. Where they give birth to two or more children at the same time, the said benefit shall be increased by 50%. This benefit shall also be due in the event of miscarriage, subject to the presentation of a medical certificate <sup>64</sup> .
	Malaysia	Every female employee, who is entitled to maternity leave, shall be entitled to receive from her employer a maternity allowance. A female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children <sup>65</sup> .
	Myanmar	According to the Union Civil Services Board, (1) During the maternity leave, female employees are entitled to enjoy fully wages (for Civil Services only). (2) Other private workers shall be entitled according to their respective companies' or workplace's rules and regulations.
	Philippines	Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least 6 months for the last twelve months, maternity leave of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery or abortion with full pay based on her regular or average weekly wages. The maternity leave shall be paid by the employer only for the first 4 deliveries by a woman employee <sup>66</sup> .



Maternity Protection Convention, 2000 (No. 183)	Singapore	<p>Under the Employment Act, an employer is required to continue paying an employee her usual salary at the monthly gross rate of pay for the first eight weeks of maternity leave if:</p> <ol style="list-style-type: none"> <li>The employee has been employed for at least 90 days before the date of delivery</li> <li>The employee has less than two children of her own at the time of delivery. In the case of multiple births (e.g. twins, triplets etc.) during the first pregnancy, the employer is still required to pay eight weeks of maternity leave for the next pregnancy</li> <li>The employee has given her employer at least one week's notice before going on maternity leave, and informed her employer as soon as practicable of her delivery. Otherwise, the employee is only entitled to half the payment during the maternity leave, unless she can show sufficient cause that prevented her from giving such notice to the employer.</li> </ol> <p>If the employee qualifies for Government-paid Maternity Leave under the Child Development Co-Savings Act, she will be paid by the employer during the entire 16 weeks of maternity leave, regardless of the birth order of the child. The employer may later claim reimbursement from the Government for the last eight weeks for the first and second confinements and all 16 weeks for the third or subsequent confinements.</p>
	Thailand	An employer shall pay the basic pay of an employee on maternity leave, at a rate equal to the basic pay for a normal working day, for the entire leave taken for up to 45 days <sup>67</sup> .
	Viet Nam	<p>During maternity leave, a female employee shall be entitled to maternity benefits as stipulated in Law on Social Insurance.</p> <p>Upon the end of the maternity leave, the female employee may return to work before the end of her maternity leave, but no sooner than four months after her confinement, if she has a certificate of the competent medical establishment stating that her return to work will not harm her health and her employer's consent.</p> <p>In this case the female employee shall continue to receive maternity allowance besides the employer's pay for her working days<sup>68</sup>.</p>

1	2	3
	Article 8.	
	1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.	
	2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.	
	Brunei Darussalam	When a female employee absents herself from work in accordance with the provisions of Part X – Employment of Women, it shall not be lawful for her employer to give her notice of dismissal during her absence or on such a day that the notice will expire during her absence <sup>69</sup> .
	Cambodia	The employer is prohibited from laying off women in labour during their maternity leave or at a date when and of the notice period would fall during the maternity leave <sup>70</sup> .
	Indonesia	The entrepreneur is prohibited from terminating the employment of a worker who is absent from work because she is pregnant, giving birth to a baby, having a miscarriage or breast-feeding her baby <sup>71</sup> .
	Lao PDR	An employer shall not terminate a worker's employment contract or force a worker to stop work where the said worker is a pregnant woman or a woman having given birth to a child within the last one year <sup>72</sup>
	Malaysia	<p>- Any employer who dismisses a female employee from her employment during the period in which she is entitled to maternity leave commits an offence .</p> <p>- Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service<sup>74</sup>.</p>
	Myanmar	No literature.
	Philippines	<p>It shall be unlawful for any employer:</p> <p>- To discharge such woman on account of her pregnancy, or which on leave or in confinement due to her pregnancy;</p> <p>- To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant<sup>75</sup></p>
	Singapore	<p>-Dismissal on the grounds of pregnancy constitutes unfair dismissal. It is also an offence to terminate the employment of an employee when she is on maternity leave.</p> <p>-The Employment Act and Child Development Co-Savings Act further requires an employer who dismisses a pregnant female employee without sufficient cause within the last six months of her pregnancy to pay her maternity benefits that she would otherwise be entitled to.</p>
	Thailand	An employer is prohibited from terminating a female employee because of her pregnancy .
	Viet Nam	<p>- An employer is prohibited from dismissing or unilaterally terminating the labour contract of a female employee for reason of marriage, pregnancy, taking maternity leave, or raising a child under 12 months old<sup>77</sup>.</p> <p>- A pregnant female employee, in case where there is a certificate issued by a competent medical establishment which states that continued employment would adversely affect her womb, shall be entitled to a right to unilaterally terminate or to temporarily suspend the labour contract. A period of notice, that such female employee must give to her employer, shall depend on the period specified by the competent medical establishment<sup>78</sup>.</p> <p>- A female employee shall be guaranteed to return to the same post after her maternity leave as stipulated in this Labour Code. In case such post no longer exists, the employer must arrange another post for her with a salary not lower than that has been given to her before her maternity leave<sup>79</sup>.</p>

1	2	3
Maternity Protection Convention, 2000 (No. 183)	Article 9. 1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment. 2. Measures for a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is: (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or (b) where there is a recognised or significant risk to the health of the woman and child.	
	Brunei Darussalam	Any contract of service whereby a female employee relinquishes any right to maternity benefit under the Part X Employment of Women shall not be valid in so far as it purports to deprive her of that right or to remove or reduce the liability of any employer to make any payment under this Part (Section 93 of Employment Order 2009).
	Cambodia	No specific provisions
	Indonesia	No specific provisions
	Lao PDR	No specific provisions
	Malaysia	No provisions
	Myanmar	No literature.
	Philippines	No specific provisions
	Singapore	Singapore does not condone discrimination, including discrimination on the grounds of pregnancy, in any form in the workplace. Employers are expected to abide by the principles of fair employment as set out in the Tripartite Guidelines on Fair Employment Practices – formulated by the government, unions and employer groups. This includes the principle that employers should recruit and select employees on the basis of merit (such as skills, experience, or ability to perform the job), and regardless of age, race, gender, religion, family status or disability.
	Thailand	No specific provisions
	Viet Nam	No specific provisions

1	2	3
Maternity Protection Convention, 2000 (No. 183) Article 10	Article 10. 1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. 2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.	
	Brunei Darussalam	No specific provisions
	Cambodia	- For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift (Article 184 of Labour Code 1997). - Breaks for breast-feeding are separate from and shall not be deducted from normal breaks provided for in the labour law, in interval regulations of the establishment, in collective labour agreement, or in local custom for which other workers in the same category enjoy them (ibid, Article 185).
	Indonesia	Entrepreneurs are under an obligation to provide proper opportunities to female workers whose babies still need breast-feeding to breast-feed their babies if that must be performed during working hours (Article 83 of Act on Manpower 2003).
	Lao PDR	During the 12-month period following confinements, women workers shall have the right to a daily break of one hour to nurse or take care of their child, and women workers shall have the right to take their child to immunization injection in accordance regulation (paragraphs 3, Article 39 of Labour Law (amended) 2006).
	Malaysia	No specific provisions
	Myanmar	No literature.
	Philippines	No specific provisions
	Singapore	No specific provisions
	Thailand	No specific provisions
	Viet Nam	A female employee nursing a child under 12 months of age shall be entitled to 60 minutes off in every working day. This time-off is still paid full wage as stated in the labour contract (paragraph 5, Article 155 of Labour Code (amended) 2012).

## 2.3: CASE STUDIES

### 2.3.1 PUBLIC POLICY AND GENDER EQUALITY IN THE PHILIPPINES

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#### Introduction

Compared to their counterparts in Southeast Asia, Filipino women have always enjoyed greater equality in Philippine society. In fact, the Filipino society does not question women's rights to legal equality and to inherit family property. Today, the Philippines is the only country in Asia and among the few countries in the world, to have closed the gender gap on education. Education and literacy levels were higher for women than for men: in 2008, the adult functional literacy rate among women was 87.6% while that of men was 84.1%. Women's secondary school graduation rate was also higher than men: in 2010, the rate for women was 55.5% and for men 52.5%.<sup>13</sup>

This brief report positions, using official statistical data, women in the labour market in the Philippines. It outlines various laws and policies that make up the country's public policy on gender equality and/or equal opportunities for women. Finally, this report highlights that an enabling legal and policy environment has significantly contributed to the substantial progress of the Philippines in promoting gender equality.

#### Women in the labour market

In 2010, nearly 4 in 10 (39%) of the Philippines' labour force<sup>14</sup> were women. In fact, between 2006 and 2010, data from the Bureau of Labour and Employment Statistics (BLES) indicate women accounted on the average the same proportion (38.6%) of the labour force (BLES-DOLE, 2011). Women's participation rate in the labour force<sup>15</sup> (49.7%) was lower than men's (78.5%) in 2010. Between 2006 and 2010, women's labour force participation rate averaged 49.3%. This means that women participate substantially less in the labour force than men. In 2010, the men-women participation gap was 28.8%, down from 30% in 2006. Between 2006 and 2010, this participation gap averaged 29.5%, meaning men participated in the labour force 30% more compared to women. Nonetheless, the trend indicates a marked closing of the gap during the period; that women are increasingly participating in the labour force.

Between 2006 and 2010, women's employment rate was gradually rising. In 2010, the employment rate for women was 93.1%, higher than that of men (92.4%) and for both sexes (92.7%). The same trend was observed in 2006: women's employment rate was 92.4%, men's 91.8%, and the average for both sexes, 92%. Between 2006 and 2010, women's employment rate averaged 92.8%, slightly higher than the rate registered for men (92.3%).

In the Philippines, women workers predominate in the service industries. In 2010, women workers were the majority in the wholesale and retail trade (60.2%), hotels and restaurants (54%), financial

intermediation (56.5%), education (74.6%), health and social work (71.6%), and private households with employed persons (84.5%). These were the same industries where women accounted more in 2006. On the average, there was no marked change in the number of employed women in said industries between 2006 and 2010.

In manufacturing, over 2 in 5 workers (43.3%) were women in 2010. About the same proportion was employed in public administration, defence and compulsory social security (39.9%). Nearly half (49.3%) of all workers employed in other community, social and personal service activities in the same year were women. Over one in 3 workers (36%) in the real estate, renting and business activities industry were women. More than 1 in 4 (28.1%) workers in agriculture, hunting and forestry were women.

As women predominate the service industries, so too in service-related occupations. It is also interesting to highlight that women comprise the majority in occupations that wield decision-making power in varying degrees, as well as occupations requiring high level of skills. In 2010, women workers comprised the majority in the following occupational groups: officials of government and special interest-organisations, corporate executives, managers, managing proprietors and supervisors (52.7%); professionals (68.5%); technicians and associate professionals (51.9%); clerks (62.4%); and service workers and shop and market sales workers (50.7%). Over 2 in 5 (42.8%) unskilled workers were women. Meanwhile, about 1 in 5 (20.7%) trades and related workers was a woman in 2010. All these suggest a narrowing of occupational segregation by sex.

Since the early 1990s, women were found in more than a proportionate share of many professions. In 2010, women predominated professional and technical positions, and corporate and managerial positions, but also in clerical work, and sales. Moreover, according to data from BLES, women overwhelmingly outnumber men in private domestic household work: in 2010, among the women who were wage and salary workers, more than 1 in 5 (21.7%) worked for private household, while the rate for men in the same category was a meager 2.5%. This latter finding underscores how cultural gender norms in Philippine society continue to map into women's work.

In 2006, the nominal average daily basic pay<sup>16</sup> of women workers in all industries amounting to Php257.60 was lower than the men's average (Php264.76) and the average for both sexes (Php261.90). However, in 2010, the trend was reversed. This time women's average daily basic pay of Php309.32 was higher than that of men's (Php304.67), and the average for both sexes (Php306.53).

On close scrutiny however, the pay landscape is more nuanced. As indicated in Table 11, women received less than men in agriculture and non-agricultural industries in 2010. In the non-agricultural sector, the average daily basic pay of women was lower than men in the following industries: manufacturing, wholesale and retail trade; hotels and restaurants; public administration and defence/compulsory social security; health and social work; other community, social and personal activities; and private households with employed persons. This is despite the fact that women workers predominate most of these industries, such as in wholesale and retail trade, hotels and restaurants, public administration and defence, health and social work, other community, social and personal activities, and private households with employed persons.

<sup>13</sup> Nonetheless, the tendency that women of higher educational attainment are more likely to be unemployed than their men counterparts still persists. Between 1995 and 2010, among the unemployed, women who had tertiary education numbered more than their men counterparts. In 2010, among the unemployed women, those with tertiary education accounted 48.7%. Among the men unemployed, the proportion for the same category was lower at 36.8%.

<sup>14</sup> Labour force is the sum of all the employed and unemployed persons.

<sup>15</sup> Labour force participation rate is the ratio of the total labour force to the total household population 15 years old and over multiplied by 100.

<sup>16</sup> The average daily basic pay is the average gross daily basic pay excluding allowances. It relates to remuneration of employees for normal time prior to deductions of social security contributions, with holding taxes, etc.



TABLE 11: AVERAGE DAILY BASIC PAY BY MAJOR INDUSTRY GROUP AND SEX: 2006 AND 2010

Major Industry Group	Men		Women	
	2006	2006	2006	2006
			109.69	135.85
<b>Agricultural</b>	<b>138.33</b>	<b>138.33</b>	<b>271.13</b>	<b>324.62</b>
<b>Non-agricultural</b>	<b>297.75</b>	<b>297.75</b>	<b>200.34</b>	<b>292.63</b>
Mining and quarrying	200.56	200.56	257.42	296.36
Manufacturing	270.51	270.51	468.21	535.13
Electricity, gas and water supply	434.79	434.79	337.65	396.98
Construction	262.96	262.96		
Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods	236.52	236.52	215.43	257.76
Hotels and restaurants	259.11	259.11	213.52	240.80
Transport, storage and communications	294.85	294.85	505.39	526.02
Financial intermediation	294.85	294.85	465.30	542.18
Real estate, renting and business activities	525.82	525.82	410.54	506.78
Public administration and defense; compulsory social security	337.63	337.63		
Education	426.68	426.68	392.45	440.28
Health and social work	423.47	423.47	470.96	577.17
Other community, social and personal service activities	405.33	405.33	387.04	461.56
Private households with employed persons	292.42	292.42	239.91	304.61
	183.54	183.54	101.49	123.20

Source of data: Table 8.8, BLES 2011 Gender Statistics on Labour and Employment.

### Women in the political and public scene

Filipino women have also made great strides in political and public life. As early as 1937, Filipino women were already allowed to vote and stand for election. Furthermore, as early as 1941, a woman had already been elected into Parliament, the first in Southeast Asia. They have become presidents of the country, senators, cabinet officers, Supreme Court justices, administrators, and heads of major business enterprises. However, their proportion in these professions remains significantly lower than their male counterparts. In 2008, over 1 in 5 (22.5%) legislators in the House of Representatives (the lower house of Congress) were women. In the Senate (the upper house), 16.7% of the legislators were women (FES, 2008). In government, while about 1 in 4 (24%) held ministerial positions at the provincial level in 2008, only 9% held these positions at the national level (ibid). At the local government level, nearly 1 in 4 (24%) of all governors in 2008 were women. Meanwhile, nearly 1 in 3 (30%) of Supreme Court justices were women in 2007.

Filipino women also played a significant role in the United Nations to advance women's global agenda. As early as 1964, Filipino women already occupied high position in the U.N. Commission on the Status of Women. They also sat as Committee Chair and Experts in the Commission on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The significant number of women in the above-cited occupation groups, particularly in the higher occupational hierarchy, suggests that women are accorded equal opportunity and treatment in employment in jobs which they can ably compete. Thus, according to a draft report on decent work in the Philippines prepared by the ILO/EC Project "Monitoring and Assessing Progress on Decent Work" (MAP) (ILO/EC, 2012), the computed index of dissimilarity continuously fell from 0.368 in 1995 to 0.305 in 2010. This suggests that there is no tendency for the Philippine labour market to be segmented on the basis of sex.<sup>17</sup> In the World Economic Forum's Global Gender Gap Report of 2011, the Philippines ranked 8th out of 128 countries in terms of progress in narrowing the gender gap, from a rank of 9th in 2010.

### An enabling legal and political environment for gender equality

As briefly discussed above, the important role of women in society has long been recognised in the Philippines. Section 11 of the 1987 Philippine Constitution recognises equality of women and men as a state policy. Moreover, Section 1 of the Bill of Rights of the Constitution accords to all citizens, equal protection of the laws.

The Philippines has also ratified the following international conventions which form the policy framework for gender equality:

- UN International Covenant on Economic, Social and Cultural Rights (CESCR)
- UN International Covenant on Civil and Political Rights (CCPR)
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Convention on the Rights of the Child (CAT)
- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)
- UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- ILO Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
- ILO Night Work (Women) Convention (Revised), 1948 (No. 89)
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
- ILO Convention on Equal Remuneration, 1951 (No. 100)
- ILO Convention on Discrimination (Employment and Occupation), 1958 (No. 111)
- ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ILO Convention on Decent Work for Domestic Workers, 2011 (No. 189)

The Philippine Labour Code, under Articles 135-137, expressly prohibits discrimination. These provisions instruct that it is unlawful for an employer to discriminate against any female employee with respect to terms and conditions of employment solely on account of her sex. In the same manner, an employer is prohibited from discriminating on account of marriage and/or pregnancy. Article 130 of the Labour Code prohibits night work for women in industrial undertaking between 10 PM to 6 AM of the following day, and in commercial or non-industrial undertaking between 12 midnight to 6 AM. However, on 21 June

<sup>17</sup> According to the index of dissimilarity, an increase in the index (ranges from 0 to 1) will mean a greater tendency of men and women to work in different jobs. Full occupational integration is a situation in which the occupational distribution for each sex is the same as the occupational distribution of the total employed population.

2011, Republic Act 10151 was passed allowing the employment of night workers and repealed Article 130 of the Labour Code prohibiting employment of women for night work. The basis for the repeal is that the night work prohibition for women was viewed as discriminatory as it tends to limit employment opportunities of women workers. To address the concerns about the hazards of night employment, employers under the new law are required to give all night workers adequate and reasonable facilities, such as sleeping or resting quarters in the establishment, and transportation from the work premises to the nearest point of their residence. In addition, particularly for the protection of women workers, employers are required to take measures to ensure that an alternative to night work is available for pregnant woman before and after childbirth for a period of at least 16 weeks, and for additional periods as necessary.

Indeed, a gamut of legislations and public policy laid the substantive framework for the promotion of women's rights and the implementation of gender equality at the workplace and in public life. Hega (2003) lists the following national policies and plans that aim at promoting gender equality and mainstreaming:

- *Local Government Code (1991)*. Provides for the election of sectoral representation, including women, in local legislative councils.
- *Party List Law (1998)*. Provides for the creation of women-oriented or women-based parties to compete under the party-list system. Women is one of the 9 sector identified in the law.
- *Women in Nation Building Law*. Republic Act 7192 (1991) is an act promoting the integration of women as full and equal partners of men in development and nation building. The law provides that a substantial portion of government resources be utilized to support programmes and activities for women. The law also encourages the full participation and involvement of women in the development process and to remove gender bias in all government regulations and procedures. In relation to gender budgeting, the law specifically mandated all agencies to allocate a minimum of 5%, increasing to 30%, of all official development funds in mainstreaming gender concerns. Through executive directives however, this 5% allocation is further expanded to cover the total budget appropriations, not only development funds, of all government agencies and local government units in the country. This is known as the Gender and Development Budget or GAD.
- *Comprehensive Agrarian Reform Law (1988)*. Gave Filipino women the right to own land that previously reverted to sons and other male family members.
- *Republic Act 7688 (1994)*. An act giving representation to women in social security commission.
- *Anti-Sexual Harassment Law. RA 7877 (1995)* an act declaring sexual harassment unlawful in the employment, education or training environment.
- *Republic Act 7822 (1995)*. An act providing assistance to women engaging in micro and cottage business enterprises.
- *Day care Law or RA 6972 (1990) and Paternity Leave Act (1996)*. Both of which acknowledge that children is both a parental and state responsibility.
- *Republic Act 8353 (1997)*. An act expanding the definition of the crime of rape reclassifying the same as a crime against persons. While the constitutional and legal framework acknowledges the need for gender mainstreaming, gender equality is indeed still a work in progress. Thus, one can find a myriad of projects, initiatives, and processes on the gender challenge that are corollary to gender-oriented legislations.
- *Framework Plan for Women (FPW)*. This is part of the Philippine Plan for Women which the current administration developed to focus on three thrusts namely: promoting women's economic

empowerment; advance and protect women human rights; and promote gender responsive governance. This plan identifies the concrete gender issues that will be addressed, pinpoints targets and indicators, names programmes, formulates the implementation plan, and set-up tools for monitoring and evaluation. Philippines has a well-developed legal framework for gender equality. This is even reinforced by the ratification of international instruments on women (e.g. Convention on the Elimination of all Forms of Discrimination against Women or CEDAW) and clear commitments to the outputs of the UN Women Conferences. This is already a good handle for gender equality but their implementation and the "real politics" surrounding these legal norms leave so much to be desired.

- *Philippine Plan for Gender Responsive Development (1995-2025)*. The National Plan for Women that consolidates the action commitments of the Philippines during the Beijing World Conference on Women. This is the over-all frame that is also the point of reference for the discussions and monitoring of gender mainstreaming.
- *Gender and Development Budget (GAD) (1996)*. Integral to the Philippine Plan for Gender Responsive Development, GAD aimed at institutionalizing gender concerns in the mainstream development process and agenda and not just peripheral programmes and projects of the government. Concretely, it prescribes for the allocation of 5% of the government agency's/local government unit's budget on gender-responsive activities and projects. As a result, the implementation of the development programmes and policies of government also means that women have a role in governance. As primary stakeholders in the development process, women have the right to maximize their involvement in governance, be it at the local or national level.

In December 2012, after hibernating in Congress for 15 years, the Magna Carta for the *Kasambahay 2005* or the *Kasambahay* (house-help) Law was passed, amending Book III, Articles 141-152 of the Labour Code. This landmark law seeks to promote decent work among over 2.9 million household service workers in the country. It sets the minimum wage for domestic workers as follows:

- P2,500 a month for those employed in the National Capital Region;
- P1,700 a month for those employed in chartered cities and first class municipalities; and
- P1,500 a month for those employed in other municipalities.

The law also requires the Regional Tripartite Wages and Productivity Boards to review and adjust the minimum wage rates annually. It also stipulates the following rights of household service workers: right to free board, lodging and medical attendance; right to access educational opportunities; right to self-organisation, and right to redress grievance.

The law also provides several labour standards for household service workers. These are among others: the requirement of a written employment contract; 13th month pay; restriction on the assignment on non-household work; prohibition on the use of services of household workers in places other than their legitimate workplace; and various leaves (maternity, paternity, and vacation).

The enactment of the *Kasambahay* Law came after the country's ratification of the ILO Convention 189 on Decent Work for Domestic Workers which the Philippines ratified on 12 September 2012. The Philippines is the second country after Uruguay to ratify this Convention.

Meanwhile, House Bill 1955 or the Magna Carta for Workers in the Informal Economy is still pending in Congress. This bill seeks to provide legal protection to 17 million informal workers or 45% of the country's working population of 37.191 million based on the 2011 Labour Force Survey of NSO. It is estimated that 80% of the informal workers in the Philippines are women. The Magna Carta for Workers in the Informal Economy seeks to give recognition to the workers in this sector, provide protection from abuse and space for participation, institute programmes and services (i.e. enhancement of skills, health and social insurance, decent working conditions, access to credit and savings for production, etc.) and provide access to rights and justice (FES, 2008).

The main state institution responsible in promoting gender equality and mainstreaming is the National Commission on the Role of Filipino Women (NCRFW) which is under the Office of the President of the Philippines. Established in 1975, the NCRFW advises the President and the Cabinet in policy formulation and implementation for gender-responsive development. It reviews and evaluates the extent of gender integration and gender equality in sectoral programmes, and promotes fuller equality of men and women before the law. Its major programmes include the establishment of gender focal points as an institutional mechanism for gender mainstreaming, training in gender and development, research and policy studies on issues such as violence against women, migration, prostitution, family, peace, and the media, and development of a sex-disaggregated database on the Philippines (NCRFW website).

### 2.3.2 GETTING SINGAPOREAN WOMEN BACK TO WORK - BACK TO WORK (B2W) PROGRAMME AND TRIPARTITE ALLIANCE FOR FAIR EMPLOYMENT PRACTICES (TAFEP)

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#### Introduction

As far back as the mid-1990s, Singapore has taken a pro-active approach in an attempt to encourage more women to get back to the labour market.

Thus the "Back to Work" (B2W) programme has been running since September 1996. Its aim is to encourage housewives and retirees to return to the workforce. Its main focus is to promote part-time and flexible work to enable housewives to balance work with their family responsibilities, and retirees to continue working at a suitable pace. It is a national initiative undertaken by the Ministry of Manpower, the Singapore Productivity and Standards Board, The National Trade Union Congress and the Singapore National Employers' Federation.

The successful return of housewives and retirees to the workforce enables Singapore to better utilise its indigenous manpower resources, alleviate the manpower shortage faced by employees, and help reduce its reliance on foreign workers as well as engage older people as contributing members of society.

Promotional activities are targeted at potential employers and employees. Employers are given help to restructure job vacancies into part-time and flexible jobs that can be undertaken by housewives and retirees. Attractive training grants are also provided to help job seekers who have left the workforce some time ago to undergo the necessary core skills and job-specific skills training.

The B2W programme has 3 specific thrusts (NTUC Women's Development Secretariat, 2012):

1. Recruitment: by organising regular job fairs and weekly recruitment drives to offer employment opportunities for women job seekers
2. Re-adjustment: by providing training for women job seekers wishing to re-enter the workforce and increase their employability.
3. Retention: by promoting work-life balance in organisations so as to enhance the well-being of employees.

As part of the push to encourage women to return to work and for companies to actively hire women, Flexi-Works! is an initiative by the Singapore Workforce Development Agency (WDA), in partnership with the National Trade Union Congress (NTUC) to help companies hire new workers on part-time or flexible work arrangements. The scheme offers a grant of up to \$100,000 to support a company's efforts in doing so. The programme has been extended to run from 1 April 2010 to 31 December 2012.

Flexi-Works! is to facilitate the recruitment of employees (aged 30 and above) on part-time/flexible work arrangement. This is targeted at helping companies attract the economically inactive back to work. It provides each company up to \$100,000 in funding, when it hires new employees (aged 30 and above), on part-time/flexible work arrangement.

In addition, the WoW! Fund is to facilitate companies to implement Work-Life initiatives. It is a project-based grant that funds up to \$20,000 per project for work-life initiatives. It is targeted at building Work-Life processes and infrastructure in a company, and would tend to benefit the entire workforce in a company, including employed workers. The WoW! Fund funds a wide range of Work-Life solutions, including employee support schemes such as lactation or day care rooms, time-saving services, etc.

A common objective of both funds is to promote flexible work arrangements. This is also accompanied by a recent increase in maternity leave to 16 weeks. According to Part IX of the Employment Act and Part III of the Child Development Co-savings Act, mothers are entitled to absent themselves from work four weeks immediately before and twelve weeks immediately after delivery, totalling 16 weeks. In addition, the Employment Act also extends entitlement for parents up to six days of childcare leave per year for those with children below 7 years old. Also, six days of unpaid infant care (child below 2 years old) leave per year are provided for by the law.

So far, it seems that there is a degree of success in promoting women's employment. A comparison of gender employment statistics of 2001 and 2010 shows an improvement in labour force participation by women. Women workers reported a 2.6% increase in labour force participation per annum, almost twice that of male workers, thereby increasing the total citizen labour force participation (see Table 12).

TABLE 12: SINGAPORE CITIZENS IN THE LABOUR FORCE, 2000-2011

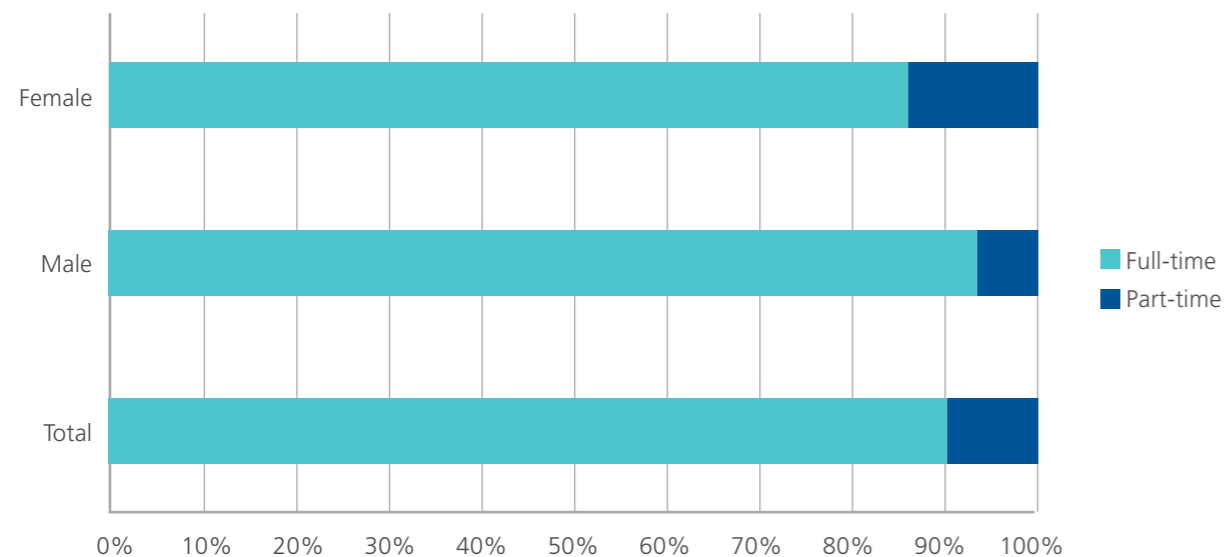
Year	Total (%)	Males (%)	Females (%)
2000	63.2	76.6	50.2
2001	64.4	77.7	51.6
2002	63.6	77.2	50.6
2003	63.2	76.1	50.9
2004	63.3	75.7	51.3
2005	63.0	74.4	52.0
2006	65.0	76.2	54.3
2007	65.1	76.5	54.3
2008	65.6	76.1	55.6
2009	65.4	76.3	55.2
2010	66.2	76.5	56.5
2011	66.1	75.6	57.0

Source: Singstat (2012) time Series on Labour Force Participation Rate (as at June)

However, in general, the rate for male citizens still increased sharply as they entered the workforce and remained at a high 86 to 94% during the prime-working years of 25 to 54, before declining thereafter, especially for those aged 60 and over. On the other hand, while a large proportion of female citizens in their late twenties and early thirties were employed, the female employment rate declined soon after, reflecting the withdrawal of some women from the workforce after marriage and childbirth. Reflecting the value of education in strengthening employment prospects, the employment rate of tertiary-educated citizens was generally higher than those without tertiary qualifications, especially among women (Singstat, 2011:4).

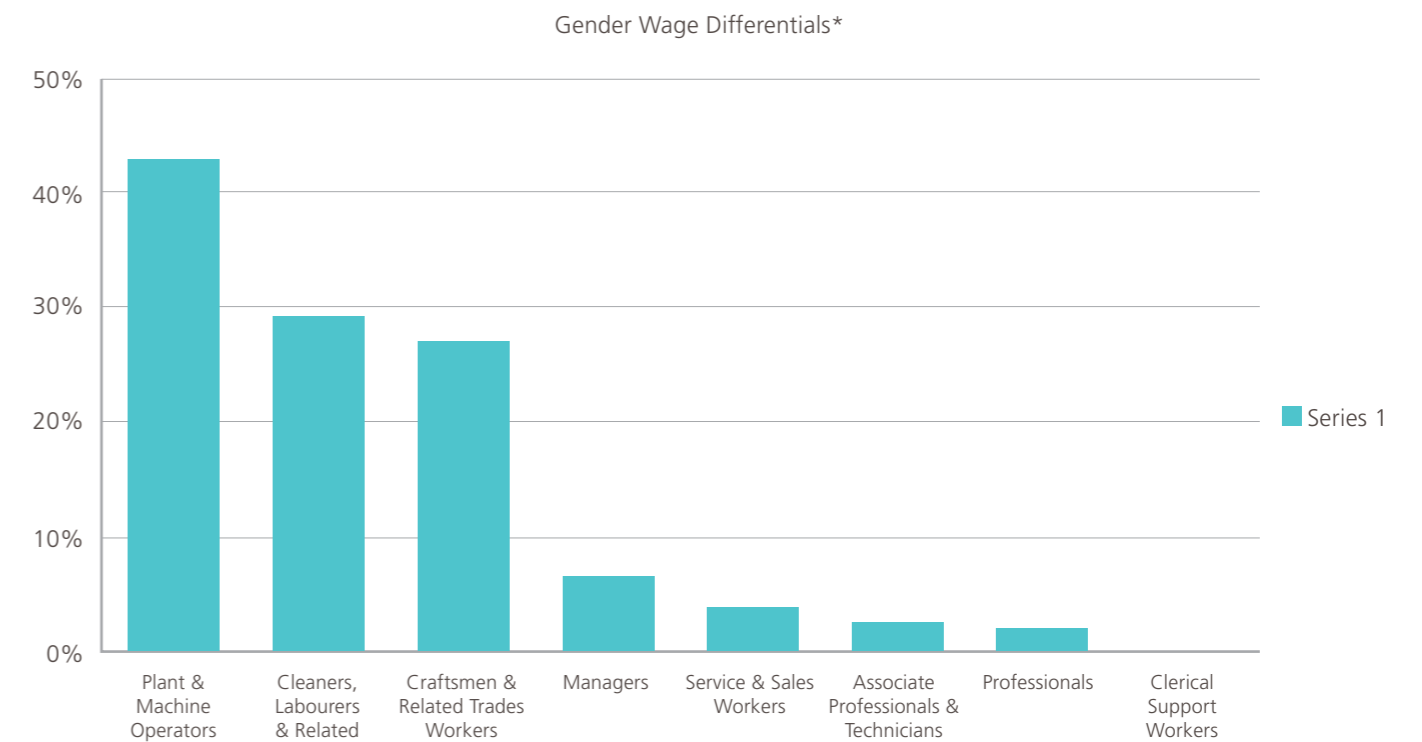
Nine in ten employed citizens were in full-time jobs in 2010. While the majority of women were also in full-time employment, they were more likely to work part-time (14%) than men (6.3%), primarily due to the need to manage work and family responsibilities (see Figure 3).

FIGURE 3: DISTRIBUTION OF EMPLOYED SINGAPORE CITIZENS BY EMPLOYMENT NATURE AND SEX, JUNE 2010



Like in other countries, females in Singapore typically earn less than males. The gender wage gap was narrower in white-collar occupations, with women in the prime-working age of 35 to 39 earning close to or the same as men in clerical support, professional, associate professional & technician and service and sales occupations. The wage differential was considerably wider in blue-collar occupations. This could reflect the different jobs males and females hold within the occupational group. For instance, within the group of plant & machine operators, females tend to concentrate in occupations such as electronic equipment/component assemblers which typically pay less than the male-dominated crane & hoist operators and lorry drivers (MOM, 2011:55).

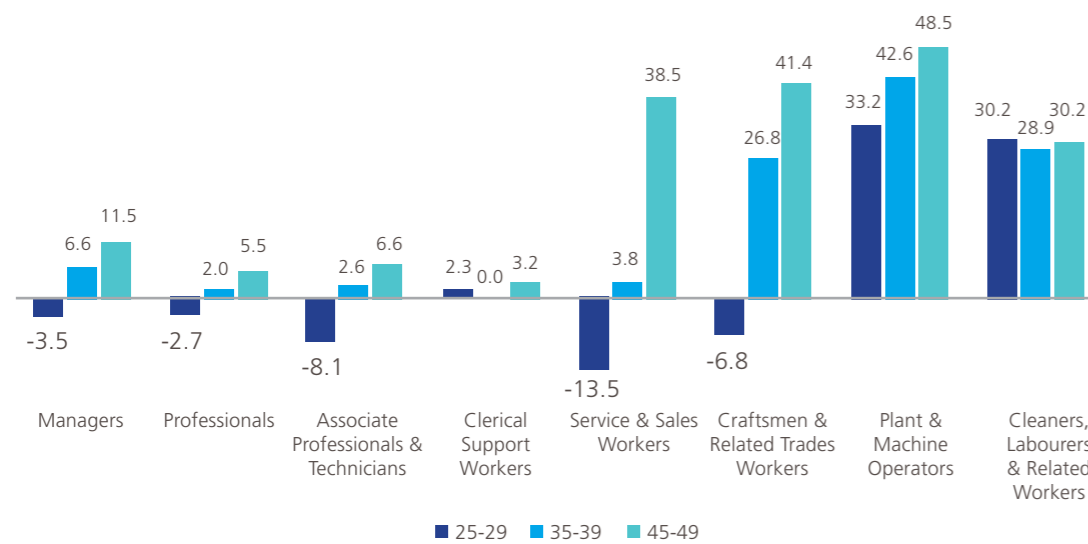
FIGURE 4: GENDER DIFFERENTIAL IN MEDIAN GROSS WAGES (%) FOR WORKERS AGED 35 TO 39 BY OCCUPATIONAL GROUP, JUNE 2011



Source: Occupational Wage Survey, MOM (extracted from MOM, 2011:55)  
 \*gender wage differential =  $(1 - (\text{female median gross wage} / \text{male median gross wage})) \times 100\%$

Gender wage differential also varied with age, with the younger cohorts having substantially lower wage differential than those older. With age, females were more likely to take career breaks to care for their family which reduced their work experience and hence pay, relative to men (ibid, 2011:56).

FIGURE 5: GENDER DIFFERENTIAL IN MEDIAN GROSS WAGES (%) BY OCCUPATIONAL AND SELECTED AGE GROUPS, JUNE 2011



Source: Occupational Wage Survey, MOM (extracted from MOM, 2011:56)

In addition to the B2W programme, the Tripartite Alliance for Fair Employment Practices (TAFEP) is another initiative targeting employers/ companies where Singapore as a meritocratic society, implementing fair and merit-based employment practices, is advocated as the right thing to do. The Tripartite Alliance for Fair Employment Practices (TAFEP) promotes the adoption of fair, responsible and merit-based employment practices among employers, employees and the general public.

TAFEP is co-chaired by Mr Bob Tan, Vice President, Singapore National Employers Federation (SNEF) and Mr Heng Chee How, Deputy Secretary-General, National Trades Union Congress (NTUC). Members include employer representatives, union leaders and government officials (TAFEP website, 2012).

One of the TAFEP's key initiatives is to highlight best practices of companies where fair and progressive employment practices have been implemented. This has taken in the form of awarding companies with the exemplary employer award in 2010 and 2012. Some recipients of the awards in 2012 with exemplary practices in promoting and retaining women talents have been included below.

#### ERNST & YOUNG (TAFEP, 2012:22-23)

Ernst & Young actively reaches out to the Women's Development Secretariat and Community Development Councils to hire more female employees, including those with disabilities. To foster an inclusive culture, Ernst & Young organizes regular workplace activities such as lunchtime talks, wellness programmes and recreational activities to provide opportunities for employees of different profiles and departments to interact. Flexible work arrangement was implemented in 2011 at Ernst & Young to support its employees in striking a balance between work and personal responsibilities. The purpose of implementing this initiative goes beyond providing welfare for its employees; it has helped Ernst & Young retain skilled, motivated and productive employees who show commitment to the organization. This is especially for the case for female employees who have competing family demands.

#### ACCENTURE (TAFEP, 2012:12-13)

Accenture launched a women mentoring programme in late 2011 targeted at grooming local female university students. The one-year mentorship programme matches female participants to Accenture's female executives, to allow them to tap on their mentors' experiences and learn about the industry. So far, eight mentors comprising Senior Managers and Senior Executives have helped participants get insights and tips on how to build a successful career.

For Accenture's female employees who are on the path towards senior leadership, they are given the opportunity to attend development courses specific for helping top performing female executives in shaping career goals. The courses also provide them with information, tools and practice opportunity to become efficient leaders and managers of people and business.

#### UBS (TAFEP, 2012:50-51)

With female employees making up 48 per cent of the organization's workforce, UBS has implemented a wide range of fair employment initiatives to support the development of this employee group and accommodate the different life stages of their career. One of these unique initiatives is 'Embracing Organizational Energy – Power UP', a workshop aimed at self-reflection and empowerment and to equip female leaders with tips on how to take their work performance to a higher level and be effective leaders. This programme complements UBS's 'Women's Business Network Mentoring Program' which supports the professional and personal development of female employees in the organization. The mentors and mentees meet regularly during one year to discuss career development, organizational know-how and day-to-day business challenges. In addition to other initiatives, UBS also organizes forums to equip former female employees, who wish to return to the workforce with the right skills. At these forums, the employees interact with relevant speakers to refresh their skills set and be updated on the latest in the financial industry.



## 2.4 CHAPTER CONCLUSION

The examination of the labour laws of ASEAN member countries in promoting gender equality at work and the protection of women workers have revealed that much progress has been made in the legal dimension. Although no ASEAN countries has yet ratified C183, almost all countries already have relatively comprehensive laws in place in line with the principles of the convention. However, that might not necessarily lead to real changes in the domain of paid and unpaid work in the lives of working women as revealed in the persisting gaps in GII and GGI.

The various laws, programmes and policies that comprise the Philippines' public policy in promoting women's rights and welfare have substantially contributed to the promotion of gender equality and equal opportunities for women in many facets of Philippine society. Of course, various non-state actors, particularly a strong and activist-oriented women's movement, grassroots organisations of women in the informal economy, trade unions, and other social movements involved in the promotion of women's rights, have continuously pushed for the enactment and implementation of an enabling public policy environment for women's rights and gender equality.

In the changing world of work, particularly in the increase of service sectors employment, this has created a double edged sword for women. As seen in the case of Singapore, on one hand, it provides more part-time job opportunities and flexi-work arrangements especially for working mothers, but at on another hand, there remains a gender pay gap between their overall earning capacity and that of male counterparts. The issue of gender pay gap remains prevalent across the ASEAN member states despite the wide ratification of related conventions and mirrored in the respective national laws.

This is why organisations and society as a whole must address the issue of closing the gaps in access to work, pay structures, supporting women to return to work while recognizing that women have an inherent (unpaid) procreation and family responsibility. Workplace flexibility as well as creating pro-family structures for both women and men, such as child care facilities that facilitate female employment, more measures that encourages greater participation of fathers at home such as paternity leave and at the same time, allow women to greater opportunity to play a leading role in the emerging global labour market.



# Employment of Persons with Disabilities

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### 3.1 INTRODUCTION

Disabilities are common experiences faced by individuals regardless of their age, gender, ethics, and socio-economic status. Disability can happen at any point during a person's lifetime due to such antecedences as congenital disorder, disease, illness, accident, or ageing. The recent UN's World Report on Disability reveals that about 15% of the world's population lives with some form of disability, of whom 2-4% experience significant difficulties in functioning. This global disability prevalence is higher than previous WHO estimates, which dates from the 1970s suggesting a figure of approximately 10% of the world's population. This global estimation for disability is on the rise due to population ageing and the rapid spread of chronic diseases as well as improvements in the methodologies used to measure disability. In addition, according to the World Health Survey, around 785 million (15.6%) persons 15 years and older live with a disability, while the Global Burden of Disease estimates a figure of around 975 million (19.4%) persons. Of these, the World Health Survey estimates that 110 million people (2.2%) have very significant difficulties in functioning, while the Global Burden of Disease estimates that 190 million (3.8%) have "severe disability" – the equivalent of disability inferred for conditions such as quadriplegia, severe depression, or blindness. Only the Global Burden of Disease measures childhood disabilities (0–14 years), which is estimated to be 95 million (5.1%) children, of whom 13 million (0.7%) have "severe disability" (WHO, 2011).

According to UN estimation, around 600 million individuals with disabilities in Asia and the Pacific, and 90 million individuals with disabilities in ASEAN are in need of support to enjoy their basic rights and access to opportunities without any form of discrimination. However the precise number of persons with disabilities in ASEAN is unobtainable due to lack of systematically collected statistics in some countries and differences of disability definition used in each country. In addition, the accurate number of persons with disabilities is hardly accessed due to stigmas against persons with disabilities that usually cause family's unwillingness to allow persons with disabilities to present in the community and be counted. As seen in Table 1, the estimate number of persons with disabilities in ASEAN ranges from 1% in Malaysia to 7.8 % in Viet Nam.

It is generally realised that most persons with disabilities (PWDs) face poverty and marginalisation from mainstream society. They are hindered to participate in society due to limited access to basic rights, including mobility and transportation, health care services, appropriate education, information and media, as well as employment opportunities. To focus on employment, it is evident that persons with disabilities are underemployed or unemployed. It is estimated that unemployment rate among the persons with disabilities is as high as 80 per cent in some countries. Often employers assume that persons with disabilities are unable to work. The contributing factors, inter alia, are misunderstanding, stereotyping, and lack of awareness in relation to disability and persons with disabilities.

TABLE 13: ESTIMATED NUMBER OF PERSONS WITH DISABILITY TO TOTAL POPULATION, 2011

Country	Estimated No. of PWDs/ Total Population	Estimated %	Estimated % of who are active in formal labour market	Source of information
Brunei Darussalam	N/A	N/A	N/A	Disability at a glance 2010: A profile of 36 Countries in Asia and the Pacific
Cambodia	169,058	4.5%	N/A	
Indonesia	3,063,000	1.38%	N/A	Survey of the present study
Lao PDR	No response provided	8%	N/A	
Myanmar	No response provided	2.8%	N/A	Disability at a glance 2010: A profile of 36 Countries in Asia and the Pacific
Malaysia	197,519	1%	N/A	
Philippines	942,000	1.2%	N/A	Survey of the present study
Singapore	131,000	3%	N/A	
Thailand	1,900,000	2.9%	N/A	58.18% of the whole PWDs have job and they can live independently
Viet Nam	6,100,000	7.8 %		

Greater attention from governments and concerned stakeholders is needed to allow PWDs to live with their full potential, become self-reliance, and achieve quality of life. Internationally, several efforts have been made to promote rights and quality of life of persons with disabilities. The UN World Programme of Action Concerning Disabled Persons (WPA), adopted by the General Assembly on 3 December 1982, serves as the very first rights-based global strategy to enhance disability prevention, rehabilitation, full participation and equal opportunities. Importantly, one of the most recent significant achievements for disability rights is the UN Convention on the Rights of Persons with Disabilities (CRPD), which became effective in 2008 with the aims to ensure equal rights and opportunities for persons with disabilities. As of November 2012, 6 ASEAN member states, i.e. Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, and Thailand have ratified the Convention while 4 countries i.e. Brunei Darussalam, Cambodia, Singapore, and Viet Nam have only signed the CRPD (UN, 2011).

This comparative study aims at examining relevant international labour treaties and legislations pertaining to protecting the rights of persons with disabilities in employment. The intent of the present chapter is not that to compare the relevant international treaties, rather to focus on reviewing important elements of the three international treaties namely the UN Convention on the Rights of Persons with Disabilities and the ILO No. 111 and 159 Conventions, to benchmark with the national laws existing in each ASEAN Member States regarding equal employment opportunity of persons with disabilities. Obstacles in the implementation and/or enforcement of these laws, best practices or programmes which have led to advancement of persons with disabilities, and factors contributing to positive employment outcome are also explored.

### 3.2 COMPARISON INTERNATIONAL STANDARDS WITH NATIONAL LAWS CONCERNING EMPLOYMENT OF PERSONS WITH DISABILITIES

The ILO No. 111 is the employment discrimination convention aiming at protecting all the workers of the countries ratified to the Convention. The Convention on the Rights of Persons with Disabilities (CRPD) and the ILO Convention No. 159 are considered the key international treaties regarding rights protection and promotion for persons with disabilities. While the ILO No.159 (1983) focuses specifically on rehabilitation and employment of persons with disabilities, the primary intention of the CRPD is to protect the rights of persons with disabilities in all aspects, and rehabilitation and employment are emphasised as one of important spheres that lead to improving the quality of life of people with disabilities.

The following table outlines actions that have been taken by each ASEAN Member States regarding ratification or signatory on the CRPD and ILO No. 111 and 159 Conventions. Although the ILO has published “The Code of Practice: Managing Disability in the Workplace” it will be addressed in the chapter discussion section.

As seen in Table 14, among 10 ASEAN Member Countries, there are 5 countries that ratified the ILO No. 111 Convention (Cambodia, Indonesia, Lao PDR, Philippines, and Viet Nam) and only 2 countries (i.e. the Philippines and Thailand) that ratified to the ILO No. 159 Convention. For the CRPD, there are 6 ASEAN member countries that ratified to the Convention (i.e. Indonesia, Lao, Malaysia, Myanmar, Philippines, and Thailand), while 4 countries signed the CRPD (Brunei Darussalam, Cambodia, Singapore and Viet Nam). It is important to note that Brunei Darussalam, Cambodia, and Viet Nam signed the CRPD since 2007; and Singapore recently signed in November 2012; however, there are no legal obligations imposed on a signatory State after the treaty is signed. This merely means that the States indicate their intention to take steps to be bound by the treaty at a later date. Signing also creates an obligation, in the period between signing and ratification or consent, to be bound and to refrain from acts that would defeat the objective and purpose of the treaty.

TABLE 14: ASEAN MEMBER STATES AND RATIFICATION TO INTERNATIONAL STANDARDS

Country	ILO 111 <sup>18</sup> Ratification	ILO 159 <sup>19</sup> Ratification	UN Convention on the Rights of Persons with Disabilities (CRPD)			
			Convention Ratification	Protocol Ratification	Convention Signature	Protocol Signature
Brunei Darussalam	-	-	-	-	18 December 2007	-
Cambodia	23 August 1999	-	<b>Ratification is in process</b>	-	1 October 2007	1 October 2007
Indonesia	7 June 1999	-	30 November 2011	-	30 March 2007	-
Lao PDR	13 June 2008	-	25 September 2009	-	5 January 2008	-
Myanmar	-	-	7 December 2011	-	-	-
Malaysia	-	-	19 July 2010	-	8 April 2008	-
Philippines	17 November 1960	23 August 1991	15 April 2008	-	25 September 2007	-
Singapore	-	-	-	-	<b>30 November 2012</b>	-
Thailand	-	11 October 2007	29 July 2008	-	30 March 2007	-
Viet Nam	07 October 1997	-	-	-	22 October 2007	-

<sup>18</sup> ILO Convention No. 111 Discrimination (Employment and Occupation) (1958)

<sup>19</sup> ILO Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons) (1983)

#### 3.2.1 A CONTENT REVIEW OF THE RELATED TREATIES

Concerning equal employment opportunity for persons with disabilities, there are key international treaties that are included for the review: the ILO No. 111 and 159 Conventions and the UN Convention on the Rights of Persons with Disabilities (CRPD). Although there are some other related documents such as the Convention concerning Employment Promotion and Protection against Unemployment, (ILO No. 168) which was designed to implement ILO No. 159 Convention and the ILO Recommendation No. 195 on human resources development, only the above mentioned Conventions are included in this preliminary review.

The ILO No. 111 Convention is considered “Fundamental Convention” that covers fundamental principles and rights at work for all workers; nevertheless, the ILO No. 159 and the CRPD are disability focused. The CRPD and the ILO No. 159 Convention were also formulated with different purposes and focuses; they share the common fundamental principle which is, rights and equal opportunity for persons with disabilities.

The following table outlines a side-by-side review of the three important international treaties by highlighting some important aspects pertaining to employment and employment of persons with disabilities, which are subsequently referred to as benchmarks for mapping of labour legislation which promotes employment for persons with disabilities in respective ASEAN countries.



TABLE 15: A CONTENT REVIEW OF THE RELATED INTERNATIONAL STANDARDS

CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
<b>Structure</b>	<b>14 articles</b>	<b>9 articles under 4 parts</b>	<b>50 articles</b>				
The ILO No. 111 Convention is the non-disability specific convention aiming to eliminate all form of discrimination against employment and occupation. The ILO No. 159 Convention focuses specifically on vocational rehabilitation and employment services of persons with disabilities.	The convention outlines action in force to be taken by Member States ratified to the Convention such as (Article 3): (a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; (d) to pursue the policy in respect of employment under the direct control of a national authority;(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority; and (f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.	Part I: Definition and scope Part II: Principles of vocational rehabilitation and employment policies for disabled persons Part III: Action at the national level for the development of vocational rehabilitation and employment services for disabled persons Part VI: Final provisions	Article 1: Purpose Article 2:Definitions Article 3:General principles Article 4:General obligations Article 5:Equality and non-discrimination Article 6:Women with disabilities Article 7:Children with disabilities Article 8:Awareness-raising Article 9:Accessibility Article 10: Right to life Article 11: Situations of risk and humanitarian emergencies Article 12: Equal recognition before the law Article 13: Access to justice Article 14:Liberty and security of the person: Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment Article 16: Freedom from exploitation, violence and abuse Article 17: Protecting the integrity of the person Article 18: Liberty of movement and nationality Article 19: Living independently and being included in the community Article 20: Personal mobility Article 21: Freedom of expression and opinion, and access to information Article 22: Respect for privacy Article 23: Respect for and the family				Article 24: Education Article 25: Health Article 26: Habilitation and rehabilitation Article 27: Work and employment Article 28: Adequate standard of living and social protection Article 29: Participation in political and public life Article 30: Participation in cultural life, recreation, leisure and sport Article 31: Statistics and data collection International cooperation Article 32: International cooperation Article 33: National implementation and monitoring Article 34: Committee on the Rights of Persons with Disabilities Article 35: Reports by States Parties Article 36: Consideration of reports Article 37: Cooperation between States Parties and the Committee Article 38: Relationship of the Committee with other bodies Article 39: Report of the Committee Article 40: Conference of States Parties Article 41: Depositary Article 42: Signature Article 43: Consent to be bound Article 44: Regional integration organisations

CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
<p><b>Definition of Disability or A Person with Disability</b></p> <p>The term disability or persons with disabilities is not directly defined in the ILO NO. 111 Convention. Definition of a person with disability defined by the CRPD and the ILO No. 159 Convention is not identical but consistent. Disability is viewed as a condition that an individual is limited or hindered in performing their functions and participating in society. The ILO No. 159 focuses in secured employment while the CRPD focuses on all aspect of participation in society.</p>	N/A	<p><b>Article 1</b> specifies that the term “disables person” means an individual whose prospects of securing, retaining and advancing in suitable employment are substantial reduced as a result of a duly recognised physical or mental impairment.</p>	<p>Article 45: Entry into force Article 46: Reservations Article 47: Amendments Article 48: Denunciation Article 49: Accessible format Article 50: Authentic texts</p> <p><b>Article 1</b> specifies that “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”</p>	<p>ensuring that persons with disabilities are able to access to equal opportunity with appropriate services provided by the government. Provision of appropriate vocational rehabilitation services and measures is emphasised in the ILO No. 159 Convention; however, the CRPD focuses primarily on respectfulness in inherit dignity and capacity of persons with disabilities.</p>	<p>dignity, of economic security and equal opportunity, and considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights.</p>	<p>shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market.</p> <p><b>Article 4:</b> The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers.</p>	<p>(e) Equality of opportunity; (f) Accessibility; (g) Equality between men and women; (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.</p>
<p><b>General Principles</b></p> <p>The ILO No. 111 Convention focus on affirmative action on the adoption of certain proposals with regard to discrimination in the field of employment and occupation for all the workers. The ILO No. 159 Convention and the CRPD were formulated with different principles; however, they are congruence to each other in terms of</p>	<p>Affirmative action on the adoption of certain proposals with regard to discrimination in the field of employment and occupation with consideration that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and</p>	<p><b>Article 2</b> addresses “Each Member shall, in accordance with national conditions, practice and possibilities, formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.” Article 3: The said policy</p>	<p><b>Article 3</b> states</p> <p>(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; (b) Non-discrimination; (c) Full and effective participation and inclusion in society; (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;</p>			<p><b>Article 5:</b> The representative organisations of employers and workers shall be consulted on the implementation of the said policy, including the measures to be taken to promote co-operation and coordination between the public and private bodies engaged in vocational rehabilitation activities. The representative organisations of and for disabled persons shall also be consulted.</p>	

CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
<p><b>Habilitation and Rehabilitation of Persons with Disabilities</b></p> <p>Both the ILO No. 159 Convention and the CRPD stresses that State Parties shall take effective measures regarding establishment of habilitation and rehabilitation services for persons with disabilities.</p> <p>The CRPD stresses services that utilize the multidisciplinary approach on assessment and knowledge on use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation. The ILO No. 159 Convention stressed that existing services for workers generally shall be used with necessary adaptations whenever possible and appropriate.</p>	<p>N/A</p>	<p><b>Article 6:</b> Each Member shall, by laws or regulations or by any other method consistent with national conditions and practice, take such steps as may necessary to give effect to Article 2, 3, 4 and 5 of this Convention.</p> <p><b>Article 7:</b> The competent authorities shall take measures with a view of providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment, existing services for workers generally shall, whenever possible and appropriate, be used with necessary adaptations.</p> <p><b>Article 8:</b> Measures shall be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities.</p>	<p><b>Article 26:</b> 1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:</p> <p>(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;</p> <p>(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.</p> <p>2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.</p> <p>3. States Parties shall promote the availability, knowledge</p>	<p><b>Employment Discrimination against persons with disabilities</b></p> <p>The ILO No. 111 Convention delineates what are considered discrimination which has effect of nullifying or impairing equality of opportunity or treatment in employment or occupation</p> <p>The ILO No. 159 Convention does not explicitly mention employment discrimination against persons with disabilities, while the CRPD does.</p> <p>The ILO No. 159 Convention rather focuses on equal opportunity in employment of persons with disabilities (see following section)</p>	<p>Article states that “discrimination includes--(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.”</p> <p><b>Article 1 (2)</b> further states that “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination”</p>	<p>N/A</p>	<p>and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.</p> <p>The CRPD’s article 4 General Obligation addresses “the States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”</p> <p><b>Article 2</b> states “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;</p>

CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	CONTENT	ILO DISCRIMINATION CONVENTION (EMPLOYMENT AND OCCUPATION) (NO. 111), 1958	ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION (NO. 159), 1983	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
	<p><b>Article 3</b> addresses that “Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.</p>						<p>States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:</p> <p>(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;</p> <p>(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;</p> <p>(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;</p> <p>(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;</p>
<p><b>Equal Access to employment</b> The ILO No. 111 convention has its purpose on access to vocational training and employment of the workers. The ILO No. 159 Convention focuses on equal opportunities for persons with disabilities in employment with provision of positive measure when appropriate. Employment discrimination against persons with disabilities is prohibited by the CRPD. This covers all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.</p>	<p>The <b>Article 1</b> addresses that “the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.”</p>	<p><b>Article 3</b> addresses “The said policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market.”</p> <p><b>Article 4</b> states that the policies of member states “shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers.</p>	<p><b>Article 9 Accessibility:</b> To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others...including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Article 27 regarding work and employment addresses 1. States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.</p>				



## CONTENT

ILO DISCRIMINATION  
CONVENTION (EMPLOYMENT  
AND OCCUPATION)  
(NO. 111), 1958

ILO VOCATIONAL  
REHABILITATION AND  
EMPLOYMENT (DISABLED  
PERSONS) CONVENTION  
(NO. 159), 1983

CONVENTION ON THE RIGHTS  
OF PERSONS WITH DISABILITIES

**Reasonable Accommodation**

The ILO No.111 Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination". This is consistent with the ILO No 159 Convention which states that special positive measures aiming at effective equality of opportunity for persons with disabilities shall not be regarded as discriminating against other workers.

The CRPD addressed that reasonable accommodation means necessary and appropriate modification and adjustments to ensure that persons with disabilities would enjoy and exercise an equal basis with others of all human rights and fundamental freedoms.

**Article 5** mentioned that "Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination" and "any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

**Article 4** mentions that "The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers."

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

**Article 2** addresses that "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

**Qualified Professionals**

N/A

The ILO No. 159 Convention mentions vocational rehabilitation counsellors and other suitably qualified staff as qualified professional working for vocational guidance, training, and placement, while the CRPD addressed that the State Parties are obliged to promote the training for professionals and staff working for persons with disabilities regarding the rights specified under the Convention.

**Outreach rehabilitation service to remote area**

N/A

Both the ILO No. 159 Convention stressed availability of services in rural and remote areas.

**Monitoring and Evaluation Mechanism**

The ILO No. 159 Convention states that the competent authorities shall take measures regarding vocational rehabilitation services for persons with disabilities

**Article 9:** Each member state shall aim at ensuring the training and availability of rehabilitation counsellors and other qualified staff responsible for the vocational guidance, vocational training, placement and employment disabled persons.

**Article 8:** Measure shall be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities

**Article 8:** Measure shall be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities

**Article 7:** The competent authorities shall take measures with a view of proving and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled

Article 4 General obligations:  
(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognised in this Convention so as to better provide the assistance and services guaranteed by those rights.

It is focused in the Convention that services for persons with disabilities should be accessible in both urban and rural areas.

**Article 26** on habilitation and rehabilitation states that Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

**Article 33** regarding National implementation and monitoring states that "States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters relating

## CONTENT

ILO DISCRIMINATION  
CONVENTION (EMPLOYMENT  
AND OCCUPATION)  
(NO. 111), 1958

ILO VOCATIONAL  
REHABILITATION AND  
EMPLOYMENT (DISABLED  
PERSONS) CONVENTION  
(NO. 159), 1983

CONVENTION ON THE RIGHTS  
OF PERSONS WITH DISABILITIES

persons to secure, retain and advance in employment, existing services for workers generally shall, whenever possible and appropriate, be used with necessary adaptations.

to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.”

It further states that “States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention....”

“Civil society, in particular persons with disabilities and the representative organisations, shall be involved and participate fully in the monitoring process.”

### 3.2.2 A Comparative Review of the Labour Laws, decrees and international standards relative to implementation and enforcement

The State Parties which ratified the international treaties are obliged to take appropriate measures that are consistent with the ratified treaties. In general, appropriate measures include modifying or abolishing existing laws, regulations, customs and practices that constitute discrimination against persons who are protected. Out of 10 ASEAN Member States, 5 countries ratified the ILO No. 111 Convention, 2 countries ratified to the ILO No. 159 Convention, and 6 countries ratified the CRPD. The following table provides information relating ratification on the three key international treaties and existing national disability and labour related laws of each ASEAN Member States.

TABLE 16: RATIFIED INTERNATIONAL TREATIES AND NATIONAL DISABILITY AND LABOUR RELATED LAWS OF ASEAN MEMBER STATES

COUNTRY	INTERNATIONAL CONVENTIONS			Laws	RELATED NATIONAL LAWS		
	ILO 111 <sup>20</sup> Ratification	ILO 159 <sup>21</sup> Ratification	CRPD <sup>22</sup> Ratification		Classification of Law		
					Labour	Disability-Specific	Other
BRUNEI DARUSSALAM	-	-	-	Trade Union 1961	●		
				Old Age and Disability Pension 1984	●		
				Employment Agencies 2004	●		
				Immigration 2006	●		
				Employment 2009	●		
				Workplace Safety and Health 2009	●		
CAMBODIA	23 Aug 1999	-	-	Immigration Law 1994	●		
				Management of Foreigner Work Permit 1995	●		
				The export of Khmer Labour to Work Oversea 1995	●		
				Labour law 1997	●		
				Social Security Schemes	●		
				<b>Protection and Promotions of Rights of Persons with Disabilities 2009</b>		●	

20 Convention NO 111: Discrimination (Employment and Occupation) Convention (1958)  
21 Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons) (1983)  
22 Convention on the Rights of Persons with Disabilities

COUNTRY	INTERNATIONAL CONVENTIONS			RELATED NATIONAL LAWS			COUNTRY	INTERNATIONAL CONVENTIONS			RELATED NATIONAL LAWS					
	ILO 111 <sup>20</sup> Ratification	ILO 159 <sup>21</sup> Ratification	CRPD <sup>22</sup> Ratification	Laws	Classification of Law			ILO 111 <sup>20</sup> Ratification	ILO 159 <sup>21</sup> Ratification	CRPD <sup>22</sup> Ratification	Laws	Classification of Law				
					Labour	Disability-Specific						Other	Labour	Disability-Specific	Other	
INDONESIA	7 Jun 1999	-	-	<b>Disabled People's Act 1997</b>		●		PHILIPPINES	17 Nov 1960	23 Aug 1991	15 April 2008	Labour Code 1974	●			
				Concerning Trade Union 2000	●							<b>Republic Act No. 7277 (1992) (Magna Carta for Disabled Persons).</b>		●		
				Manpower Act 2003	●							Immigration 1995	●			
				Industrial Relation Dispute Settlement 2004	●							Trade Equality 2008	●			
				The National Social Security System 2004	●							Trade Union Act 1941 (2010 Amendment)	●			
				Social Security 1999	●							Women Charter 1997 (Charter 353)			●	
				Development and Protection of Women 2004			●					Employment Act 1985	●			
LAO	13 Jun 2008	-	-	Labour Law 2006	●			SINGAPORE	-	-	-	Employment of Foreign Manpower 2007	●			
				Protection on the Rights of Child 2007			●						Labour Relation Act 1975 (B.E. 2518)	●		
				<b>(Draft) Decree on the Rights of Persons with Disabilities</b>		●						Immigration Act 1979	●			
				Trade Union 1959	●							Social Security Act 1990 (B.E. 2533)	●			
				Immigration 1963	●							Measure in Prevention and Suppression of Trafficking in Women and Child 1997 (B.E. 2540)			●	
				Child and Young Persons 1966	●							Labour Protection Act 1998	●			
				Industrial Act 1967			●					<b>Persons with Disabilities Empowerment Act 2007</b>			●	
MALAYSIA	-	-	19 July 2010	Social Security Act 1969	●			THAILAND	-	11 Oct 2007	29 July 2008	Alien Working Act 2008	●			
				Labour Code 1955 (2006 Amendment)	●							<b>Ordinance on Disabled Persons 1998</b>			●	
				<b>Persons with Disabilities 2008</b>		●						Labour Code	●			
				Social Security Act 1954												
				Registration for Foreigner 1954												
				Freedom of association collective bargaining and industrial relation 1988												
				Law Relating to Overseas Employment 1999												
MYANMAR	-	-	7 Dec 2011	Law Labour Organisation 2011				VIET NAM	07 Oct 1997	-	-					
				Settlement of Labour Dispute 2012												

TABLE 17: A LIST OF MAJOR DISABILITY SPECIFIC LAWS IN EACH ASEAN MEMBER STATES

Brunei Darussalam	N/A
Cambodia	The Protection and the Promotion of the rights of Persons with Disabilities 2009
Indonesia	Disabled People 1997
Lao PDR	The Draft Decree on the Rights of Persons with Disabilities
Myanmar	Persons with Disabilities 2008
Malaysia	N/A
Philippines	Republic Act No. 7277 (1992) Magna Carta for Disabled Persons
Singapore	N/A
Thailand	The Persons with Disabilities Empowerment Act 2007
Viet Nam	Ordinance on Disabled Persons 1998

### 3.2.3 Definition of Persons with Disabilities

The ILO No. 111 Convention only mentions that special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be discrimination discriminated against. The term “disablement” is not directly defined. However, the definitions of persons with disabilities are included in the ILO No. 159 Convention and the CRPD. The definition defined by ILO No. 159 convention is vocationally focused; however, the definition under the CRPD emphasises disability as result of limited full and effective participation in society compared to general people, in a wider perspective and not only employment.

At the national level, definitions of disability or a person with disability vary from country to country, covering physical, sensory, mental intellectual impairment. Besides medical or physical aspects of impairment, definition of disability that take into consideration limitation in performing activities of daily living and participation in social activities are important aspects reflecting that disability is not only viewed from medical but also from social perspectives. The following table shows different definitions of disability or persons in each country.

TABLE 18: COMPARATIVE REVIEW ON DEFINITION OF DISABILITY OR PERSONS WITH DISABILITIES

<b>ILO No. 159</b>	<b>Article 1</b> specifies that the term “disables person” means an individual whose <b>prospects of securing, retaining and advancing in suitable employment are substantial reduced</b> as a result of a duly recognised physical or mental impairment”
<b>CRPD</b>	<b>Article 1</b> specifies that “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in <b>interaction with various barriers may hinder their full and effective participation in society on an equal basis with others</b> ”
<b>Brunei Darussalam</b>	<i>No official definition of disability of “a person with disability” is available.</i>
<b>Cambodia</b>	According to the Protection and Promotion of Rights of Persons with Disabilities Act (2009) persons with disabilities refers to “any persons who lack, lose, or damage any physical or mental functions, which result in a <b>disturbance to their daily life or activities</b> , such as physical, visual, hearing, intellectual impairments, mental disorders and any other types of disabilities toward the insurmountable end of the scale”
<b>Indonesia</b>	According to the Disabled People Act (1997) a person with disability means “any person who has physical and/or mental deficiencies which can <b>hinder or restrict that person to do their activity properly</b> . They are divided into three based on categories of disabilities: (a) persons with physical disabilities; (b) persons with mental disabilities; and (c) persons with physical and mental disabilities”



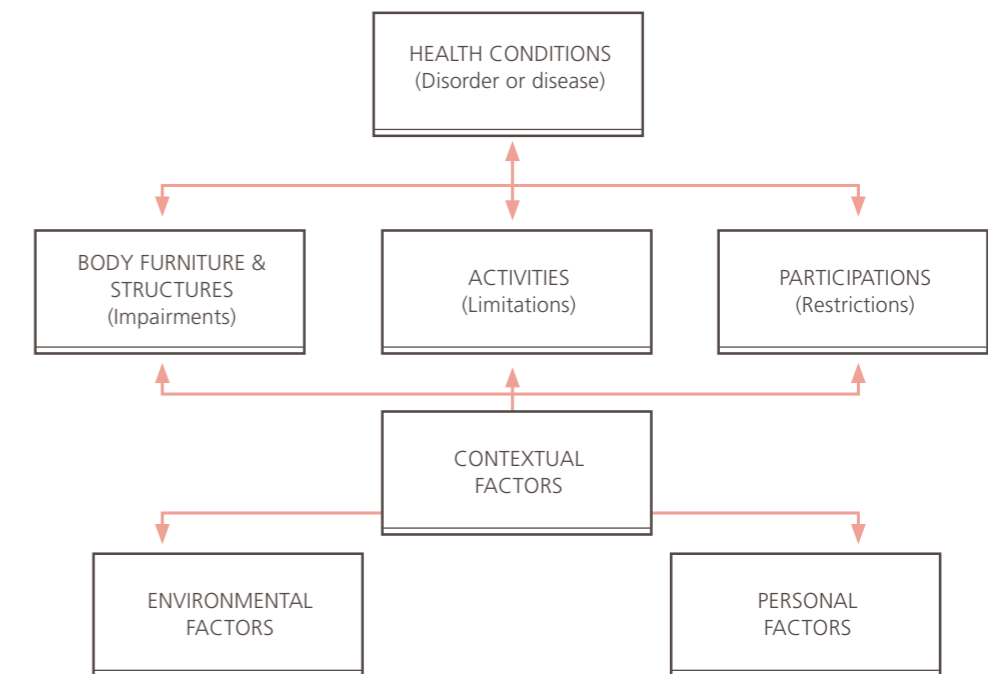
<b>Lao PDR</b>	According to the draft Decree on the Rights of Persons with Disabilities, persons with disabilities, irrespective of the cause of disability, are persons who have physical, mental or intellectual anomaly or defects including visual, hearing and speaking impairments for a long term, which <b>hinder their daily activities and full and effective participation in society on equality basis with others.</b>
<b>Malaysia</b>	According to the Persons with Disabilities Act (2008) persons with disabilities refer to “those who have long term physical, mental, intellectual or sensory impairments <b>which in interaction with various barriers may hinder their full and effective participation in society.</b> ”
<b>Myanmar</b>	No official definition of disability of “a person with disability” is available.
<b>Philippines</b>	According to the Republic Act No. 7277 (1992) “disabled persons are those <b>suffering from restriction or different abilities</b> , as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being.”
<b>Singapore</b>	In 2004, the Ministry of Community Development, Youth and Sports (MCYS) refined the Advisory Council for the Disabled (ACD)’s definition to include “[T]hose <b>whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced</b> as a result of physical, sensory, intellectual and developmental impairments.”
<b>Thailand</b>	The Persons with Disabilities Empowerment Act 2007 states that “persons with disabilities/ disabled persons are persons who <b>encounter certain limitations in performing living their daily activities or social participation</b> due to their impairment in vision, hearing, mobility, communication, mind, emotion, conduct, intellect, learning, or any other impairment/disabilities along with various difficulties, and specifically need some assistance to enable them to perform their daily activities or social participation as ordinary persons. The types and prescriptions of disabilities shall be determined and announced by the Minister of Social Development and Human Security.”
<b>Viet Nam</b>	The Ordinance on Disabled Persons 1998 states that “Disabled persons by definition of this ordinance, irrespective of the causes of the disability, are defective of one or many parts of the body or functions which are shown in different forms of disability, and which <b>reduce the capability of activity and causes many difficulties to work, life and studies.</b> ” (Viet Nam 1998, chap. I, art. 1; ESCAP 2006, Q 19)

Besides reviewing the selected international treaties, as seen in Table 6, the definitions of persons with disabilities being used in many countries reflect WHO’s The International Classification of Functioning (ICF), Disability and Health which describes functioning of human being at three perspectives: body, person and societal. The conceptualisation of disability provided by WHO’s ICF makes it impossible to understand disability without considering the environmental factors that impose on a person.

According to ICF, Functioning and Disability Components are divided into two main components: (1) Body component including Body functions and Anatomical structures. According to this, a problem in body function or structure is noted as an Impairments; (2) ‘Activity’ and a ‘Participation’ component where activity is defined as the execution of a task or action by an individual and participation is defined by involvement in a life situation. A difficulty at the person level would be noted as an activity limitation, and at the societal level as a participation restriction.

Contextual Factors Component is an independent and integral component of the classification and is divided into (1) ‘environmental factors’ and (2) ‘personal factors’. ‘Environmental factors’ have an impact on all components of functioning and disability but ‘Personal factors’ are not classified in the ICF.

FIGURE 6: WORLD HEALTH ORGANIZATION (WHO) INTERNATIONAL CLASSIFICATION OF FUNCTIONING, DISABILITY AND HEALTH



### 3.2.4 PROHIBITION ON EMPLOYMENT DISCRIMINATION OF PERSONS WITH DISABILITIES

The CRPD and the ILO No. 111 Conventions address employment discrimination issues.

ASEAN member states that have ratified the ILO No. 111 Convention (Cambodia, Indonesia, Lao PDR, Philippines, and Viet Nam) and the CRPD (Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, and Thailand) are obliged to eliminate all form of discrimination against persons with disabilities. According to the CRPD, the disability specific Convention, these countries shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. However, some countries that have not yet ratified to the CRPD but have their national disability comprehensive laws or plans such as Cambodia, Singapore

and Viet Nam may also take measures to eliminate employment discrimination against persons with disabilities by their existing national laws and/or plans. The following table identifies measures taken by AMS regarding prohibition on employment of persons with disabilities by taking into account only national disability-specified laws of each AMS.

TABLE 19: PROHIBITION ON EMPLOYMENT DISCRIMINATION OF PERSONS WITH DISABILITIES

<b>Brunei Darussalam</b>	N/A	<b>Malaysia (Ratified the CRPD)</b>	Section 29 of the Persons with Disabilities 2008 states (1) Persons with disabilities <b>shall have the right to access to employment on equal basis with persons without disabilities.</b> (2) The employer shall protect the rights of persons with disabilities, on equal basis with persons without disabilities, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment and the redress of grievances. (6) For the purposes of this section, “employer” includes the Government.
<b>Cambodia</b>	Article 33. of the Protection and Promotion of Rights of Persons with Disabilities states “Persons with disabilities who have the required qualifications and competence to carry out the duties, role and responsibilities of a particular position <b>have the right to be employed without discrimination</b> , including employment as civil servants, workers, employees, apprentices or interns.	<b>Myanmar (Ratified the CRPD)</b>	N/A
<b>Indonesia (Ratified the CRPD)</b>	Article 13 of the Disabled People 1997 states <b>“Every disabled person shall have equal opportunities to obtain employment according to their disabilities.”</b>  Article 14 states “State and private companies <b>shall give equal treatment and opportunities to the disabled by employing them at the companies according to their disabilities education, and abilities.</b> The quota shall be adapted to the number of employees existing and/or qualification of the company.”  In addition, articles 5-6 of the Manpower Act also has provisions on non-discrimination for employment.	<b>Philippines (Ratified the CRPD and the ILO No. 159)</b>	Title II (Sec. 5) of the Republic Act No. 7277 (1992) regarding equal opportunity for employment states that <b>“No disable person shall be denied access to opportunities for suitable employment.</b> A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able bodied person.  Title III of the Republic Act No. 7277 (1992) states <b>“No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability</b> in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
<b>Lao PDR (Ratified the CRPD)</b>	The draft Decree states in Article 8 <b>“Persons with disabilities have equal rights in front of the law without any discrimination based on sex, race, ethnic group, language, causes of disability, economic or social status.”</b>  Regarding employment, Article 25 states that “Persons with disabilities, irrespective of the cause of disabilities, <b>shall have the right to work in all State and private sectors according to their capacity and on equal basis with others without any discrimination</b> , such as application for employment, acceptance, salary, rank promotion, compensation, job determination, right to enhancement of skills, and others.”  “The State shall promote the private sector to employ persons with disabilities more than a certain number specified by the State, by considering tax reduction or exemption.”	<b>Singapore</b>	N/A
		<b>Thailand (Ratified the CRPD and the ILO No. 159)</b>	Section 15 of the Persons with Disabilities Empowerment Act 2007 states “Orientation of policies, rules, regulations, measures, projects or practice of public agencies, the private entities or any other parties, wherein any and <b>all discriminatory and unfair act or treatment shall be prohibited.</b>  In addition, Section 16 stipulates “Disabled persons who are treated in a discriminatory and unfair way pursuant to Section 14, shall be entitled to request the Commission to revoke or prohibit such action, thereby the order of the Commission shall be deemed as final.”
		<b>Viet Nam</b>	Article 9 of the Ordinance on Disabled Person 1998 states “It is <b>strictly forbidden to take any act of discrimination or maltreatment against disabled persons</b> , to abuse the body, dignity and honour of the disabled persons, misuse, entice or force them or misuse the organisations of disabled persons to carry, out acts in contravention of law.”

### 3.2.5 Reasonable Accommodation for Persons with Disabilities

Reasonable accommodation is an important aspect that enables persons with disabilities to get access to employment opportunities. The ILO No. 159 Convention states that special positive measures aimed at effecting equality of opportunity for persons with disabilities shall not be regarded as discrimination against other workers. The CRPD addressed that reasonable accommodation means necessary and appropriate modification and adjustments to ensure that persons with disabilities would enjoy and exercise an equal basis with others of all human rights and fundamental freedoms.

The following table outlines whether reasonable accommodation for persons with disabilities is officially addressed in the national law of each ASEAN Member Countries. However, it is important to note that although the term “reasonable accommodation” is not addressed in the national law, the subordinates i.e. regulations and orders may contain the term and practices exist accordingly.

TABLE 20: REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES ADDRESSED IN NATIONAL LAW

<b>Brunei Darussalam</b>	N/A
<b>Cambodia</b>	<p>In the Protection and the Promotion of the rights of Persons with Disabilities 2009, Article 38 states “Legal entities shall arrange a reasonable accommodation for persons with disabilities who apply for employment as workers, employees, apprentices or interns except where such accommodation constitutes an excessive burden.”</p> <p>Article 40 “The educational, training, technical, and vocational establishments of state, private or other organisations shall arrange a reasonable accommodation for persons with disabilities who are applicants, trainees or interns, unless such accommodation causes excessive burden.”</p> <p>Article 46 regarding Persons with Disabilities Loan also states that “the Persons with Disabilities Fund shall provide loans and credits for reasonable accommodation.”</p>
<b>Indonesia</b>	Reasonable accommodation is not specified in the national law. However, the Disabled People 1997 addresses in Article 19 that “Social assistance shall be directed to help the disabled improve their social welfare standard.”
<b>Lao PDR</b>	<p>Article 27 of the draft Decree regarding employment of persons with disabilities states that “When persons with disabilities are taken to work, they shall be provided with necessary accommodation.”</p> <p>Article 29 regarding public access addresses “Any public places which are already constructed or going to be constructed should provide reasonable accommodation such as ramps, rail, signs and other.”</p>

<b>Malaysia</b>	Persons with Disabilities 2008 provides definition of reasonable accommodations and states in Section 28 that the Government and private educational providers shall, in order to enable persons and children with disabilities to pursue education, provide reasonable accommodation suitable to the requirements of persons and children with disabilities in education. However, reasonable accommodation in terms of access to employment is not specified.
<b>Myanmar</b>	N/A
<b>Philippines</b>	Title I (Section h(4) of the Republic Act No. 7277 (1992) states that “Reasonable Accommodation include 1) improvement of existing facilities used by employees in order to render these readily accessible to and usable by disabled persons; and 2) modification of work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or company policies, rules and regulations, the provision of auxiliary aids and services, and other similar accommodations for disabled persons”
<b>Singapore</b>	N/A
<b>Thailand</b>	N/A
<b>Viet Nam</b>	<p>According to the Labour Code, during the period in which an employee is absent from work for medical treatment related to a work-related accident or occupational disease, the employer must pay the employee his/her full salary and expenses for the treatment. After the treatment, the employee will be examined and assigned a category of injury, which depends on the reduction of his/her ability to work due to the work-related accident or disease. The employee will be entitled to a social insurance benefit paid as a lump sum or in monthly instalments by the social insurance fund.</p> <p><b>Special Rules for Categories of Employees</b></p> <p>There are no categories of employees to whom special rules apply, but certain categories of persons (e.g., pregnant women or mothers of babies less than 12 months old, junior employees, senior employees, and disabled employees) benefit from more generous protection from discrimination.</p>

### 3.2.6 Quota Scheme on Employment of Persons with Disabilities

Many countries apply quota scheme as the measure to guarantee that persons with disabilities have opportunities and access to employment. Majority of ASEAN Member Countries utilise quota system to promote employment of persons with disabilities in their countries as information shown below.

TABLE 21: QUOTA SCHEME ON EMPLOYMENT OF PERSONS WITH DISABILITIES<sup>21</sup>

Brunei Darussalam	N/A
Cambodia	Article 34 of the Protection and the promotion of the Rights of Persons with Disability addresses that the set quota shall be determined by sub decree as proposed by the Ministers in Charge of Social Affairs, Labour and the Council for Development of Cambodia. Recently, the drafted sub-decree on the quota system of employment of persons with disabilities was endorsed by the parliament.
Indonesia	1% Employers must employ 1 disabled person for every 100 employees, private sector and state-owned enterprises
Lao PDR	3% in the private sector
Malaysia	1 % in the public sector
Myanmar	N/A
Philippines	5 % of all casual, emergency, and contractual positions in the Department of Social Welfare and Development; Health Education, Culture and Sports; and other government agencies, offices or corporations engaged in social development shall be reserved for disabled persons." (Philippines 1991, sect. 5)
Singapore	N/A
Thailand	1% in both public and private sector
Viet Nam	2 % for enterprises in the areas of electricity generation, metallurgy, chemicals, geology, cartography, petroleum and gas, mining, mineral exploitation, capital construction and transport; 3 per cent for other enterprises

Seven out of 10 ASEAN Member Countries have enforced compulsory employment measures specifically the quota scheme, to enable persons with disabilities to employment opportunities. However, the effectiveness of implementing the quota scheme is unknown. For example, comments from the returned survey of the Philippines addressed that although, in terms of law, there are apparently sufficient provisions to assist the PWD, in practice however, much leaves to be desired in the actual implementation. RA 7277 has already been in existence for almost two decades, however, general awareness towards employers and other stakeholders is still is an area that needs improvement. Government as a duty bearer needs to exercise extra effort to ensure participative interaction with PWD in governance. Further, the local government especially has a vital role to play in terms of ordinances that will protect and promote the general welfare of PWD. The need for data and statistics of PWD should be made available to enable various agencies to extend assistance to them. One of the good practices regarding positive measure

<sup>21</sup> Information gained from ESCAP. (2010). Disability at a Glance 2010: a Profile of 36 Countries and Areas in Asia and the Pacific.

for employer on hiring persons with disabilities is from Singapore, who introduced the Open Door Fund (ODF) in 2007 to provide grants of up to S\$100,000 for employers who hire persons with disabilities to enable them to carry out workplace and job redesign. The job opportunities were initially in the food and beverage sector, and have since expanded to include manufacturing, telemarketing, horticulture, retail and hospitality. Since the ODF's inception, some 200 companies have come on board to provide a total of over 900 job opportunities for persons with disabilities (as of 25 July 2012). This marks a significant increase from about 33 companies offering 330 jobs during the first two financial years of the ODF launch. More than 600 persons with disabilities have been placed in these jobs (information gained from Singapore Ministry of Manpower).

### 3.2.7 Respective Institution for Inspection (National coordination and advisory mechanism)

TABLE 22: NATIONAL COORDINATION AND ADVISORY MECHANISM

Brunei Darussalam	N/A
Cambodia	The Disability Action Council –DAC, chaired by the Minister in charge of Social Affairs or his/her representative and representatives of concerned ministries and institutions; representatives of disabled people's organisations; representatives of organisations, employers, and non-governmental organisations providing services to persons with disabilities
Indonesia	No national coordination and advisory mechanism but the Ministry of Manpower and Transmigration of Indonesia (KEMENAKERTRANS) has taken the initiatives and measures to promote the placement of persons with disabilities in the work force
Lao PDR	National Commission for People with Disabilities, established in 1995. The draft Decree on the Rights of Persons with Disabilities addresses that the Ministry of Labour and Social Welfare is the focal point to coordinate with the various sectors to monitor the activities for protecting the rights and benefits of persons with disabilities.
Malaysia	National Advisory and Consultative Council for Disabled Persons established in 1998 is disability focal point, with the Ministry of Women, Family and Community Development
Myanmar	Currently the Department of Social Welfare serves as the disability focal point
Philippines	The National Council on Disability Affairs (NCDA) is the national government agency mandated to formulate policies and coordinate the activities of all agencies, whether public or private, concerning disability issues and concerns... The NCDA is the lead agency tasked to steer the course of program development for persons with disabilities and the delivery of services to the sector.



<b>Singapore</b>	Disability Policy Branch, Ministry of Community Development, Youth and Sports
<b>Thailand</b>	The National Committee on Empowerment of Persons with Disabilities, chaired by Prime Minister comprises of minister concerned and representatives from national associations of persons with disabilities of all type
<b>Viet Nam</b>	National Coordinating Committee on Disability of Viet Nam NCCD) established under the Ministry of Labour, Invalids and Social Affairs

### 3.3 CASE STUDIES OF GOOD PRACTICES

Persons with disabilities can and want to be productive members of society; however, they have witnessed a long history of employment discrimination in the mainstream labour market, as generally, persons with disabilities are unemployed or underemployed. Fortunately, although not significantly, the stereotype that persons with disabilities are less productive is gradually diminishing compared to the past as a number of persons with disabilities who enter into regular labour market has increased. This may be the results from labour law and policies formulated and practiced in many countries together with employer positive attitudes toward persons with disabilities that have increased through accurate understanding on disability and persons with disabilities.

The following section is intended to provide examples of good practices relating employment of persons with disabilities in ASEAN countries particularly in regular labour markets where persons with disabilities have access to employment opportunities and are able to contribute to the corporate and society as active members. The good practices are selected based on consistency with the key aspects related to employment of persons with disabilities i.e. reasonable accommodation, on the job training, and peer support; and obtainable information. The selected good practices reflect practices at both policy and company levels. Lessons learned and key points of successful employment of persons with disabilities are also discussed.

#### 3.3.1 THE FUND FOR EMPOWERMENT OF PERSONS WITH DISABILITIES, THAILAND<sup>24</sup>

Thailand has placed great attention to quality of life development of persons with disabilities as evidenced by the enactment of the Rehabilitation of Disable Persons Act A.D. 1991, the first disabilities specific law in which vocational rehabilitation of persons with disabilities was formally adopted. One of key development of disability act is that the Act stipulates employment ration of 1 person with disabilities to every 200 non-disabled employees in private sector. The Empowerment of Persons with Disabilities A.D. 2007 is the 2nd disability specific law; however, considered the 1st disability-specific human rights act. The Act specifies rights of persons with disabilities which is consistent with the UN Convention on the Rights of Persons with Disabilities as well as stipulates various forms of social welfare and services for persons with disabilities.

<sup>24</sup> Source of the Case Study: The Empowerment of Persons with Disabilities A.D. 2007 . The National Office for Empowerment of Persons with Disabilities: www.nep.go.th

Because of the Act, one of the important mechanisms developed to promote employment of persons with disabilities- the new employment ration of 1 person with disabilities to every 100 non-disabled employees. Although the set quota was utilised since the 1st Act, it is vital to note that this revised ratio is to apply in both public and private sectors.

Section 33 of the Act addresses that for the empowerment of persons with disabilities, employers, entrepreneurs and government agencies shall employ persons with disabilities to work in the positions suitable for them in proper proportions to the entire number of the employees in their work places (referred to the employment ratio 1:100 mentioned earlier).

Pertaining Section 34, employers or entrepreneurs who do not employ persons with disabilities at the proper proportions as mentioned in Section 33 shall send money to the Fund for Empowerment of Persons with Disabilities. According to the Act, the Fund for Empowerment of Persons with Disabilities was established to serve as the fund for expenditure on the protection and empowerment of persons with disabilities and the promotion of welfare services, rehabilitation, education and occupation as well as the promotion and support for the work of disability-related organisations. Employers or entrepreneurs who are obliged to send money to the Fund but violate the obligation or fail to do so in a timely manner, or fail to send the whole or partial amount, shall pay interests at the rate of seven and a half percent per annum of the outstanding amount. Employers or entrepreneurs who employ persons with disabilities or send money to the Fund as mentioned in Paragraph One shall be eligible for tax exemption at certain percentages of the amount they pay as wages or salaries to employees with disabilities or of the amount they send to the Fund, as the case may be, as prescribed by the law.

In addition, in order to promote employment of persons with disabilities and to accelerate a higher employment rate, the government has paid great attention on empowerment and self-reliance for persons with disabilities by rendering tax deduction/ exemption measures for persons with disabilities, allowing persons with disabilities to earn a living. On November 16, 2010 the Cabinet agreed to implement Income tax exemption for registered individuals with disabilities in order to improve the quality of life for persons with disabilities. Thai residents with disabilities who are less than 65 years of age receive a nominal tax which does not exceed 190,000 baht in the tax year.

#### 3.3.2 THE TRIPARTITE ALLIANCE FOR FAIR EMPLOYMENT PRACTICES (TAFEP), SINGAPORE<sup>25</sup>

In Singapore, discriminatory employment practices are addressed by the Tripartite Alliance for Fair Employment Practices (TAFEP) which was set up in 2006 by the Singapore National Employers Federation (SNEF) and the National Trades Union Congress (NTUC) with the support of the Ministry of Manpower. Recognising that the key to dealing with discrimination issues is to change employers' mind-sets, TAFEP takes a promotional and educational approach to encourage fair employment practices. The prominent initiatives of TAFEP are as follows.

TAFEP issued the Tripartite Guidelines on Fair Employment Practices which identify fair and progressive HR practices in areas such as job applications, interviews, progression and grievance handling. The guidelines

<sup>25</sup> Source of the Case Study: The completed questionnaire from the Singapore Ministry of Manpower

help employers recruit based on objective criteria and adopt progressive in-employment processes to give employees opportunities for growth and development based on merit. The Employers' Pledge of Fair Employment Practices is an initiative by the TAFEP to reach out to both private and public sector establishments in its promotion of fair employment. To date, over 2,000 establishments have signed the Employers' Pledge of Fair Employment Practices. Pledge signers are expected to abide by the tripartite guidelines on fair employment practices in good faith, and implement fair employment practices. TAFEP has been recognised in its achievements. TAFEP has been effective in tackling discriminatory employment practices, including gender discrimination. So far, all employers approached by TAFEP following a complaint have heeded TAFEP's advice by changing their employment practices, for example by removing discriminatory criteria in recruitment.

The efforts by TAFEP as well as the employers to extend fair employment opportunities to people with disabilities have seen results. For example, the Enabling Employers Network, which is an alliance of like-minded employers, and the Singapore National Employers Federation, has influenced over 160 companies to commit some 600 employment opportunities for people with disabilities. The tripartite partners intend to take these efforts further.

Although TAFEP is not disability specific mechanism, it promotes fair employment of persons with disabilities. Recently, TAFEP, in collaboration with Microsoft Singapore, the Infocomm Accessibility Centre (IAC), and the Enabling Employers Network (EEN) convened the Towards an Inclusive Workforce Employers Forum that gathered 120 persons with disabilities, employers, disability sector professionals as well as policy makers to celebrate the achievements of persons with disabilities and milestone of the multi-organisational partnership to empower persons with disabilities for gainful employment. TAFEP is also supporting Community Businesses to encourage companies operating across Asia to celebrate International Day of Persons with Disabilities by holding initiatives to demonstrate their support by removing barriers for inclusion for people with disabilities.

### 3.3.3 JOLLIBEE FOODS CORPORATION, PHILIPPINES<sup>26</sup>

Jollibee's Hearing Impaired Personnel Project is regarded a successful corporate-NGO partnership as evidenced by its employment of more than 50 Deaf workers in the metropolitan Manila outlets. Workers with hearing impairment have helped to expand Jollibee's consumer base, standing as yet another distinguished testament to the business case for hiring workers with disabilities (ILO, 2007)

In brief, Jollibee Foods Corporation (JFC) was founded in 1978 by Tony Tan Caktiong as an ice cream parlour. Nowadays, it incorporates six subsidiary companies and more than 1,000 fast-food and full-service outlets in six countries. It retains a staggering 50 per cent share of the Philippine fast-food market. In 1997, the Jollibee ingenuity and success took another direction. By partnering with the STEAM (Special Training, Employment, Advocacy and Management) Foundation, a Philippine NGO devoted to creating employment opportunities for people who are Deaf, Jollibee began to learn about the business case for employing workers with disabilities. At first, it started with Cromwell Umali, a Deaf sales clerk, and Aga Muhlach, a Filipino movie star. Mr. Umali worked in a popular clothing boutique where he met the

<sup>26</sup> Source of the Case Study: Employability: A resource guide on disability for employment in Asia and the Pacific, document published by ILO

actor when he was shopping. Mr. Muhlach, among his many credits, serves as the celebrity endorser of Jollibee's corporate social responsibility programmes. Mr. Umali asked Mr. Muhlach to help pitch a new Jollibee programme, one that would provide job opportunities to Deaf people. A partnership between Jollibee and STEAM ensued. Guided by a memorandum of understanding, STEAM recruits and provides pre-employment training to prospective Jollibee employees who are Deaf. The training includes skills in social graces, customer relations and communication and basic work orientation. STEAM also provides disability sensitivity training and workshops on basic American Sign Language for Jollibee's hearing staff working who work with the Deaf employees. Citing family support as an important component to the successful employment of people with disabilities, STEAM also runs support groups for Deaf employees and their families. STEAM assists with the job matching and placement. STEAM's specialised trainers also helps deliver Jollibee's on-the-job training programme. Mr. Umali is now one of those trainers. Aside from the training assistance, Jollibee has not found it necessary to make any changes to its facilities or job descriptions for its Deaf employees.

It was reported by Jollibee vice president for human resources that all customer feedback on Jollibee's Deaf employees has been positive. Employing Deaf workers may allow Jollibee to tap into an even larger market beyond the disability community. As one Jollibee store manager addressed that "Most of the Deaf employees are from less-privileged families, which are also our main customer base." Jollibee is working on plans to open a store that is completely operated by a Deaf staff and could serve as a training facility for new Deaf employees.

### 3.3.4 KRUNGTHAI-AXA LIFE INSURANCE, THAILAND<sup>27</sup>

Krungthai-AXA Life Insurance, one of the leading insurance companies in Thailand, was awarded by the National Office for Empowerment of Persons with Disabilities, Ministry of Social Development and Human Security as the "Organisation that provided contribution for Disabled People" in occasion of the National Disabled People Day 2011.

The story was started when Krungthai-AXA Life Insurance launched the "Diversity and Inclusiveness (DAI)" project, as part of corporate responsibility projects. "DAI" in Thai language means "Yes" or "Yes, we can." In other words, "DAI" means Thread. DAI Project" aims to 1) maximise the diversity in Thai society by way of recruiting disabled people to work in wide-ranged departments of KAL, 2) harmonise the work atmosphere between their employees and disabled people; and 3) maintain the sustainable action of DAI Project. Krungthai-AXA Life scored well on age and gender diversification in their search for new talent and further identified that one sector of talent, disability, was being overlooked. The DAI project has resolved this issue and as of now, 10 persons with disabilities are working with Krungthai-AXA Life insurance. With the new quota system (1:100), AXA should hire 13 persons with disabilities. However, recently they hired only 10 because they have not yet matched persons with disabilities to the positions. All of the current employees with disabilities are trained from the Mahathai Foundation to work in different areas of their business. These people were chosen not because of their disability but because of their talent and ability. They are employed as cashiers and administrative officers.

<sup>27</sup> Source of the Case Study: Recommendation from the Disabled Peoples' International Asia-Pacific (DPI/AP) Regional Office

### 3.3.5 CHANG SHIN, VIET NAM<sup>28</sup>

The example of Chang Shin on employing persons with disabilities is distinctive as Chang Shin has achieved its integration without any assistance from a disabled person's organisation or NGO, and in a country with a labour code that has an outmoded provision for a seven-hour work day for disabled workers (International Labour Organisation, 2007).

The Nike operation in Viet Nam subcontracts Chang Shin to produce a million pairs of sneakers a month. In its production, 161 disabled workers whose disabilities range from mobility to visual and hearing impairments, and from mild to severe, are participating actively in the process. Disability mainstreaming in the workplace is evident by the fact that the disabled employees work alongside non-disabled employees throughout Chang Shin's 22 production workshops, which engages a total of 18,500 workers. Historically, Chang Shin began hiring disabled workers in 2001, an initiative instigated by the owner of the Korean-based Chang Shin who also hires workers with disabilities. Since then, Chang Shin has seen a steady increase in productivity, employee retention, workplace morale and also public image. It is a good example of commitment and creative hiring. With technical support from Nike and others, Chang Shin is able to create jobs where the shorter work day does not impact the assembly lines, such as production jobs in component preparation, maintenance and custodial jobs. Initially, Chang Shin worked with the Government for a trial that allowed for 25 disabled volunteers to work an eight-hour day. The programme was a success, and both Nike and the Government are looking to review it in the future and to change the outmoded law. Two of the disabled employees have been promoted for excellent performance, and others fill key posts throughout the factories; one of them is in charge of cooling system maintenance, for instance, Mr. Edolsa admits that the management staff worried at first when workers with disabilities expressed less confidence in their abilities and the non-disabled workers seemed unsure of how to interact with them. However, eventually, everyone saw the equal capabilities of workers with disabilities and once Chang Shin learned to accommodate their work day, disabled employees became more confident and the non-disabled workers quickly became accepting and supportive.

### 3.3.6 PROTEC HELMET FACTORY, VIET NAM<sup>29</sup>

Protec Factory is the first non-profit helmet factory in the world which was started in 2001 in Hanoi by the Asian Injury Prevention Foundation, a registered US not-for-profit organisation. The main purpose of the foundation is to reduce the devastating rate of road crash injuries and fatalities in the developing world. The helmet factory is located close to Hanoi's airport, has more than 200 workers and out of those, 30% of staff are persons with disabilities. The Human Resources Manager, Ms. Nguyen Anh Cam, advised they have over 20 persons with disabilities working in the factory in different parts of the assembly line. The factory is all on one floor and the assembly line was designed to be lower in order that persons with disabilities may be able to work comfortably. Protec Company keeps over 10 donated wheelchairs in the factory to enable persons with physical disabilities to move and work comfortably in the environment (Disabled Peoples' International Asia-Pacific Region, 2011)

From the beginning in 2001, Protec began hiring persons with disabilities to work in the factory. Some of

the staff with disabilities have now been with the company for a decade. There are different disabilities represented within the company. The company observed several different degrees of physical disabilities and hearing impaired. Persons with disabilities mainly work within the assembly line. Recruitment of persons with disabilities has been through word of mouth and also via job fairs organised by the Blue Ribbon Employment Council-BREC. Most staff with disabilities working at Protec live close to the factory and do not usually experience one of the biggest challenges for persons with disabilities, which is accessible transportation. The staff with disabilities working there arrives and leaves work in various types of motorised three wheeled scooters or motorbikes, or even by electric wheelchair. As they live close by, their mode of transportation allows them to travel independently without worrying about accessible public transportation. Persons with disabilities working at Protec company receive the same salary as their non-disabled colleagues, although they work for 7 hour shifts, and not 8 hour shifts. Ms Nguyen Anh Cam explained that sometimes, some staff with disabilities will work an 8 hour shift as well. She advised that this government regulation is a disincentive for many companies in Viet Nam not to hire persons with disabilities. Initially when the company was started in 2001, many non-disabled staff did not want to work alongside with persons with disabilities for a number of reasons, including preconceived prejudices. However a few months after the start of the hiring of people with disabilities, management noted that attitudes had shifted and all staff integrated well together within the company. There is a probation period for all staff which is between one and three months long at the start of their employment with the company. In terms of accessibility, the whole workplace is accessible and on one floor, including the cafeteria, accessible toilets and pathways. As mentioned earlier, the assembly line was altered to be more accessible for people with disabilities.

### 3.3.7 LESSON LEARNED FROM GOOD PRACTICES

The examples of good practices of employment of persons with disabilities above have informed what important factors facilitate the successful employment of persons with disabilities, particularly in the mainstream labour market.

At the policy level, although many AMS apply quota scheme to promote employment opportunity of persons with disabilities in formal labour markets, additional measures are needed to enhance effective implementation of related laws and policies. In Thailand, the employment ratio of one of person with disability to every 100 regular employees is applied. While the establishment of the Fund for Empowerment of Persons with Disabilities is considered a form of penalty for employers who do not employ persons with disabilities at the proper proportions to send money to the Fund, and the Fund was established for expenditure on the protection and empowerment of persons with disabilities and the promotion of welfare services. The tax deduction measure is considered an incentive for employers to hire persons with disabilities.

In Singapore, although it has not yet ratified to the CRPD and the ILO No. 111 and 159 Conventions, there is a mainstream model for dealing with discrimination issues in employment and to promote positive attitude of employers through a promotional and educational approach to encourage fair employment practices. The Tripartite Guidelines on Fair Employment Practices help employers conduct fair recruitment process and adopt a progressive employment scheme to give employees opportunities for growth and development. Outreach program- the Employers' Pledge of Fair Employment Practices - to private and

<sup>28</sup> Source of the Case Study: Employability: A resource guide on disability for employment in Asia and the Pacific, document published by ILO

<sup>29</sup> Source of the Case Study: the Disabled Peoples' International Asia-Pacific (DPI/AP) Regional Office: [http://www.dpiap.org/.../Report\\_Visiting\\_Protec\\_Factory\\_11\\_11\\_04.doc](http://www.dpiap.org/.../Report_Visiting_Protec_Factory_11_11_04.doc)

public sector, concerning promotion of fair employment is also viewed as important initiative. In addition, the Singapore Government regularly consults stakeholders for feedback and in reviewing some policies. To elaborate, The Enabling Masterplan Implementation Committee (EMIC) comprises representatives from voluntary welfare organisations (VWOs) as well as the private and public sectors who serve to facilitate feedback and dialogue among stakeholders and members of the disabled community on the implementation of the Masterplan. There is the Standing Committee on Disability which is a public and people sector body that addresses disability issues and tracks the implementation of the Enabling Masterplan recommendations. The Disability Network is a meeting among Executive Directors of the National Council of Social Service (NCSS), and staff of the disability VWOs, to provide updates on the latest policies and development in the disability sector, and the tripartite partners (NTUC, SNEF and MOM) also consult regularly on employment-related issues.

At the company level, there are different models used by employers. The lesson learned from Jollibee is that the key factor contributing to its success is a partnership between the corporate (Jollibee) and expert on employment of persons with disabilities, like in the case of STEAM Philippines. This enables technical support regarding job matching and placement of persons with disabilities to be adequately provided to the business. Importantly, pre-employment, on-the-job training programmes, as well as peer support group, all things considered contributing to this successful employment equation. Preparing non-disabled colleagues at the workplace through disability sensitivity training is obviously the important factor that facilitates correct understanding of disability. Likewise, Krungthai-AXA Life Insurance works collaboratively with Mahathai Foundation, who provides technical support on employment of persons with disabilities and a sound job matching service. The lesson learn from Krungthai-AXA Life Insurance is that equal employment opportunities for persons with disabilities is vital to allow qualified persons with disabilities to get access to the jobs, like their peers without disabilities. Like regular employees, work skills of persons with disabilities can be promoted and they will contribute to the future success of the company. The example of Chang Shin informs us that appropriate job matching is as critical as job accommodation, and flexible working hours can be provided to persons with disabilities without negative impact to the operation of the business when businesses are able to identify the job that suits the persons with disabilities. This tenet of “put the right person to the right job” is actually applicable not only for persons with disabilities but for placing every employee into the positions. Importantly, this is consistent with Article 2 of the UN Convention on the Rights of Persons with Disabilities (CRPD), which the term “reasonable accommodation” is referred to “modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”. Last, but not the least, accessibility to the most basic accommodation from every work place should provide for persons with disabilities. The example of the Protec Helmet Factory shows that reasonable accommodation can be done at low or no cost. In order to allow employee with disabilities to be able to work comfortably, the company designates all the assembly lines on one floor. Reduced working hours is also viewed as a reasonable accommodation for persons with disabilities.

### 3.4 CHAPTER CONCLUSION

Everyone can and wants to be active members of society. Work is viewed as an important mean, inter alia, that allows each individual to live independently, become self-reliant, and attain quality of life. Globally, persons with disabilities have faced a long history of employment discrimination. Fortunately, many efforts have been made particularly by the government or entities concerned to promote employment of persons with disabilities. From the present comparative study, it is apparent that all ASEAN member countries have made efforts regarding promotion of employment for persons with disabilities in many ways. Ratification to the international treaties, specifically the UN Convention on the Rights of Persons with Disabilities and the ILO Conventions No. 111 and 159 are considered the major milestones that instigates active movement of related entities and other stakeholders toward protecting and promoting rights of persons with disabilities. National laws and governmental mechanisms have been put into place to promote right to work of persons with disabilities. While positive attitudes of employers regarding hiring persons with disabilities cannot be ensured, guaranteed positions through quota scheme is one of the mechanisms to promote employment of persons with disabilities, which is used by many countries. However, it should be pointed out that the quota scheme could be regarded as an unwarranted measure in the mainstream labour market and not in accordance with overall labour market policies. One of the consequences could be a policy vacuum with no sanctions executed on employers who avoid the quota obligation and no alternative right to employment for workers with disabilities. Although the quota is in place to ensure that disabled people are represented proportionately in employment; persons with disabilities are still underemployed according to the determined proportion. Incentive measures for employers such as tax deduction/exemption could be viewed as the mechanism to enhance employers’ willingness to hire persons with disabilities.

Decent work is widely used as a benchmark for determining good employment. To elaborate, the term “Decent Work”, as both concept and an agenda, it was introduced and promoted by the International Labour Organisation (ILO) in 1999. ILO’s comprehensive definition of decent work is “being productive work for women and men in conditions of freedom, equity, security and human dignity. Decent work involves opportunities for work that is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers better prospects for personal development and encourages social integration; gives people the freedom to express their concerns, to organise and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all”.

For employment of persons with disabilities, while the comprehensive concept of decent work should be applied as a core to every employment policy initiated by government and related entities, it is important to be aware that all the work conditions covered by the decent work concept mention earlier (e.g. fair income, security in workplace, personal development) would not be possible in practice, if the first step of allowing equal opportunities for persons with disabilities entering jobs is not satisfied. Ideally, persons with disabilities should not be discriminated in employment if they are qualified for positions, with or without reasonable accommodation; however, persons with disabilities are systematically discriminated in employment opportunities. In respond to employment issues, majority of ASEAN member countries employ job quota scheme to guarantee a certain employment ratio of persons with disabilities to regular employee.



Interestingly, information from the ILO Disability Fact Sheet reveals that 80 per cent of persons with disabilities live in developing countries; however, only 10 percent of children with disabilities are estimated to attend primarily school in the region. More importantly, persons with disabilities are more likely to be unemployed. It is estimated that up to 90 percent of persons with disabilities in developing countries are unemployed. As mentioned earlier, persons with disabilities are systematically discriminated as they are limited to accessible environment, public service and transportation, education, etc. A low employment rate of persons with disabilities could be viewed as a result of these limitations or discriminations. Importantly, knowledge regarding reasonable accommodation at workplace has not been sufficiently provided to employers and colleagues of persons with disabilities. According to CRPD, reasonable accommodation means necessary and appropriate modification and adjustments to ensure that persons with disabilities would enjoy and exercise an equal basis with others and fundamental freedoms. However, how and what to provide to accommodate persons with disabilities at work should be translated into simple language and examples for practical applications for employers. In addition, a fair wage for workers with disabilities is not much discussed in the field. One of the possible reasons is that persons with disabilities are not even hired or provided equal opportunities to enter the workforce.

In ASEAN, policy frameworks on disability and employment of persons with disabilities are in place. Employment is emphasised on several ASEAN documents. ASEAN's Socio-Cultural Community Blueprint envisages the six characteristics: (a) Human Development; (b) Social Welfare and Protection; (c) Social Justice and Rights; (d) Ensuring Environmental Sustainability (e) Building the ASEAN Identity; and (f) Narrowing the Development Gap. Disability and employment issues are addressed specifically in the Human Development, Social Welfare and Protection, and Social Justice and Rights characteristics. Under the Human Development characteristics, disability is mentioned in A.1. Advancing and prioritising education, A.2. Investing in human resource development, A.3. Promotion of decent work, A.4. Promoting Information and Communication Technology (ICT), and A.6. Strengthening entrepreneurship skills for women, youth, elderly and persons with disabilities. To illustrate, promotion of decent work is aimed at incorporating decent work principles in ASEAN work culture, like safety and health at work place and ensuring that the promotion of entrepreneurship becomes an integral part of ASEAN's employment policy to achieve a forward-looking employment strategy. The A.4. aims to implement capacity building programmes to increase ICT literacy in ASEAN, for women, children, the elderly and people with disabilities. Under the Social Welfare and Protection characteristics, it is aimed with B.4. that access to healthcare and promotion of healthy lifestyles to promote the sharing of best practices in improving the access to primary health care by people at risk/vulnerable groups, with special attention to diabetes mellitus, cardiovascular diseases, cancers and disabilities through regional workshops, seminars, and exchange visits among the ASEAN Member States. Lastly, under the Social justice and rights characteristics, disability is addressed in C.1. with Promoting and protecting the rights and welfare of women, children, the elderly, and persons with disabilities.

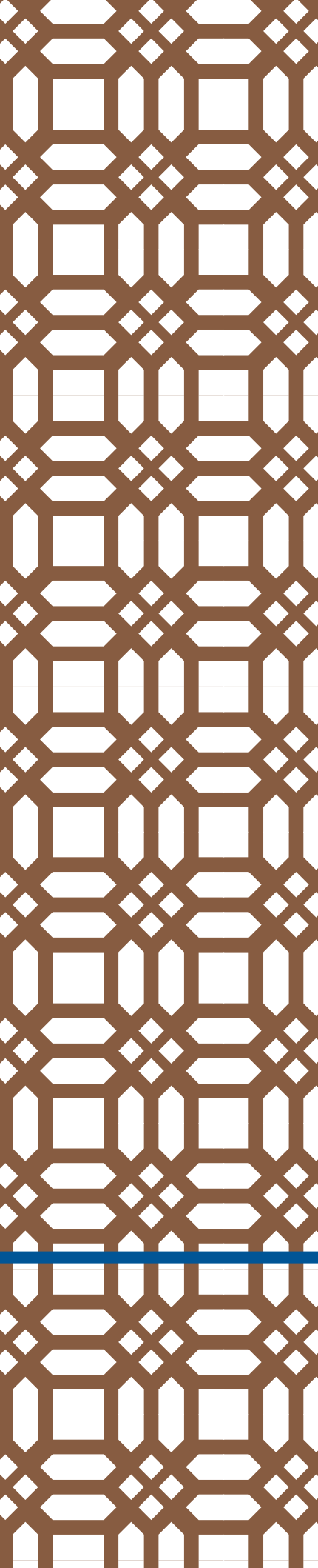
Recent achievements concerning disability in ASEAN are the main tenants of the Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community, and the ASEAN Decade of Persons with Disabilities 2011-2020 at the 19th ASEAN Summit held in Bali, Indonesia in 2011. The Bali Declaration encourages ASEAN Member States to promote, develop and diversify social services supporting persons with disabilities in the fields of social welfare and employment. It also emphasises the need of providing accessibility to public facilities and amenities, public transportation, education, employment information communication and technology (ICT), recreation as well as sports for persons with disabilities in ASEAN.

For the ASEAN Decade of Persons with Disabilities, employment and decent work of persons with disabilities (Priority 3) are among the focused areas under the Decade. The Decade calls for following actions to be taken: 1) Enhance capacities of government in incorporating decent work principles for employment of persons with disabilities, 2) Encourage that Corporate Social Responsibility (CSR) be incorporated in the corporate agenda and contribute towards a sustainable socio-economic development in ASEAN member states, 3) Promote establishing a network of entrepreneurs/business owners to contribute towards employment of persons with disabilities, leading to reduction of the poverty rate, 4) Promote skill development programmes of persons with disabilities, and 5) Strengthen entrepreneurship skills and capacity building for women, youth, elderly and persons with disabilities. The ASEAN Decade of Persons with Disabilities (2011-2020) is considered a guideline for the implementing entities to initiate programmes and activities to promote quality of life of persons with disabilities. In addition, the Decade is linked with the ASEAN's Strategic Framework on Social Welfare and Development (SOMSWD). Importantly, the Decade emphasises that disability is a cross-cutting issue embedded within all 3 ASEAN pillars. Both are important milestones which reflect that ASEAN member states have paid greater attention to disability issues, including employment of persons with disabilities.

The comparative study on ASEAN labour Laws and Practices regarding equal opportunities in employment for persons with disabilities has presented an overview of the legislative framework concerning employment of persons with disabilities within ASEAN Member States (AMS). Although there are both commonalities and differences among AMS in terms of legal infrastructure, it is clear that efforts have been made to promote equal employment opportunities for persons with disabilities. Toward equal employment of persons with disabilities, it should be pointed that the role is not only of the government. As seen from the selected good practice cases, there are sound models of policy-level measures, employers' initiative, and collaboration of disabled persons' organisations.

As discussed earlier, ASEAN has made great effort to promote rights and equal opportunities for persons with disabilities and regional plans and frameworks are in place. Among AMS, due to different levels of development, it is vital that AMS share knowledge and experiences with each other. Improved international cooperation could be beneficial for financial support, and exchange of experience and human resources. As negative attitudes against persons with disabilities is viewed one of the most critical issues that impedes persons with disabilities to exercise their rights and access to employment and other social welfare and services, societal and employer positive awareness toward persons with disabilities should also be focused upon. Persons with disabilities should be included in relevant policy formulation.

In term of disability research, systematic study on employment of persons with disabilities is evidently lacking at both, national and regional level. One of the possible explanations could be that persons with disabilities have been viewed as an unproductive group, and a subject for social welfare rather than the productive population who could contribute to society like others. Disability is a niche market where less attention is paid by public, educators, or researchers. In addition, challenges to conduct disability research are doubled for conducting a research at regional level. Although there are several attempts made by regional development and intergovernmental entities, further efforts are required in order to empirically study employment situation of persons with disabilities. The finding from empirical research would beneficially inform policy formulation processes.



# Opportunities for Youth Employment

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## 4.1 INTRODUCTION

### 4.1.1 Twin Challenge of Child Labour and Youth Employment

The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

It refers to work that (ILO, 2004:16):

1. is mentally, physically, socially or morally dangerous and harmful to children; and
2. interferes with their schooling by:
  - depriving them of the opportunity to attend school;
  - obliging them to leave school prematurely; or
  - requiring them to attempt to combine school attendance with excessively long and heavy work.

In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age. Whether or not particular forms of “work” can be called “child labour” depends on the child’s age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. As such, not all work done by children should be classified as child labour that is to be targeted for elimination.

Nonetheless, the number of working children in the Asia and the Pacific is by far the largest in the world and represents 18.8% of the 650 million children age 5 to 14 in the region (or 122 million children) who are forced to work for their survival (ILO, 2008:1-5).

The International Labour Organisation (ILO) estimated that in 2008, the total number of children in hazardous work is 115 million – over 7 per cent of all children aged 5-17 (ILO, 2011:7). While less than one-third of younger children in employment (those aged 5–14) are now in hazardous work, almost half of all children aged 15–17 who are in employment are in work classified as hazardous (ibid).

TABLE 23: BY REGION, THE NUMBER AND PERCENTAGE OF CHILDREN AGED 5-17 ENGAGED IN HAZARDOUS WORK, 2008

Region	Total children ('000)	Hazardous work	Incidence rate (%)
World	1 586 288	115 314	7.3
Asia and Pacific	853 895	48 164	5.6
Latin America and Caribbean	141 043	9 436	6.7
Sub-Saharan Africa	257 108	38 736	15.1
Other regions	334 242	18 978	5.7

Source: IPEC: Global child labour development: Measuring trends from 2004 to 2008 (Geneva, ILO, 2010)  
(Extracted from International Labour Organisation (ILO), 2011. Children in Hazardous Work: What We Know, What We Need To Do, pp.8)

Fortunately, there seems to be a global awareness on the moral obligation as well as economic imperatives to ensure elimination of child labour. In 2010, 450 delegates from 80 countries, including participation by governments of Cambodia, Indonesia, Philippines, Thailand and Viet Nam agreed on the Hague Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016 (ILO and Ministry of Social Affairs and Employment of the Netherlands, 2010b) at the Conference, and reaffirmed the commitment to substantially increase global efforts to eliminate the worst forms of child labour (ILO and Ministry of Social Affairs and Employment of the Netherlands, 2010a:77-80).

The Roadmap specifically calls on governments to “assess the impact of relevant policies on the worst forms of child labour, taking into account gender and age, put in place preventive and time-bound measures and make adequate financial resources available to fight the worst forms of child labour, including through international cooperation”. It also calls on social partners to take “immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency, including through policies and programmes that address child labour” (ILO Press Release, 2010).

On the other hand, out of the young people who made up 20.5 per cent of Asia’s labour force in 2005, unemployed youth constituted 47.7 per cent – almost half – of the region’s total jobless population. The youth unemployment rate stood at 7.8 per cent in East Asia, 11.3 per cent in South Asia and a staggering 16.9 per cent in South-East Asia, including the Pacific island states<sup>30</sup> (ibid, 2006:2). Furthermore, young people are more than three times likely to be unemployed than adults and an alarming five times in Southeast Asia and the Pacific (ILO, 2006:33).

According to the United Nations, youth are defined as individuals between the ages of 15-24 (UN, 1992); however, this age range can vary according to the definitions that different countries apply<sup>31</sup>.

Hence, there is a cruel irony in the co-existence of child labour and youth unemployment, underemployment and discouragement: while there is a demand for certain types of labour that is met by children who should not be working, there is also a supply of labour from young people that goes unutilised or under-utilised. There is hence an urgent need to shift the demand for labour away from children and towards young people.

The issues of vulnerability and precarious employment situation of young people are underpinned, to a certain extent to the level of development in the region. As such, poverty reduction (Millennium Development Goal 1) and universal access to education (Millennium Development Goal 2) remains the top priorities to uplift the lives of peoples, including children and young persons. Only Brunei Darussalam, Malaysia and Singapore are ranked as high or very high in the human development index.

<sup>30</sup> Except in Singapore where the ratio of youth to adult unemployment rates was only 1.5, other countries for which data are available show youth unemployment at least twice as high as adult unemployment

<sup>31</sup> In some countries, the definition of youth can apply to those above 24, even up to the age of 30 or higher. In operational terms, this paper particular applies to the phase in which youth make the transition from adolescence to adulthood, and from school into the labour market.



TABLE 24: UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT INDEX AND RANK OF ASEAN MEMBER COUNTRIES, 2011

COUNTRY	HDI VALUE (2010)	HDI RANKING
SINGAPORE	0.866	26
BRUNEI DARUSSALAM	0.838	33
MALAYSIA	0.761	66
THAILAND	0.682	103
PHILIPPINES	0.644	112
INDONESIA	0.617	124
VIET NAM	0.593	128
CAMBODIA	0.494	139
LAO PDR	0.524	138
MYANMAR	0.483	149

SOURCE: UNDP (2011:127-130)

There is a concerted initiative by the ASEAN member states to close the development gap and in particular with special focus on protection the rights of children and to enhance the well-being of young people.

This chapter examines and compares labour laws of ASEAN member countries against the benchmark of international standards (ILO conventions) with regards to employment, protection of children and youth, as well as promotion of employment opportunities for young persons. It also includes an overview of three (3) countries' case studies on national policy and programmes targeted at children and young persons. A brief understanding of ASEAN's priorities with regards to young persons would also be mentioned in the next section.

#### 4.1.2 ASEAN Socio-Cultural Community (ASCC) Blueprint and the Development of Children and Youth

Through the ASEAN Socio-Cultural Community Blueprint, ASEAN is committed to the enhancement of the "well-being and livelihood of the peoples of ASEAN by providing them with equitable access to human development opportunities by promoting and investing in education and life-long learning, human resource training and capacity building, encourage innovation and entrepreneurship, promote the use of English language, ICT and applied science and technology in socio-economic development activities." (ASEAN, 2009:2)

Moreover, in strategic objective A1 (ASEAN, 2009:2-3), "advancing and prioritising education, ensuring the integration of education priorities into ASEAN's development agenda and creating knowledge based society; achieving universal access to primary education; promoting early child care and development..."

Specific actions as outlined include:

- i. Achieve universal access to primary education across ASEAN by 2015 with priorities to eradicate illiteracy and to ensure compulsory primary education for all, and gender equality in education through advocating equal opportunity in education regardless of social class, geography, ethnicity, background or physical disabilities, with 70 per cent target benchmark achieved by end of 2011.
- ii. Improve the quality and adaptability of education, including technical/vocational/ skills training education in the ASEAN region by developing a technical assistance programme including training

for teaching staff and staff exchange programme at higher education level for this purpose by 2009, in particular CLMV.

- vi. Promote equal access to education for women and girls and enhance the exchange of best practices on gender sensitive school curriculum.
- xiv. Establish platforms for networking and sharing of best practices on ASEAN children and youth development strategies and tools.
- xix. Promote lifelong learning.
- xx. Work towards the establishment of an ASEAN Youth Development Index to evaluate the outcomes and effectiveness of youth programmes in the region and to assist Member States in planning new youth interventions.

In its strategic objective A2 (ASEAN, 2009:3), investing in human resource development aims to enhance and improve the capacity of ASEAN human resource through strategic programmes and develop a qualified, competent and well-prepared ASEAN labour force that will benefit from it as well as cope with the challenges of regional integration.

Specific actions as outlined include:

- iii. Undertake assessments to identify gaps in training needs in ASEAN, particularly in the CLMV, in order to develop joint technical cooperation programmes for the workforce.
- iv. Enhance the IT skills of the workforce in ASEAN through joint training programmes and courses.
- vi. Design and implement training programmes to address the needs of high value added industries that enhance ASEAN global competitiveness.
- vii. Develop a consolidated plan for regional cooperation for skills development for women, youth and persons with disabilities.

The ASEAN Children's Forum has also been set up to "serve as the regional voice for children in ASEAN and a channel where children can express their views on urgent regional issues and how these can be resolved by governments with children and young people's participation" (ASEAN Children's Forum, 2012). This is through the "Senior Officials Meeting and the Ministerial Meeting on Social Welfare and Development (SOMSWD/AMMSWD) where agreements and children's recommendations derived from the Children's Forum will be deliberated at the SOM level and raised to the Ministerial level for consideration and action" (ibid, 2012).

At the same time, there is also an ASEAN Ministerial Meeting on Youth (AMMY) which meets once every two years, tasked with the mission from the Vientiane Action Programme (VAP) which urges increased participation of youth in the productive workforce, and encourages their entrepreneurship and employability, leadership and regional awareness. Priorities for youth cooperation are highlighted in the VAP's section of the ASCC, under the strategic thrusts for "Building a Community of Caring Societies", "Managing the Social Impact of Economic Integration" and "Promoting an ASEAN Identity", of which employability of youth has been identified as one of the four priority actions (ASEAN Ministerial Meeting on Youth, 2012).

### 4.1.3 Definition of Child, Young Person and Youth

The term ‘child’ is commonly used to denote a relationship or a person in the early stages of their life. Youth is the transitional phase between childhood and adulthood.

Children and Youth are commonly described in terms of their age. Age is used as an indicator of their developmental stage and level of dependence. The age range used to describe children and youth can vary and there is no universally accepted standard. The reason for the use of different age ranges is that age chosen depends on the issue under analysis.

Article 1 of the United Nations Convention on the Rights of the Child defines ‘children’ as persons up to the age of 18 (UNHCHR, 1989). This was intentional, as it was hoped that the Convention would provide protection and rights to as large an age-group as possible and because there was no similar United Nations Convention on the Rights of Youth.

The United Nations General Assembly defines ‘youth’, as those persons falling between the ages of 15 and 24 years (UN General Assembly, 2001:2). This definition was made for the International Youth Year, held around the world since 1985. All United Nations statistics on youth, including the ILO, are based on this definition, as illustrated by the annual yearbooks of statistics published by the United Nations system on demography, education, employment and health.

Definition of Child	Definition of Youth
Anyone below 18 years old	Anyone between 15 and 24 years old

However, in the labour laws of all 10 ASEAN member countries, as well as in the above mentioned conventions, the age parameter of a working young person typically connotes the range of being between 12 and 18 years old. In the three case studies that follow later in this chapter, the age range would also include young persons up to the age of 30 years old.

For the purpose of this research chapter due to the dissimilarities in the age definition of youth, the terms “youth” and “young person” will be used here interchangeably.

### 4.1.4 International Standards to Protect the Rights of Child and Empowerment of Youth

The most comprehensive international standards for the prevention of child labour and employment protection of young persons can be found in the 2 fundamental conventions of the International Labour Standards, namely, the C138 Minimum Age Convention, 1973, and C182 Worst Forms of Child Labour Convention, 1999. Both of these conventions have been widely ratified globally and in the ASEAN region; 163 global ratifications of C138, and 175 global ratifications of C185. In the ASEAN region, 9 countries have ratified both C138 and C185. All ASEAN Member States have also ratified the Convention on the Rights of the Child (CRC).

TABLE 25: RATIFICATION STATUS OF ASEAN COUNTRIES ON C138, C182 AND CRC

No.	Country	C138 Minimum Age Convention, 1973	C182 Worst Forms of Child Labour Convention, 1999	Convention on the Rights of the Child, 1989
1	Brunei Darussalam	17 Jun 2011	09 Jun 2008	27 Dec 1995
2	Cambodia	23 Aug 1999	14 Mar 2006	15 Oct 1992
3	Indonesia	07 Jun 1999	28 Mar 2000	5 Sep 1990
4	Lao PDR	13 Jun 2005	13 Jun 2005	8 May 1991
5	Malaysia	09 Sep 1997	10 Nov 2000	17 Feb 1995
6	Myanmar	Not yet	Not yet	15 Jul 1994
7	Philippines	04 Jun 1998	28 Nov 2000	21 Aug 1990
8	Singapore	07 Nov 2005	14 Jun 2001	5 Oct 1995
9	Thailand	11 May 2004	16 Feb 2001	27 Mar 1992
10	Viet Nam	24 Jun 2003	19 Dec 2000	28 Feb 1990

Though not as widely ratified, two other technical conventions, C077 and C078, specific to the health of children and young persons, are also highlighted in this chapter considering the importance of ensuring their health and safety well-being. They are the Medical Examination of Young Persons (Industrial Occupations - C077) and (Non-Industrial Occupations - C078).

The United Nations Convention of the Rights of the Child, particularly in its articles 32-34 and article 23, contains specific clauses for the protection of children from economic exploitation and hazards as well as the recognition for the special needs of children with disabilities. These are articles similar in content and purpose as the ILO conventions.

This section maps out the key provisions in ASEAN nations’ labour laws, which addresses protection to employment of children and young persons by benchmarking against the two ILO core conventions above. It also provides a comparative mapping of the provision of labour laws across the 10 ASEAN member countries.

This chapter has selected three case studies (Cambodia, Indonesia and Singapore) from varied levels of development among the ASEAN member states to provide an illustration and examination of how they have been pursuing a continuing effort to groom and grow the next generation of leaders and people.

## 4.2 A COMPARATIVE REVIEW OF ASEAN LABOUR LAWS FOR THE PROTECTION OF CHILD LABOUR AND PROMOTION OF DECENT YOUTH EMPLOYMENT

### 4.2.1 C138 Minimum Age Convention, 1973 and C182 Worse Forms of Child Labour Convention

#### C138 Minimum Age for Employment

Article 2:

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.
3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

Article 3: The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

Article 5:

3. The provisions of the Convention shall be applicable as a minimum to...., but excluding family and small scale holding producing for local consumption and not regularly hired workers.

Article 7:

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--
  - (a) not likely to be harmful to their health or development; and
  - (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.
3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article, and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

#### C182 Worse Forms of Child Labour

Article 2: For the purposes of this convention, the term child shall apply to all persons under the age of 18.

Article 3:

For the purpose of this Convention, the term the worst forms of child labour comprises:

- a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children

TABLE 26: MINIMUM AGE CONVENTION AND THE ELIMINATION OF WORST FORMS OF CHILD LABOUR

	BRUNEI DARUSSALAM	CAMBODIA	INDONESIA	LAO PDR	MALAYSIA		MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIET NAM
MIN. AGE OF EMPLOYMENT	14 years old	15 years old	18 years old	14 years old	16 years old		MIN. AGE OF EMPLOYMENT Not specified	15 years old	14 years old	15 years old	15 years old
TYPE AND NATURE OF EMPLOYMENT OF CHILD/ YOUNG PERSONS BELOW 18 YEARS OLD	Only in non- industrial undertaking if at least 14 years old or that a child may work in industrial undertaking where only family members are employed  The Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan may prescribe the conditions of employment of child or young persons in industrial or non- industrial undertaking	15 – 18 years old No employment hazardous to health, safety or morality determined by Prakas of Ministry of Labour  No employment in underground mines or quarries unless determined with special conditions of work or apprenticeship in underground work only for young persons between 16 and 18 years of age Authorized by Ministry of Labour and Labour Advisory committee on the condition that health, safety and morality are guaranteed	13-15 years old May be employed in light work only if does not stunt physical, mental and social developments with maximum working time of 3 hours. There needs to be written permission from parents or guardian of the child; a work agreement between entrepreneur and parents/ guardians; no disruption to school time; ensure occupational safety and health; and, clear employment relations and accordingly receive wage	At least 14 to 18 years old provided that: Not more than 8 hours and are not in sectors involving heavy work or are dangerous to health as in mining, involving chemical, explosives or toxic, handling of human corpses or in places serving alcohol or with gambling or environment with excessive noise or work at night (10pm-5am)	In light work suitable to his/ her capacity carried on by his/ her family  For those 14 - 16 years, can be employed as domestic worker, in an office, shop, godown, factory, workshop, store, boarding house, theatre, cinema, club or association		TYPE AND NATURE OF EMPLOYMENT OF CHILD/ YOUNG PERSONS BELOW 18 YEARS OLD Not specified	Except he/she works directly under the sole responsibility of parents/ guardians and that the employment does not interfere with schooling  Between 15 and 18 years old may be employed in conditions determined by the Secretary of Labour and Employment and that the work is not hazardous or deleterious	<b>For young persons 16 years of age:</b> A young person, who has completed his 15th year of age but has not completed his 16th year of age may be employed in an industrial undertaking. However, the employer must: Notify the Commissioner for Labour within 30 days of the young person's employment; and before employment, submit a medical certificate certifying the young person's fitness for employment. Persons below 16 years of age are not allowed to work in: i. Any occupation or place with working conditions that are injurious, or likely to be injurious, to their health; ii. Any service involving management of, or attendance to, machinery in motion;	An Employer shall not require a young worker under 18 years of age to perform any of the following: i) metal smelting, blowing, casting or rolling; ii) metal pressing; heat, cold, vibration, noise and light of an abnormal level which may be hazardous as prescribed in the Ministerial Regulations; iv) work involving hazardous chemical substances as prescribed in the Ministerial Regulations; v) work involving poisonous microorganisms which may be a virus, bacterium, fungus, or other germs as prescribed in the Ministerial Regulations;	Admission to work for children under 15 years of age is prohibited except in certain categories as determined by MOLISA;  Employers may only employ junior workers (below 18 years) in work suitable to their health so as to ensure their physical, mental and personal development and must concern themselves with their care in regards to their work, wages, health and training in the course of employment; Prohibition of work in hard, dangerous and work exposed to harmful substances as determined in a list issued by MOLISA and MOH



## 4.2.2 Exceptions with Regards to Vocational Training

TABLE 27: EXCEPTIONS WITH REGARDS TO VOCATIONAL TRAINING

	SINGAPORE	THAILAND
TYPE AND NATURE OF EMPLOYMENT OF CHILD/ YOUNG PERSONS BELOW 18 YEARS OLD	<p>iii. Any service involving management of, attendance to, or proximity to any live electrical apparatus that is not effectively insulated; or;</p> <p>iv. Any underground work.</p>	<p>vi) work involving poisonous substances, explosive or inflammable material, other than work in a fuel service station as prescribed in the Ministerial Regulations;</p> <p>vii) driving or controlling a forklift or a crane as prescribed in the Ministerial Regulations;</p> <p>viii) work using an electric or motor saw;</p> <p>ix) work that must be done underground, underwater, in a cave, tunnel or mountain shaft;</p> <p>x) work involving radioactivity as prescribed in the Ministerial Regulations;</p> <p>xi) cleaning of machinery or engines while in operation;</p> <p>xii) work which must be done on scaffolding ten metres or more above the ground; or</p> <p>xiii) other work as prescribed in the Ministerial Regulations.</p> <p>An Employer shall not require a young worker under eighteen years of age to work in the following places:</p> <p>i) a slaughterhouse;</p> <p>ii) a gambling place;</p> <p>iii) a place of dancing, Ramwong or Rong Ngeng;</p> <p>iv) a place of selling and serving food, liquor, tea or other drinks, with a servicing person to serve customers, or with a place for relaxing, or a massage service for customers; or</p> <p>v) other places as prescribed in the Ministerial Regulations</p>

	COUNTRIES	CONTENTS
Exceptions to Vocational Training Convention, 1973 (No. 138)	<b>Article 1.</b>	There are exceptions on application of Convention 138. Convention 138 does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--
		(a) a course of education or training for which a school or training institution is primarily responsible;
		(b) a programme of training mainly or entirely in an undertaking, and the programme has been approved by the competent authority; or
		(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.
	Brunei Darussalam	In technical, vocational or industrial training school/ institute, young persons can be employed under the apprenticeship program approved and supervised by Institute of Technical Education (ITE), Ministry of Education or authorized government agency.
	Cambodia	The area of activity provides specific and adequate instruction or vocational training, authorized by Ministry of Labour and Labour Advisory committee on the condition that health, safety and morality are guaranteed.
	Indonesia	Not specified.
	Lao PDR	Not specified.
	Malaysia	-Work approved or sponsored by the Federal Government or the State Government and carried on in any school, training institution, or training vessel. - As an apprentice under written contract approved by DG with whom a copy of contract is being filed.
	Myanmar	No literature.
Philippines	-The National Youth Council through its Secretariat exercise the authority and jurisdiction over and administer on-going technical assistance programmes, grants-in-aid for youth and manpower development. -The Council recommends programmes for to The Regional Manpower Development Office and agencies within the policies formulated by the council.	
Singapore	Children and Young Persons are also allowed to be employed in the following: (a) (i) Work approved and supervised by the Ministry of Education or Institute of Technical Education Singapore; (a) (ii) Carried out in any technical, vocational or industrial training school or institute.(b) to the employment of young persons under any apprenticeship programme approved and supervised by the Institute of Technical Education, Singapore..	
Thailand	Not specified.	
Viet Nam	Trainees of at least 13 years old in training establishments (unless otherwise stated by the Ministry of Labour, Invalids and Social Affairs) and where vocational training or apprenticeship is permitted, with the required agreement and supervision of their parents or guardian.	

### 4.2.3 Exception with Regards to Artistic Performances

TABLE 28: EXCEPTION WITH REGARDS TO ARTISTIC PERFORMANCES

COUNTRIES	CONTENTS	
Exceptions to artistic performances Convention 1973, (No. 138)	<b>In Article 8:</b> 1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances. 2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.	
	Brunei Darussalam	Not specified.
	Cambodia	Not specified.
	Indonesia	Child/ Young person is put under direct supervision of their parent/ guardian with a maximum working time of 3 hours a day where the working conditions and environment do not disturb their physical, mental and social development and school time and to be abiding the regulation of the Ministerial Decision.
	Lao PDR	Not specified.
	Malaysia	In accordance with license granted by the Director General of Labour and with required periodic medical examinations.
	Myanmar	No literature.
	Philippines	Not specified.
	Singapore	Not specified.
	Thailand	The exception to working time is applicable to motion picture, play or the like and appropriate rest time is to be provided.
Viet Nam	Not specified.	

### 4.2.4 Medical Examination, C77 and C78

TABLE 29: MEDICAL EXAMINATION

COUNTRIES	CONTENTS	
Medical Examination, Industrial Occupations - C077 & Non-Industrial Occupations - C078	<b>Article 2</b> 1. Children and young persons under eighteen years of age shall not be admitted to employment by an industrial undertaking unless they have been found fit for the work on which they are to be employed by a thorough medical examination. 2. The medical examination for fitness for employment shall be carried out by a qualified physician approved by the competent authority and shall be certified either by a medical certificate or by an endorsement on the work permit or in the workbook. 3. The document certifying fitness for employment may be issued- (a) subject to specified conditions of employment; (b) for a specified job or for a group of jobs or occupations involving similar health risks which have been classified by the authority responsible for the enforcement of the laws and regulations concerning medical examinations for fitness for employment. 4. National laws or regulations shall specify the authority competent to issue the document certifying fitness for employment and shall define the conditions to be observed in drawing up and issuing the document.	
	<b>Article 3</b> 1. The fitness of a child or young person for the employment in which he is engaged shall be subject to medical supervision until he has attained the age of eighteen years. 2. The continued employment of a child or young person under eighteen years of age shall be subject to the repetition of medical examinations at intervals of not more than one year. 3. National laws or regulations shall- (a) make provision for the special circumstances in which a medical re-examination shall be required in addition to the annual examination or at more frequent intervals in order to ensure effective supervision in respect of the risks involved in the occupation and of the state of health of the child or young person as shown by previous examinations; or (b) empower the competent authority to require medical re-examinations in exceptional cases.	
	Brunei Darussalam	Not specified.
	Cambodia	A physician requested to examine children less than 18 years of age employed in an enterprise in order to establish that their jobs are not beyond their physical capabilities.
	Indonesia	Not specified.
	Lao PDR	Not specified.
	Malaysia	- A person who is alleged to be a child or young person must provide a certificate of a Government Medical Officer; - A children and young person shall be examined by a Government Medical Officer in the first instance and thereafter not less than once in every 3 months.
	Myanmar	No literature.
	Philippines	Not specified.
	Singapore	<b>For young persons 16 years of age</b> A young person, who has completed his 15th year of age but has not completed his 16th year of age may be employed in an industrial undertaking. However, the employer must: - Notify the Commissioner for Labour within 30 days of the young person's employment; and - Before employment, submit a medical certificate certifying the young person's fitness for employment.
Thailand	Not specified.	
Viet Nam	Not specified.	

## 4.2.5 Working Time and Rest Time, C77 and C78

TABLE 30: WORKING TIME AND REST TIME

COUNTRIES	CONTENTS
	<b>Article 7:</b> The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 or this article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
Brunei Darussalam	Not specified.
Cambodia	No employment in night work unless approved by Prakas of Ministry of Labour for young persons aged 16 to 18 years old in order to avoid disruptions to nature of industries.
Indonesia	Maximum working time of 3 hours a day work is conducted in the day without disruption to school time.
Lao PDR	- No work for more than 8 hours and do not work over time. - No night time work between 10pm and 5am.
Malaysia	Not specified.
Myanmar	No literature.
Philippines	Not specified.
Singapore	The Employment Act and Employment (Children and Young Persons) Regulations prescribe the working hours and minimum conditions of work for children and young persons:  Hours of work where a) No child shall be employed as a workman for — b) more than 3 hours without a break of 30 minutes; or c) more than 6 hours in any one day. Hours of work of young persons employed in industrial undertaking No young person shall, without the written permission of the Commissioner, be employed as a workman in an industrial undertaking for — (a) more than 4 hours without a break of 30 minutes; or (b) more than 7 hours in any one day.
Thailand	- Uninterrupted rest period each day of not less than one hour for every four hours worked; - Prohibited to work overtime or holidays; - No work time is allowed between 22.00 and 06.00 unless written permission by Director General or delegate; - Exception is applicable for motion picture, play or the like and appropriate rest time is to be provided.
Viet Nam	- Working time cannot exceed 7 hours per day or 42 hours per week; - Young workers may only work over time or night time in certain categories of work determined by MOLISA.

Working Time and Rest Time, Industrial Occupations - C077 &amp; Non-Industrial Occupations - C078

## 4.2.6 Prescription of Registers

TABLE 31: PRESCRIPTION OF REGISTERS

COUNTRIES	CONTENTS
	<b>Article 9:</b> 2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention. 3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.
Brunei Darussalam	Not specified.
Cambodia	A record must be kept indicating the date of birth, manual labour conditions for children, and the daily schedule i.e. the assignment of hours of study, manual labour, rest and meals.
Indonesia	Not specified.
Lao PDR	Not specified.
Malaysia	Any child employed in any form of labour shall be produced or caused to be produced, by his employer for inspection at any time during working hours or any other reasonable time.
Myanmar	No literature.
Philippines	Not specified.
Singapore	The Employment Act requires employers to retain a register of all employees employed by him. The register shall include details such as the names, date of birth and rate of pay of each employee.
Thailand	- Employer shall notify the labour inspector on the employment of the child employee within 15 days from the date of commencement of work ; - Prepare a new record of the terms of employment if there is any change from those in existence to be kept in the place of business or office for inspection during working hours Notify labour inspector of the termination of employment of the child employee within 7 days from the date of last employment; - Any record shall be in the form prescribed by the Director-General.
Viet Nam	Separate records of junior workers below age of 18 years old shall be kept, mentioning in full name, date of birth, work assigned, and results of periodic health checks and shall be produced upon demand by labour inspectors.

Prescription of registers, Industrial Occupations - C077 &amp; Non-Industrial Occupations - C078



#### 4.2.7 Prescription on Wage Rates

TABLE 32: PRESCRIPTION ON WAGE RATES

	COUNTRIES	CONTENTS
Prescription on Wage Rates	Brunei Darussalam	The Minister with approval, prescribe minimum rates of salary to be paid to children, young persons or both in industry, type of employment or area.
	Cambodia	Not specified.
	Indonesia	To receive wages in accordance with prevailing provision.
	Lao PDR	Not specified.
	Malaysia	Minister direct an inquiry, and appoint a Board. The Board shall report its findings and recommendations to the Minister, and make an order prescribing the minimum rates of wages to be paid to children or young persons or to both.
	Myanmar	No literature.
	Philippines	Not specified.
	Singapore	If it is shown to the satisfaction of the Minister, upon the application of the Commissioner and after such inquiry as the Minister may think fit to direct, that the salaries of children or young persons, or both, employed in any industry or for any particular work or in any area are insufficient, having regard to the nature of the work and the conditions of employment, it shall be lawful for the Minister to prescribe, by order to be published in the Gazette, minimum rates of salary to be paid to children or young persons or both in that industry, type of employment or area.
	Thailand	Not specified.
	Viet Nam	Not specified.

#### 4.2.8 Penalties on Violation of Law

C138, Article 9:

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

Most ASEAN member countries made provisions of appropriate penalties on the enforcement of the laws protecting working children and young persons, although the type of penalties differs among them. Malaysia and Singapore provide general penalty provision applicable to any violation of the labour law while Indonesia and Thailand state specific corresponding penalties to respective legal provisions. Brunei Darussalam and Cambodia uses a combination of general and specific penalties.

General penalties have been listed separately below whereas specific corresponding penalty provisions have already been stated in relevant context above.

**In Brunei Darussalam**, any person who employs a child or young person in contravention of the provisions of this Part or any of the regulations made thereunder; Any parent or guardian who knowingly or negligently suffers or permits any such employment, is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 2 years or both.

In the case where a child or young person suffers serious injury or death resulting from any breach of the provisions of this Part or any regulations made thereunder, the offender is guilty of an offence and liable on a further conviction to a fine not exceeding \$2,000 and imprisonment for a term not exceeding 2 years.

**In Cambodia**, those guilty of violating the rules concerning the minimum age are liable to a fine of 30 to 120 days of the base daily wage.

**In Malaysia**, any person who shall employ any child or young person in breach of any of the provisions of the regulations or who shall fail to produce a child or young person when required under the provisions or shall otherwise contravene the provisions of these regulations, shall be guilty of an offence and shall, where no other penalty is provided by the Act, be liable to a fine not exceeding 250 ringgit or to imprisonment for a term which may extend to 6 months or to both such fine and imprisonment.

Any person contravening any of the provisions of this Act or of any regulations or order made thereunder or who being the parent or guardian of a child or young person knowingly acquiesces in any such contravention in respect of such child or young person shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2,000 ringgit or to both and, in the case of a second or subsequent offence, shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding 3,000 ringgit or to both.

**In Singapore**, any person who employs a child or young person in contravention of the provisions in the Employment Act or any of the regulations made thereunder and any parent or guardian who knowingly or negligently suffers or permits such employment shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or to both,



except in the case where a child or young person suffers serious injury or death resulting from any breach of the provisions of this Part or any regulations made thereunder, the offender shall be punished with a fine of \$5,000 and shall also be liable to imprisonment for a term not exceeding 2 years.

#### 4.2.9 Recognizing the Special Situation of Girls in Eliminating Child Labour

Article 7:

2e) Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures taking in account, the special situation of girls.

TABLE 33: RECOGNIZING THE SPECIAL SITUATION OF GIRLS IN ELIMINATING CHILD LABOUR

	COUNTRIES	CONTENTS
Measures taking account special situation of girls, Convention, 1999 (No. 182)	<b>Article 7</b>	2e) Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures for the special situation of girls.
	Brunei Darussalam	Not specified.
	Cambodia	Not specified.
	Indonesia	Prohibit to employ female workers / labourers aged less than 18 years of age between 11 p.m. until 7 a.m.
	Lao PDR	Not specified.
	Malaysia	No female young person may be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs unless they fulfil some requirements.
	Myanmar	No literature.
	Philippines	Not specified.
	Singapore	Not specified.
	Thailand	Not specified.
	Viet Nam	Not specified.

**In Malaysia**, there is a focus on the employment in which female children and young persons are involved. Girls and young women may not be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs unless such establishment are under the management or control of her parent or guardian; or provided that if the establishment is not managed by her parent or guardian, her employment must seek the approval of the Director General.

**In Indonesia**, labour law regulates the working time of girls. It is prohibited to employ female workers or labourers aged less than 18 years of age between 11 p.m. until 7 a.m. Violation of this provision shall be subjected to a criminal sanction in prison for a minimum of 1 month and a maximum of 12 months and / or a fine of a minimum of Rp10,000,000 and a maximum of Rp100,000,000.

2.10 Other Related Legal Legislation

#### 4.2.10 Other Related Legislation

Examining the labour laws across the ten member countries, at least three (3) countries provide reference to other applicable legislation not explicitly stated in the labour law. They are also presented here for reference to show the interconnectedness of the subject to other legislations.

TABLE 34: OTHER RELATED LEGISLATION

	COUNTRIES	CONTENTS
Other related legal legislations mentioned in labour law	Brunei Darussalam	Not specified.
	Cambodia	Not specified.
	Indonesia	- Ordinance Year 1926, which regulation concerning Child and Youth Labour on Board of A Ship (Staatsblad Year 1926 Number 87); - Ordinance Number 9 Year 1949 concerning Restriction of Child Labour (Staatsblad Year 1949 Number 8); - Ordinance dated December 17, 1925, which is a regulation concerning the imposition of restriction on Child Labour and Night Work for Women (Staatsblad Year 1925 Number 647); - Ordinance Number 9 Year 1949 concerning Restriction of Child Labour (Staatsblad Year 1949 Number 8);
	Lao PDR	Not specified.
	Malaysia	- The Children and Young Persons Rules 1947 [G.N. 8529 of 1947]; - Children and Yong Persons (Employment) Regulations 1966; - Employment Act 1955; - Factories and Machinery Act 1967 [Act 139]; - Electricity Supply Act 1990 [Act 447];
	Myanmar	No literature.
	Philippines	Not specified.
	Singapore	- Children and Young Persons Act;
	Thailand	Not specified.
	Viet Nam	Not specified.

In comparing ILO C138 and C182 and existing ten (10) labour laws of ASEAN member states, the following areas have been highlighted in the above:

- 2.1 Minimum age and nature of employment
- 2.2 With exception to vocational training, and;
- 2.3 Artistic performances

In ensuring that basic protection is extended to protect children and youth in employment, the following have been identified:

- 2.4 Medical Examination
- 2.5 Working Time and Rest Time
- 2.6 Prescription on Registrar

A couple of member states have made specific mention taking into account the situation of girls and young women in 2.9 while some member states have made specific provision on matters relating to wage rates in 2.7.

In the overall enforcement of labour law, penalties on violation of law have also been covered in 2.8.

However, the comparison of labour laws vis-à-vis ILO conventions can only reveal one dimension in the examination of how ASEAN and its member states have made steps to eliminate child labour and in promoting youth employment. As stated in C182,

*C182, Article 7*

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organisations, taking into consideration the views of other concerned groups as appropriate.

*C182, Article 8*

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
  - a) prevent the engagement of children in the worst forms of child labour;
  - b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
  - c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
  - d) identify and reach out to children at special risk; and

A similar comprehensive approach is also reflected in the adopted Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2015 (where action by governments should be guided by priorities in):

- National legislation and enforcement
- Education and training
- Social protection
- Labour market policy

While at the same time, social partners, NGOs and regional/ international organisations are also expected to support, wherever possible to the efforts.

Therefore, a thorough examination of selected efforts by ASEAN Member States in the combat against child labour and in promoting youth employment would contribute to a robust understanding and discussion of the issue at hand. The three case studies in this chapter are:

1. Children's Empowerment through Education Services (CHES), Cambodia
2. Education and Skills Training for Youth Employment (EAST), Indonesia
3. Institute for Technical Education (ITE) Contributing to the Human Resource Development among Young People, Singapore

The case studies selected in the following section aims to illustrate the programmes or policies based on the missions above so as to achieve to the best of its ability, decent work for young persons. It was also purposeful that these three case studies represent member states of varying levels of development. The cases were also partly selected on the basis of convenience and availability of data considering that only 1 questionnaire has been responded and returned.

As such, this section has relied heavily on secondary sources particularly in the cases of Cambodia and Indonesia, the country profiles, project paper and evaluation reports of the funding agencies supporting the programmes were the main source of information. In the case study of Singapore, the conceptual framework and analysis were the credits of Chew and Chew (2010), which has been used extensively here.

## 4.3 CASE STUDIES OF GOOD PRACTICES

### 4.3.1 Elimination of the Worst Forms of Child Labour – Children's Empowerment through Education Services (CHES) Project in Cambodia

#### *Child Labour and Youth Employment in Cambodia*

In Cambodia<sup>32</sup>, children work in exploitative conditions on commercial rubber and tobacco plantations, in subsistence agriculture, in salt production, in fish processing, as porters, in brickmaking, in the service sector, and as garbage pickers. They also work in other occupations determined by the government to be hazardous, including processing sea products, such as shrimp; breaking, quarrying, or collecting stones; working in gem and coal mining; working in garment factories; working in restaurants; and making handicrafts. Children also work as domestic servants; most child domestics are girls, age 15 to 17, who work between 6 and 16 hours per day (USDOL, 2008:59).

Child involvement in economic activity is widespread in Cambodia. In all, an estimated 52% of 7-14 year-olds, over 1.4 million children in absolute terms, were economically active in the 2001 reference year (UNICEF, 2006:1). This percentage is very high relative to other countries with similar levels of income, highlighting that children's work poses a particular concern in the Cambodian context.

An even larger proportion of children are engaged in non-economic productive activities, specifically housework. An estimated 79% of 7-14 year-olds were engaged in housework activities on a regular basis each week during the 2001 reference year. Housework tends to start earlier than economic activity, but is performed much less intensively. One of every two children performs "double-duty", i.e., is involved in both housework and economic activity each week.

Over 750,000 economically active children are below the absolute minimum working age of 12 years, and an additional 500,000 (12-14 year-olds) children in non-light economic activity are below the minimum age for this type of work. Over 250,000 children aged 15-17 years are in the seven (of 16) nationally-identified hazardous sectors, for which data is available, or are working 43 or more hours per week. Putting these groups together yields an estimate of almost 1.5 million 7-17 year-olds in child labour, 40% of this age group during the 2001 reference year (ILO, n.d). (see the following chart)

<sup>32</sup> Reliable data on the worst forms of child labour and working children in Cambodia are difficult to collect given the often hidden or illegal nature of the worst forms.

TABLE 35: CHILDREN AGED 7 -17 ACTIVITY STATUSES, CAMBODIA<sup>33</sup> (UNICEF, 2006:10)

Activity Status	Children aged 7 -14 years						Children aged 15 -17 years					
	Male		Female		Total		Male		Female		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Involved in economic activity only	114,485	8.1	122,503	9.1	236,988	8.6	158,875	33.4	228,306	51.8	387,181	42.3
Attending school only	508,999	36.2	495,480	36.8	1,004,479	36.5	59,969	12.6	43,189	9.8	103,159	11.3
Involved in economic activity and attending school	622,862	44.3	579,862	43.0	1,202,724	43.7	234,274	49.3	140,654	31.9	374,928	40.9
Not involved in economic activity and not attending school	160,736	11.4	149,981	11.1	310,717	11.3	21,959	4.6	28,777	6.5	50,736	5.5
Total eco.active ①	737,347	52.4	702,365	52.1	1,439,712	52.3	393,149	82.8	368,960	83.7	762,109	83.2
Total attending school ②	1,131,861	80.4	1,075,342	79.8	2,207,203	80.1	294,244	61.9	183,844	41.7	478,087	52.2

Notes: ① Regardless of school attendance status; and ② Regardless of economic activity status. A child is considered to be economically active if he or she spent at least one hour per week in work for “payment/non-payment, profit, family gain or own final use of consumption” or “did not work, but had a job with assurance for returning.”

Although education is free until grade nine, it is not compulsory and significant barriers still exist in accessing the education system. In remote areas of the country, children have to travel long distances to reach their school and transportation is limited. This sometimes deters girls from attending school due to safety concerns. Moreover, salaries of teachers remain low and instructors often charge extra fees to students for exams, snacks and even class time (IRN, 2008). These informal fees can make the cost of education prohibitive for poor children, who are the most vulnerable to worst forms of child labour.





The Cambodian Labour Law sets the minimum age for employment at 15. Children younger than age 18 are barred from hazardous work according to a 2004 declaration issued by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation. The declaration lists 38 types of hazardous work, including working underground; lifting, carrying or moving heavy loads; deep-sea and off-shore fishing; working near furnaces or kilns used to manufacture glass, ceramics or bricks; and handling and spraying pesticides and herbicides.

Children as young as age 12 are permitted to perform domestic labour as long as the work is not hazardous for their health, safety or morals and does not involve any type of hazardous work specifically prohibited. While the legal framework provides some protections against the worst forms of child labour, the Labour Law does not prohibit hazardous work in family-based agriculture or family businesses. Additionally, the lack of a compulsory school age in Cambodia also leaves children vulnerable to the worst forms of child labour as they are not required to be in school but are not legally permitted to work.

In December 2010, Cambodia enacted a Penal Code that explicitly prohibits child trafficking, child pornography, child prostitution and the use of children in other illicit activities.

#### Government Policies on the Worst Forms of Child Labour

TABLE 36: LAWS AND REGULATIONS ON THE WORST FORMS OF CHILD LABOUR IN CAMBODIA

	C138, Minimum Age	√
	C182, worst Forms of Child labour	√
	CRC	√
	CRC optional Protocol on Armed Conflict	√
	CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography	√
	Palermo Protocol on Trafficking in Persons	√
	Minimum Age for Work	15
	Minimum Age for Hazardous Work	18
	Compulsory Education Age	No
	Free Public Education	Yes

Source: U.S. Department of Labour's Bureau of International Labour Affairs, Country Profiles, 2010 Findings on the Worst Forms of Child Labour (p.131)

<sup>33</sup> A number of data sources are available in relation to the measurement of child labour. However, it is immediately clear that some household surveys have not been carried out on a regular basis, and therefore, a complete time series would not be available. CCLS, the national survey was last carried out nearly a decade ago and more recent sources to measure and track efforts to eliminate child labour are not available.

The National Plan of Action on the Elimination of the Worst Forms of Child Labour 2008-2012 (NPA-WFCL) aims to reduce the percentage of working children ages 5 to 17 from an estimated 13% in 2005 to 8% by 2015 and to eradicate the worst forms of child labour by 2016 (Vatanak, 2011).

The NPA-WFCL addresses all worst forms of child labour and lays out the specific sectors, regions and activities in which these worst forms may be found (Government of Cambodia, 2011). The plan reflects the list of prohibited hazardous work through a list of priority sectors, including quarrying, brickmaking, portering, rubber plantation work, salt production, fishing and mining. Domestic service is also listed as a priority although it is not universally prohibited for children younger than age 18. The NPA-WFCL also includes a matrix of project outputs, activities, implementing agencies, resources and indicators to articulate how the Government will achieve its objectives in areas including research, policy, enforcement, social mobilisation, education, protection, prevention and withdrawal.

In September 2010, the Ministry of Education, Youth and Sport published the Education Strategic Plan 2009-2013. The Plan addresses access to education and targets marginalized groups, including child labourers, for entry into primary education (Government of Cambodia, 2010:22-23). This policy uses vocational training as a development strategy for marginalized youth, including child labourers (ibid:48-49).

The issue of Child Labour has also been incorporated into other key development policies. The Cambodia Millennium Development Goals have also adopted the NPA-WFCL objective of decreasing the share of working children to 8% by 2015 (Government of Cambodia, 2005). In June 2010, a draft of the National Social Protection Strategy was finalised, establishing social safety nets for poor children and mothers in an effort to eliminate child labour (USDOS, 2009:113), and was adopted by the Cabinet on March 18, 2011. The ILO-Decent Work Country Program, endorsed by the MOLVT, highlights child labour issues and outlines a framework for enhancing policies, laws and enforcement mechanisms to protect children (ibid). In addition, the MOLVT's First Occupational Safety and Health Master Plan (2009-2013) include eliminating hazardous child labour as one of its six priorities (ibid).

The NPA-WFCL 2008-2012 provides the main policy framework and the project design is closely aligned. The NPA, which was approved in June 2008, has eight objectives, and this project contributes to them all in varying degrees. The CMDGs (The Cambodian Millennium Development Goals) include a targeted reduction in child labour. Both of these policy frameworks share the target of reducing child labour to 8% by 2015. In addition, the RGC (The Royal Government of Cambodia) made a commitment to the ILO-IPEC goal to eliminate all WFCL by 2016 in June 2009. These 2015 and 2016 goals are now known as the 'twin goals'.

Other main policy frameworks with which the project design aligns are the National Strategic Development Plan (2006-2010), the Education for All (EFA) policy and the National Plan of Action Against Trafficking In Persons and Sexual Exploitation.

Significant policy statements made during the project period, and which the project have had a role in ensuring that child labour concerns are incorporated, include:

- RGC's support and commitment to the ILO-IPEC 2016 goal to eliminate WFCL in Cambodia
- RGC's Roadmap for ending the WFCL by 2016

- National Social Protection Strategy (NSPS) 2010
- Rectangular Strategy Update (2009-2013)
- National Strategic Development Plan (NSDP) 2009-2013
- MoLVT's Strategic Plan for implementing the NSDP 2009-2013
- Education Strategic Plan (ESP) 2009-2013

The Royal Government of Cambodia (RGC) is publicly committed to ending child labour and has taken concrete steps to do so. Since ratifying International Labour Organization (ILO) Conventions No. 138 and 182, the country has adopted time-bound targets and measures to address child labour. And in the past decade, the Government of Cambodia has participated in many initiatives to combat child labour and child trafficking (see the following chart 3):

TABLE 36: INITIATIVES IMPLEMENTED BY CAMBODIA IN THE LAST DECADE

Years	Grantee	Project
2001-2004	ILO-IPEC <sup>34</sup>	Sector Program: Fish/Shrimp Processing, Rubber Plantations, Salt Production
2003-2007	World Education <sup>35</sup>	Education Initiative: Trafficking and Commercial Sexual Exploitation
2004-2007	Hagar International <sup>36</sup>	Expanding Economic Activity
2004-2009	ILO-IPEC	Timebound: Domestic Work, Porters, Fishing, and Production of Brick, Salt, and Rubber
2007-2011	Winrock International <sup>37</sup>	<b>Children's Empowerment Through Education Services: Eliminating the Worst Forms of Child Labour in Cambodia</b>
2008-2012	ILO-IPEC	Combating the Worst Forms of Child Labour

*Children's Empowerment Through Education Services (CHES): Eliminating the Worst Forms of Child Labour in Cambodia*

In 2007, the Government participated in a 4-year, US\$4 million, USDOL-Funded program – Children's Empowerment Through Education Services (CHES): Eliminating the Worst Forms of Child Labour in Cambodia, to withdraw 3,750 children and prevent 4,500 children from the worst forms of child labour in subsistence and commercial agriculture and fishing by providing direct education services (ibid:114). The project works on several of the objectives laid out by the NPA-WFCL, including research, policy development, legislation and enforcement, advocacy and education. The provincial Agriculture Offices assisted the project in training families of child labourers on alternative income generation activities, such as chicken raising, fish culture and vegetable gardening. Labour inspectors helped to build the capacity of the project's child labour monitoring committees by training them on labour laws, education policies and safe migration guidelines.

The CHES project began in September 2007 until July 2011, when the final evaluation was conducted. This project aimed to withdraw and prevent children from exploitative child labour by expanding access to and improving the quality of basic education and supporting the goals of USDOL to reduce the worst forms of child labour through research, awareness raising, and policy formation. The project was implemented in 160 villages in the provinces of Kampong Cham, Prey Veng, Pursat, and Siem Reap, 4 of the poorest

<sup>34</sup> International Labour Organization – International Programme on the Elimination of Child Labour, for more see <http://www.ilo.org/ipec/lang--en/index.htm>

<sup>35</sup> World Education, for more see [www.worlded.org](http://www.worlded.org)

<sup>36</sup> Hagar International, for more see [www.hagarinternational.org](http://www.hagarinternational.org)

<sup>37</sup> Winrock International, for more see, [www.winrock.org](http://www.winrock.org)



provinces in Cambodia. Two associate organisations, Wathnakpheap and Kampuchean Action for Primary Education (KAPE), were responsible for implementing work at the provincial level – Wathnakpheap in Pursat and Siem Reap, and KAPE in Kampong Cham and Prey Veng. The associates have field offices and field staff in each province to follow up on project implementation. In October 2010, the project also set up a subcontract with the Cambodian Center for Study and Development in Agriculture (CEDAC) for agriculture training of beneficiaries and for the parents of withdrawn beneficiaries.

The main goals of the programme included:

1. Improving access to and the quality of education for working and at-risk children in the target areas.
2. Engaging communities, civil society, and local governments in promoting education and eradicating child labour.
3. Strengthening national institutions and policies to effectively address the issues of child labour and education.
4. Ensuring the sustainability of project activities and benefits for the primary stakeholders.

Other activities undertaken include:

1. Improving the capacity of key individuals and institutions, such as the Department of Child Labour (DOCL) at the national level and the Provincial Department of Labour and Vocational Training at the local level, to combat child labour and provide quality education through innovative policy measures;
2. Implementing a community-awareness program to provide information on the distinction between child work and exploitative child labour in subsistence agriculture and freshwater fishing;
3. Conducting participatory research on the causes and extent of child labour in subsistence agriculture, tobacco and cassava farming, and fishing;
4. Establishing or strengthening Child Labour Monitoring Committees (CLMCs) in 160 villages to monitor child labour at the local level;
5. Offering life skills and other programmes, classes, and services targeted at children, their parents, and members of the community.

In addition to its implementation in rural agricultural areas, the CHES project addressed child labour issues in floating boat-house villages. This posed unique challenges in terms of program implementation and monitoring, and receiving buy-in of parents and community leaders to promote the message of prevention and eradication of child labour.

#### *CHES Project Team*

The project administration and organisation set up with Winrock International at the central level were responsible for the overall implementation arrangements of the project. Staff members included:

- one project director, who was also the lead for education; an M&E specialist, who followed up progress monitoring and research as well as policy development;
- a child labour specialist, who followed up on program service implementation;
- a communication specialist; administration staff
- finance officer
- supporting personnel

The support staff for computerizing the list of beneficiaries and tracking children; one provincial coordinator was based in the Provincial Department of Labour and Vocational Training (PDOLVT) in each targeted province to facilitate implementation at the local level.

At the central level, Winrock was responsible for the overall management of the project, including M&E functions, and for raising awareness through radio and mass media. Winrock also had a subcontract with DOCL at the central level to organise training of inspectors at the provincial and commune/community levels.

#### *Project Implementation:*

Service 1: Withdrawing or Preventing Child Labour through Education. This goal was adequately supported by the project through withdrawal and prevention of children involved in or at risk of becoming involved in exploitative child labour through the provision of four types of direct educational services:

In addition, a number of auxiliary services were provided to facilitate children's access to schools, including setting up child care mothers (CCM) programmes in targeted communities to ensure that children did not need to stay home to attend to younger siblings but could instead attend school normally. The CCM engaged with a number of younger children, aged 3 to 5, and guided them in play and learning activities. Further, the project strengthened the child councils in the schools, which sensitized peers to the dangers of child labour. The project also helped set up CYCs, which followed up on dropouts, participated in awareness-raising activities, and acted as a savings clubs. In some cases, members of these clubs offered remedial classes to younger children. In other schools, the project organised regular teachers to offer the remedial classes. Other activities included the skills training of parents to compensate for income lost when children stopped working, as well as the creation and training of community CLMCs to follow-up on the schooling of children.

1	<i>Age 6 to 14 years old Education support for withdrawn child labourers</i>	This component targeted children who had dropped out of school but previously attained at least grade 3 to 6 of primary schooling to provide them with a 2 – month refresher course or 1–month intensive course during the summer holidays, and according to the results of an entry test, to re-enroll these children in grade 3 or 4. Subsequent to the re-entry program, the beneficiaries were provided with educational materials, such as stationery, school bags, uniforms, and in certain cases, shoes. The target age and training of these children followed MOEYS's policies, and the project also used the ministry's curriculum. Most interviewees deemed this component to be the most relevant and effective of all the project activities to combat child labour.
2	<i>Age 6 to 14 years old Education support for at-risk children</i>	This component provided educational supplies to at-risk children and provided follow-up through CLMC intervention. It helped the children to stay in school, and most project beneficiaries deemed this support to be adequate and useful for the target beneficiaries.
3	<i>Education support for at-risk girls age 12 to 14 transitioning into secondary school.</i>	This component provided educational materials to girls transitioning into lower secondary schools. For those living at a distance from school, the component also provided bicycles.
4	<i>Provision of NFE and livelihood skills for withdrawn children aged 15 to 17</i>	This component provided literacy and skills training for out-of-school youth who were too old to be reintegrated into primary school. Although this project activity might have reduced WFCL, all the children targeted by this component could be hired legally under Cambodian law for paid work, and many of the beneficiaries reached adulthood (age 18) within the timeframe of this project.

Service 2: Strengthening Policies on Child Labour and Education. This goal was adequately supported through the project's work with the National Sub-Committee on Child Labour and, in particular, assisted in the processes of establishing prakas (ministry orders) on WFCL in various sectors related to subsistence agriculture and fishing. The project was also engaged in policy dialogue between MOLVT and the Ministry of Education, Youth and Sports (MOEYS) to facilitate the inclusion of policies contributing to the elimination of child labour, in particular WFCL, into the government's education policy. Conversely, the project also tried to facilitate the inclusion of policies and programmes related to the Education for All initiative in the government's policies on elimination of child labour.

Service 3: Raising Awareness about Child Labour and Education. This goal was adequately supported through various project initiatives, including the CLMCs' local awareness-raising campaigns, organisation of celebrations on world Day Against Child Labour, the project's quarterly newspaper, collaboration with local media, a video project that has been shown on national TV, and two weekly radio programmes on child labour, which had a growing audience. Also, the child councils and CYCs were instrumental in raising awareness about child labour and education.

Service 4: Research on Child Labour. This goal was adequately supported through various research initiatives, including the baseline study and research regarding WFCL in Subsistence and Commercial agriculture and freshwater fishing gathered after the establishment of prakas (ministry orders). In particular, five core documents were produced at the beginning of 2011, based on research which began in October 2010:

1. Crossroads to Development and Winrock. (2009). Research on Hazardous Child Work in Tobacco Production in Kampong Cham Province. Phnom Penh, Cambodia: Winrock.
2. Crossroads to Development and Winrock. (2009). Research Report on Hazardous Child Work in Cassava Production in Kampong Cham Province. Phnom Penh, Cambodia: Winrock.
3. Crossroads to Development and Winrock. (2011). Research Report on Hazardous Child Labour in Subsistence Agriculture Sector. Phnom Penh, Cambodia: Winrock.
4. Crossroads to Development and Winrock. (2011). Research Report on Hazardous Child Labour in Subsistence Freshwater Fishing Sector. Phnom Penh, Cambodia: Winrock.
5. Winrock. (2011). Child Labour, Education and Agriculture Policy Brief. Phnom Penh, Cambodia: Winrock.

Auxiliary Services: Effectiveness of Models Used by the Project. The project used an exceptionally multifaceted structure to address the problem of child labour and had multiple models that targeted different user groups.

1. Child Care Mothers. The project addressed the need for certain children to stay at home to look after younger siblings by setting up CCM service to care for younger in lieu of their siblings, who could now attend school. This component was an innovative way of helping children to attend school and at the same time provide preschool services.
2. Child Councils in Schools. The Ministry of Education promotes the establishment of child councils in primary schools and youth councils in secondary schools. Parents, teachers, and local authorities support these groups, which discuss child labour and other relevant issues.
3. Child-Friendly Schools. This component provided training for child-centred teaching and learning to teachers, and provided water and books to the classrooms. It was built on UNICEF's proven model

4. Child Youth Clubs. The project often organised CYCs as saving groups, and the members also at times offered remedial classes. These groups followed up on other children's schooling and raised awareness about child labour.
5. Remedial Classes. The project helped organise remedial classes for CHES beneficiaries and other interested students, most taking place from March to June 2011. Teachers were recruited for this popular service, or in some cases, CYC members ran them. The project offered incentives for the service, so children did not have to pay for the classes.
6. Youth Agricultural Entrepreneurs. The YAE model was implemented by CEDAC. Participants visited, observed, and interviewed farmers and wrote reports together with their own history. Teaching, often provided by a Community-based Facilitator, concentrated on one or several of the following topics: system of rice intensification; composting to grow vegetables; or fish and chicken raising.

#### Project Outcomes

##### On Preventing and Withdrawing:

The immediate objective of the project was to reduce the overall number of children engaged in exploitative child labour in subsistence and commercial agriculture in Cambodia. The project achieved this target end of 2011. The project had reached and surpassed the target number of beneficiaries enrolled.

The target number of direct beneficiaries, prevented and withdrawn<sup>38</sup>, were 8,250 children - 5,325 girls and 2,925 boys. The number of direct beneficiaries reached and tracked were 8,988 children (5,275 girls and 3,713 boys), well above targets. However, these numbers must be compared with the number of beneficiaries who actually completed the program. The project-established definition of completion is 2 years for formal education programmes and 6 months for Non-Formal Education (NFE) programmes. The aggregate percentage of children enrolled in the first of the project's cohorts who completed the program was 81%. For the other project cohorts (children enrolled in 2009 and new NFE children enrolled in 2010 and 2011), the project at the end of July 2011 counted 4,567 children (2,722 girls and 1845 boys), who completed their education and training programmes; a 73% completion rate against those enrolled (6,177) for the period. At the time of the April 2011 Technical Progress Report, the number of beneficiaries withdrawn and/or prevented was 7,964 children (4,802 girls and 3,162 boys). The number of beneficiaries enrolled compared with the target, by service, is displayed below:

TABLE 37: NUMBER OF BENEFICIARIES IN CHES

Services	Target	Actual
Withdrawn	2,250	2,289
NFE	1,500	1,706
Prevented	3,000	3,785
Girls' Transition	1,500	1,208
Total	8,250	8,988

TABLE 38: MEAN AGE OF BENEFICIARIES IN CHES

Services	Mean age ( $\mu$ )
Service 1. Withdrawal	11.42
Service 2. NFE	15.21
Service 3. Prevention	11.32
Service 4. Girls' Transition	14.01

The project indicated that an additional 578 children (310 girls) age 15 to 17 have recently been withdrawn and enrolled in NFE (agricultural skills training). The withdrawn and prevented figure as of August 2011 is 8,542 (5,112 girls and 3,430 boys), has exceeded the target. The highest drop-out percentage is found among NFE beneficiaries, especially in the first generation of enrollees before the service had been sufficiently adjusted to the needs of the beneficiaries in terms of literacy and skills training.

##### On Policy Development:

To strengthen national policy on child labour and education, the project targets aimed to complete three draft policy papers "to reflect the needs of child labourers in agriculture and children at risk." The project addressed this target through the use of a consultancy firm, Mekong Think Tank, to produce a policy paper that addressed the link between child labour and education, which was the subject of a project-arranged, bipartite meeting between MOEYS and MOLVT on July 5, 2011. The project achieved targets for "improved capacity of key individuals and institutions to combat child labour and provide quality education," and through the aforementioned research reports, "Government and NGOs have information to understand and respond to the causes and extent of child labour in subsistence agriculture, tobacco and cassava farming, and fishing"

##### Effectiveness of the Direct Action Interventions

All 210 children have received a direct service from the project. The fieldwork found that a number of children had dropped out of school. The drop-out percentage was very irregular, ranging from 0% to over 40% in certain geographic locations and for certain services. The project's statistics indicated an average retention rate of above 90% for the period ending in February 2011.

Activity 1: Education Support for Withdrawn Child Labourers Age 6 to 14. This component led to the effective withdrawal of 2,289 children from child labour, of which 83.6% were retained in school. The project offered a 2-month re-entry course for those who dropped out at or were above grade 3 for less than a year. This course followed the Ministry of Education's policies and curriculum and was an effective tool to reintegrate children back into class. This component was adequate for those at or above grade 3 but not for those below. The children's socioeconomic situation and age group seemed to correspond to the project goals, and the service has generally been successful.

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Activity 2: Provision of NFE and Livelihood Skills for Withdrawn Children Age 15 to 17. This service generally reached the target group of drop-out children aged 15 to 17. Enrollees were provided with a 3 to 8 month literacy course, followed by skills training. Often, the children were less interested in literacy and preferred skills training. Some children who had previously been to school found the literacy training too easy; conversely, some children who had not been to school were still not capable of reading and

<sup>38</sup> 'Prevented' refers to high risk group of children likely to enter into child labour who have been prevented from doing so and 'withdrawn' refers to child labourers who have been withdrawn from the labourmarket

writing after attending the course. Skills training were provided in various fields, including agriculture (chicken and fish raising, growing vegetables and mushrooms, pisci-culture and earthworm production), hairdressing, weaving, and sewing, as well as motorcycle and bicycle repair.

*Activity 3: Education Support for At-Risk Children Age 6 to 14.* This component aimed to prevent drop-out of at-risk children by providing stationery and school materials, including uniforms and shoes. In general, this project intervention was effective, in so much as these children knew about the project objectives and appreciated the project assistance. Interviews, child drawings, and debriefings indicated that the beneficiaries corresponded to the project targets—they were poor and at-risk children.

*Activity 4: Education Support for At-Risk Girls Age 12 to 14 Transitioning into Secondary School.* This service provided education materials and bicycles to a number of girls transitioning into secondary schools. Many of the girls interviewed had a long way to go to school and appreciated the bicycle. In general, this project activity stimulated educational participation among girls transitioning to secondary school.

#### *Main Findings and Evaluation of the Programme*

The project used an exceptionally multifaceted structure to address the problem. And for its four core services – withdrawal and reintegration in primary; withdrawal and provision of non-formal education and skills training; prevention; assistance to girls’ transition to secondary – the project used multiple models targeted toward different user groups and categories, including child care mothers, child councils in schools, CFS, child youth clubs (CYC), remedial classes, and young agricultural entrepreneurs (YAE), most of which have been very successful.

The project offered a wide variety of activities and services to address a complex situation of poverty, and a lack of awareness of WFCL and the importance of education. The project design addressed two core barriers to education: (1) poverty, including the need to compensate for income lost when children stop working (addressed with skills training of parents), and (2) low quality of education (addressed by setting up child-friendly school [CFS]). In addition, the project included a robust awareness-raising component, which included media, especially radio, as well as one-to-one interaction such as child labour monitoring committee activities in the communities, to change social practices and to bring awareness of the problem of child labour to project stakeholders and the wider community. The project also addressed issues of education access and education quality by training community teachers<sup>39</sup>.

The CHES project also invited UN agencies, local partners, and other civil society sectors to visit project sites and participate in project activities. The project also organised/attended coordination meetings with NGOs working in the same areas to inform them about project activities and seek a more active collaboration and cooperation in child labour prevention work.

The project’s impact is visible at the community level, at the institutional levels (both local and central), and at the policy levels through research and development of prakas (ministry orders). It is involved at and has had an effect on different levels. The emerging lessons learned and good practices are related to a

<sup>39</sup>Community teachers were posted in areas where schools were overcrowded to improve the teaching-learning environment and allow better interaction between students and teachers.

good project design – with a variety of services and interventions at different levels, projects can have an impact at several levels. The impact and legacy of the project, to a certain degree, will consist of social development and raised governmental awareness.

However, one main obstacle for project implementation was the non-inclusion of subsistence agriculture and freshwater fishing on the list of WFCL in Cambodia. The project had difficulty advocating for the elimination of WFCL in this sector since there was a lack of legal and implementation structures to address the issue<sup>40</sup>. For example, the provincial labour inspectors generally did not follow up on WFCL in subsistence agriculture. The project addressed this problem through research, policy, and awareness raising at all levels. A major goal of the CHES project was to introduce subsistence agriculture as a sector with child labour, to define worst and hazardous forms of child labour within this sector, and to distinguish them from child work. The project defined WFCL and hazardous child labour in subsistence agriculture and freshwater fishing as it implemented the programme. Subsequently, the conclusion was that it would be almost impossible in most cases to eliminate child labour in these sectors in Cambodia.

Statistics were not up-to-date, and the data collection and entry system was very complex. The CHES project was improved and the process of project data collection and entry was simplified. Some of the statistics were still not up-to-date during final evaluation fieldwork.

### 4.3.2 Education and Skills Training for Youth Employment in Indonesia (East)<sup>41</sup>

#### *Child Labour and Youth Employment in Indonesia*

Indonesia’s economic growth rate in 2010, measured by the increase in Gross Domestic Product (GDP), was 6.1 per cent. There was growth in all economic sectors, with the transportation and communication sector experiencing the highest growth rate at 13.5 per cent and the agricultural sector experiencing the lowest, at 2.9 per cent. If the oil and gas sector is excluded from the calculation, GDP growth in 2010 was even higher, at 6.6 per cent (Government of Indonesia, 2011:25).

Statistics show that there is increasing employment and decreasing unemployment. However, job opportunities in labour force still lag behind the growth, resulting in an increase in open unemployment and high under employment. This is particularly concentrated in urban areas and mainly involving young people, both school graduates and drop-outs. While the unemployment rate in 2005 was 10.26 per cent, the percentage of unemployed people aged 15-29 and 20-24 reached 34.88 per cent and 25.24 per cent respectively. Urban unemployment rate in urban areas (13.51 per cent) is almost twice as high as in rural areas (7.98 per cent) (ibid:26).

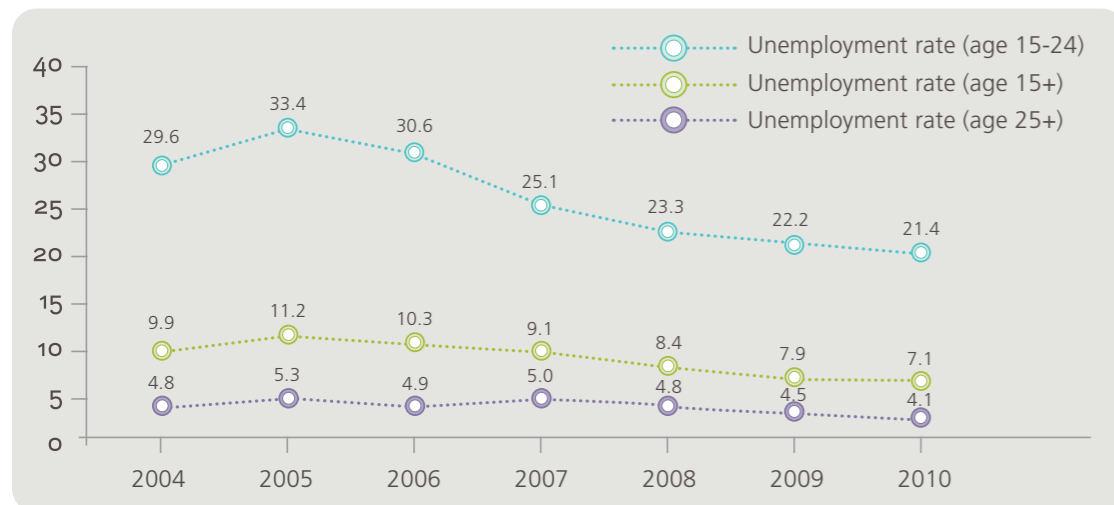
<sup>40</sup> The project’s scope is relevant to prevent WFCL. Presently, the Government of Cambodia has a list of 16 accepted WFCL, but subsistence agriculture is not on this list.

<sup>41</sup> This case study draws heavily from ILO Project Brief on Education and Skills Training for Youth Employment in Indonesia (EAST) [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/projectdocumentation/wcms\\_153162.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/projectdocumentation/wcms_153162.pdf)



Statistics from the ILO concur a similar trend; unemployment rates among youth are disproportionately higher than adults aged 25 years and above (see figure 1).

FIGURE 7: UNEMPLOYMENT RATES BY AGE GROUPS, INDONESIA, 2004-2010



Youth employment opportunities are typically correlated to education attainment. Job opportunities are also especially scarce for junior and senior high school graduates due to the lack of jobs in the formal sector, as these are the preferred jobs for graduates and high school students alike.

Almost 20% of the youth between the age of 15 and 24 years old are unemployed, significantly higher than adults above the age of 25 where only 4% are unemployed. Although one ought to be concerned about the high 32% of underemployment across the ages. Not surprisingly, women are affected by unemployment more severely than men but chronic unemployment among young women (21%) raises a gendered dimension to the issue of equal opportunities at work.

TABLE 39: UNEMPLOYMENT RATES BY LEVEL OF EDUCATION, INDONESIA, 2008-2010

Level of Education	2008 February	2009 February	2010 February
Elementary school or below	4.7	4.51	3.71
Junior high school	10.05	9.38	7.55
Senior high school	13.69	12.36	11.9
Vocational education	14.8	15.69	13.81
Academy/ diploma	16.35	15.38	15.71
University	14.25	12.94	14.24
Total	8.46	8.14	7.41

Source: BPS Data, 2010 Population Census

The Indonesian President Susilo Bambang Yudhoyono, in his second term as Presidential Officer outlined his fifteen priorities as a basis for his cabinet's 5-year development programme. One of the fifteen priorities is the synchronisation of the education system, and to make education more relevant to the needs of the labour market and adapt it to improve employability and entrepreneurship skills of the youth (ILO, 2010:2).

From a legal perspective, Indonesian Law No. 13 of 2003 (in alignment with ILO Recommendation No. 195) states that vocational training should have social and economic functions. Vocational Training Centres (VTC), who are providers of such training, under the supervision of the Ministry of Manpower and Transmigration (MoMT), play a very strategic role in improving human resource quality and competitiveness. The Government, through the MoMT, as implemented a "VTC Revitalization" program to empower all VTCs throughout the country, has the aim of producing better-trained human resources who are able to fulfil the needs of domestic and foreign markets.

Indonesian Law No. 20 of 2003 concerning the National Education System states that educational curriculums should refer to work demands and the certification of their graduates. Therefore, through a process of coordination and facilitation by 17 ministries and technical agencies, the Minister of Manpower and Transmigration determined 201 National Work Competency Standards (SKKNI) for nine sectors. These standards were based on industrial needs and were used as references in the development of modules, programmes and curriculums by education and training centres.

Other legal provisions protect children and young persons from being victims of trafficking and exploitation. Law No. 21 on the eradication of the Criminal Act of Trafficking in Persons defines and prohibits trafficking, including trafficking for debt bondage and sexual exploitation, with increased penalties in cases where the victim is a child and where government officials and corporate entities are involved.

Presidential Instruction No. 1 stipulates nine years of compulsory education for children between ages of seven and fifteen. The Child Protection Act, Articles 48 and 53, also specific that the government must provide a minimum of nine years of basic education for all children and free education for disadvantaged children. In addition, Bantuan Operasional Sekolah (BOS), ensures that children in all government schools are provided free education.

### Institutional Mechanism for Coordination and Enforcement of Protection Against Child Labour

The National Action Committee for the Elimination of Worst Forms of Child Labour coordinates and monitors policy and program efforts to eliminate the worst forms of child labour at the national level. The NAC is chaired by MoMT and is composed of other government agencies, employers, NGOs and trade unions.

In addition to national coordination, provincial and district-level committees are mandated by the Guidelines for the Formation of Regional Action Committees, the Establishment of Regional Action Plans and the Empowerment of Communities in the Elimination of the Worst Forms of Child Labour (2009). The provincial- and district-level committees are established to coordinate and monitor policy and programme efforts and the development of action plans to eliminate the worst forms of child labour at local levels. By the end of 2010, there were child labour action committees in 29 provinces and 131 districts/ municipal areas. However, the Government is still working to successfully integrate the various entities responsible for working on child labour at the national, provincial and district levels.

The Ministry of Women's Empowerment and Child Protection (MoWECP) coordinates the development and implementation of policies related to child protection. MoWECP child protection policies are subject

to inquiry from an independent commission known as the Indonesian Child Protection Commission (KPAI). This commission was created under the mandate of the Child Protection Act and serves to disseminate information on child labour legislation, receive child protection complains, monitor and evaluate the implementation of child protection efforts and provide feedback on child protection to the president. The National Task Force to Combat Trafficking in Persons is responsible for coordinating the country's anti-trafficking efforts, including child trafficking. MoWECP coordinates the Task Force between 19 ministries. The Task Force coordinates six working groups to develop action plans and budgets for trafficking in persons. During the reporting period, the Government implemented 20 provincial and 72 district anti-trafficking task forces, all of which coordinate the provincial and district governments (including police, prosecutors and courts), NGOs and the international community. MoWECP allocated \$133,000 for all anti-trafficking activities, including those that target children. MoWECP also led training programmes to educate local law enforcement officials on the law for trafficking in persons.

MOMT is responsible for monitoring and enforcing child labour laws. In 2009, MOMT employed 2,354 labour inspectors, who are all tasked with enforcing laws including those related to child labour. Labour inspectors provided information to employers on child labour laws and regulations, issue inspection notices on child labour violations, and work with law enforcement officials to prosecute any child labour violations.

In addition to MOMT, the National Police also has the right to conduct inspections and raids as well as make arrests in response to all crimes, including those related to child labour and child trafficking. The police may also conduct joint inspection with MOMT, other government agencies and the independent child protection agency (Indonesia Child Protection Commission – KPAI). In early 2011, the national Police issued a letter to all provincial, district and sub-district police units to include the elimination of child labour as a priority in their jurisdictions. Research found no information in the number of child trafficking inspections, violations, convictions and assistance.

The Government of Indonesia's general policy framework for the elimination of child labour is the 20-year National Action Plan for the Elimination of the Worst Forms of Child Labour (2002-2022). This national action plan is in its second 5-year phase and focuses on continued development of national and local policies to combat child labour as well as on providing direct assistance to child labourers and at-risk children. The Government allocated \$23 million to combat child labour for the period of 2010-2014. During the reporting period, five provincial action committees and seven district and municipal action committees finalised action plans to eliminate child labour.

The Government has incorporated child labour issues into relevant development agendas. The National Mid-Term Development Plan (2010- 2014) addresses the worst forms of child labour in domestic work, transportation, construction and mining and provides specific targets and budgetary allocations for action.

TABLE 40: INDONESIA'S RATIFICATION OF INTERNATIONAL STANDARDS RELATED TO CHILDREN AND YOUNG PERSONS

	C138, Minimum Age	✓
	C182, worst Forms of Child labour	✓
	CRC	✓
	CRC optional Protocol on Armed Conflict	No
	CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography	No
	Palermo Protocol on Trafficking in Persons	✓
	Minimum Age for Work	15
	Minimum Age for Hazardous Work	18
	Compulsory Education Age	15
	Free Public Education	Yes

Source: U.S. Department of Labour's Bureau of International Labour Affairs, Country Profiles, 2010 Findings on the Worst Forms of Child Labour (p.378)

### 2.3.1 Education and Skills Training for Youth Employment in Indonesia (EAST) (ILO, 2011)

The Education and Skills Training project (ILO EAST) is coordinated at national and provincial levels by tripartite steering committees. It is aimed at:

- Improving employability and capacity for entrepreneurship among young women and men
- Contributing to the elimination and prevention of child labour through improved access to high quality and relevant education and training opportunities
- Upgrading of selected public technical training centres BLKIs to enable them to become more effective and efficient in training young men and women in programmes relevant to the needs of the labour market

This project places great importance on linking elimination of child labour to more relevant skills and better opportunities for youth, once they leave school – thus facilitating the school-to-work transition. It provides support to all categories of formal and non-formal education and skills providers for youth, which in Indonesia is a category of young people between the age of 13 and 29 years.

The project therefore has 2 development objectives and 7 immediate objectives.

#### Development Objectives:

- Effective progress with National Plan of Action on Worst Forms of Child Labour
- Education and training systems and policies to better equip young people for employment and entrepreneurship

Immediate Objectives:

1. Capacity enhancement of national, provincial and district level stakeholders to prevent child labour and improve access to education
2. The relevance of lower secondary education is increased through provision of an extra-curricular pre vocational skills programme
3. Young people are in a better position to make well-informed choices about education, training and career plans
4. Access of disadvantaged youth to relevant and market-oriented livelihood and core work skills and development opportunities are increased
5. Public technical training centres (BLK) deliver competency based training courses according to market demand
6. Young people have access to enhanced entrepreneurship and business creation education
7. Provincial and district structures and networks have enhanced capacity for policy advocacy using improved knowledge based on child labour, education and youth employment

Project was executed under the responsibility of the Ministry of National Education and Ministry of Manpower and Transmigration and coordinated by the national Development Planning Agency (BAPPENAS). Financial and technical support was provided by the Netherlands Government and project implementation and funds management was provided by the ILO. The implementing agencies:

- Ministry of Manpower and Transmigration
- Ministry of Education
- Government entities
- Trade unions
- NGOs
- Private training providers

The duration of this project is 5 years, between 2007 and 2011 and is managed by a National Steering Committee and 6 Provincial Steering Committees. Project Support Unit at ILO Jakarta and 6 field offices are established in 6 provinces. Each field office is staffed by a local project coordinator, a local project officer and an administrative assistant. In 3 areas, an additional vocational and technical education staff member was included to support component 5 (revitalisation of the BLKs)

The project's main strategy line is to facilitate school to work transition with the following components:

AGE GROUP	MAIN STRATEGY	AREA OF INTERVENTION
13-15 – below minimum age for employment	Preventing early school drop out and facilitating return to school of children at risk of child labour	<ul style="list-style-type: none"> <li>• Capacity building of 2,000 teachers on learner centred/ participatory teaching methods (in junior high schools, madrasahs, one roof schools, open junior high schools)</li> <li>• Capacity building of 480 teachers to provide life skills training (transferable skills) through pre vocational activities</li> <li>• Capacity building of 260 instructors of community learning centres and strengthening of linkages with formal schools</li> <li>• Strengthening of the capacity of 800 school counsellors in junior secondary schools to provide information about the world of work to Area of Intervention allow children to make fact based education decisions</li> </ul>

AGE GROUP	MAIN STRATEGY	AREA OF INTERVENTION
15-18	Preparing young women and men to the world of work	<ul style="list-style-type: none"> <li>• Providing entrepreneurship and/or vocational skills to 13,000 young women and men who dropped out of school, with Start Your Business, Gender and Entrepreneurship Together – Ahead (GET Ahead) module and the “4 in 1 Handbook for Training Providers”</li> <li>• Building the capacity of 1,600 higher secondary teachers to provide entrepreneurship courses with Know About Business module</li> <li>• Strengthening the capacity of 1,600 school counsellors in senior secondary and higher vocational secondary schools to provide information about the world of work to allow children to make fact based education decisions</li> </ul>
18-29	Strengthening the employability of young women and men for their better integration in the labour market	<ul style="list-style-type: none"> <li>• Supporting the revitalization of three Technical Vocational Employment Training (TVET) centres of Aceh, Jayapura, Sorong, by increasing their interaction with the private sector, training the management and upgrading the skills of the instructors and providing equipment</li> </ul>

The main achievements of the project recorded are the following:

- Synergy created with 15 government and UN development schemes/ projects at national and provincial levels for joint activities in order to improve the access of trained youths to after training support training and start-up capital. Establishment of a network of collaboration with 163 private sector companies to facilitate the placement of trained youths.
- 12.200 junior high school level children in hard to reach areas prevented from child labour, through improved education services and direct support.
- Improved character building of junior high school students demonstrated through increased attendance in schools, increased number of hours spent in school (beyond required time), less bullying, more group work, and positive assertive participation in class.
- Training for out of school youths – 69 per cent of out of school young women and men trained in vocational and/or entrepreneurial skills were either employed or started a business (against 33 per cent for those trained on entrepreneurial skills only).
- Success in recruiting women for non-traditional trainings (mechanic, etc) but also in facilitating their placement in garage shops, air conditioning repair shop etc, following awareness raising efforts in community and training providers

The project sustainability has been maintained by:

- Mainstreaming of policy inputs on child labour and youth employment at each level of governance: from National Medium Term Development Plan to Ministerial five years strategies, to provincial and district levels policies and programmes.
- Institutional capacity building of teachers training centres and networks of trainers on entrepreneurship, vocational training for out of school youths, work and education counselling, life skills and inclusive education.
- Strong partnership with government institutions and social partners that facilitates replication of ILO EAST approaches.

### 4.3.3 INSTITUTE FOR TECHNICAL EDUCATION (ITE) CONTRIBUTING TO THE HUMAN RESOURCE DEVELOPMENT AMONG YOUNG PEOPLE, SINGAPORE

#### Education Profile of Youth in Singapore

As of June 2011, Singapore reported a resident youth population (between 15 and 24 years old) of about 515,800 of which 178,200 are employed. Youth unemployment rate stood at 6.7%, about 3 times more of that of national average (Trading Economics, 2012). Young job seekers usually do not experience long unemployment spells. Based on the questionnaire responses from the Ministry of Manpower (MOM) Singapore, only 3.2% of youth job seekers had been looking for work for at least 25 weeks compared with 19% among all the unemployed residents. Consequently, the long term unemployment rate of youth stood at only 0.3% - lower than the overall resident average of 0.7%.

It was also observed by the MOM that there is a strong correlation between level of education and youth employment. Hence, it was also recognised that the increased educational profile of its youth have also led to more intense job competition and further putting those without strong traditional academic portfolios in a more disadvantaged position vis-à-vis their cohorts.

“Nine out of 10 polytechnic and ITE graduates gain employment within six months of graduation. The average unemployment rate of residents aged 15 to 24 in Singapore was 6.7 per cent last year, compared to the global figure of 12.6 per cent. It is also lower than the youth unemployment rate in countries such as the United States (17 per cent), Germany (8.5 per cent) and South Korea (9.6 per cent).”

(The Straits Times Singapore, 9 November 2012)

As such, this case study focuses on Singapore's strategy towards the less academically-inclined youth, their education and employment. In general, these youth benefit from the prosperity of Singapore in terms of access to a better education and training system. Nevertheless, the less enterprising youth still face relentless competition from low-wage foreign workers. If nothing is done to help them, they may become low-income working adults with little opportunities for upward social mobility. Fortunately, many training schemes exist for youth workers who do not have formal education qualifications which enable them to build up their human capital and cycle of low wage employment. This case study shows that youth before reaching the age of 21 should either be in school or attending training programmes. Otherwise, the state will have to bear more costs in the future.

With reference to the youth training scheme of the state, the consensus is that the youth problem can become a social problem if not tackled early and correctly. Training is certainly a solution<sup>42</sup>. However, prevention is better than cure. The Singapore experience shows that if we can minimise the drop-out rate from the formal school system and create a web of learning opportunities for youth, then the youth worker problem is manageable.

<sup>42</sup> Steedman (1993) shows that the Germany youth training programme is in a desirable state of stable equilibrium because there is a strong demand on the part of youth to attend the training programmes on the one hand, and corporations are keen to accept such trainees, on the other. O'Higgins (2001) presents a global perspective on the training of youth. O'Connell and McGinnity (1997), Dolton, Makepeace and Treble (1994) and Main (1991) all assess the effectiveness of youth training programmes in the respective context.

Singapore devotes a significant amount of resources to education. Singaporean children begin their formal education at the age of 6 years old. The formal school system comprises six years of primary education, four years of secondary education and two years of junior college education. There is a nation-wide exam at the completion of primary education, referred to as the PSLE<sup>43</sup>; at the completion of secondary education, referred to as the O-levels<sup>44</sup>; and at the completion of junior college education, referred to as the A-levels<sup>45</sup>.

Hence, the typical age of completion of the PSLE, O-levels and A-levels is at 12, 16 and 18, respectively. Those who do very well in their O-levels will proceed to a junior college and then to one of the state universities. Those who do not do as well, but who do fairly well in their O-levels may proceed to one of the polytechnics for a three-year diploma course, many of whom will apply to study at one of the state universities upon graduation. However, the majority of the diploma holders will work and study part-time for a degree in Singapore. The remaining O-level certificate holders who are less academically inclined will proceed to the Institute of Technical Education (ITE) for a vocational education. Table 41 shows the enrolment in the educational system in Singapore.

TABLE 41: ENROLMENT IN EDUCATIONAL INSTITUTIONS IN SINGAPORE, 2001, 2007 AND 2011

	2001		2007		2011	
	NO.	% OF TOTAL	NO.	% OF TOTAL	NO.	% OF TOTAL
TOTAL	646,310		700,774		689,060	
Primary Schools	302,566	47	285,048	48	258,293	37
Secondary Schools	187,081	29	218,062	37	207,974	30
Pre-University	24,376	4	31,627	5	32,296	5
Institute of Technical Education (ITE)	16,176	3	23,465	4	25,279	4
Polytechnics	59,806	9	72,379	12	85,111	12
National Institute of Education	3,883	0.6	4,447	0.7	4,452	0.6
Universities	52,422	8	65,746	11	75,655	11

Source: Yearbook of Statistics, 2012, Department of Statistics, Singapore, pp.261

In 2011, primary schools and secondary schools accounted for 37% and 30% of total enrolment, respectively, while pre-university, ITE, polytechnics and universities (which include National Institute of Education) accounted for 5%, 4%, 12% and 11%, respectively.

There were, in 2010, 61,605 secondary four students (students of secondary five from the Normal stream are also included here). After the 'O' Levels, about 22% (13,578) proceeded to junior colleges (Education Statistics Digest, 2012:11), 43% (26,737) to polytechnics (ibid:23) and 22% (14,098) to ITEs (ibid:21). This leaves about 12% of the secondary four (aged 16 years old) students to account for. Every year, there are about 6,000 to 7,000 of such youth in secondary four who do not proceed to further their education either in junior colleges, polytechnics or even study full time in ITE.

Majority of this group would choose to work and study part-time at ITE, while others would find employment in the informal sector. Informal workers are encouraged to attend training programmes organised by ITE and self-help bodies such as Chinese Assistance Development Council (CDAC) by being offered training grants. Hence, this case study focuses on the significance of ITE in contributing to the human resource development of young workers.

<sup>43</sup> The Primary School Leaving Examination (PSLE) is a national examination in Singapore administered by the Ministry of Education and taken by all students near the end of their sixth year in primary school, before they move on to secondary school.

<sup>44</sup> The O-level (Ordinary Level) is a subject-based qualification conferred as part of the General Certificate of Education (GCE).

<sup>45</sup> The Advanced Level General Certificate of Education, commonly referred to as an A-level, is a qualification offered by education institutions.



## Labour Market Characteristics of Youth in Singapore

This best practice studies youth and youth employment. Based on published source, the obtained data is on the profile of workers aged 15 -19 as well as on workers aged 20 -24. Table 2 shows the age-sex specific resident labour force participation rates (LFPR) in 2007 for Singapore.

TABLE 42: AGE-SEX SPECIFIC RESIDENT LABOUR FORCE PARTICIPATION RATES (LFPR), 2011

	Total	Males	Females
Total	66.1	75.6	57.0
15 – 19	12.3	14.6	9.8
20 – 24	62.8	63.2	62.5
25 – 29	89.2	91.8	86.7
30 – 34	88.6	97.4	81.0
35 – 39	87.3	97.7	77.6
40 – 44	84.9	97.1	73.9
45 – 49	83.7	96.0	71.2
50 – 54	79.7	93.5	66.1
55 – 59	70.2	85.7	55.1
60 – 64	54.7	71.1	38.4
65 and above	N.A	N.A	N.A

Source: Yearbook of Statistics, 2012, Department of Statistics, Singapore, pp.48-49

PerCent

Singapore does not have an unemployment benefits scheme, and anyone who is younger than the age of 60 is not eligible for public welfare assistance. Hence, it is expected that most people, especially males, will have to work. In 2011, LFPR for males aged 25 - 54 ranged from about 92% to 98%. The LFPR for females in this age group was also high, in the region of 66% to 87%.

However, for residents in the age group 15 - 19, the LFPR for males was expectedly low at 14.6%, as most males would be studying. The LFPR for females in this age group was even lower at less than 10%. The LFPR for the age group 20 - 24 was about 62.8% for both males and females. Generally, working males in this age group do not possess a university degree as they have to undergo military training for two years after their junior college education. As will be discussed later, most males and females want to further their studies in colleges and universities, which explain why the LFPR is not high for this age group.

As to be expected, Singapore does not rely on much on youth employment (see Table 11 below).

There were almost 2 million persons employed in Singapore in 2011. Those who were aged 15 – 19 accounted for 1.6% of total employment, while youth aged 20 – 24 accounted for 7.4%. The overall resident unemployment rate in Singapore was 3.0%, which is not considered high against the backdrop of a population of foreign workers and professionals numbering about one million. If we include foreign workers in our labour force, the overall unemployment rate would be around 2.1%. However, the unemployment rate of residents in the age group 20-24 was 14.9%, which was very high (Yearbook of Manpower Statistics, 2012:A5). The unemployment rate among males in this group was 6.1%, and for females it was 8.7%. For those in the 15 – 19 age group, the overall unemployment rate was 3.2%, and 0.8% for males and 2.4% for females (ibid).

TABLE 43: YOUTH EMPLOYMENT STATISTICS IN SINGAPORE, 2011

Employment Status	Total	Age 15-19	Age 20-24
Employed (1)	1,998,900 (100.0%)	31,000 (1.6%)	147,200 (7.4%)
Employed Male	1,118,800 (100%)	20,400 (1.8%)	76,700 (6.9%)
Employed Female	880,100 (100%)	10,600 (1.2%)	70,500 (8%)
Unemployed (2)	81,200 (100%)	3,200 (3.9%)	14,900 (18.3%)
Unemployed Male	41,600 (100%)	800 (1.9%)	6,100 (14.7%)
Unemployed Female	39,600 (100%)	2,400 (6.1%)	8,700 (22%)
Economically Active (1) + (2)	2,080,100	34,200	162,100
Economically Active Male	1,160,400	21,200	82,800
Economically Active Female	919,700	13,000	79,200

Source: Yearbook of Manpower Statistics 2012, Ministry of Manpower, Singapore, pp. A5

In 2011, there were about 81,200 unemployed persons (Yearbook of Manpower Statistics, 2012:A5). In terms of absolute number, therefore, unemployment in Singapore is not serious. However, within this group, about 3,200 persons aged 15 - 19 and 14,900 persons aged 20 – 24, were unemployed. Together, they accounted for 22% of total unemployment in Singapore. The statistics thus show that the unemployment rate for youth in Singapore is higher. One reason is the relentless competition faced by the Singapore youth from about 800,000 less skilled foreign workers in Singapore. They inevitably compete with the Singaporean youth, and Singaporean youth are slow to accept jobs for which wages have been depressed by the influx of foreign workers. As mentioned earlier, there is no unemployment benefits scheme in Singapore. Hence, these unemployed youth will have to adjust their wage expectations and find employment.

Another reason is that many Singaporean youth work and study at the same time, and they are inadvertently classified under the unemployed category. Singapore's approach in solving unemployment is two-fold: On one hand, Singapore imports foreign workers to meet the needs of the economy and in doing so expands job opportunities, while on the other hand, youth are encouraged to go to ITE to obtain a vocational education.

Table 44 shows the number of employed residents by occupation, age and sex for the age group 15 - 19 in 2011. The bulk of them regardless of gender are employed in the services and sales sector, followed by clerical support. Males in this age group are also more (about twice) likely to be working as cleaners or labourers. Interestingly, the females held better jobs than their male counterparts as reflected in about 1,200 of them working as associate professionals or technicians compared to just 200 among the male counterparts. (Occupational data for the age group 20 - 24 are not available.) The table therefore positively signals that it is beneficial to Singapore for its youth to be trained to take up jobs such as technicians and associate professionals.

TABLE 44: EMPLOYED RESIDENTS AGED 15 – 19 BY OCCUPATION, AGE AND SEX, 2011

	TOTAL	MALES	FEMALES
<b>Total</b>	31,000	20,400	10,600
Managers, Administrators and Working Proprietors	-	-	-
Professionals	100	-	-
Assoc. Professionals and Technicians	1,500	200	1,200
Clerical Support Workers	4,900	1,400	3,500
Services and Sales Workers	8,500	3,500	5,100
Craftsmen and related Trades Workers	100	100	-
Plant and Machine Operators and Assemblers	200	200	-
Cleaners, Labourers and Related Workers	2,100	1,400	700

Source: Yearbook of Manpower Statistics 2012, Ministry of Manpower, Singapore, pp. A9

Table 45 shows the profile of job seekers by age and education in 2011. The number of job seekers in the 15 - 20 age group who attended career centres was 1,442, and 189 managed to get a job via a career centre. The rate of placement success of (teen) youth job seekers was 13%. We shall now examine ITE as this is the only publicly-funded vocational education institution through which the less academically-inclined youth can enhance their human capital to avoid competing with foreign workers.

TABLE 45: ASSISTANCE TO JOB SEEKERS, 2011

	Job Seekers Attended at Career Centres	Job Seekers Placed in Employment by Career Centres
<b>Total</b>	100,504	14,223
Under 20	1,442	189
20-29	15,225	2,552
30-39	16,296	2,549
40-49	26,066	3,915
50-59	27,237	3,510
60 and Over	14,238	1,508
Primary and below	22,810	2,898
Secondary	54,538	7,483
Post-secondary	8,799	1,492
Diploma	7,649	1,338
Degree	6,708	1,012

Source: Yearbook of Manpower Statistics, 2012, Ministry of Manpower, Singapore, pp. D18-19

## Vocational Education in Singapore (ITE)

ITE students are generally aged 16 to 22. Evolved from a web of vocational institutes since the 1960s, the vocational educational system was organised as the Institute of Technical Education, ITE, in 1992. ITE is an internationally-recognised, post-secondary educational institution providing school leavers with a brand of hands-on, minds-on, hearts-on college education. In 2007, the Ash Institute for Democratic Governance and Innovation, at Harvard University's John F Kenney School of Government, recognised ITE's Transformation Plan since 1995 as the world's most innovative transformation programme by awarding ITE the inaugural Harvard-IBM Innovations Award in Transforming Government.

ITE admits only school drop-outs who have completed secondary education. These schools leavers can choose to take up a course either under full-time or traineeship modes of training. Full-time (ITE education) courses are conducted on a semester credit system which is more flexible. Depending on the courses, full-time ITE students can obtain ITE certification within two to three years. Full-time programmes, which lead to the award of the Higher National ITE Certificate (Higher Nitec) and National ITE Certificate (Nitec), are offered in the areas of engineering and technical skills, business and services, information communications technology, and applied and health sciences.

On an "earn as you learn" basis, traineeship courses run for one to three years depending on the level of training. The traineeship comprises of two components: off-the-job and on-the-job training. In the off-the-job training component, trainees are taught technical concepts and knowledge. This training component may be conducted in an ITE campus, an industry training centre or on the company's premises. In the on-the-job component, trainees apply the knowledge and concepts learnt during the off-the-job training. ITE's assessment comes in the form of trainees being assigned a supervisor who is trained to oversee their actual performance at work.

The government of Singapore pays particular attention to vocational education via ITE as a social safeguard to ensure that the less academically inclined youth continue to pursue an education which is a strong foundation for upward social mobility. Table 15 shows that the ITE continues to receive a steady share of almost 4% of financial resources across the decade. On a per student basis, in 2011, government expenditure on a primary school and a secondary school student was SGD\$6850 and SGD\$9095 respectively. The government expenditure on a polytechnic and university student was SGD\$14,608 and SGD\$20,805 respectively. Even for the academically less inclined vocational education, the government expenditure on each ITE student was SGD\$11,914 which is about 80% of the expenditure on each polytechnic student (Education Statistics Digest, 2012: 65).

TABLE 46: GOVERNMENT RECURRENT EXPENDITURES ON EDUCATION (SGD\$'000)

	1997	2011
Total Recurrent Expenditures	3,347,775 (100%)	9,743,977 (100%)
Primary Schools	829,887 (24.8%)	1,853,250 (19.0%)
Secondary and Pre-university Education	1,019,209 (30.4%)	2,529,659 (26.0%)
ITE	124,332 (3.7%)	347,338 (3.6%)
Universities	704,750 (21.1%)	2,944,796 (30.2%)
Polytechnics	429,234 (12.8%)	1,179,125 (12.1%)

Source: Education Statistics Digest, 2012. Ministry of Education, Singapore, pp. 63

Today, more than 2,000 ITE students (or 15% of the students ) widened their horizons by taking part in overseas exposure programmes in 17 countries with development tracks offering vocational education students as much exposure as possible as their counterparts in polytechnics and universities.

### ITE Programme Outcomes

TABLE 47: INTAKE OF STUDENTS/TRAINEES UNDER FULL-TIME INSTITUTIONAL TRAINING AND TRAINEESHIP PROGRAMMES AND STUDENTS/ TRAINEES WHO COMPLETED THE PROGRAMMES, 2011

Type of Training/ Level	Intake of Students/ Trainees			Students/ Trainees who Complete Programmes		
	Total	Male	Female	Total	Male	Female
Total	14,452	8,822	5,630	11,427	6,987	4,440
Engineering						
Diploma	74	70	4	40	35	5
Higher NITEC	2,102	1,701	401	1,765	1,413	352
National ITEC	5,114	4,042	1,072	3,824	3,148	676
Info-Communications Technology						
Higher NITEC	627	420	207	478	320	158
National ITEC	1,254	791	463	1,142	714	428
Business and Services						
Diploma	20	8	12	-	-	-
Higher NITEC	2,247	804	1,443	1,682	569	1,113
National ITEC	3,014	986	2,028	2,496	788	1,708

Source: Yearbook of Statistics, 2012, Department of Statistics, Singapore, pp.267

Table 15 shows the intake of ITE students and trainees under the full-time institutional training and traineeship programmes in 2011. In that year, ITE took in 14,452 students, of whom 8,822 were males and 5,630 were females. As mentioned above, this number was about 21% of the O-Level cohort. Most male students studied engineering and info-communications technology while an overwhelming number of female students took up business and services. A total of 11,427 students completed their studies in ITE in 2011, of whom 6,987 were males and 4,440 were females. The success rate was approximately 79% overall, with 79% of both males and females completing their programmes. Overall, the number of ITE graduates has increased from almost 5000 in 1997 to more than 10,000 in 2011.

### Short-term Training Programme at ITE

Inevitably, there are some people who cannot complete primary education or secondary education or, as mentioned earlier, after completing secondary education, do not go on to ITE to pursue a vocational education. Nevertheless, ITE also offers six-month modules in Engineering, Info-Communications Technology, Business and Services for workers seeking to upgrade their skills or to pursue education at a later stage. Those who lack formal education qualifications are encouraged to attend these six-month modules to attain the necessary academic qualifications before taking on more formal ITE training programmes.

TABLE 48: TRAINING PLACES TAKEN UP AND COMPLETED BY WORKERS<sup>46</sup>, 2011

	Workers who attending the Training Modules	Workers who completed the Training Modules
Total	20,270	11,409
ITE Certificates	11,569	4,958
Others	4,718	4,526
Continuing Education (Secondary and Pre-University)	3,983	1,925

Source: Yearbook of Statistics, 2012, Department of Statistics, Singapore, pp.273

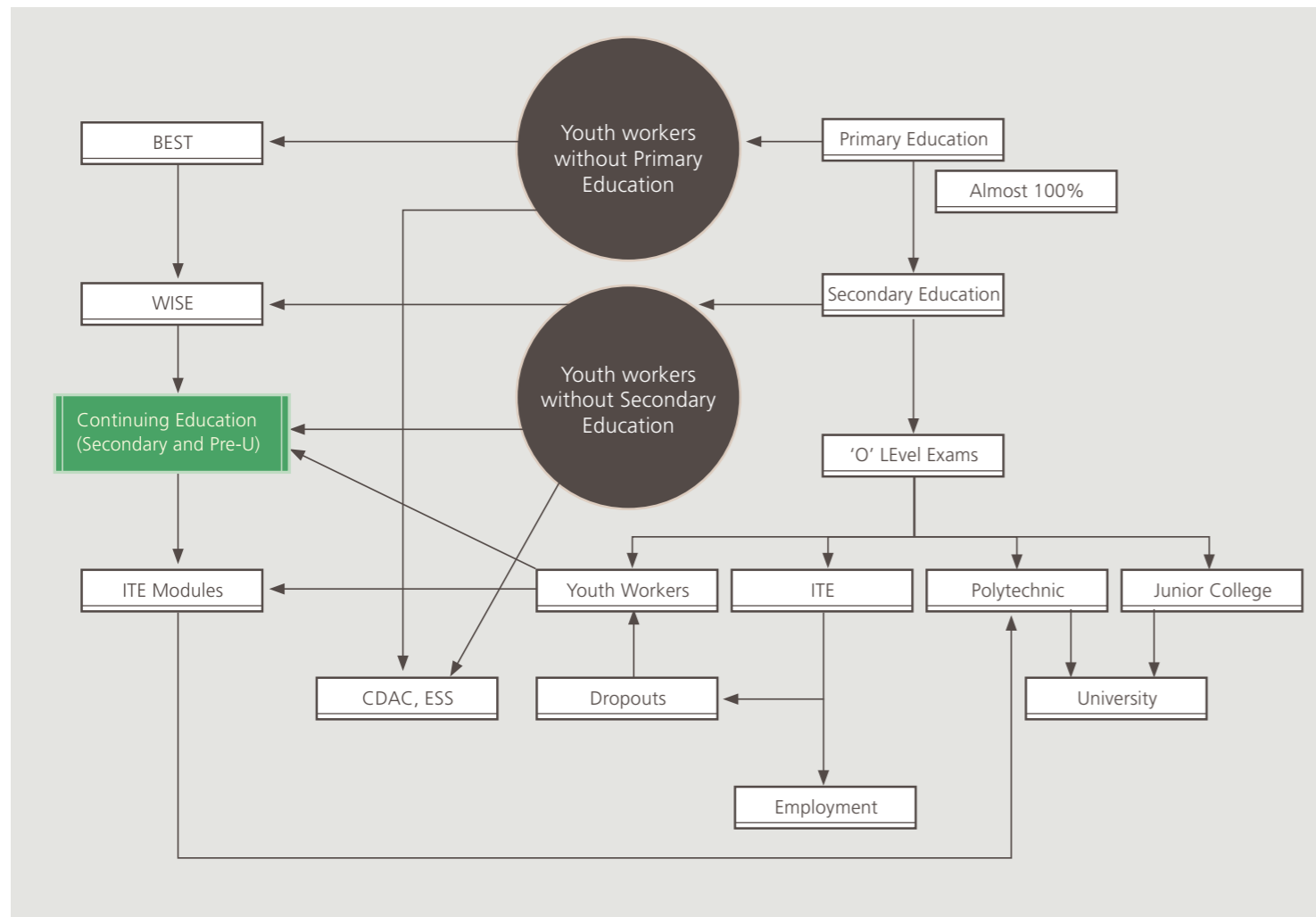
In any society, there will be students who are unable to complete primary education. These people will work as casual and low-wage workers. These youth workers are encouraged to attend BEST programmes which are highly subsidised by the government. BEST is the acronym for Basic Education for Skills Training. After they have completed the BEST programme successfully, they can proceed to the WISE (Worker Improvement through Secondary Education) programme, where they learn to improve their literacy and numeracy. Upon successfully completing the WISE programme, they can proceed to Continuing Education and, upon completion of which they can proceed to enrol in ITE modules.

Alternatively, some in these groups may enrol in training programmes of ESS which refers to the Employability Skills System which is operated by the government. ESS is recognised by both the government and 300 companies in Singapore as an alternative to formal academic qualifications such as the O-Levels. ESS offers training in Workplace Literacy Series, Workplace Numeracy Series and Workplace Skills Series. If they can follow this path persistently (see Chart 1), they can be gainfully employed.

<sup>46</sup> Most of the training modules are of 6 months' duration. A worker may attend two modules a year.

Youth who do not complete secondary education are encouraged to enrol in WISE and follow the same path (see Figure 2 below). Of this group, those who took their O-Levels and decided to work are encouraged to enrol in ITE modules. Many ITE graduates work fulltime and study in the evening for a degree course in the private colleges of Singapore. More enterprising ITE graduates proceed to polytechnics for a diploma and those who do well can apply to local state universities for admission into a degree course.

FIGURE 8: SINGAPORE’S SYSTEM OF PREVENTING YOUTH FROM BEING SUBSISTENCE WAGE WORKERS



Extracted from Chew and Chew (2009:12)

The Singaporean case study elucidates the importance of keeping youth in formal education by establishing and investing in 'educational safeguards' for even the least academically inclined. The ease and accessibility of vocational institutions like the ITE as well as other adult-oriented learning and re-learning courses open up a web of opportunities for youths and adults to gain better employment opportunities, thereby enhancing the well-being of their lives and social mobility.

This is also possible due to the tight institutional cooperation between the Ministry of Manpower, Ministry of Education and with trade unions, supported by strong statistical data to ensure timely labour market information and indicators.

#### 4.4 Chapter Conclusions

"The best labour market entry path for young people remains a good basic education, vocational training or higher education and initial work experience. Policies and national programmes that provide incentives to enterprises to hire young people, promote youth entrepreneurship, and facilitate access to finance and to other targeted active labour market measures can also help countries to improve decent work prospects of its young population." (UN ECOSOC Fact Sheet: Youth Employment, 2011:3)

While not all ASEAN Member States are similar or equal in their legislative framework to protect exploitation of child labour, AMS have widely ratified the two fundamental conventions pertaining to the rights of children. Certainly, more can be done in the areas of extending specific protection to young girls, specifying the hours of work and rest of children and youth below 18 years old, ensuring employers/workplaces keep employment registrar and ensuring equal work for equal pay to eliminate exploitation of child labour or young workers. More importantly, the effectiveness of law implementation and its enforcement also poses a challenge for ASEAN member states.

While labour laws serve to provide basic protection for vulnerable children and young persons, active labour market policies and concerted programmes targeted at ensuring education and vocational training are also critically significant in addressing these issues. An institutional setup by a tight coordination among related government agencies for a smooth education to work transition, and social services for job matching are critical components to encourage children and youth to stay in school and for youth already at work to continue in upgrading their skills.



On a macro level, other aspects that would support efforts in elimination of child labour and providing decent work for youth could include:

- Providing support to poor families with children in exchange for the commitment that all children are enrolled in school and have satisfactory attendance and academic performance.
- Supporting the provision of after-school and other public activities for children related to culture, leisure, and sports.
- Ensuring that education and training is based on appropriate labour market demand through the dissemination of labour market information.
- Ensuring that employers are aware of the talent pool available to them.

Clearly, all these require not only sound policies but also financial commitments to support such initiatives. The sustainability of CHES-Cambodia and EAST-Indonesia would need to be addressed when funding ceases and where local officials are to be continued to be equipped with the expertise to continue the educational and vocational training programmes. In the case of Singapore, vocational training like the ITE is already part of the mainstream educational landscape overseen by the Ministry of Education.

Thus, education and employment opportunities are two key components in preventing children from entering work too early while better positioning young persons in their transition to the world of work.

For ASEAN Member Countries in the lower levels of per-capita income, strengthening the quality of basic education and improving the access to and completion of primary and secondary education should be the priority focus in education and training policies, including particular emphasis on targeting vulnerable children and youth who have been left out of the school system. For countries with a stronger achievement in basic education, improving the quality of and participation in secondary education as well as technical and vocational education and training (TVET) are key actions. It is at this point in the education system that young people acquire a higher level of skills, training and knowledge required to meet the increasing demands of labour markets that are shifting towards more skilled manufacturing and services-based employment.



# Social Dialogue and Industrial Relations - Building a Regime of Good Practices in the ASEAN

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## 5.1 INTRODUCTION: SOCIAL DIALOGUE IN THE CONTEXT OF ASEAN INTEGRATION

John Dunlop, in his classic book *Industrial Relations* (1958), described rule-making by the tripartite actors – government, employers and workers/unions – as the core of modern and democratic industrial relations. These rules include work norms, employment contracts, labour laws and industrial policies which govern employer-employee relations in an economy and which provide stability in society. At the heart of modern and democratic industrial relations rule-making processes are the active interaction or social dialogue among the tripartite actors on how the rules shall be formulated and implemented.

Social dialogue has acquired greater importance in recent years given the increasing complexity of developing social and labour rules and standards under economic globalisation. As the International Labour Organisation's (ILO) Declaration on "Social Justice for a Fair Globalisation" put it: "in a world of growing interdependence of production... social dialogue and the practice of tripartism between governments and the representative organisations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards"<sup>47</sup>.

In this context, the ASEAN Labour Ministers' Meeting (ALMM) adopted a historic "ASEAN Guidelines on Good Industrial Relations Practices" in May 2010 in Hanoi/Viet Nam, which seeks to promote, among others, "**tripartite partnership and social dialogue**" as a means of fostering "economic competitiveness" and "harmonious industrial relations" in a rapidly-integrating ASEAN region. According to their guidelines, this programme of tripartite partnership and social dialogue is backed by the development of a "**sound legal framework**", which recognises the basic rights of both, employers and workers, particularly their basic rights to freely organise and bargain collectively, with the government performing the needed facilitating and balancing role.

This paper is divided into two parts. The first part presents a brief comparative analysis of the legal framework promoting social dialogue in the different countries of the Association of Southeast Asian Nations (ASEAN), citing in particular the ILO Conventions on Freedom of Association and Protection of the Right to Organise Convention (C87), on the Right to Organise and Collective Bargaining Convention (C98) and on the Tripartite Consultation (C144) as well as their translation into national laws. The second part is a documentation of illustrative case studies on how social dialogue contributes to industrial peace, productivity and competitiveness.

### 5.1.1 Definition, General Forms and Purposes of Social Dialogue

In general, social dialogue is a form of communication among social partners to advice on industrial relations and find solutions for disputes or problems on work related issues. The International Labour Organisation (ILO) defines social dialogue as follows:

*"...to include all types of negotiation, consultation, or simply exchange of information between, or among, representatives of governments, employers, and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers' organisations), with or without indirect government involvement. Concertation can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional, or an enterprise level. It can be inter-professional, sectoral or a combination of these. The main goal of social dialogue is to promote consensus building and democratic involvement among the main stakeholders in the world of work."<sup>48</sup>*

From the foregoing ILO definition, several observations can be made:

1. Social dialogue recognises the rights of both, workers and employers to freely form associations and to engage with one another on various issues of mutual interest through negotiation, consultation and information sharing.
2. Social dialogue can be **bipartite** (between workers and employers) or **tripartite** (involving workers, employers and government representatives). In a tripartite setting, the role of the government can vary, from a dialogue facilitator to an official and active dialogue participant. The dialogue process can also include other parties, for example, civic or professional organisations, which makes the dialogue process **multi-partite** in character.
3. The dialogue process can take place at different levels – enterprise, company or plant level, industry or local level, and national or even regional/global level.
4. Social dialogue is problem-solving through concerted and cooperative interaction and exchange of views and ideas by the social partners. At the shop floor, social dialogue helps provide labour management solutions on practical problems like declining productivity and competitiveness of a company. At a societal level, it promotes social cohesion, sound industrial relations and rule of law through bipartite and/or tripartite agreement in the observance and enforcement of international and national labour standards for the good of all stakeholders. In short, social dialogue seeks to promote mutual understanding and good relations between and among government agencies and employers' and workers' organisations with a view to develop the economy as a whole through improving the welfare and well-being of all parties.

### 5.1.2 COMMON ISSUES TACKLED IN THE SOCIAL DIALOGUE PROCESS

The subject matters tackled in the social dialogue process vary, from country to country. In general, however, social dialogue encourages joint consideration by the bipartite and tripartite social partners of issues of mutual concern with a view to arriving, to the fullest possible extent, to some consensus or agreement on how to tackle such issues. More specifically, competent public authorities, usually the

<sup>47</sup> International Labour Organization, 2008. ILO Declaration on Social Justice for a Fair Globalization, p. 7

<sup>48</sup> Cited in Kaufman, 2004. Original definition can be accessed here: <http://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm> (last time accessed on 18.03.2013)

labour and other relevant ministries, seek the views, advice and assistance of employers and workers' organisations with respect to matters such as:

- The preparation and implementation of laws and regulations affecting their interests;
- The establishment and functioning of national bodies, such as those responsible for the organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and
- The elaboration and implementation of plans of economic and social development.

Issues that may be taken up in the social dialogue process may cover the different aspects of the labour market system and may include any or all of the following:

- o Employment and growth strategies
- o Job displacements during crisis periods
- o Inflation and wage adjustments
- o Education and vocational training
- o Productivity and economic competitiveness
- o Migration
- o Recruitment and placement of workers
- o Taxation
- o Social equity policy
- o Social welfare and protection
- o Social and economic reforms
- o Minimum wage fixing
- o Labour legislations or amendments
- o Working conditions
- o Discrimination at the work place
- o Dispute settlement
- o Occupational safety and health
- o Varied labour standards and labour relations concerns

The social dialogue process naturally varies from country to country given the great diversity of issues preoccupying the social partners and the different social, economic, political and cultural circumstances in each dialogue setting. There is no one-size-fits-all formula.

However, the ILO encourages each country to develop and nurture an environment supportive of meaningful and constructive social dialogue, that is, an environment that enables the IR actors to hold social dialogue in a frank, free and substantial manner. In a progressive and democratic industrial relations system, this environment requires laws promoting social dialogue such as laws on tripartism, collective bargaining and freedom of association. Thus, the ILO Department on Social Dialogue is quite explicit on the importance of the following enabling conditions:

- strong, independent workers' and employers' organisations with the technical capacity and the

- access to relevant information to participate in social dialogue
- political will and commitment to engage in social dialogue on behalf of all the parties
- respect for the fundamental rights of freedom of association and collective bargaining
- appropriate institutional support

## 5.2 LEGAL FRAMEWORK FOR SOCIAL DIALOGUE IN THE ASEAN: A REGIONAL SNAPSHOT

### 5.2.1 ASEAN countries: Developing Sound Legal Framework Despite Unequal Regional Conditions and Development

As per the ALMM decision in 2010, the ASEAN and the individual ASEAN Member Countries are committed to the promotion of good industrial relations practices and the development of sound legal framework in support of tripartism and social dialogue.

The reality, however, is that this collective commitment to social dialogue cannot be translated automatically into a uniform legal system. In the first place, there is a great deal of disparity across the region in the development of the industrial relations system, including the legal system related to freedom of association, collective bargaining and tripartism.

The ten ASEAN countries have different historical and cultural traditions. Thailand's membership in the ILO dates back to 1919, the founding year of the ILO. In that year, Indonesia, Malaysia, Philippines and Singapore could not join the ILO yet because they were still colonies of Western powers. It should not surprise any labour scholar that the labour law system in the Philippines is greatly influenced by the United States while those of Malaysia and Singapore, by Great Britain (Sharma, 1985).

As for Cambodia, Lao PDR, Myanmar and Viet Nam, their membership to the ILO was interrupted in certain years (even decades) because of difficult internal conflicts at home. As to the rich island state of Brunei Darussalam, it joined the ILO only in 2007.

Another major explanation for the disparity is the unequal economic and industrial conditions and development across the region. Lao PDR and Myanmar are still primarily agrarian, while Brunei Darussalam, Malaysia and Singapore are often hailed as "newly-industrialised countries". The others are situated in between these two poles in the industrialisation process. The industrial relations system, largely a sub-system of the modern industrial economy, is underdeveloped in some countries and fairly advanced in others.

### 5.2.2 ASEAN RATIFICATION OF ILO CONVENTIONS ON FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING AND TRIPARTISM

The disparity in the legal framework is reflected in the ratification by individual ASEAN countries of relevant ILO Conventions dealing with freedom of association, representation, collective bargaining and tripartism. These Conventions are summarized in Table 1:



TABLE 49: ILO CONVENTIONS ON FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING AND TRIPARTISM

No.	Name of ILO Convention	Salient provisions
1.	ILO Convention No. 87 ("Freedom of Association and the Right to Organize" [1948])	<p><b>Article 2</b> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.</p> <p><b>Article 3</b> 1. Workers and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.</p> <p><b>Article 4</b> Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.</p> <p><b>Article 5</b> Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.</p> <p><b>Article 11</b> Each Member of the ILO for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.</p>
2.	ILO Convention No. 135 ("Workers' Representatives Convention [1971]")	<p><b>Article 3</b> For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are: a. Trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or b. Elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.</p> <p><b>Article 4</b> National laws and regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.</p> <p><b>Article 5</b> Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.</p>
3.	ILO Convention No. 98 ("Right to Organise and Collective Bargaining" [1949])	<p><b>Article 1</b> 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. 2. Such protection shall apply more particularly in respect of acts calculated to: a. Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; b. Cause the dismissal of or otherwise prejudice a worker by reason of union membership or</p>

4. ILO Convention No. 144 ("Tripartite Consultation on International Labour Standards" [1976]).  
The purpose of Convention No. 144 is to promote tripartism and social dialogue at the national level by ensuring the involvement of employers' and workers' organisations at each stage of ILO's standards-related activities. Accordingly, the Social Justice Declaration identified Convention No. 144 as one of the most significant standards from the viewpoint of governance.

because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

**Article 2**

- Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
- In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

**Article 3**

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

**Article 4**

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

**Article 3**

- The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.
- Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

**Article 4**

- The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.
- Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

**Article 5**

- The purpose of the procedures provided for in this Convention shall be consultations on:
  - Government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
  - The proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the ILO;
  - The re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
  - Questions arising out of reports to be made to the ILO under Article 22 of the Constitution of the ILO;
  - Proposals for the denunciation of ratified Conventions.

2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

**Article 6**

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

A REVIEW OF THE ASEAN'S ILO RATIFICATION STATUS (TABLE 50) SHOWS THE FOLLOWING:

TABLE 50  
RATIFICATION STATUS OF ASEAN ON ILO CONVENTIONS 87, 98 AND 144

	C87	C98	C144
Brunei Darussalam			
Cambodia	√	√	
Indonesia	√	√	√
Lao PDR			√
Malaysia	√	√	
Myanmar	√		
Philippines	√	√	√
Singapore		√	√
Thailand			
Viet Nam			√

The three ILO Conventions C87, C98 and C144 are considered as “core” conventions. The core conventions, as enumerated in the “*Fundamental Principles and Rights at Work*”, adopted by the International Labour Conference (ILC) in 1998, are as follows:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

In the 1998 International Labour Conference, the ILO identified the above eight conventions as “fundamental”, for they cover the basic principles and rights at work: 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 with respect to employment and occupation. Their observance is considered basic in the promotion of what the ILO calls as “decent work”, defined as work obtained under conditions of freedom, equality, security and dignity.

However, in relation to social dialogue, the most relevant core conventions are Conventions C87, C98 and C144. As shown in Table 2, Indonesia and the Philippines have ratified all three Conventions; Cambodia has ratified Conventions C87 and C98; Malaysia and Singapore, Conventions C98 and C144; Lao PDR and Viet Nam, Convention C144, and Myanmar, Convention C87.

### 5.2.3 DEVELOPMENT OF LEGAL FRAMEWORK AND LAWS SUPPORTIVE OF SOCIAL DIALOGUE

Under the ILO system, non-ratification does not mean member countries do not have to enact enabling national laws for the non-ratified Conventions. In fact, they are all encouraged to do so. Sometimes, national labour laws even exceed the provisions of the conventions in terms of substance and liberality.

A country usually has a hierarchy of labour laws, starting with the constitution of the country. The constitution usually gives a sweeping or general reference to certain industrial relations principles and/or labour rights. In turn, these principles and rights are translated into specific laws. The enforcement and observance of these laws are then supported by implementing rules or administrative orders issued by concerned authorities. If there are conflicts or disagreements about interpretation of the laws, the court system, labour tribunal and/or labour ministry decides on the conflicts or issue interpretative guidelines.

In the ASEAN as a whole, all countries recognise the right of workers to form unions as a basic right even if only four countries have ratified ILO Convention No 87 (see Table 3). This is reflected in their labour laws or labour codes, which, as pointed out, are at different levels of development. Also, it is difficult to compile all the implementing rules, administrative orders and legal decisions, which, collectively, govern IR practices in each country or inform the IR actors on how certain labour laws shall be implemented or observed.

The following (table 51) is a brief comparative snapshot of the development of the industrial relations legal system:

TABLE 51: OVERVIEW OF THE LABOUR LAW SYSTEM, WITH SPECIAL REFERENCE TO RECOGNITION OF TRADE UNIONISM IN ASEAN

Brunei Darussalam	Brunei Darussalam joined the ILO only in 2007.  The Laws of Brunei Darussalam recognises trade unions. Chapter 128 on the Trade Unions Act 1984 defines trade union as any combination, whether temporary or permanent, the principal purposes of which are under its constitution the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers. Trade unions are prohibited from carrying on business unless registered. Chapter 129 on Trade Disputes provides for a system of union registration and has provision on peaceful picketing.
Cambodia	Cambodia joined the ILO in 1969. Since the 1990s, it has been building up new labour institutions because its political and economic system was severely disrupted by the long period of internal conflicts in the earlier decades. Cambodia has ratified a total of 13 Conventions, including C87 and C98.  Article 36 of the Constitution declares that it is the right of all Khmer citizens to form union and association and the “organisation and conduct of trade unions” are subject to legal rules. Articles 267 up to 299 clarify the rules of union registration, guarantee “trade union freedom”, and outline the role of shop stewards in elevating workers’ issues and concerns.

**Cambodia** Like in many Asian countries, there is a multiplicity of unions in some industries and firms in Cambodia. In November 2001, Prakas No. 305 was issued to clarify which is the “most representative” union that has the right to sit down in the bargaining table.

**Indonesia** Indonesia joined the ILO in 1950. After the change in government in 1997, dramatic changes have taken place on the IR front, all in the name of Reformasi. In one swift move in 1998, Indonesia ratified all the ILO core conventions, including C87 and C98. It ratified C144 in 2002. It has a total of 18 Conventions ratified so far.

Indonesia Act number 13 concerning Manpower 2003 defines **trade union/ labour union** as an organisation that is formed [established] from, by and for workers/labourers either within an enterprise or outside of an enterprise, which is free, open, independent, democratic, and responsible in order to strive for, defend and protect the rights and interests of the worker/ labourer and increase the welfare of the worker/ labourer and their families.

Trade Union/Labour Union Act 21/2000, complementing Act No. 13 of 2003, guarantees the right of workers to form a union (with at least ten members).

**Lao PDR** The Lao PDR, a land-locked agrarian country, joined the ILO in 1964. It has a total of nine Conventions ratified. ILO C144 was ratified in 2010. Lao PDR was also consumed by internal conflicts for a long time. In 2006, it issued an “Amended Labour Law”, which recognises trade unions; in 2007, a separate “Law on Lao Trade Union Federation” was released. The Amended Labour Law gives special importance to skills upgrading, labour market development and working conditions.

The Trade Union Law defines the status, rights and obligations, as well as the system, structure and financial management of trade unions at all levels in Lao P.D.R. Article 11 of the law recognises the right of the union to sign collective employment contracts. Part IX of the law deals with the settlement of disputes.

The Labour Law of 2006 states that trade unions shall be established in each labour unit. Any labour unit in which trade union is not established yet shall have workers’ representative.

**Malaysia** Malaysia joined the ILO in 1957. It has a total of 16 Conventions ratified, including C98 and C144. The IR legal framework of Malaysia is anchored on three laws - the Industrial Relations Act 1967 (IRA), the Trade Union Act 1959, and the Employment Act 1955/Labour Ordinance Sarawak/Sabah. All laws recognise unionism and collective bargaining and seek to promote industrial harmony.

Laws of Malaysia, Industrial Relations Act 177 (last amended in 2006) defines trade union as any registered association or combination of workmen or employers, being workmen whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the

case may be, or employers employing workmen in Peninsular Malaysia, Sabah or Sarawak, as the case may be. The Trade Unions Act of 1959 as Amended provides for the creation of the office of “Trade Union Registrar”. The Registrar accredits the registration of trade unions based on established rules. Article 10 of Malaysia’s Constitution provides for the right of workers to form associations subject to some limitations provided by law.

**Myanmar** Myanmar joined the ILO in 1948. It has a fairly large number of Conventions ratified, including C87, which was ratified as early as 1955. Myanmar had difficult relations with the ILO in the past. However, there are positive signs of improvement in the IR system and labour law system. In 2011, Myanmar issued the “Labour Organisation Law” (Pyidaungsu Hluttaw Law 7/2011), which repealed the old Trade Union Act of 1926.

The new law recognises the workers’ right to form unions and conclude agreements with their employers. The law also provides for conciliation services for disputes arising between the parties.

**Philippines** The Philippines joined the ILO in 1948 and has the largest number of ILO Conventions ratified, 35 in all. These include C87, C98 and C144. The country has a fairly developed labour law system, partly due to the influence of the American colonizers. In 1974, the various labour laws were compiled into a “Labour Code”, which has remained generally intact despite a number of amendments and which has served as the general guide of the tripartite IR actors on employer-employee relations. The Code has provisions on trade unionism, collective bargaining and tripartism.

The Philippine Labour Code 1974, proclaims that the State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work, which are elaborated in the different Books (Books 3 and 4 on labour standards and Books 5 and 6 on labour relations). Article 125 ensures the freedom of workers to bargain with their respective employers in terms of wages and conditions of work. Collective bargaining is reinforced by legal provisions prohibiting unfair labour practices, such as refusal of employers to bargain in good faith and employer’s intervention in internal union matters.

In 1987, the new Constitution reaffirmed the rights of both workers and employers. Section 3, Article XIII of the Constitution guarantees “the rights of all workers to self-organisation, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law.” It also states that industrial relations is “a shared responsibility” of the parties.

**Singapore** Singapore joined the ILO in 1965, following its secession from the original Federation of Malaya. The island state has a remarkable number of ILO Conventions ratified, a total of 27, including C98 and C144. Like Malaysia, some of the Singapore laws are partly influenced by the British colonial legacy. But most have undergone revisions and amendments through the years. Thus, the Trade Union Ordinance of 1940 had been amended several times, with the latest made in 2010 through Act No. 15. The Trade



Singapore Union Act provides for a system of registration of trade unions managed by the office of the Trade Union Registrar. A separate Employment Act defines minimum standards for employment such as payment of wages, hours of work, overtime compensation and work leaves. Another law, the Industrial Relations Act of 1968 provides rules governing industrial relations, from union formation to collective bargaining and dispute settlement.

The Industrial Act of 1968 recognises the right of unions to represent workers and negotiate with their employers. Under this Act, trade unions of employees enter collective bargaining only if they are given recognition by an employer in the prescribed manner. Where an employer raises the objection that a trade union should not represent certain employees or a class of employees, the employer and the trade union shall make a joint application to a Court for the determination of the issue. Section 1 of Singapore's Constitution states that all citizens have the right to form associations.

Thailand Thailand has the distinction of being a member of ILO since 1919, the date of ILO's formation. However, it has only a total of 15 Conventions ratified so far. The original Labour Act of 1956 sought to promote cooperation between employers and employees/unions. The law provided procedures for the filing, negotiation, conciliation and settlement of labour demands. In 1975, the different rules dealing with employer-employee relations were consolidated under the Labour Relations Act. There are two supplementary labour laws. The Labour Protection Act, B.E. 2541 (1998) provides for minimum employment standards in relation to wages, hours of work, etc. The other law is the Act on the Establishment and Procedures for the Labour Court, B.E. 2523 (1979), which spells out the nature of the work of the Labour Court in mediating and deciding labour disputes.

The 2007 Constitution of Thailand recognises the right of its citizens to form unions, cooperatives and other organisations not contrary to law. The Labour Relations Act recognises and protects the rights of both employers and employees to form trade unions or associations. Chapter VII states that labour union shall have objectives in acquiring and protecting interests relating to working conditions and promoting good understanding between employer and employees and among employees themselves.

Viet Nam Viet Nam joined the ILO in 1950. However, the long war in the 1970s and 1980s somehow disrupted its national IR system. Viet Nam has a total of 19 ILO Conventions ratified, including C144

It adopted a "Labour Code" in 1995 as part of its "reform" programme after the introduction of market orientation in the economy. The Code has been the subject of several amendments and tripartite discussions. The Code covers the whole gamut of industrial relations, from the formation and registration of unions to collective bargaining and dispute settlement.

In 2010, Viet Nam further strengthened the right of workers and other citizens to associate freely by updating the Law on the Right to Form Associations. Article 5.3 indicates that the employees shall have the right to form, join union activities, participate in dialogue with employers, participate in management in accordance with internal regulations of employers and other related laws. Article 5.5 adds that the employees shall have the responsibilities to participate in the dialogue with employers upon request.

## 5.2.4 PROMOTION OF TRIPARTITE AND BIPARTITE SOCIAL DIALOGUE IN THE ASEAN

Tripartite and bipartite social dialogue is practised ASEAN-wide, with some countries like the ASEAN-5 (Indonesia, Malaysia, Philippines, Singapore and Thailand) and the rapidly-industrialising Viet Nam resorting to it heavily during crisis periods, as what happened in 2009 when these countries convened their respective tripartite meetings to discuss the adverse effects on employment of the global financial and economic crisis. A number of companies and trade unions affected by the crisis also held their own bipartite consultations. With the rights of both employers and workers to form associations and unions firmly established in the legal system (as summarised above), the conduct of social dialogue is likely to be deepened further as the ASEAN continues in its drive towards stronger and tighter regional economic integration.

The conduct of tripartite social dialogue is guided by ILO C144 and the laws on tripartite consultation and concertation in the different ASEAN countries.

### *Key provisions of ILO Convention 144 (C144)*

ILO C144 contains the following relevant provisions on representation and mechanics of tripartism in the individual ILO member countries:

"Article 3 --

3. The representatives of employers and workers for the purposes of the procedures provided for in this convention shall be freely chosen by their representative organisations, where such organisations exist.
4. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

"Article 4 --

3. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this convention.
4. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

"Article 5 --

3. The purpose of the procedures provided for in this convention shall be consultations on:
  - f. Government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the conference;
  - g. The proposals to be made to the competent authority or authorities in connection with the submission of conventions and recommendations pursuant to article 19 of the constitution of the ILO;
  - h. The re-examination at appropriate intervals of unratified conventions and of recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;



- i. Questions arising out of reports to be made to the ILO under Article 22 of the constitution of the ILO;
  - j. Proposals for the enunciation of ratified conventions.
4. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year. "Article 6 ...When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this convention."

### Promotion of tripartism and bipartism in the ASEAN

The significance of the foregoing provisions in terms of the industrial relations system and the economy as a whole cannot be underestimated since the subject matter being proposed in ILO C144 is vast – the various ILO conventions and recommendations, which set global labour standards, for example, on hours of work, wage fixing, collective bargaining, health and safety, social protection and varied social and labour issues in the work place and in society as a whole. To repeat, non-ratification of ILO Conventions does not mean non-compliance by member countries with the standards set by these Conventions. All ILO member countries are duty bound to develop appropriate legal mechanisms, including laws promoting tripartism, so that they can be compliant with these global standards.

All countries in the ASEAN have been promoting not only tripartism in labour policy formulation and dispute settlement but also bipartism in securing industrial peace and productivity at the work place. Table 4 is a summary of ASEAN laws on tripartism and bipartism.

TABLE 52: LABOUR LAWS PROMOTING TRIPARTISM AND BIPARTISM IN ASEAN

Brunei Darussalam	Based on the Laws of Brunei Darussalam, Chapter 93 on Labour, consultation can take place between the Labour Commission with any employers' and workers' organisations, representative of the interests concerned regarding contract duration.
Cambodia	Tripartism is recognised in the area of dispute settlement as well as in labour policy formulation. A tripartite Arbitration Council, with a tripartite composition, helps settle disputes unresolved at the enterprise level. On the other hand, a tripartite Labour Advisory Committee (LAC) makes policy recommendations on minimum wages, collective bargaining, and other industrial relations issues.
Indonesia	Tripartism is fully recognised, with tripartite councils or bodies formed at the city, district, provincial and national levels. However, bipartism is also well developed in Indonesia, which some observers credit for the relatively low number of legal disputes despite the huge population and the multiplicity of unions after the 1997 "krisis moneter". Under the old Act Number 22 of 1957, every problem and dispute should be settled peacefully through bipartite negotiations, and resolutions reached in such negotiations could be formulated as mutual agreements. Employers or trade unions that failed to resolve their disputes in a bipartite manner could seek the assistance of a government mediator to help them reach a compromise agreement, or they could appeal

to arbitration. If the employer and the trade union did not agree with the recommended solutions, they could present a dispute for settlement by the Regional Committee for the Industrial Relations Disputes Settlement and/or the Central Committee for Industrial Disputes Settlement. Bipartism and Tripartism have been reaffirmed as Article 106 and Article 109, respectively, of the new Act No. 13 (2003) on Manpower. Under Article 106, companies with at least 50 employees should form a "bipartite cooperation council"; under Article 107, "tripartite cooperation councils" shall be constituted at sectoral and area levels for labour policy formulation purposes.

Lao PDR  
Lao PDR has established a national tripartite committee. Both the Amended Labour Law of 2006 and the Law on Lao Trade Union Federation of 2007 emphasise the importance of bipartite and tripartite resolution of disputes. Disputes unresolved through employer-employee consultation are elevated to the Labour Administration Agency (LAA). If the disputes are not settled by the LAA, then they are submitted to a tripartite Labour Dispute Resolution Committee and people's court for interest disputes.

Malaysia  
The country has programmes for workplace cooperation and tripartite consultation and dialogue. A tripartite Code of Conduct for Industrial Harmony was adopted way back in 1975. In short, both bipartism (at the plant level) and tripartism are being promoted. Malaysia has been conducting tripartite social dialogue and consultations at the industry and national levels, especially during economic downturns.

Philippines  
The National Conciliation and Mediation Board (NCMB) and the Bureau of Labour Relations (BLR) are the country's lead institutions in the promotion of bipartism and tripartism at the plant, provincial, regional and national levels. A national Tripartite Industrial Peace Council (TIPC) is convened from time to time to discuss key labour issues and/or labour policies. The TIPC has produced a number of "Social Accords" on different labour and tripartite concerns such as business and job survival in crisis situations

Singapore  
On wage disputes, the court works closely with another tripartite body, the Singapore National Wages Council. Singapore has a well-developed system and tradition of tripartite social dialogue, with the government convening tripartite meetings or consultations on varied issues from time to time, from which one of the latest is tripartite discussion on "responsible outsourcing practices".

Thailand  
The Labour Relations Act provides for a procedure for dispute settlement, and encourages bipartism at the plant or company level. The Labour Relations Act of 1975 encourages the formation of a consultative employees' committee to deal with working conditions, occupational safety and health, and environment.

## Viet Nam

The Viet Nam Labour Code (2012), Article 4, states that the state's policy on labour is to provide guidelines for employees and employers in collective dialogue and negotiation, contribute to develop harmonious, stable and progressive industrial relations. Article 6.5 indicates the responsibility of the employers to conduct dialogues and strictly implement democratic regulations in accordance with the laws. Article 7 on labour relationship says that the labour relationship between employees or a labour collective with an employer is established through dialogue, negotiation and agreement on the principles of voluntary commitment, fairness, co-operation and mutual respect of legal rights and benefits. It states that trade unions and the employers' representative body shall work with each other and join with the State to develop harmonised and stable labour relations, protect the legitimate rights and interests of employees and supervise the implementation of the laws on labour.

Viet Nam Law on Trade unions, Article 3, states that when there are divergences in views and ideas among the State organs, the heads of units, organisations and the trade unions, they should hold talk, dialogue and consultation in order to find out proper measures for settlement of their differences in keeping with the law.

*Promotion of collective bargaining*

Related to the laws promoting bipartite and tripartite social dialogue are the laws promoting the system of collective bargaining, which should be seen as an instrument not only for dispute settlement (bipartite) but also as a means for face-to-face consultation at the plant level on various work issues. Table 5 is a summary of key features of collective bargaining laws in the ASEAN.

TABLE 53: KEY FEATURES OF COLLECTIVE AGREEMENT/BARGAINING LAWS IN ASEAN

ILO <sup>49</sup>	The collective agreement should be defined, for the purposes of statistics, as a written agreement concluded between one or more employers or an employers' organisation on the one hand, and one or more workers' organisations of any kind on the other, with a view to determining the conditions of individual employment and, in certain cases, to the regulation of other questions relative to employment. C154, Article 2 defines collective bargaining as all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: a. determining working conditions and terms of employment; and/or b. regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a workers' organisation or workers' organisations.
Brunei Darussalam	Brunei Darussalam Employment Order 2009 defines collective agreement as an agreement relating the regulation of the relations of employers and employees.
Cambodia	Cambodia Labour Law 1997 defines collective agreement as a written agreement, the purpose of which is to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organisations. Chapter V of Labour Law focuses on "Collective Labour Agreements". The chapter defines a collective agreement (CA) as a contract determining "the working and employment conditions of workers" and regulating "relations between employers and workers". The CA may either be for a "definite" or "indefinite" period but not exceeding three years.
Indonesia	Indonesia Act number 13 concerning Manpower 2003 defines collective work agreement as an agreement resulting from negotiations between a trade/ labour union or several trade/ labour unions registered at a government agency responsible for manpower affairs and an entrepreneur or several entrepreneurs or an association of entrepreneurs. The government shall specify work requirements, rights and obligations of both sides. Old labour laws on collective bargaining have been revised or updated. The institutions of trade unionism and collective bargaining have been strengthened. The new Act No. 13 on Manpower provides for the system of collective bargaining. In enterprises with several unions, the union with more than 50 per cent of the workers is recognised as the bargaining agent.

<sup>49</sup> Resolution concerning statistics of collective agreements, adopted by the Third International Conference of Labour Statisticians (October 1926, page 1.

Malaysia  
Laws of Malaysia, Industrial Relations Act 177, 2006 defines collective agreement as an agreement concluded between an employer and a trade union on the terms and conditions of employment. The Industrial Relations Act of 1967 declares that the objective of the law is “to achieve social justice on the basis of collective bargaining, conciliation and arbitration”. The legal provisions on how to operationalise collective bargaining are spelled out in the IRA, for example, timelines for the commencement of bargaining and courses of action for the parties should there be no bargaining such as seeking conciliation and arbitration assistance (from the Industrial Court). The issues covered by the CBA are 1) terms of employment such as wages, hours of work, and fringe benefits. 2) conditions of work such as physical conditions under which a workman works, including matters of his safety and physical comfort, and 3) relationships between the parties on matters such as discipline, lay-offs and retrenchment. Section 13(3) of the IRA states that the trade union cannot raise demand concerning the recruitment, transfer or promotion of any workman, his retrenchment by reason of redundancy or reorganisation, his dismissal and reinstatement and assignment or allocation of his duties and tasks. Malaysia has an Industrial Court, which settles unresolved disputes and issues awards through arbitration.

Myanmar  
Myanmar Settlement of Labour Dispute law 2012 defines collective agreement as the bilateral written agreement concluded relating to the workplace and employment conditions of workers including terms and conditions relating to the relations between employers and workers as well as among their respective organisations, recognition of the legal entity of labour organisations and guarantees for protecting workers against social risk. It also defines collective bargaining as the process carried out to enable negotiation and conclusion of collective agreement by employer or employer organisations and labour organisations for the determination on conditions of employment and the terms and conditions, their labour relations or the measures for the prevention and settlement of disputes. Chapter II states that in any trade in which more than 30 workers are employed, the collective agreement shall be negotiated and concluded by the Workplace Coordinating Committee which consists of 2 representatives each from the employees and the employers. Where there is less than 30 employees and there is grievance towards the employer, the employer shall negotiate, coordinate and settle with the workers or with their representatives within 5 days. Chapter III, IV & V of the Settlement of Labour Dispute Law (2012) provides clauses regarding the formation of Conciliation Body, Dispute Settlement Arbitration Body, Dispute Settlement Arbitration Council to deal with disputes besides the collective bargaining process to ensure the outcomes of the collective agreements.

Philippines  
The Philippines has a well-developed body of laws guaranteeing and governing the system of collective bargaining, which are outlined under Book V of the Labour Code. The Code states that it is the duty of both parties to bargain in good faith, once all the legal requirements are fulfilled. Collective bargaining is a continuing process which includes contract administration that involves prevention, monitoring, and resolution of grievances arising from the application and interpretation of the collective bargaining agreement. It is undertaken in a period of three to five years

to bargain for the improvement of some terms and conditions of employment. The agreement is sealed in a contract called the collective bargaining agreement or CBA. A collective bargaining agreement, whose life is fixed by law to five (5) years insofar as representation is concerned, covers wages and benefits, hours of work, working conditions, union recognition and security, and management rights.

The grievance machinery is one of the chief tools of employee relations stated in a CBA. It enables workers and employers to discuss and resolve disputes that arise during the term of that CBA peacefully without resort to concerted or industrial action. The Department of Labour and Employment follows a programme for a more extensive use of the grievance machinery as a voluntary mode of settling disputes, for it believes that effective grievance machineries translate to fewer cases that go into the formal dispute settlement machineries. In a bargaining impasse or deadlock, the NCMB provides conciliation-mediation assistance. The Code also has Article 255, which provides for worker’s participation in policy and decision-making on issues directly affecting their “rights, benefits and welfare.” It added: “For this purpose, workers and employers may form labour-management councils”.

Singapore

The Singapore Industrial Relations Act (chapter 136) 2004 defines collective agreement as an agreement on the terms of employment, the transfer of employment or the conditions of work of any person. The Industrial Relations Act of 1968 spells out procedures for union recognition, collective bargaining, and dispute settlement. Article 18 states that recognised trade union or employer may invite the employer for negotiation by setting put proposals for a collective agreement in relation to any industrial matters except the following individual matters of promotion, transferring, employment, termination, dismissal, reinstatement, assignment, allocation of an employee by an employer. The Singapore’s Industrial Relations Act as Amended provides for the establishment of “Industrial Arbitration Courts”. The court, which is tripartite in composition, is also the arbiter for labour disputes. The minister, the commissioner and the registrar also play a role to ensure the process of collective bargaining to take place.

Thailand

Under Chapter I, Section 10 of Thailand Labour Relations Act, B.E. 2518 (1975), a workplace having twenty or more employees shall have the working condition agreement made in writing. The regulation related to work provided by the employer under the law on labour protection is also considered the working condition agreement. Section 11 states that the working condition agreement covers: employment or working conditions; working days and hours; wages; welfare; termination of employment; petition procedure for the employee; an amendment or renewal procedure of the working condition agreement. Section 12 indicates that the working condition agreement shall be applicable through the period of time as agreed upon by both parties but not more than 3 years.

The act of negotiating between the employers and the employees or among their representatives is allowed based on legal procedures. Chapter I, Section 20 of the Thai Labour Relations Act (1975) states that “No employer shall, when the working condition agreement comes into force, enter into a contract or hire services which

is contrary to, or inconsistent with, the working condition agreement with the employee, provided that such contract of hire services is more favourable to the employee.” Chapter IV of the Act states that a Labour Relations Committee is set up to give recommendation related to the demand, negotiation, and settlement of labour dispute. This Labour Relations Committee consists of a Chairperson, and not less than 8 and not more than 14 members. The members shall consist of representatives of the employer and the employee at least 3 of each party. The Minister shall have power to appoint the Chairperson and members.

Viet Nam

Viet Nam Labour Code defines collective bargaining as a negotiating process between representatives of a labour collective and the employer or representatives of the employer in order to:

- Work out new working conditions serving as a foundation to sign collective labour agreements;
- Settle the entanglements and difficulties in the exercise of rights and performance of obligation by each party in the labour relationships; and
- Settle collective labour disputes.

It also defines collective agreement as a written agreement signed by representatives of labour collective and representatives of the employer regarding labour conditions, which have been agreed by the parties through collective bargaining. The Viet Nam Law on Trade unions, Article 11, indicates that the primary trade unions representing the working people in the negotiations sign labour agreements with the managing directors of enterprises. The Viet Nam Labour Code, Article 65 cites the principles of collective bargaining as follows: equality, willingness, cooperation, disclosure, and transparency. Collective bargaining may be carried out on a regular or irregular manner and within an enterprise and an industry. Article 67 indicates the collective bargaining representatives for the labour collective within the enterprise shall be the executive body of the grassroots trade union or upper trade unions upon request of labour executive where the trade union has not been established within an industry. It also indicates the representative for the employers to be the employers themselves or their legal representatives; and for within an industry, to be the representative from an organisation of the employers at industry level.

## 5.3 GOOD PRACTICES IN SOCIAL DIALOGUE: ILLUSTRATIVE CASE AT ENTERPRISE, INDUSTRY AND NATIONAL LEVELS

Social dialogue is at the heart of modern and democratic industrial relations. Rules formulated and arrived at through bipartite and tripartite consultation and consensus taking are far superior to rules determined by only one party. At the work place, the active and sustained dialogue between the union/workers and the managers/supervisors on how work and work processes shall be managed contributes immensely to maintaining the peace at the shop floor and opens opportunities for the realisation of higher productivity and welfare to the employees, employer, stockholders and the larger society. Production problems, both minor and major, are overcome and solved through joint discussion and problem solving by both sides.

Social dialogue is clearly essential in democratic industrial relations rule making and good governance, be it at the plant, industry or national level. This is why the ASEAN Labour Ministers have made a sound decision in putting “tripartite partnership and social dialogue” at the centre of the “**ASEAN Guidelines on Good Industrial Relations Practices**”. In 2009, at the height of the global financial and economic crisis, the ASEAN countries adversely affected by shrinking global markets called for tripartite consultations on how to minimise the social and economic impact of the global financial and economic crisis. Some industries within the ASEAN even held consultations with their unions and workers on how to reduce wastes and cost of operations in order to avoid layoffs and potential business closures. This is why the region enjoyed relative calm during the crisis compared to the situation in the Asian financial crisis 1997-1998. As the ASEAN intensifies its programme of community building and transforming the region into one competitive economic community, the role of social dialogue shall increasingly become important. Economic and social progress cannot be achieved with one party acting alone or in isolation.

The following are some illustrative cases of what the social partners can achieve through social dialogue.

### 5.3.1 SOCIAL DIALOGUE AT THE ENTERPRISE LEVEL: HERO SUPERMARKET IN INDONESIA

#### *Introduction*

Indonesia, with a population of about 243 million people, is the third largest in Asia after China and India. About two thirds of the population are in the labour force (15 to 64), and roughly 70 per cent of the labour force are in the informal sector. Despite difficult political changes in the last two decades, Indonesia’s economy is rapidly growing, attracting a lot of domestic and foreign investors.

There are also dramatic changes on the IR front, initially triggered by the collapse in 1998 of the Suharto regime. The latter narrowed the scope of social dialogue among the IR actors by determining the IR agenda under a government-managed “Panchasila industrial relations” system. Nonetheless, there were some advances. For instance, the establishment of the National Tripartite Council (LKS) in 1983 institutionalised IR social dialogue, though this was limited.



With the democratisation fever sweeping the country following the collapse of the Suharto regime and in the wake of the Asian financial crisis of 1997-98, the unions and workers became more assertive about their rights while the government was emboldened to adopt new labour laws suited to the changed political and economic landscape. Despite some initial confusion, bipartite social dialogue at the firm level and tripartite social dialogue at the industry/national level have been sustained. Indonesia even has a law requiring companies with at least 50 employees or so to constitute a joint employer-employee consultation council. As shown in Table 6, there are over 12,000 “bipartite cooperation” bodies, apart from the 10,667 “collective labour agreements” in 2010.

Table 54: Selected Data of Industrial Relations Instrument in Indonesia, 2010

No.	IR Instruments	Total	Remarks
1	Company Regulation	42 461	
2	Collective Labour Agreement	10 667	
3	Bipartite Cooperation Body	12 099	
4	Tripartite Cooperation Body	31	Provincial level
		268	Municipal/ Regency level
5	<u>Trade Union</u>		
	Federation	91	
	Confederation	4	
	Enterprise Union	11 852	
	Membership	3 414 455	

Source: Directorate General of IR, MOMT, 2010

However, in many companies, employees are still at the incipient stage of learning to exercise their freedom to organise and articulate their demands, while employers still have to learn to regard employees and their representatives as mutual and constructive partners. Against this backdrop, the government has the difficult task of helping facilitate dialogue between the parties in order to smoothen industrial relations. The following case study on HERO Supermarket illustrates the transformative role of social dialogue at the enterprise level.

### *Brief introduction to HERO Supermarket*

PT HERO Supermarket Tbk is among the largest and oldest domestic supermarket chains in Indonesia. It began operations in 1971, with headquarters in Jakarta, Indonesia. The company retails fresh food, groceries and leisure and lifestyle products. As recorded in 2008, around 30 per cent of HERO's shares were owned by Dairy Farm International (DFI), a Hong Kong-based firm. In 2002, HERO joined the hypermarket boom in Indonesia by opening Giant, a Malaysia retail store chain which is also owned by DFI. Today, HERO has a total of 533 stores all across Indonesia, including 45 stores under HERO Supermarket brand, 39 stores under GIANT Hypermarket brand, 86 under GIANT Supermarket brand, 231 under Guardian brand, and 132 under Starmart brand. At the end of the financial year of 2007, HERO reported an income of Rp 5.15 trillion (exchange rate then of IndR9,143:US\$1).

In 1998 or two decades after HERO's establishment, the HERO Supermarket Union was formed, largely as the result of the workers' efforts to counter the adverse impact of the financial crisis, which saw large layoffs, low salary and high inflation rates in the country. By 2010, the Union had 8,021 members among the firm's total 13,892 employees.

### *Hostile industrial relations at the beginning*

It is also well-known that the distribution or the retailing-wholesaling sector in the Asia-Pacific region is one of the least unionised. Very often, union formation efforts in the sector lead to conflicts and difficult legal challenges for the union organisers. At the time of the union formation, HERO Supermarket was badly affected by the financial crisis. Some stores were burnt down during the 1998 Jakarta riots and about 22 others had to be closed down. As a result, there were mass layoffs, while with an 80 per cent inflation rate, workers could barely survive on their low wages.

In the initial union years, the relationship with the management was highly confrontational. Strikes were common and the union was known to be one of the most militant in Indonesia. Their relationship at that time was hostile and negotiations with the management often ended in deadlocks or an impasse.

### *HERO's transformation: The role of social dialogue*

In 2001, the adversarial relations at HERO began changing, with both sides learning to listen to one another -- patiently -- and talking to one another constructively.

What happened? Real, serious and sustained dialogue process was instituted. This occurred when HERO's management began opening up and sitting down for “discussions” with the union, with the facilitating

help of the UNI Global Union (UNI) and its Asia Pacific office (UNI Apro). Both UNI and UNI Apro leadership have experiences in creating positive partnership with the management of multinational corporations. In the case of HERO, UNI Apro came in in 2000 to help break a bargaining impasse by initiating a talk with the principal stockholders of HERO in Singapore and with the HERO's management in Jakarta. This paved the way for the formal resumption of the negotiation and the forging of an amicable settlement between the parties in November 2000. UNI Apro did this by nudging the parties to refocus the negotiation based on an understanding of the need for management and the union to work together.

Eventually, the sustained and honest dialogue process at HERO helped shape a constructive and cooperative partnership between management and union. This successful social dialogue experiment involved the management and the union at the enterprise level in Jakarta as well as their social partners at the national and international level<sup>50</sup>. One remarkable outcome of the dialogues was the decision to hold an unprecedented joint union-management team-building training workshop, with the cooperation and technical support from UNI Apro. This led to more positive developments – sharing of management's business concerns on market survival and competition, sharing of union and employees' concerns for job security and day-to-day needs, and greater understanding by each party of the needs of the other.

With greater trust on one another, the parties have learned to “reciprocate” or adjust to the requirements of each party's needs without giving up on each other's basic rights. For example, the union learned to temper its demands based on the reading of the business situation facing the company, while the latter has learned to share more of the profits it earns due to better performance of the company as a result of better employee performance. With the culture of open communication, trust on one another and value of reciprocating on each other's needs, the social partnership in HERO has become a model not only for Indonesia but also for Asia. Moreover, the union and its members have played a critical role in making HERO Indonesia's most profitable and largest distribution chain. They are the best marketing ally of HERO, especially in promoting the wholesome and endearing image of HERO to its vast customer base.

This harmonious relationship has continued and deepened despite a change in the leadership of the management team. According to Rusdi Salam, the President of HERO Supermarket Union, this is a relationship built on trust and respect to one another, particularly on the accepted role of each side, that is, management has a job to fulfil by managing the company well and professionally while the union's role is to cooperate in this undertaking while articulating the needs of workers and their demand for a fairer share of the profits. All, therefore, have the common goal of assisting the company build its market brand and improve the profitability of the company.

This new-found partnership, however, should not be taken as a sign that the union has lost its independence and that key decisions of the union are unduly influenced by the management. Accorded respect as a social partner, the union has become more mature and realistic on how to deal with varied enterprise issues, including those that affect its members most – job security, wages and benefits, and safe and healthy working conditions. The union has been advancing proposals aimed at protecting jobs and increasing member's living standards. The difference is that it sees these demands in a broader context, that is, they are inextricably linked to the improvement in the company's performance. Profit margins must increase for the company to be able to provide better benefits to the workers. In understanding this, the union actively looks for ways in cooperating with the management in order to cut cost such

as improving the use of workers' time to be more efficient, providing trainings, reducing wastage and increasing profitability. By being able to contribute positively to the company's image and bottom line, the union's demands are looked upon favourably.

In 2008, a study of this partnership was done on the occasion of ten years after the formation of the HERO Supermarket Union. Both the then CEO John Callaghan and Hakim, the previous HERO Union Leader, gave testimonies on how the union and management enjoyed a cordial working relationship with one another. Union-management meetings were regularly held, the strategic action plans of the company were shared and discussed with the union and problem solving was very much a joint union-management effort.

In 2009, HERO Supermarket Union and Company agreed on new bonus schemes for employees. In 2011, the Collective Agreement was concluded with a provision allowing the union to organise the contract employees as union members and for pension to be provided for its employees. In 2012, both the management and union decided to hold a nation-wide team building exercise to ensure that all layers of the enterprise – managerial people, union representatives and rank-and-file employees -- embrace and internalise the culture of partnership based on the model of better relations and understanding among all categories of employees in the HERO Group. As a result of the exercise, a better salary scheme has been adopted, along with a 100 per cent coverage of all employees under HERO's Employees Health Insurance.

The strength of the “*Partnership Industrial Relations*” was put into test when some of the outsourced non-unionised workers in the Distribution Center in Cibitung decided to go on strike in June 2012, demanding that the HERO Group Company compensate for the bonuses not covered under the contract with its outsourcing employer. Within days, this handful of outsourced workers, together with third parties, grouped together to form a militant group and started a violent attack on the distribution center and HERO Group head office. The HERO Supermarket Union and union members defended both venues during that time and sought dialogues with the militant group. The HERO Supermarket Union had earlier negotiated for the total absorption of these outsourced workers as permanent or regular employees of HERO Supermarket with full benefits. Sadly, this was rejected by this handful of ill-advised outsourced workers. During the tense negotiations, the HERO Supermarket union worked together with the management to resolve the issue – a demonstration of true partnership in action and reality. This crisis shows that the partnership concept between the union and management works and that the union's professionalism in handling a crisis situation holds at all times.

One positive outcome of the Union's stand: the agreement by the HERO Group to absorb all the company's outsourced workers as permanent or regular employees and their inclusion in the HERO Supermarket collective agreement. Consequently, the HERO Supermarket union leadership, together with the representatives of management, has been travelling to cover over 500 branches of HERO throughout the Indonesian archipelago, spreading the gospel of “Partnership Industrial Relations”, which now covers all (rank-and-file employees and outsourced employees) and promotes a genuine win-win partnership with the management, and gives economic and social empowerment to the workers. And all of this started with the initiation of positive dialogue process in 2000, a process that has been sustained and deepened through the years!

<sup>50</sup> The persons who were consulted include UNI Apro officials from Australia Joseph De Bruyn and from Singapore Christopher Ng; the then Regional Director for South Asia of Dairy Farm, the holding company and its Head of Human Resources Chan Kah Fai and South Asia Director of Dairy Farm Michael Kok and HERO's expatriate managers.

### 5.3.2 SOCIAL DIALOGUE AT THE ENTERPRISE AND INDUSTRY LEVEL: BANCO DE ORO/BANK INDUSTRY TRIPARTITE COUNCIL

The second case study highlights the role of social dialogue in the stability of industrial relations between Banco de Oro Unibank, Inc. (BDO), now the Philippines' largest in terms of assets and deposits, and the Banco de Oro Employees Association (BDOEA)/National Union of Bank Employees (NUBE), the country's largest banking union and possibly the country's largest union today.

The relationship between BDO and the BDOEA/NUBE is now over three decades old. This is a remarkable feat in the Philippines given the fierce competition among labour federations to "organise the organised". This rivalry usually spawns divisive and exhausting inter- and intra-union disputes and prevents union and management to have long-term sustainable and productive relations.

Another amazing feature of the BDO-BDOEA/NUBE relations is the readiness of the BDO management to regularise the status of new hires in BDO once they have met the tenure requirements and to allow them to join the BDOEA/NUBE. As a result, the percentage of the non-regulars in the BDO rolls is less than five per cent. But more significantly, as the BDO grows, so does the BDOEA, which has now 12,000 members distributed in close to 800 BDO branches and related financial facilities. In contrast, in 1976, the original BDO known then as Acme Savings Bank had only a little over 200 employees. This clearly defies some anti-union trends in human resource management in the Philippines and other countries, specifically the trend to resort to more and more non-regular hiring and the tendency to limit the coverage of unionism and collective bargaining by limiting union formation on a per branch or per facility basis (meaning one union per branch). These trends mean shrinking union membership overall and the proliferation of small unions with limited organisation clout -- even if a company or industry continues to grow in financial strength and operations.

And yet, the tremendous expansion of BDOEA/NUBE has not been a bar in the tremendous expansion of BDO as a unibank in terms of assets, branches and financial offerings. The BDO management itself readily acknowledges that the stability of their relationship with their employees through the BDO-BDOEA/NUBE partnership has enabled them to grow and expand year by year. BDO's excellent performance in business has been recognized globally. It has been hailed as the "Best Bank in the Philippines" by the Hong Kong-based Finance Asia for three consecutive years and the "Best Retail Bank" by The Asian Banker.

At the same time, one cannot claim that the BDOEA/NUBE union is a company-dominated union. In the first place, a company-dominated union will have difficulty maintaining its hold over its growing membership over a period of three decades. The union will be easy prey to rival organisers from other federations. In the second place, the BDO-BDOEA/NUBE collective bargaining agreement or CBA is easily the best among the local commercial banks in the Philippines in terms of employee benefits and entitlements. The BDOEA/NUBE employees even get an annual Labour Day allowance, which enables the employees to hold the largest indoor employee assemblies during Labour Day.

So how has this stable union-management relationship developed?

#### *From discordant beginnings to harmonious transformation*

The harmonious relationship between the BDO management and the union was not developed overnight.

The BDOEA/NUBE was established in the early 1980s amidst tough times. The original BDO was a newly-acquired company that had to brave the unstable financial system in a country reeling from a debt and economic crisis compounded by the political uncertainties during the last years of the Marcos administration. The overall industrial relations climate in the country was also generally hostile, with numerous disputes and strikes sprouting all over Manila and other urbanized and industrialised areas. The challenge for the bank then was how to make the company grow amidst a difficult economic, political and labour environment, while the challenge for the union was how to conclude a CBA amidst the same difficult industrial relations environment.

The union was able to conclude its first CBA in the early 1980s, after a long and gruelling process, characterised by hardline negotiation between the two parties, legal manoeuvres and even threats of concerted employee action. However, during the CBA renewal in the mid-1980s, Ms. Teresita Sy-Coson, the young President of BDO, uncharacteristically sat down during the CBA meeting despite the absence of a management lawyer. While this meeting elicited some verbal tussles between Ms. Coson and the other side of the bargaining table headed by NUBE President Jose Umali, Jr., this signalled the beginning of a direct face-to-face dialogue process between BDO and BDOEA/NUBE, regardless of the presence or absence of lawyers.

Later, as the parties hunkered down to their respective bargaining positions, they realized that they would not get anywhere if they remained inflexible. Moreover, the parties realised that they could have direct face-to-face dialogue or discussion, especially on difficult bargaining issues requiring immediate and decisive answer from either management or the union. And as they learned to communicate to one another directly, the relationship between the parties became non-threatening. Gradually, over the years, the relationship has become cordial and mature, with both parties able to understand each other's positions and rights more fully. There is no labour or HR problem, no matter how big, that cannot be solved because both, the leadership of the bank and the union is just a telephone away.

Clearly, the direct involvement and commitment of the top management in the person of Ms. Coson herself, was crucial in instituting and sustaining good labour relations at BDO. Ms. Coson maintains an open and direct communication with the union not only during CBA negotiations but also when there is a need to immediately tackle pressing and complicated employee concerns, for example, in one instance a branch manager accused of sexual harassment was immediately reassigned in response to a union complaint. This positive attitude of Ms. Coson is emulated by her HR and other managers in the bank. The BDO management treats its workers with utmost respect. It openly declares its commitment to BDO employees as follows:

*"We are committed to our employees' growth and development and we will nurture them in an environment where excellence, integrity, teamwork, professionalism and performance are valued above all else."*

On the other hand, the positive attitude of the BDOEA/NUBE union, headed by NUBE President Jose Umali and BDOEA President Nestor Perez, is also crucial in stabilising and strengthening the relationship. Although the union has maintained the tradition of hard bargaining to secure the best possible terms and conditions for its members, it has also extended full cooperation with the BDO in the latter's varied productivity-enhancing programmes, particularly in building up the customer base of the bank. In the last CBA, a new benefit mirrors this cooperative and productive relations – a “good customer service incentive” award amounting to 20 per cent of the basic pay.

The best indicator of the stability of the BDO-BDOEA/NUBE partnership is the record of the bank in terms of disputes – zero strikes and zero labour-related legal cases in three decades. This is truly amazing given the huge personnel complement of BDO. Some good IR practices help maintain this positive and productive IR partnership. These include the establishment of the “hot line” communication system between the top management, as discussed earlier, and the institution of an effective grievance machinery.

On grievance machinery, this can be problematic in a company as big as BDO, with branches dispersed throughout the archipelago. A response of the union to this situation is the empowerment of the branches through the establishment nationwide of “shop stewards”, who attend to the grievances of rank-and-file employees and who hold grievance meetings with their respective branch managers. Grievances unsettled at the branch level are, of course, elevated at the higher levels – first, between the BDO area managers and BDOEA/NUBE regional coordinators and, lastly, between the top management of BDO and the BDOEA/NUBE national leadership. However, grievances at the branch level are rarely raised upwards because the BDOEA/NUBE union has been conducting a nationwide training programme for its shop stewards, while the BDO HR Department has been briefing its branch and area managers on the BDO obligations to their employees under the CBA and the labour law system.

The BDO and BDOEA/NUBE have also been conducting joint seminars for their managers and shop stewards. Similarly, a joint programme of building up the BDO culture has been undertaken by the two parties so that all employees and managers can internalize the BDO values. This is important given the acquisitions by the BDO of smaller banks and financial outfits whose work culture is somewhat different from the BDO.

Finally, the BDO has been in the business of creating and maintaining jobs at all times. Instead of laying off employees of the acquired banks and financial outfits, the BDO integrates them in the BDO family. Instead of laying off employees during hard times like in 2009 when the BDO registered huge losses due to bad Lehman investments, it kept expanding its branches and financial offerings so that no redundancies were created. The same formula is used by the BDO in its continuing modernisation programme. Moreover, there is a proviso in the CBA providing for union consultation on personnel matters related to automation and modernisation such as the introduction of ATMs, as well as in relation to mergers and acquisitions.

### *Social dialogue at the industry level: Tripartite agreement on outsourcing rules*

The BDOEA/NUBE and BDO are also active members of the Bank Industry Tripartite Council (BITC), one of the few tripartite industry councils meeting regularly to thresh out common labour and industrial

relations concerns. The big bank unions and federations such as NUBE and the bank associations such as the Bankers Association of the Philippines, and Chamber of Thrift Banks are represented in the BITC. The government side is represented by the Department of Labour and Employment (DOLE) and the Bangko Sentral ng Pilipinas (BSP).

On December 1, 2011, the BITC formally adopted Resolution No. 1, Series of 2011, on the “Banking Industry Voluntary Code of Good Practice on Dispute Settlement and Outsourcing/Subcontracting of Certain Bank Functions”.

This is a historic tripartite agreement because the issue of subcontracting/outsourcing and the related issue of non-regular hiring of workers by third-party service contractors have deeply divided the IR actors in the Philippines and in other countries. Employers demand ease in the outsourcing of work, even those done by regular employees, on the argument that global competition requires flexibility in the labour market and in the completion of certain tasks. Unions, on the other hand, bitterly oppose such practices because these practices obviously erode their bargaining power and workers' job security. This is why Articles 106-109 of the Labour Code on permitting “independent job contracting” and prohibiting “labour-only contracting”<sup>51</sup> have been the subject of divisive debates between and among the Philippine IR actors since 1974, the year the Labour Code was promulgated. The accompanying “Implementing Rules” for these Articles have also been changed four times (1997, 2001, 2002, 2011).

And yet, in the BITC, the tripartite members were able to discuss the rules on subcontracting/outsourcing more dispassionately and with less acrimony. After a year of dialogues, they agreed, through Resolution No. 1, on the following key points:

- Bank management and unions are encouraged “to maintain open and continuous dialogue” on any programme involving the subcontracting/outsourcing of work.
- The parties are reminded that such programme should conform to the requirements of the Labour Code, including existing guidelines by the Bangko Sentral on non-outsourcing of inherent bank functions.
- Management “must engage the affected employees and the union, if any, in a pro-active discussion prior to the implementation of subcontracting or outsourcing arrangement, most specially if said subcontracting or outsourcing would result in the termination of regular employees or reduction or splitting of an organised bargaining unit”.
- Should certain employees be affected by any subcontracting/outsourcing measure, management is asked, “on best effort basis”, to transfer said employees to other departments within the bank and “Coordinate with the service provider of the outsourced bank activity to absorb the affected employees”.
- Should displacement become unavoidable, DOLE shall extend assistance through livelihood programmes and other interventions.

<sup>51</sup> Labour-only contracting means the so-called providers of outsourced service do not have sufficient capital and equipment and are not performing the real powers of an employer such as supervision of the work process.



In short, the BITC Resolution recognises the “management prerogative” of banks to institute appropriate organisational and business adjustments. But such adjustments should be the subject of dialogue, especially if such adjustments will lead to the displacement or dislocation of certain jobs. Moreover, such adjustments should conform to existing guidelines of the BSP, which prohibits the outsourcing of “inherent banking functions”. Should the adjustments become unavoidable, there should be programmes to provide jobs to the affected.

Also, Resolution No. 1 provides for a mechanism for the settlement of any complaint, grievance or dispute related to subcontracting/outsourcing. The management and the union (or an “employees’ organisation” in the absence of a union) shall try to settle such complaint or grievance in the grievance machinery as provided in the CBA. Should the dispute be not resolved at the grievance machinery level, the same can be elevated to voluntary arbitration.

The BITC is also empowered to conciliate-mediate any related issue that has general industry implication. For this purpose and should there be a formal request for such conciliation-mediation service, the BITC can constitute a “Committee of Five” composed of two representatives each from the management and union panels of the BITC, with DOLE having one representative.

Clearly, what the above BITC Resolution shows is that the three parties, through a serious process of social dialogue, are able to come to an agreement that recognises the rights of all sides under a subcontracting/outsourcing arrangement and supports a win-win approach. Of course, the earlier story about BDO’s all-out regularisation of employees, all-out job creation for all and continuous dialogue and partnership with the BODEA/NUBE still appears to be a superior win-win formula.

### 5.3.3 NATIONAL TRIPARTISM AND ECONOMIC DEVELOPMENT: SINGAPORE

There are other outstanding cases in the ASEAN of social dialogue maturing into productive and enduring social partnership like the cases of HERO and BDO. The Asia-Pacific Regional Organisation of the Union Network International (UNI Apro) undertook an unprecedented programme of awarding or formally recognising outstanding employers in Asia such as the Star Asia and Telekom of Malaysia, OCBC Bank and Media Corporation of Singapore and BDO of the Philippines. What is clear from all the cases is that sustained and honest dialogue, with the parties respecting each other’s rights and aspirations, is a formula for the greater viability and sustainability of businesses and jobs.

Now at the national levels, almost all the ASEAN countries have their own positive experiences in the promotion of tripartite dialogues, both at the national and regional levels on an issue to issue basis, or even on the overall macro framework of economic and labour governance. In relation to this, Singapore’s experience stands out.

Singapore is one country that has consciously promoted industrial development with a great dose of tripartite consultation. This was dramatically demonstrated in 2009, when no one less than the Prime Minister, sat down with the representatives of the National Trades Union Council and the Singapore National Employers Federation, under the full glare of the media, for an open discussion on how the country shall overcome the global financial crisis which hit the island state badly because of its huge

exposure to global finance. Because of tripartite consensus on stimulus spending, skills development and other positive measures, Singapore quickly rebounded and is once again on the forefront of economic growth accumulation.

A good study on how tripartism works in Singapore<sup>52</sup> was documented by Dr. Hing Ai Yun of the National University of Singapore, particularly in the area of wage setting. As every IR expert knows, wage setting, at the national level, can be divisive and tumultuous. In the case of Singapore, there were also hiccups along the way. But the tripartite approach in support of a “flexible wage system” in an industrialising Singapore is now considered a global success story.

Before independence, Singapore was a low-wage, surplus labour developing economy with high unemployment. In the 1960s and 1970s, the economy attained rapid growth through the export-oriented labour-intensive industrialisation relying on relatively low-skilled, low-waged work force. Economic growth surged but industrial disputes also increased. This necessitated the passage of certain labour laws regulating labour costs and labour movement, i.e., Industrial Relations Ordinance, 1960, Industrial Relations Act, 1968 and Employment Act 1968.

But the most significant labour measure was the establishment in 1972 of the National Wages Council (NWC), a tripartite advisory body in support of orderly wage regulation. The NWC became an arena for social dialogue and wage determination. It has 30 members with 10 each representing employers, government and trade unions. However, the chairman is chosen for his integrity and neutrality.

The NWC, under its sub-committees, has been taking up not only issues of wage adjustments but also other labour market issues such as changing skills requirements by a fast-changing industry and economy, movement of skills and talents within the labour market and so on. On wage adjustments, the NWC has been making recommendations based on studies and tripartite consensus. It issues guidelines to industry and unions as the basis for wage negotiations. But at the end, most wage settlements tend to converge with the guidelines.

On a larger scale, the NWC has played a significant role in shaping the direction of the economy, particularly in the movement of Singapore from a low-wage country to a competitive NIC economy. In this regard, the NWC has always been linking growth in wages to growth in the economy through the realisation of higher productivity. In this connection, the work of the NWC is closely related to the administration of government assistance to industry by upgrading the latter’s technical and skills base. This assistance is managed through the Skills Development Fund (SDF), a fund established with contributions from businesses. The SDF provides support for productivity-oriented and technology-adjustment training programmes for managers and workers. The Department of Science and Technology is also involved because it undertakes studies and provides assistance on technological upgrading.

In 1984, the capacity of the NWC was severely tested because of the first recession in Singapore. Again, the creativity of the NWC surfaced: it undertook an in-depth study on how companies can respond quickly to economic downturns by adjusting wages rather than resorting to layoffs. Earlier, the government had nudged industry to increase wages and productivity so that the country could get out of the low-wage, low-industrial development stage.

52 Hing Ai Yun (2003), “Social Dialogue and the Flexible Wage System in Singapore”, in Best Practices in Social Dialogue, New Delhi: ILO and IIRA.

### *From the “flexible wage system” to “Project Advantage”*

In 1986, the NWC set up a subcommittee on Wage Reform (NWCWR) which recommended the adoption of a Flexible Wage System (FWS). The idea was to minimise displacement of workers during economic crisis and encourage companies to reward workers during the upturns of the economy. This paved the way for the development of the “variable pay”, also called “strategic pay” system and the FWS. Under the FWS, a worker’s wage is divided into three major components: (i) a basic wage that serves as the minimum that should be given to an employee to meet daily needs, (ii) variable wage component, which can go up and down depending on the productivity and profitability of the company, and incremental wage component associated with a worker’s service to the company (e.g., longevity, seniority, etc.). This formula is obviously a flexible and win-win formula. Not surprisingly, in 1993, a study found that more than three-fourths of Singapore firms had shifted to some kind of flexible system, including 85 per cent of the unionised companies.

It should also be pointed out that many of the NWC’s recommendations are directional, meant to serve as reference points for wage negotiations and settlement. The idea is to provide good reference wage indicators, which can serve as basis for realistic negotiation and social dialogue among the parties. It has also been made clear by the tripartite IR actors that the FWS is “not about cutting wages” but on rewarding performance and ensuring business’ and jobs sustainability.

As can be readily seen in the progress of Singapore in the last three decades, the FWS and the system of tripartite/bipartite social dialogue have served the country well in realising faster economic growth, smooth structural changes in the economy and industrial peace. Today, Singapore is discussing extending the working age through “Project Advantage”, managing the mobility and diversity of the work force and preparing for the job requirements of the 21st century. They are also discussing how a new “Social Contract” can be forged given the new forms of social and economic inequality in an economy that continues to surge forward. The bottom line is social dialogue for inclusive growth for all.

### *Tripartism in other areas of work force development*

As can be surmised, Singapore is a big user of tripartism in support of smooth wage and economic adjustments. The reality is that Singapore has been applying tripartism in numerous other areas of work force upgrading and economic development. This can readily be seen in the following tripartite committees and task forces, whose titles clearly explain the nature and mission of these committees and task forces:

- Tripartite Review Committee on Employment Act, 1994-95
- Tripartite Committee on Extension of Retirement Age, 1997
- Tripartite Panel on Retrenched Workers, 1998
- Tripartite Committee on Executives Joining the Rank and File Unions, 1999-2000
- Tripartite Committee on Portable Medical Benefits, 2000-2001
- Tripartite Review Team on Section 18A of the Employment Act on Company Restructuring, 2004
- National Tripartite Advisory Panel on Family Friendly Practices, 2004
- Tripartite Committee on Flexible Work Schedules, 2004
- Tripartite Committee on the Employability of Older Workers, 2005
- Tripartite Alliance for Fair Employment Practices, 2006
- Tripartite Panel on Community Engagement at Workplaces, 2006
- Tripartite Implementation Workgroup, 2007
- Tripartite Workgroup on Employment Act Reviw, 2008
- Tripartite Taskforce on Managing Economic Downturn, 2008-2009
- Tripartite Upturn Strategy Teams (TRUST Teams), 2009

In addition to the above, there are tripartite advisories and guidelines issued from time to time such as “Tripartite Guidelines on Non-Discriminatory Job Advertisements” (1998), “Tripartite Guidelines on Best Work-Life Practices” (2003), and “Tripartite Advisory on Responsible Outsourcing Practices” (2007).

To Singapore, there is no substitute for information sharing, consultation and dialogue when it comes to varied IR and labour market issues and concerns.

## **5.4 CONCLUSION: SOCIAL DIALOGUE AND SOCIAL PARTNERS IN SUPPORT OF GROWTH AND DEVELOPMENT IN ASEAN**

With the ASEAN’s goal of building an ASEAN Community by 2015, social dialogue will increasingly play a major role.

The ASEAN Economic Community (AEC) characterised by the free flow of capital, goods, services and skilled labour, requires numerous economic adjustments among companies and industries across the region. Some of these adjustments are painful and will be doubly painful if the social partners do not sit down and sort out their development options. On the other hand, good adjustments based on sound social dialogue backed up by sound legal framework are a good formula for survival, growth and sustainability – for all.

A first attempt has been made in the services sector in this regard. An annual dialogue between the labour ministries of the AMS, the ASEAN Confederation of Employers (ACE) and the ASEAN Services Employees Trade Union Council (ASETUC) has been established in 2009. Since then high-ranking officials from governments, employers and trade unions in ASEAN meet to discuss labour issues and share information on social and labour standards.

<sup>125</sup> Under Project Advantage, management and union are encouraged to discuss a re-design of jobs for ageing workers so that they can continue working up to retirement age or even beyond. For example, a camera man carrying heavy foto equipment can be given a movable trolley to avoid carrying heavy weight.

Yes, there is so much disparity in the industrial relations system and legal framework in place among the different ASEAN countries – due to historical, political, economic and cultural reasons. Such disparity cannot be smoothed overnight. It has to be part of the process of community building being pursued by the ASEAN member countries based on their vision of a “community of caring and sharing societies”.

For this purpose, there is a great need for capacity building through a sharing of good experiences and good practices. There is a need to build up institutions and appropriate laws supportive of social dialogue such as the establishment of tripartite and bipartite bodies for purposes of social dialogue and recognition of basic labour rights (freedom of association and collective bargaining).

Social dialogue is an integral component to economic and social development in ASEAN and its member countries. The roles and responsibilities of social partners in the process of engaging in a dialogue on a range of matters ensure that growth and development work for the benefit of the largest possible constituents and with the sensitisation of bi-partite perspective. In particular, strong bi-partite and tri-partite institutions lead to better results in national policies and initiatives.



# Conclusion: Analysis and Recommendations

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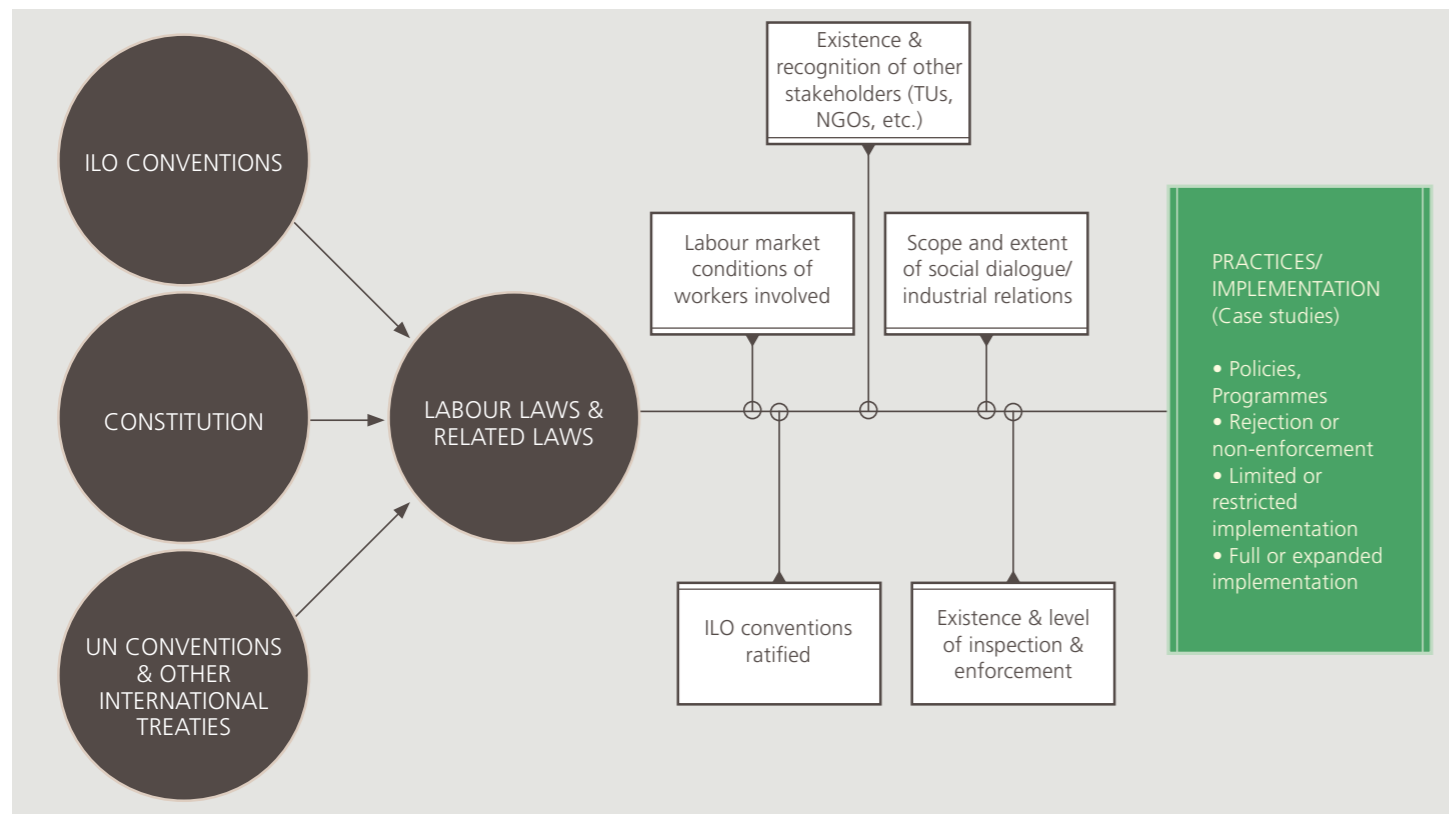
## 6.1 INTRODUCTION

The research study presented in this extensive volume, ASEAN Labour Laws and Practices – A Comparative Study on Gender Equality, Equal Opportunities in Employment for Persons with Disabilities, Youth Employment and Social Dialogue - Volume II, has focused on the protection and promotion of equal opportunity for employment of three specific groups in the ASEAN community – women, young persons and persons with disabilities – and the promotion of social dialogue among stakeholders. The study was undertaken in consultation with Senior Labour Officials from Cambodia, Lao PDR, Myanmar, and Viet Nam (coordinator), CLMV, who are the lead countries participating in the project.

The objective of the project is to facilitate the understanding of labour laws among ASEAN member states and contribute critical input into measures with respect to labour identified by the ASEAN Secretariat in the implementation of ASEAN Socio-Cultural Community (ASCC) Blueprint. The recommendations are addressed to the ALMM, SLOM and SLOM-WG that can be discussed in existing and future national and regional sectoral meetings in ASEAN to formulate action plans. Such plans should aim, among others, to harmonise CLMV labour legislation with other ASEAN member states benchmarking labour sector performance with ILO standards, with reference to the ASEAN Labour Ministers' Work Programme 2010-2015.

Researchers were guided by an analytical framework (Figure 1) in assessing the relationship between ILO conventions, UN conventions and other international standards, and the factors influencing the extent of implementation or non-implementation of labour laws on the other.

FIGURE 1: THE ANALYTICAL FRAMEWORK



We conclude with the following:

### PART I

A summary of key findings of the comparative study of labour laws regarding the four focal areas – gender equality in employment, protection against child labour and promotion of employment of young persons, equal opportunities in employment of persons with disabilities, and social dialogue and industrial relations.

### PART II

Analysis, recommendations, issues for discussion and further study towards achieving the ASCC Blueprint and vision for an ASEAN Community moving forward.

## 6.2 KEY FINDINGS OF THE COMPARATIVE STUDY ON ASEAN LABOUR LAWS AND PRACTICES, VOLUME II

### 6.2.1 Employment and Gender Equality in ASEAN

#### 6.2.1.1 International Labour Standards Promoting Gender Equality in Employment

CEDAW UN Convention on the Elimination of Discrimination Against Women  
 C111 ILO Convention on Discrimination in Employment and Occupation  
 C100 ILO Convention on Equal Remuneration

#### 6.2.1.2 Comparison of Labour Laws in ASEAN Promoting Gender Equality in Employment with International Labour Standards (ILS)

All ASEAN member states (AMSs) have ratified CEDAW. While 5 AMSs have ratified C111, legislation in 6 member states prohibit discrimination in employment based on gender and protect the safety and health of women with provisions regarding nature of work and working conditions. However, it is noted that no member state provides a clear definition of "discrimination". In practice, both direct and hidden discrimination exists.

While 8 AMSs have ratified C100 on equal remuneration, only 4 member states have provisions in law requiring equal pay regardless of sex, and none provide a clear definition of the concept of "work of equal value". In practice, there continues to be a wage gap between men and women due to many factors such as gender stereotyping with many low-skilled low-paying jobs predominantly held by women, and the negative consequences on employability and career development of the greater onus borne by women to balance work with family responsibilities.

No AMS has ratified Maternity Protection C183 or Workers with Family Responsibilities C156. However, most member states provide varying levels of maternity protection and benefits by law, and provisions to better enable women to balance work and family responsibilities. While this recognises the importance of women's role in reproduction and the family/household, there are very few provisions to promote shared family/household responsibilities between men and women.

International Standards	Commonalities & Differences	Of Note
Elimination of discrimination CEDAW - all have ratified or acceded C111 Discrimination (Employment & Occupation)	5 AMSs have ratified. 6 AMSs provide legislation prohibiting discrimination based on sex, but no member state provides a clear definition of discrimination.	In practice, both direct and hidden discrimination exists.
Promote equal opportunities & treatment – employment and occupation	6 AMSs have some provisions, but most are regarding protection rather than promoting equal opportunities (e.g. prohibit certain types of work to protect safety & health)	
Equal Remuneration C100	8 AMSs have ratified; 4 AMSs have provisions in law requiring equal pay regardless of sex, but no member state provides a clear definition of the concept of 'work of equal value'.	A wage gap between men and women continues in all AMSs due to such factors as gender stereotyping with many low-skilled low-paying jobs predominantly held by women, and women losing seniority, wage and career progression when they leave the workforce to raise their families.
Maternity Protection C183	No AMS has ratified C183, but most have provisions in law and/or policy, varying in scope and coverage Most (8AMSs) protect health & safety during pregnancy or breastfeeding	
Protection from termination	All provide such protection in law	In practice, however, it is often difficult to prove that pregnancy was the cause of termination of employment
Maternity leave not less than 14 weeks Paid leave not less than 2/3 earnings	Duration of leave varies Different provisions – e.g. maternity allowance but amount not stated; payment specified, ranging from 50% to 100% of wage; 60% minimum wage	
Workers with Family Responsibilities C156	No AMS has ratified C156, but all have some provisions in law and/or policies* *Lao, Myanmar, Thailand – no information found in English	Work-Life Harmony/Balance provisions : Brunei Darussalam –National Plan of Action for Women Cambodia – provisions for childcare Malaysia – Ministry of Women, Family & Community Development Philippines – Magna Carta of Women Paternity Leave Act 1996 Singapore - Work-Life Works, WoW! Fund; Flex-Works Fund; Employer Alliance on Work-Life Harmony Viet Nam – Law on Gender Equality, National Strategy on Gender Equality (2011-2020)

### 6.2.1.3 Indicators of Progress - Gender Inequality Index (GII), Gender Gap Index (GGI)

The United Nations Development Programme (UNDP) **Gender Inequality Index (GII)** and World Economic Forum (WEF) **Gender Gap Index (GGI)** are recommended as useful indicators of progress in achieving gender equality.

The ranking of ASEAN member states in both indexes vary widely. In the GGI ranking which includes more employment-related measures, the Philippines has notably consistently ranked among the top 10 countries, Singapore has made much progress indicated by significant improvement in the ranking of countries since 2007, while the gender gap has changed little or widened for other AMSs.

### 6.2.1.4 Examples of Good Practice

#### *Public Policy and Gender Equality in the Philippines*

Insights into the comprehensive public policy and legislation promoting gender equality in the Philippines drawn from a case study provide an understanding of its ranking among the top 10 countries in gender equality in the World Economic Forum Gender Gap Index (GGI) and first among the 10 AMSs.

#### *Promoting Gender Equality Through Tripartite Initiatives and Social Dialogue in Singapore*

Singapore has achieved significant progress in closing the gender gap as indicated by its GGI scores and ranking in 2011 as compared with 2007. It is cited in gender study as an example of tripartite and bipartite cooperation and social dialogue in promoting gender equality in employment. Upon ratification of C100, a Tripartite Declaration on Equal Remuneration for Men and Women Performing Work of Equal Value was issued in 2002 calling on employers and trade unions to include an equal remuneration clause in collective agreements. However, as at 2008, only 7% of C/A had such a clause.

While Singapore has not ratified C111 and there are no legal provisions prohibiting gender discrimination in employment other than provided in relation to maternity leave, problems are raised through trade unions at company level or to the Tripartite Alliance for Fair Employment Practices (TAFEP) established in 2006, and policies are formulated, reviewed and amended through tripartite consultation at national level. Other initiatives include a Code of Responsible Practices issued by the national employer and union organisations, Employer Alliance for Work-Life Harmony; Back-to-Work programme, and a multi-stakeholder collaboration to help women re-enter the workforce.

### 6.2.1.5 Recommendations

While many member states provide protection against gender discrimination in law, it is difficult to enforce. Discriminatory actions can be addressed through effective grievance procedures, collective bargaining, and social dialogue.

Some ASEAN countries have addressed the standards in ILO C111 with comprehensive legal frameworks developed to help female workers in areas of health, time, and financial assistance to enable them to

combine family responsibility and paid work to compete on a more level playing field with their male counterparts. However, researchers caution that a balance is needed between the extension of positive discrimination and the demands of employers, or risk employers avoiding recruitment of women. In order to create real equality between female and male workers in practice, provisions must be reasonably developed, and extended to both men and women such as enabling work-life balance.

There is also a reality that the steadily rising proportion of female migrant workers are domestic workers in Asia which has an effect of hampering the development of national support systems for care for children, the elderly, and the sick. Researchers consider it imperative for each nation to review and improve national labour legislation and employment system to achieve both decent work for domestic workers, and facilitation of work life balance of workers.

Researchers note that in the ‘Third Report on the Advancement of Women in ASEAN’ (2007), the ASEAN Secretariat had urged AMS to look seriously into disparities in work, and women’s additional burden of reproductive and family responsibilities, but there have been no such progress reports. From secondary research, the study highlights that measures for greater work-life harmony are addressed in Brunei Darussalam’s National Plan of Action for Women, the Philippines’ Magna Carta of Women, Viet Nam’s Law on Gender Equality, and government support for flexible work hours and arrangements such as in Malaysia and work-life programmes such as Work-Life Works! grants to employers in Singapore. Researchers caution that measures to promote women in employment must be practical and not become a disincentive for employers to hire women. Factors contributing to Philippines’ ranking within the top 10 out of 135 countries and #1 among AMS in the World Economic Forum’s Gender Gap Index merits study by AMSs.

The study concludes with the importance for all AMSs to take a multi-pronged approach to achieve gender equality noting, in particular, the continued wage gap, vertical job segregation, balancing work and family responsibilities, increasing women in leadership and decision-making positions, and social dialogue in addressing gender stereotyping and discrimination.

## 6.2.2 Equal Opportunities in Employment for Persons with Disabilities

### 6.2.2.1 Relevant International Labour Standards

CRPD UN Convention on the Rights of Persons with Disabilities

C 111 ILO Convention on Discrimination (Employment and Occupation)

C 159 ILO Convention on Vocational Rehabilitation and Employment (Disabled Persons)

### 6.2.2.2 Comparison of Labour Laws with ILS

5 AMSs have ratified ILO C111; 2 countries ratified to the ILO No. 159 Convention, and 6 countries ratified the CRPD. However, significantly, 7 member state have established disability specific laws, including a quota system to promote employment of persons with disabilities. However, effectiveness in implementation is unknown.

ILS	Commonalities and Differences	Of Note
Definition of Disability, Persons with Disabilities	Definition of disability or a person with disability varies, with only 1 adopting the CRPD definition.	
ILO C159 – pertaining to employment	CRPD-more fully defines disabilities as barriers that “may hinder full and effective participation in society on an equal basis with others”	
C111 Prohibition of Employment Discrimination	While 5 AMSs have ratified, 7 AMSs have established specific persons with disabilities laws prohibiting employment discrimination	
Reasonable Accommodation for PWD	6 AMSs address this provision in law	
Quota Scheme for employment	7 AMSs Quota schemes to ensure persons with disabilities to employment opportunities	Effectiveness of implementing the quota scheme is unknown.
National coordination and advisory mechanism	9 AMSs A specific institution or provision for inspection	

### 6.2.2.3 Possible Indicator of Progress

Regular monitoring of the number of persons with disabilities employed in the mainstream labour force over time, would be a concrete indicator of progress towards achieving equal opportunity for employment. Recognising the difficulty to collect such information is noted by researchers, the approach in Thailand cited in their report (highlighted below) merits further study. While several member legislate a quota system, the requirement for employers in Thailand to pay into the Fund for Empowerment of PWD if they fail to meet the quota suggests there may be a more rigorous reporting system in place.

### 6.2.2.4 Good Practices

#### 1. Fund for Empowerment of PWD - Thailand

Thailand has ratified CRPD and C159, with specific disability legislation, Persons with Disabilities Empowerment Act 2007, aimed at improving the quality of life of PWD.

While most member states legislate quota schemes but find it difficult to enforce, Thailand is cited for an innovative solution. It established a Fund for Empowerment of PWD that requires employers to report if they have met the quota of 1 PWD to every 100 non-disabled (former 1 to every 200). If they fail to meet the quota they are required by law to contribute to a national Fund, failing which, interest is levied

on the outstanding amount. In recognition of the requirement placed on employers, tax exemptions are provided on wages paid to PWD and amounts paid to the Fund. The Fund is used to help cover government expenditure in other schemes for the protection and empowerment of PWDs including promotion of services and support for the work of disability-related organisations.

#### *II. Tripartite Alliance for Fair Employment (TAFEP) - Singapore*

Singapore has not ratified CRPD, C 111 and C 159. However, it is cited for its non-legalistic promotional and educational approach in dealing with discrimination which is aimed at changing employer mind-sets and behaviour to voluntarily adopt fair employment practices.

Within a long-established tripartite approach to industrial relations, the Tripartite Alliance for Fair Employment Practices (TAFEP), established in 2006, as well as government and employer initiatives have made measurable progress in extending fair employment opportunities for persons with disabilities. Highlighted in the study:

- Employers' Pledge of Fair Employment Practices (2000)
- The Enabling Employers Network – over 160 companies to date have committed to provide employment opportunities for ~600 PWD
- The Open Door Fund – government grants up to S\$100,000 to enable employers who hire PWD to carry out workplace and job redesign

#### *III. Corporate Social Responsibility*

Selected examples of good company practices highlight factors facilitating successful employment and integration of persons with disabilities in the mainstream labour market.

##### *Jollibee Foods Corporation, Philippines*

Hearing Impaired Personnel Project, a successful corporate-NGO partnership, which has helped expand the company's consumer base.

##### *Krungthai-AXA Life Insurance, Thailand*

Awarded national recognition for maintaining sustainable action, employing persons with disabilities because of their talent & ability, not because of their disability.

##### *Chang Shin, Viet Nam*

Disability mainstreaming in the workplace within a global supply chain with assistance in job matching and flexible work hours from MNC Nike in cooperation with government. Management and non-disabled workers overcame initial concerns. Positive outcomes include increase in productivity, employee retention, workplace morale, and public image.

##### *Protec Factory, Hanoi*

The first non-profit factory in the world by the Asian Injury Prevention Foundation, Protec Factory is a registered US not-for-profit organisation. Preconceived prejudices of non-disabled staff were overcome. PWD receive the same salary although most work an hour less.

### 6.2.2.5 Recommendations

ASEAN has made great effort to promote rights and equal opportunities for persons with disabilities and regional plans and frameworks are in place. More data and statistics of PWD should be made available to enable various agencies to better extend assistance. With different levels of development within ASEAN, sharing knowledge and experience among member states will facilitate efforts to close the gap in employment opportunities for PWD. Improved international cooperation could also be beneficial enabling exchange of experience and human resources and financial support.

Negative attitudes against persons with disabilities is viewed one of the most critical issues that impedes persons with disabilities to exercise their rights and access to employment and other social welfare and services. The stereotype that persons with disabilities are less productive will gradually diminish as more persons with disabilities enter the regular labour market. Contributing factors include labour law and policies formulated and practiced in many countries, together with employer positive attitudes toward persons with disabilities that have increased through better understanding of disability and persons with disabilities.

### 6.2.3 The Protection against Child Labour and the Promotion of Employment of Young Persons

#### 6.2.3.1 International Labour Standards to Protect the Rights of Child and Empowerment of Young Persons

CRC UN Convention on the Rights of the Child

C138 ILO Convention 138 on Minimum Age C138

C182 ILO Convention on the Elimination of the Worst Forms of Child Labour

#### 6.2.3.2 Comparison of Labour Laws with ILS

While 9 member states have ratified the UN Convention on the Rights of the Child, C138 and C182, the definition of minimum age varies, with only 6 specifying restrictions on the type and nature of work for below 18 year olds.

Other restrictions and safeguards specified in ILS to protect children are not widely provided in law: artistic performance (3 AMSs); measures to take special consideration of girls (2); medical examination if employed below 18 years (3); work and rest time provisions (6); register of employees if below 18 years (5); minimum/sufficient wage rates (3)



ILS	Commonalities and Differences	Of Note
Convention on the Rights of the Child CRC	All ASEAN Member States (AMS) have ratified	
Minimum Age C138	9 AMS have ratified, with legal provisions defining minimum age in compliance with C138  All specify type and nature of work to protect health and safety of young workers, minimum age varies.  Exceptions regarding employment: i. Vocational training if approved - provision in 7 AMS  ii. Artistic performance provision in 3 AMSs	No information in English for Myanmar regarding legal provisions that may be in compliance  However, only 6 AMSs specify 18 years for restrictions
Elimination of Worst Forms of Child Labour C182	9 AMSs have ratified  Measures to take special consideration of girls- provision 2 AMS	
C77, C78 Medical Examination (Industrial & Non-Industrial Occupations)	Medical exam if below 18 years- provision in 3 AMSs  Work & rest time – addressed by 6 AMS  Prescription of Registers of employees less than 18 years of age - specified in 5 AMS	
Prescription of Wage Rates	Minimum/sufficient wage –provision in 3 AMS	
Penalties on violation of law (C138, C182)	Provisions in 4 AMS	

### 6.2.3.3 Indicator of Progress - UNDP Human Development Index (HDI)

The issue of vulnerability and precarious employment situation of young people is underpinned by the level of development in the region. As such, poverty reduction (Millennium Development Goal 1) and universal access to education (Millennium Development Goal 2) remain the top priorities in uplifting the lives of peoples, including children and young persons.

The Human Development Index (HDI) is identified as a relevant indicator of progress in the protection of children and promotion of employment opportunities for young persons. Reported annually by the UN Development Programme, it is a composite index which comprises life expectancy, educational attainment (mean years of schooling for young adults (25 years old) and expected years of schooling for children of school entering age), and income. The comparative HDI scores of ASEAN member states (AMSs) generally reflect the development gap with higher HDI in developed economies Singapore, Brunei Darussalam and Malaysia and lower HDI in the emerging economies of Viet Nam, Lao, Cambodia and Myanmar.

### 6.2.3.4 Examples of Good Practices

#### *I. Children's Empowerment Through Education Services (CHES) Project in Cambodia Goal - Elimination of the Worst Forms of Child Labour*

Cambodia has ratified the Convention on the Rights of the Child, C138, C182, and has established a National Plan of Action on the Elimination of the Worst Forms of Child Labour (2008-2012) and an Education Strategic Plan (2009-2013) addressing access to education of marginalised groups.

Its successful implementation of this 4-year project with international cooperation and support from the US government is cited as an example of effective project planning and implementation. The project used an exceptionally multi-faceted structure and approach to address two core barriers to education: poverty, including the need to compensate for income lost when children stop working (addressed with skills training of parents), and low quality of education (addressed by setting up child-friendly schools). It demonstrates the importance of good project design and holistic approach to meet its target of withdrawing 3,750 children and preventing 4,500 children from the worst forms of child labour in subsistence and commercial agriculture and fishing by providing direct education services in 160 villages in 4 of the poorest provinces.

#### *II. Education and Skills Training for Youth Employment in Indonesia (EAST) Project in Indonesia Goal – Elimination of Worst Forms of Child Labour, and Providing Better Opportunities for Youth*

Indonesia has ratified the Convention on the Rights of the Child, C138, C182.

The Education and Skills Training For Youth Employment (EAST) project in Indonesia is cited for its ability to successfully implement a 5-year project with international cooperation, sustained by mainstreaming policy inputs at each level of governance, institutional capacity-building of teachers training centres and networks, and strong partnerships with government institutions and social partners. The project was undertaken with 2 development objectives to achieve effective progress with the National Plan of Action on Worst Forms of Labour and establishing education and training systems and policies to better equip young people for employment and entrepreneurship.

Key outcomes achieved: 12,200 junior high school level children in remote areas were prevented from child labour through improved education services and direct support, 69% of out-of-school young women and men trained were either employed or started a business; women were recruited in non-traditional training and jobs.

#### *III. Institute for Technical Education (ITE) in Singapore Goal - Human Resource Development of Young People*

Singapore has ratified C138, 182, and the Convention on Rights of the Child.

It ranks highest among ASEAN member states in the Human Development Indicator (HDI) in which access to education is a key factor.

Insights are provided into Singapore's approach to integrating vocational training and other programmes into the mainstream educational system to minimise the drop-out rate from the formal school system and create a web of learning opportunities for youth, including the least academically inclined. Accessibility of vocational training institutions as well as other adult-oriented learning and re-learning courses have been established and improved over the years to open up opportunities for youth and adults to gain better employment opportunities, thereby enhancing the well-being of their lives and social mobility.

### 6.2.3.5 Recommendations

There is concerted initiative by the ASEAN member states to close the development gap and in particular with special focus on protection the rights of children and to enhance of well-being of young people. However, while AMSs have widely ratified the two fundamental conventions pertaining to the rights of children, provisions in law vary and can be improved; notably, extending specific protection to young girls, specifying the hours of work and rest of children and youth below 18 years old, ensuring employers/workplaces keep employment registrar and ensuring equal work for equal pay to eliminate exploitation of child labour or young workers.

Regarding progress achieved with international cooperation in projects, the researchers noted issues that should be addressed include sustainable impact beyond the project period, and whether a project is scalable and replicable.

It is noted that eradicating child labour is only one side of the coin. Equally, if not more important is to ensure decent job creation through economic development so as to provide better jobs for young people. Institutional capacity and coordination among related government agencies to facilitate the transition from education to work, and social services such as job matching are critical components to encourage children and youth to stay in school and for youth already at work to continue in skills upgrading.

## 6.2.4 Social Dialogue and Industrial Relations: A Comparative Analysis of ASEAN Labour Laws

### 6.2.4.1 Relevant International Labour Standards

C 87 ILO Convention on Freedom of Association

C 98 ILO Convention on Right to Organise and Collective Bargaining

C 144 ILO Convention on Tripartite Consultation

### 6.2.4.2 Comparison of Labour Laws with ILS

Although only 4 AMSs have ratified C87 on Freedom of Association, all recognise the legal right of workers to form unions, with legal definitions of trade unions. 4 AMSs also define employer organisations/associations/trade unions. While only 5 AMSs have ratified C98 Right to Organise and Collective Bargaining, all except Lao (no info or no provision?) define collective agreement in law. 5 MSs define collective bargaining, including 2 MSs that have not ratified C98. C144 Tripartite Consultation has been ratified by 6 AMS, with 6 MS specifying tripartite institutions and mechanisms (including 1 MS that has not ratified C144).

The researchers note that it is difficult to monitor enforcement and there can be a big gap between *de jure* and *de facto* observance of labour rights.

ILS	Commonalities and Differences	Of Note
Freedom of Association C87	Ratified by 4 AMSs All AMSs provide definitions of worker/labour organisations/ trade unions and provisions to be established under the law. All AMSs recognise the right to form unions in labour laws or labour codes.	There is legal definition of employers' associations/ organisations in Cambodia, Myanmar, Singapore and Thailand. The legal definition of trade union and employers associations in Singapore and Thailand encourage social dialogue. Difficult to monitor implementation.
Right to Organise and Collective Bargaining C98	5 AMSs Provisions defining collective agreement in 9 AMSs Provisions defining collective bargaining in 5 AMSs	
Tripartite Consultation C144	6 AMSs 6 – tripartite institutions and mechanisms specified	

### 6.2.4.3 Indicators of Progress

The researchers suggest quantitative data on the membership and density of trade unions and employers' organisations, together with collective bargaining coverage as useful indicators of a conducive environment for social dialogue.

### 6.2.4.4 Good Practices

The examples of good practices are experiences in establishing effective social dialogue at the enterprise, industry, and national levels. Factors in common are the transition from confrontational to cooperative labour-management relations, and leadership in initiating the transition.

*i Hero Supermarket, Indonesia*

Indonesia has ratified C87, C 98, C144.

With highly confrontational labour-management relations and deadlocked negotiations in the Hero Supermarket chain, the global federation UNI-APRO intervened to initiate discussions between management and union on the need to work together for mutual gain. Over time, the two parties established more open communications, gained trust and respect, and have effectively resolved problems and introduced improvements benefitting both company and employees.

*ii Banco de Oro Unibank Inc and Employees Association/NUBE*

Philippines has ratified C87, C98, C144.

The union was formed in a hostile industrial relations climate in Philippines. The decision of the young female President of BDO to attend a negotiation meeting for a face-to-face dialogue without the management lawyer was the turning point, as both sides realised they would not get anywhere if they remained inflexible. A positive relationship was developed over time, with Human Resource and management emulating the positive attitude of the BDO President. The case highlights how a union complaint of sexual harassment by a branch manager was immediately addressed.

*iii Singapore Tripartite Forum (STF), Tripartite Alliance for Fair Employment Practices (TAFEP)*

Singapore has ratified C98 and C144.

While the first two cases illustrate leadership from the trade unions and management in taking the first step away from confrontational industrial relations towards a long-term relationship built on trust and consultation for mutual gains, Singapore is cited for the role of its government in adopting a tripartite and stakeholder engagement approach in industrial relations as a national strategy for industrialisation and sustainable economic development being a newly independent nation-state. The case highlights tripartite and bipartite relations based on shared values and principles, which are credited for contributing to Singapore's ability to overcome economic crisis, and in engaging stakeholders to ensure fair and equitable employment practices as a shared responsibility in an inclusive and cohesive society.

#### 6.2.4.5 Recommendations

Enabling laws on collective bargaining, freedom of association and tripartism, and the extent to which the social partners are able to negotiate and regulate their terms of conditions of employment and labour relations are important contributing factors for sustainable and meaningful social dialogue.

Uneven development of labour laws on freedom of association, collective bargaining, tripartism and social dialogue in ASEAN is explained in large part by the different historical, cultural and political context and socio-economic stage of development.

It is noted that non-ratification of ILO conventions does not mean member countries need not establish enabling national laws for the non-ratified Conventions. National labour laws may, in fact, exceed the provisions of the Conventions in terms of substance and liberality.

Although only 4 ASEAN member states have ratified C87, all member states recognise the legal right of workers to form unions as a basic right. However, it is difficult to monitor the implementation and enforcement of the many rules, administrative orders, and legal decisions.

The researchers propose quantitative data on the membership and density of trade unions and employers' organisations, together with collective bargaining coverage as useful indicators of a conducive environment for social dialogue.

It will take time to harmonise the practice of industrial relations and social dialogue as part of the process of building an ASEAN community. Capacity-building of the social partners and sharing good practices and experiences, such as the three cases in the study, will contribute practical insights that may help the progress of AMSs.

## 6.3 ANALYSIS AND RECOMMENDATIONS

### 6.3.1 Key Insights

The following key insights are drawn from the detailed analyses and recommendations in the preceding chapters which have been highlighted in Part I Summary of Key Findings.

1. The general lack of convergence of labour laws in ASEAN can be largely explained by the diverse historical, geographical political, cultural and socio-economic contexts. While there is a gap in labour legislation between emerging economies and developed/more developed economies, there is also much scope for improving labour laws in all member states relating to the 4 focal areas in this study.
2. The different state of social-economic development results in different scope of actions taken. For example, less-developed AMS have less funding for programmes to include vulnerable groups into the labour market or require donor assistance. In the latter case, the question of the effective implementation and sustainability of the programme after the termination of donor funding arises. The varying demography in ASEAN member states also defines different priorities to be addressed.
3. The diverse contexts notwithstanding, some commonalities were identified among ASEAN member states in terms of labour laws and/or policies that specifically addressed each focal issue:
  - i. Employment and Gender Equality: While only Viet Nam has a specific Law on Gender Equality, 5 member states have defined national action plans/strategies/policies/institutions for women (Brunei Darussalam, Malaysia, Philippines, Singapore, Viet Nam).
  - ii. Protection Against Child Labour, Promotion of Employment of Youth: 4 member states have specific (albeit not comprehensive) laws or regulations (Indonesia, Malaysia, Myanmar, Singapore). 2AMS have defined national action plans on the elimination of the worst forms of child labour (Cambodia, Indonesia).
  - iii. Equality Opportunities in Employment for Persons With Disabilities (PWD): 7 member states have specific legislation regarding PWD (Cambodia, Indonesia, Malaysia, Philippines, Thailand, Viet Nam).
  - iv. Social Dialogue and Industrial Relations: notably uneven development of the relevant labour legislation. 6 AMS have established tripartite institutions and mechanisms (Cambodia, Indonesia, Lao, Malaysia, Philippines, Singapore). Singapore has further established a conducive environment and capacity of the key stakeholders to achieve widespread practice of social dialogue in industrial relations.

4. ILO conventions are relevant benchmarks for comparison of labour laws. Ratification of a convention indicates a country's commitment to uphold the principles and standards for the labour matter, and to put in place the necessary legislation, policies and practices to uphold the principles and standards. Thus, the extent of ratification by ASEAN member states of relevant conventions provides an indication of the potential for convergence and harmonisation of labour laws and/or policies and practice in ASEAN, the diverse contexts of the 10 AMSs notwithstanding.
5. However, there is currently no strong relationship between ratification of ILO conventions and the existence of comprehensive legislation reflecting the ILO standards in the four focal areas studied. There is also a common challenge regarding effective implementation and enforcement of laws.
6. Thus, while the terms of reference for this study were to document the relevant legislation and not how the laws are implemented, the case studies of effective policies and practices provide practical insights that merit further study. It is recommended that the next phase of the study focus on how laws have been implemented and enforced to help developing and less developed countries improve labour laws and progress toward harmonisation.
7. The next phase of the study should examine, in particular:
  - (a) the role of social dialogue and the mutual gains for governments, employers, trade unions, NGOs and community organisations to work together in both the protection and promotion of employment opportunities for women, child labour/youth and persons with disabilities; ASEAN member states can learn much from one another through case studies, sharing experiences and perspectives. Involving employer organisations, trade unions and other stakeholders, as well as SLOM members, in contributing case studies and drawing learning points in discussions together is very much part of the process of social dialogue.
  - (b) the critical importance of other laws and social policies complementing labour laws.

### 6.3.2 Moving Forward: ASEAN Cooperation Programmes in the ALM Work Programme<sup>54</sup>:

The findings and recommendations in this report on Phase II of the comparative study of labour laws in ASEAN can be appropriately taken up by ALMM and SLOM in cooperation programmes in the ALM Work Programme 2010 – 2015 such as the following, and by employers and trade unions in their respective institutions and programmes for review and strategic planning.

8. Informational workshops – to share experiences among Member States and with social dialogue and cooperation partners.

9. Collection of baseline information with regard to labour sector attributes such as laws and regulations, policies, institutional performance, social partners' organisations and actions, workforce development, and labour markets permits benchmarking of labour sector performance within the region.
10. Analysis of labour sector performance in ASEAN Members States with regard to benchmark information and good practice experiences may lead to the identification of strategic initiatives with the goal of reducing the most disruptive gaps among Member States.
11. Continuation of the ongoing efforts among AMSs based on consultation and consensus on possible policy convergence in labour areas.
12. Capacity-building (training) of AMSs' labour ministries' officials, employer organisations and trade unions raises awareness of good labour sector practices and helps Members States to incorporate such practices within their own country contexts.
13. International cooperation between the ASEAN labour ministries and dialogue and cooperation partners enriches debate and may provide financial and technical resources to support the capacity of ASEAN labour ministries.
14. Tracking of benchmark and progress indicators allows the ALMs and their officials, employer organisations and trade unions to monitor labour sector evolution over time and track cooperation progress accomplishments and perhaps even outcomes.
15. Outreach by ASEAN labour ministries in their respective countries and through the ASEAN Secretariat, enables civil society, stakeholders, and the general public to appreciate ASEAN progress made towards achieving its overall objective of ASEAN cooperation on labour.

We would like to highlight the critical importance of increasing the availability of accurate data and information in English regarding labour laws, policies and practice in individual member states and ASEAN as a region.

The study on women in employment notes that the last Regional Status Report on the implementation of the Declaration on the Advancement of Women in ASEAN was in 2007. Other ASEAN work plans and guidelines regarding ASEAN cooperation in the protection and promotion of opportunities for employment in decent work for women, child labour, youth and persons with disability, and social dialogue noted in this report are highlighted below. Periodic progress reports in English would help to raise awareness, appreciation of progress, and engagement with stakeholders, civil society and the general public.

<sup>54</sup> ASEAN Labour Ministers' Work Programme 2010-2015 and Related Recommendations (Vietnam 2010)



**WOMEN**

ASEAN Commitment	Proposed Periodic Progress Reports		
ASEAN Committee on Women (2002), formerly ASEAN Sub-Committee on Women (1976)	ASEAN Committee on Women Work Plan (2011-2015)		iii. Establish platforms for networking and sharing of best practices on ASEAN children and youth development strategies and tools.
Declaration on the Advancement of Women in ASEAN (1988)	Implementation of Declaration monitored and shared in Regional Status Reports		iv. Promote lifelong learning.
	WAGE – Workplan for Women’s Advancement and Gender Equality (2005-2010)		v. Work towards the establishment of an ASEAN Youth Development Index to evaluate the outcomes and effectiveness of youth programmes in the region and to assist Member States in planning new youth interventions.
Declaration on the Elimination of Violence Against Women in ASEAN (2004)	Workplan to Operationalise Declaration	ASEAN Ministerial Meeting on Youth	Urges increased participation of the youth in the productive workforce, and encourages their entrepreneurship and employability, leadership and regional awareness. Priorities for youth cooperation are highlighted in the Vientiane Action Programme (VAP) section on the ASCC.
Joint Statement and Commitment to Implement Gender Mainstreaming (2008)			
ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (2010)	Work Plan 2012-2016	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (2010)	Work Plan 2012-2016

**CHILDREN AND YOUNG PERSONS**

ASEAN Commitment	Proposed Periodic Progress Reports
ASEAN Socio-cultural Community (ASCC)	Actionable Goals for Young Persons: i. Achieve universal access to primary education across ASEAN by 2015 with priorities to eradicate illiteracy and to ensure compulsory primary education for all and gender equality in education, through advocating for equal opportunity in education regardless of social class, geography, ethnicity, background or physical disabilities, with 70 per cent target benchmark achieved by end of 2011.  ii. Improve the quality and adaptability of education, including technical/vocational/ skills training education in the ASEAN region by developing a technical assistance programme including training for teaching staff and staff exchange programme at higher education level for this purpose by 2009, in particular CLMV. Promote equal access to education for women and girls and enhance the exchange of best practices on gender sensitive school curriculum.

**PERSONS WITH DISABILITIES**

ASEAN Commitment	Proposed Periodic Progress Reports
Bali Declaration on the Enhancement of the Role and Participation of Persons with Disabilities in ASEAN Community 2011	ASEAN Decade of Persons with Disabilities 2011-2020

**SOCIAL DIALOGUE**

ASEAN Commitment	Proposed Periodic Progress Reports
ASEAN Labour Ministers Meeting (ALMM), Hanoi, Viet Nam, May 2012	ASEAN Guidelines on Good Industrial Relations Practices - promoting tripartite partnership and social dialogue as a means of fostering economic competitiveness and harmonious industrial relations in a rapidly-integrating ASEAN region.

**6.3.3 Issues for Discussion and Further Study**

The following are issues recommended for SLOM consideration, drawn from the study :

**1 Baseline Information**

The comparative analysis of labour laws concerning women, children, youth, persons with disabilities and social dialogue provide baseline information for SLOM and ASEAN member states (AMS) discussion and consideration.

However, the information in the study is based on secondary research from information publicly available in English. It is thus recommended that

- i. The baseline information in this study be further developed and updated by SLOM as useful reference for member states; SLOM and ALMM would monitor progress.

- ii. SLOM and AMS provide more data and information in English to contribute to raising awareness, understanding and appreciation of the status and progress in the ALM Work Programme.

## 2 Harmonisation of Labour Laws and Practice

While the relevant international labour standards C111 on Discrimination (Employment and Occupation) and C159 on Vocational Rehabilitation and Employment (Disabled Persons) are not widely ratified, all AMS have signed or ratified the Convention on the Rights of Persons with Disabilities. Significantly, 7 member states have established disability specific laws (Cambodia, Indonesia, Lao, Malaysia, Philippines, Thailand, Viet Nam) and all define a quota scheme requiring employers to employ a minimum ratio of persons with disabilities to non-disabled employees. It is recommended that SLOM consider how these laws can be further harmonised, for example, by adopting/adapting the PWD Empowerment Fund introduced in Thailand. Details are provided in the chapter on PWD. The value/benefit of special legislation and policies towards achieving progress in equal employment opportunities in practice should be considered by SLOM.

From the case studies it is evident that companies who voluntarily employ PWDs in their mainstream workforce for demonstrating leadership and corporate social responsibility can have a competitive advantage, and gain momentum in becoming an industry-wide practice in response to stakeholder expectations. Singapore, notably, does not have disability specific legislation but encourages employment of persons with disabilities through national policies and programmes. Most significantly, the cases suggest that as more persons with disabilities are employed together with non-disabled, negative stereotypes and barriers are reduced.

Principles and approaches to harmonising national laws, and practices at the local level, which may be adopted/adapted in other areas can be drawn from a deeper understanding of the PWD legislation, policies and practices. As has been noted in the four focal area studied, the benchmarked international standards must be implemented through national laws and monitored at the local level, with active engagement and coordination by stakeholders at the national and local levels, and with regional and international cooperation where appropriate.

## 3 Effective Implementation of Donor-Funded Projects

In the study of legislation relating to the protection of child labour and employment of young persons, the case studies provide insights into effective implementation of donor-funded projects in national development policies in Cambodia and Indonesia in addressing poverty and lack of quality education and how they have achieved measurable progress towards the elimination of the worst forms of child labour. They merit further study and discussion, as well as how to achieve sustainable model for projects, and whether a project is scalable and replicable.

## 4 Importance of Leadership

The study on the promotion of social dialogue stressed the importance of sound legal framework which recognises the basic rights of both employers and workers, specifically, their basic rights to freely organise

and bargain collectively, with the government performing the needed facilitating and balancing role and the capacity of social partners to engage. While noting the uneven development of such sound legal frameworks in ASEAN and the challenge of effective implementation and enforcement, the case studies highlight the critical importance of leadership in establishing social dialogue which merit further study. As the cases illustrate, the first step towards opening communications and establishing trust and mutual respect in labour-management relations can be initiated by employers (Philippines), trade unions (Indonesia), and government (Singapore). The value of women in leadership should also be further studied. Notably, in the Philippines case, the female bank President not only took a non-legalistic approach to negotiations that initiate constructive engagement between management and workers, when a union complaint of management sexual harassment was filed, she took immediate action.

## 5 Benchmarks and Indicators of Progress

In addition to monitoring the ratification of benchmark international standards and extent of commonalities in the relevant labour laws in ASEAN Member States, indicators of progress identified in this study merit more in-depth consideration if they are currently not being monitored by SLOM and AMS.

The World Economic Forum Gender Gap Index (WEF GGI) is a good example of a relevant indicator of progress. The GGI is comprised of several measures of gender equality in employment which are discussed at length in the study on gender (Chapter 2). Insights into the comprehensive public policy and legislation promoting gender equality in the Philippines drawn from a case study support its ranking among the top 10 countries in gender equality, and first among the 10 ASEAN member states, in the World Economic Forum Gender Gap Index (GGI).

## Towards an ASEAN Community

### Vision

*“To realize an ASEAN Community that is people-centred and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the peoples are enhanced.”*

ASEAN Socio-Cultural Community Blueprint

*“The overall objective of ASEAN cooperation on labour is to build towards the vision of a better quality of life, productive employment, and adequate social protection for ASEAN peoples through enhancing workforce competitiveness, creating a harmonious and progressive workplace, and promotion of decent work for all.”*

ASEAN Labour Ministers’ Work Programme (2010 – 2015)

The research presented in Comparative Study on ASEAN Labour Laws and Practices, Volume II has focused on the protection and promotion of equal opportunity for employment of three specific groups in the ASEAN community – women, young persons and persons with disabilities – and the promotion of social dialogue among stakeholders.

We conclude with the importance of establishing a scorecard to monitor progress in the implementation of strategies and actions in the ASCC Blueprint towards achieving the vision for an ASEAN Community, and the ASEAN Labour Ministers' Work Programme (2010-2015). This study has identified or proposed indicators of progress that merit further study by SLOM and ASEAN Secretariat, relevant to the following dimensions of the ASCC Blueprint - human development (Human Development Index), social welfare and protection, social justice and rights (quantitative data on trade union and employer organisations, scope of collective bargaining that provide the foundation for social dialogue), and narrowing the development gap (Gender Gap Index, quantitative data on employment of persons with disabilities in the mainstream workforce).

The findings and recommendations are submitted to ALMM, SLOM and SLOM-WG for consideration in future national and regional sectoral meetings for formulating action plans in moving forward. We hope this study will contribute to the understanding of labour laws among ASEAN member states and contribute useful input into measures with respect to labour identified by the ASEAN Secretariat in the implementation of ASEAN Socio-Cultural Community (ASCC) Blueprint.

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