



# Women Migrant Workers in the Laws and Policies of ASEAN Member States

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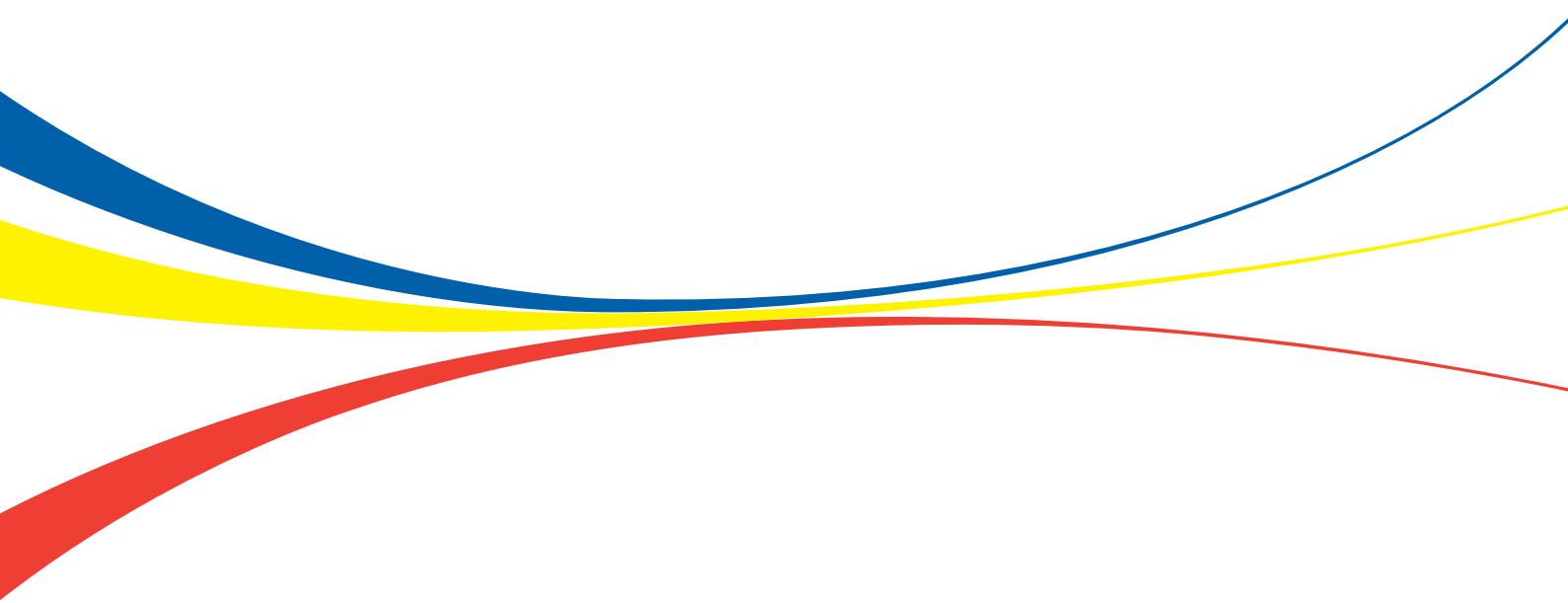
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# Women Migrant Workers in the Laws and Policies of ASEAN Member States



The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

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## FOREWORD

I am very happy to note the finalisation and endorsement of the *Regional Study on Women Migrant Workers in the Laws and Policies of ASEAN Member States*. Under the guidance of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), this Study report has provided a much needed and timely review of the changing legal and policy landscape for women migrant workers in ASEAN.

The Regional Study pointed out the many challenges that women migrant workers faced in the region such as having to work with lower wages or unpaid, facing higher barriers to employment, being likely to be laid off due to pregnancy and childbirth, long working hours without overtime pay, poor job description, working conditions different from the contract as well as harassment and sexual abuse at the workplace. Furthermore, the effect of the COVID-19 pandemic has further exacerbated the pre-existing inequalities faced by women migrant workers.

The *Regional Study on Women Migrant Workers in the Laws and Policies of ASEAN Member States* is an important step forward in the post-pandemic, highlighting the good practices and progressive experiences in the implementation of laws and policies for the protection and promotion of women migrant workers. This research can be considered an important baseline for the ASEAN Member States to reference in their principal instruments and policies.

On this occasion, I would like to extend my appreciation to the European Union, the International Labour Organization (ILO), and UN Women as well as the cooperation and participation of the ASEAN Member States, the efficient coordination of the ASEAN Secretariat, and the active involvement the international consultants in realising the Regional Study on Women Migrant Workers in the Laws and Policies of ASEAN Member States.

I hope that we can utilise this Regional Study in contributing to building a sustainable and inclusive ASEAN Community for all.

A handwritten signature in blue ink, appearing to read 'ccarmu', with a long horizontal line extending to the right.

**H.E. DAO NGOC DUNG**

*Minister of Labour, Invalids And Social Affairs of Viet Nam*



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Under the guidance of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), the study provided a comprehensive gender analysis of the principal labour migration provisions in national laws and highlighted promising practices and challenges across the AMS. It contributed to the realisation of the ASEAN Guidelines on Gender Mainstreaming into Labour and Employment Policies towards Decent Work for All, ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, and ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025. Key evidence-based recommendations were provided to enable better understanding of ways to better protect women migrant workers and address their vulnerabilities.

We gratefully acknowledge the expertise and enriching contributions of regional consultants, Ms. Jane Aeberhard-Hodges and Ms. Ruchika Chaudhary, who authored the report.

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## ABBREVIATIONS AND ACRONYMS

ACMW	ASEAN Committee on the Implementation the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AFML	ASEAN Forum on Migrant Labour
ASEAN	Association of Southeast Asian Nations
BLA	bilateral labour agreements
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CLMTV	Cambodia, Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
CSO	civil society organization
DOE	Department of Employment (Thailand)
DOLISA	Department of Labour, Invalids and Social Affairs (Viet Nam)
DOLE	Department of Labor and Employment (Philippines)
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ILMS	International Labour Migration Statistics
IMW	Indonesian migrant worker
IPA	In-Principle Approval (Singapore)
IOM	International Organization for Migration
MLVT	Ministry of Labour and Vocational Training (Cambodia)
MOL	Ministry of Labour (Myanmar)
MOLISA	Ministry of Labour, Invalids and Social Affairs (Viet Nam)
MOLSW	Ministry of Labour and Social Welfare (Lao PDR)
MOM	Ministry of Manpower (Indonesia and Singapore)
MOU	memorandum of understanding
MRC	Migrant Worker Resource Centre
NGO	non-governmental organization
NRCO	National Reintegration Centre for OFWs (Philippines)
OFW	overseas Filipino worker
ORBD	Office of Reverse Brain Drain (Thailand)
OWWA	Overseas Workers Welfare Administration (Philippines)
PDOLVT	Provincial Department of Labour and Vocational Training (Cambodia)
POEA	Philippine Overseas Employment Administration
POLO	Philippine Overseas Labour Office
PPE	personal protective equipment

SDG	Sustainable Development Goal
SLOM	ASEAN Senior Labour Officials Meeting
SOP	standard operating procedure
SorTorPor Committee	Gender Equality Promotion Committee (Thailand)
TESDA	Technical Education and Skills Development Authority (Philippines)
UN	United Nations
UN DESA	United Nations Department of Economic and Social Affairs
UNIFEM	United Nations Development Fund for Women (now merged into UN Women)
VAWG	violence against women and girls
VCO	Victim Care Officer (Singapore)
WorLorPor Committee	Committee on Consideration of Unfair Gender Discrimination – Thailand







## TERMINOLOGY

**Country of destination.** Country to which a person migrates to live and/or work.

**Country of origin.** Country a migrant originates from, typically her or his country of nationality.

**Domestic work.** Work performed in or for a household or households, within an employment relationship (ILO Domestic Workers Convention, 2011 (No. 189), Article 1). The majority of domestic workers provide personal and household care, to cook; clean; mind children, the elderly and persons with disabilities; and attend to the garden and domestic animals in private homes or drive the family car.

**Fair treatment** refers to just and reasonable treatment applied to migrant workers in the workplace regarding working conditions, safety and access to recourse in the event of employment subject to the prevailing laws, regulations and policies of the destination State (2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers).

**Migrant worker.** A person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in remunerated activity in a State of which he or she is not a national. The applicability of the Consensus to different categories of migrant workers shall be subject to the laws, regulations, and policies of respective ASEAN Member States (2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers).

**Migrant Worker Resource Centres** (MRCs) deliver services directly to migrant workers and their communities in countries of origin and destination and are often housed in government institutions, trade unions or civil society organizations. MRCs provide information on migrating to work and provide a space to ask questions and to lodge complaints and get legal aid. Counselling is provided at MRCs and in communities through outreach activities and meetings, in addition to online and over the phone (ILO 2014).

**Recruitment agency/recruiter.** Employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services; can be public or private (ILO Private Employment Agency Convention, 1997 (No. 181)).

**Recruitment fees** and “related costs” refer to any fees or costs incurred in the recruitment process in order for workers to secure overseas employment or placement, regardless of the manner, timing, or location of their imposition or collection (ILO 2019a, General Principle No. 7).

**Return** is a catch-all term that can apply to a whole range of situations, but in general it refers to the return of migrant workers from a country of destination back to the country of origin. The ASEAN (2017a) Compendium on Migrant Workers’ Education and Safe Migration Programs has the following definition: “Return: in a general sense, the act or process of going back to the country of origin. There are subcategories of return which can describe the way the return is implemented; for example, voluntary, forced, assisted and spontaneous returns.” According to the Statistics Division of the United Nations Department of Economic and Social Affairs

(UN DESA), return migrants are “persons returning to their country of citizenship after having been international migrants (whether short-term or long-term) in another country and who are intending to stay in their own country for at least a year”. While this definition identifies the home country with nationality, some argue that it is better to use the country of birth as the criterion for identifying returning migrants because those who were naturalized in countries of destination may be left out. Migrants may also move to a third country/countries before returning the country of origin (ASEAN 2020a, 53–54).

**Reintegration.** There is no universally agreed upon definition of the concept of reintegration. The Return Migration and Development Platform of the European University Institute (which carries out analytical and empirical studies of return and reintegration in different regions) defines reintegration as the “process through which a return migrant participates in the social, cultural, economic, and political life of the country of origin”. Unlike return migration, reintegration is a multi-dimensional concept that is not easily measurable. It can be observed at several levels: individual; family; community; economy; and society. The United Nations High Commissioner for Refugees’ 2004 Handbook for Repatriation and Reintegration Activities states that “the ‘end state’ of reintegration is the universal enjoyment of full political, civil, economic, social and cultural rights” (ASEAN 2020a, 53).

**Sexual harassment** at work is unwelcome conduct of a sexual nature that is explicitly or implicitly made a condition for favourable decisions affecting one’s employment (quid pro quo harassment) or that creates an intimidating, hostile or offensive work environment. It is a specific form of violence that concerns primarily, but not exclusively, women. Sexual harassment can take the form of a power display, intimidation or abuse from a supervisor or co-workers. It is a means of control to which women are more vulnerable because of their age, origin, migrant status or employment status (Haspels et al. 2001).

**Work permit.** A legal document issued by a competent authority of a State authorizing a migrant worker to be employed in the country of destination under a set of prescribed conditions during the period of validity of the permit (IOM 2019, 232).



## EXECUTIVE SUMMARY

Around the world, more people are migrating than ever before. The United Nations Department of Economic and Social Affairs (UNDESA) estimates that in 2020 nearly half of the 281 million migrants who live and work outside their countries of birth were women or girls. International labour migration has increased during the past decades, mainly due to the lack of job opportunities in the home countries, the shortage of human resources to fill vacancies in the destination countries, and openness to mobility (especially for women workers) to meet worker's job expectations. Labour migration is recognized as having a far-reaching impact on the economic and social development of both countries of origin and destination.

Intra-ASEAN migration has also been rising steadily. It accounted for one-third of the region's total international migrant stock in 2020, and women make up a large share of all intra-ASEAN migrants. The ASEAN community has taken several initiatives towards regional integration; however, labour migration is often overshadowed by a struggle for equal treatment, as these advances in promoting decent work for women and men in law and practice across the ASEAN Member States face barriers to achieving of the desired outcomes. Challenges are varied — some structural, some embedded in stereotypical perceptions of what work women want and can do, and some arising from outside forces that affect progress across the globe and thwart international efforts to ensure gender equality in the world of work, such as natural catastrophes, financial crises and more recently the COVID-19 pandemic.

There is compelling evidence that women have fewer options for regular migration, and migrant women face multiple intersecting inequalities. They are often found in potentially the most vulnerable situations, such as domestic and care workers. Specific issues range from sexual harassment, abuse and exploitation, non-payment and underpayment of wages to technical weaknesses in the design of migration systems where poorly organized schemes result in a lack of social protection for women migrant workers.

Harmonizing national labour legislations in the ten ASEAN Member States with regional and international standards is a central pillar to ensuring that women migrant workers enjoy decent work alongside their male counterparts and national workers in the destination countries. However, implementation of policy and legislation often remains a severe challenge; and more research within ASEAN Member States is needed.

The overall aim of the study is to provide a comprehensive gender analysis of the principal labour migration provisions in law, including highlighting promising practices, assessing achievements, and challenges across the ten ASEAN Member States. The study contributes to the ASEAN Socio Cultural Community Blueprint 2025's Strategic Measures and the realization of the ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025. The study also supports implementation of the ASEAN Labour Ministers' Work Programme 2021-2025, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), and Sustainable Development Goals.

The study is guided by a well-rounded research process and follows a two-pronged approach aimed at providing a comprehensive gender analysis of existing legislation and policies. The study first examines the current trends of migration, especially women migrants and their characteristics, such as employment, working conditions and earnings, in the region. For this, the study uses secondary data from UN DESA, ILMS-ILOSTAT and World Bank data on remittances. The study also conducted a desk review of relevant documents from the Repository of Legislations and Policies on Migrant Workers of ASEAN Member States, ASEAN Guidelines on Gender Mainstreaming into Labour and Employment Policies towards Decent Work for All, and other international and regional frameworks guiding the labour migration policies in the ASEAN. Furthermore, to supplement the desk review, the study executed a comprehensive survey on existing migration laws and policies governing the labour migration in the ten ASEAN Member States, the responses to which provided timely and insightful details on various aspects of labour migration in the Member States.

The study offers detailed gender analysis of women migrant workers' rights in existing laws and policies on labour migration in the ASEAN region. The study puts forward key evidence-based recommendations for ASEAN Member States to enable them to understand more deeply the labour migration challenges for women. ASEAN-wide recommendations aim to ensure decent work for women migrant workers in ASEAN countries, to review and revise the existing laws and policies on women migrant workers where necessary, engage public awareness regarding decent work for women migrant workers, strengthen protection and promotion of systems for the rights of women migrant workers and make labour migration governance more gender responsive for women. The study's attention to promising practices among ASEAN Member States in gender responsive migration laws and policies lay a foundation for recommended ASEAN-wide training and tools development.





Photo Credit: ILO/Antonio Ganai



## CHAPTER 1. INTRODUCTION

Labour migration is an established feature of labour markets in the Association of Southeast Asian Nations (ASEAN) region. Intra-ASEAN migration is also on the rise – it accounts for one-third of the region's total international migrant stock (UN DESA 2020). Labour migration is recognized as having a far-reaching impact on the economic and social development of both countries of origin and destination. Migrant workers contribute to destination countries by meeting the demand for workers at all skill levels (albeit mostly in elementary and middle-skilled occupations on temporary employment contracts) <sup>1</sup>, promoting entrepreneurship, and so on. In their home countries, migrant workers contribute by alleviating labour market pressures, transferring technology and skills, and sending remittances. Yet many of these gains are not realized because of inadequate policy frameworks concerning migrant workers.

Women are also increasingly migrating for employment. As per the latest United Nations Department of Economic and Social Affairs (UN DESA) estimates, women make up nearly half of all international migrants (5 million women out of 10.6 million total international migrants in 2020). They also make up roughly half of all migrant workers in ASEAN Member States (ILOSTAT 2020).<sup>2</sup>

Labour migration can be an empowering experience for women, as it can lead to increased economic and social power. Women may gain more agency, more influence over resources and increased ability to set standards and create norms

<sup>1</sup> Labour migrants help fill gaps in the labour markets, particularly in lower-skilled sectors such as domestic work, construction and fisheries, and therefore are regarded as integral to the economies of these destination countries (Harkins, Lindgren, and Suravoranon 2017).

<sup>2</sup> The latest available International Labour Migration Statistics (ILMS) database includes key labour market statistics for migrants and non-migrant populations from the 2019 labour force surveys of ASEAN Member States.

and values that are deemed desirable and legitimate. However, migration dynamics can also reinforce traditional gender stereotypes and expose women to many risks and vulnerabilities. More often than not, women have fewer options for regular migration, and migrant women face multiple and intersecting inequalities (based on gender, ethnicity, race, nationality, socio-economic situation, age, migration status). As a result, they are disproportionately represented in lower-paid service sector jobs (such as domestic and care workers) with scarce labour and social protections, often face heightened risks of abuse and exploitation, and their contributions to the ASEAN's regional development are not well recognized.

At the same time, the COVID-19 pandemic has been having an unparalleled impact on migrant workers.<sup>3</sup> With most migrants in ASEAN being temporary migrant workers, loss of jobs and wages have been especially severe among them, as their jobs are less amenable to teleworking compared to non-migrant workers. Worryingly, women migrant workers face high risk of exposure to coronavirus infection, owing to their concentration in care work, domestic work and healthcare. Additionally, women migrant workers have greater difficulty accessing health services and gender-based violence support services, due to their migrant status and cultural barriers. The COVID-19 crisis has also resulted in large-scale returns of migrant workers (Amo-Agyei 2020).

The ASEAN community has made a lot of efforts to promote decent work and gender equality for migrant workers both in law and practice and has also taken several initiatives towards regional integration. Member States have signed two critical instruments to establish a regional framework for cooperation on labour migration, namely the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) (known as the “Cebu Declaration”) and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017) (hereafter, the “ASEAN Consensus”). ASEAN Labour Ministers have also adopted the ASEAN Guideline on Gender Mainstreaming into Labour and Employment Policies Towards Decent Work for All, with labour migration being one of its four focus areas. The Guideline serves as an insightful and practical tool for improving gender equality in the work of work. Despite such measures and progress in promoting decent work for women in law and practice across the ASEAN Member States, women migrant workers still face several challenges, and so more needs to be done at the ASEAN level to ensure the sustainability of the rights of women migrant workers.

### **1.1. Study purpose and objectives**

Despite efforts and many advances, the steps taken to ensure the rights of ASEAN migrant workers still face barriers to achieving the desired outcomes, as labour migration often takes place against a persistent background of stereotypes and gender-biased societal norms. Migrant workers are sometimes subject to exploitative conditions, such as unsafe work practices, underpayment of wages, social exclusion and discrimination, absence of social protection, lack of freedom of association, or human rights abuses. Migrants,

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<sup>3</sup> The disproportionate toll on migrant women is evident, as their sectors of employment have been acutely impacted by the COVID-19 pandemic.



particularly women migrants, face many challenges before migration; they face higher barriers to enter the workforce (partly due to their heavy engagement with unpaid household and care work) and are vulnerable to recruitment-related abuses originating from governance gaps and their relatively weak bargaining position. During employment, women migrant workers risk ending up in precarious employment arrangements with inadequate labour protection and are often among the lowest paid with dismal working conditions. Particular attention is required to ensure that the policy base – and the legislative framework that follows from the policy choices – promote equality between women and men and do not exacerbate existing societal prejudices faced by women migrant workers. Implementation of policy and legislation often remains a severe challenge as well.

The overarching objective of the present study is to provide a comprehensive gender analysis of the principal labour migration provisions in law, including assessing achievements and challenges, and highlighting promising practices, across the ten ASEAN Member States. The study contributes to the ASEAN Socio Cultural Community Blueprint 2025's strategic measures and the realization of the ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025, which in paragraph 12.2, specifically commits to realizing an inclusive community that promotes a high quality of life, offers equitable access to opportunities for all, and promotes and protects the human rights of women and migrant workers, among other groups facing vulnerable situations. The study also supports implementation of the ASEAN Labour Ministers' Work Programme 2021–2025, the ASEAN Consensus, and the United Nations' Sustainable Development Goals (SDGs).

## **1.2. Scope and methodology**

Harmonizing national labour legislations in the ten ASEAN Member States with regional and international standards is a central pillar to ensuring that women migrant workers enjoy decent work alongside male migrant workers and national workers in destination countries. In this context, this study enables ASEAN Member States to:

- i. understand more deeply the labour migration challenges for women in ASEAN countries; and
- ii. review their legislation in the light of the study's through gender analysis of existing national labour migration provisions.

Under the supervision of and in accordance with the guidance of the Government of Viet Nam, the ASEAN Secretariat, the ILO and UN Women, the scope of the study is as follows:<sup>4</sup> it takes into account the general gender equality framework of each ASEAN Member State and examines their laws and assesses achievements and challenges regarding labour migration policy. The study is designed around national-level law and policy in each

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<sup>4</sup> This study does not cover “undocumented migrant workers” (based on the understanding enunciated in the Cebu Declaration: “Nothing in the present Declaration shall be interpreted as implying the regularization of the situation of migrant workers who are undocumented.”), nor does it cover informal migration for work or human trafficking.

ASEAN Member State, and does not enter into municipal or provincial-level regulatory frameworks. The study uses the ASEAN Consensus' definition of "migrant worker" as "a person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in a remunerated activity in a State of which he or she is not a national" (ASEAN 2017b, para. 3). In particular, the study reflects State responsibilities and that of other actors, including employers, workers and their organizations, recruitment agencies, and organizations representing women migrant workers across the four key areas relevant to the international migration cycle:

- i. **pre-departure arrangements**, including detailed orientations concerning the destination country and recruitment costs borne by women migrant workers;
- ii. **arrival/on-site working conditions**, including access to fundamental rights in the world of work, contractual status, wages, working time and vacation, occupational safety and health (OSH) measures, social protection benefits (in particular maternity protection), protection from violence, abuse and sexual harassment, adequate or reasonable accommodation (where provided), and remittance transfer arrangements and accessible labour dispute mechanisms;
- iii. **exit/return and reintegration measures**; and
- iv. **enforcement machinery**, in particular concerning the right to file a complaint under the labour dispute provisions in the destination State concerning issues such as unfair recruitment practices, termination of employment and breach of an employment contract while, subject to the national immigration laws, being allowed to continue staying in that country pending the disposal of the worker's case, and examining the impact of penalties against employers and employment agencies that violate national laws.

The study adopts an evidence-based research process and follows a two-pronged approach aimed at preparing an elaborated gender analysis after analysing existing laws, provisions and other measures on labour migration in the ten ASEAN Member States. The study first examines the current trends of migration in the region, especially women migrants and their characteristics, such as employment, working conditions and earnings. For this, the study uses secondary data from UN DESA (various years), data from ILOSTAT's International Labour Migration Statistics database (2020), and World Bank data on remittances. The study also conducted a desk review of relevant documents from the Repository of Legislations and Policies on Migrant Workers of ASEAN Member States (2012–present), the ASEAN Guideline on Gender Mainstreaming into Labour and Employment Policies Towards Decent Work for All, and other international and regional frameworks guiding the labour migration policies in ASEAN. Furthermore, to supplement the desk review, the study executed a comprehensive survey of existing migration laws and policies governing labour migration in the ten ASEAN Member States (the questionnaire can be found in Annex I), the responses to which provided timely and insightful details on various aspects of labour migration in the Member States.

The report is divided into five chapters. Chapter 1 sets out the objectives of the study, scope and methodology. Chapter 2 summarizes the main migration trends and patterns in the ASEAN Member States, and also illustrates major characteristics of women migrant workers and provides comparisons with male migrant workers and non-migrant populations based on quantitative analysis. Chapter 3 lays out the regional and international standards on gender equality and labour migration, which provides the foundation for the gender analysis, with Chapter 4 offering the situational analysis of women migrant workers. This analysis is done across the main intra-ASEAN labour migration laws (using latest available English-language versions) and is enriched by all the ASEAN Member States' responses to this study's questionnaire and feedback from a 22 March 2022 workshop on the study results. The report ends with ASEAN-wide recommendations for the best possible way forward to ensure decent work for women migrant workers and that migration policies are gender-responsive and rights-based to make migration an empowering experience for women in ASEAN and for ASEAN's sustainable economic and social growth (Chapter 5).







## CHAPTER 2. INTRAREGIONAL MIGRATION AND DATA COLLECTION IN ASEAN

### 2.1. Migration trends and patterns

It is estimated that the total migrant stock in ASEAN was 10.6 million in 2020, of whom 47 per cent were women (UN DESA 2020). Intra-ASEAN migration has also been rising steadily – it increased from 1.3 million in the 1990 to 7.1 million in 2020 – with these 7.1 million intra-regional migrants accounting for two-thirds of ASEAN's total international migrant stock, and women make up a large share of intra-ASEAN migrants.<sup>5</sup>

Sizable income disparities within ASEAN are a significant factor underpinning the rising migration trend from lower-income countries to higher-income countries within and beyond the region. There is also a solid geographic aspect to migration – with higher levels of people migrating between countries sharing borders, particularly along Thailand's borders with the Lao People's Democratic Republic, Cambodia and Myanmar. In addition, ASEAN's efforts toward greater regional integration have contributed to increased intra-regional migration (Hatsukano 2015 and Hugo 2014, as cited in IOM 2020, 75).

<sup>5</sup> UN DESA (2020) estimates refer to the total migrant population, which includes both labour and non-labour population.



**Table 1.** Intra-ASEAN migration (in millions), 2020

Country	Total	Men	Women
Main countries of origin			
Cambodia	0.71	0.33	0.38
Indonesia	1.42	0.85	0.57
Lao PDR	0.95	0.42	0.53
Malaysia	1.19	0.52	0.67
Myanmar	2.21	1.26	0.96
Main countries of destination			
Brunei Darussalam	0.09	0.05	0.04
Malaysia	1.94	1.23	0.71
Singapore	1.33	0.55	0.78
Thailand	3.49	1.74	1.76

Lao PDR = Lao People's Democratic Republic. Note: Undocumented migration is not fully captured in these figures. Total intra-ASEAN migrants originating from Viet Nam equal 0.17 million and from the Philippines equal 0.15 million.

**Source:** UN DESA 2020.

Table 1 gives a snapshot of the main origin and destination countries for intra-ASEAN migrants. Thailand, Singapore, Brunei Darussalam and Malaysia are net destination countries; while Myanmar, Indonesia, the Lao People's Democratic Republic, Cambodia, the Philippines and Viet Nam are net origin countries. It is worth noting that many countries of origin may also be emerging countries of destination, and vice versa. For instance, Malaysia has emerged as both an origin country (with many Malaysians migrating to Singapore) and a destination country for many migrant workers. At the same time, Viet Nam and Indonesia are emerging as destination countries for many migrants in the region, with growing (albeit still low) numbers of workers migrating to these countries.

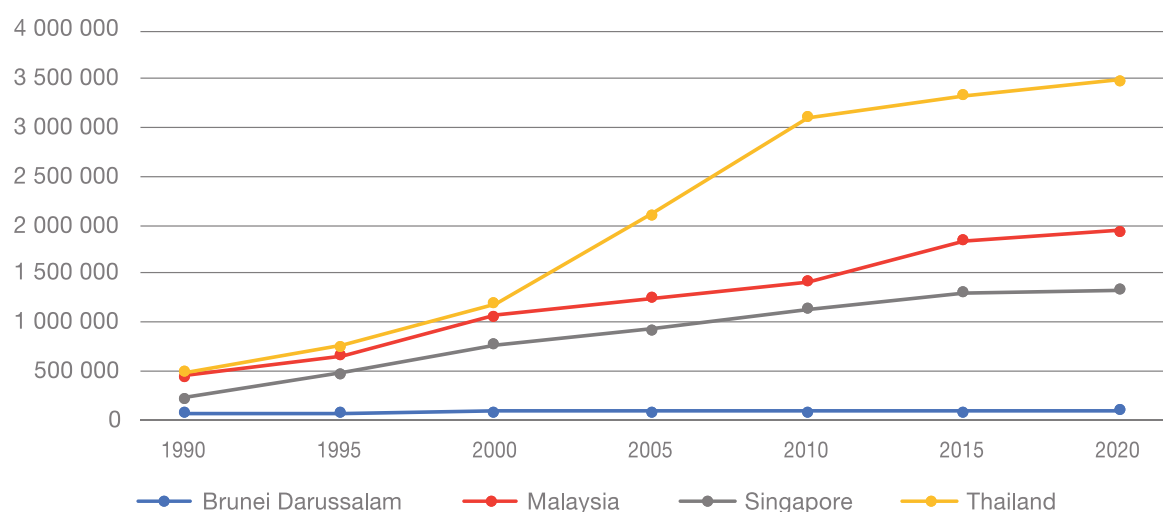
The five most prominent corridors for intra-ASEAN migrants (2020 figures) are as follows:

- Myanmar to Thailand (1.8 million);
- Lao People's Democratic Republic to Thailand (0.94 million);
- Cambodia to Thailand (0.69 million);
- Malaysia to Singapore (1.1 million); and
- Indonesia to Malaysia (1.2 million).

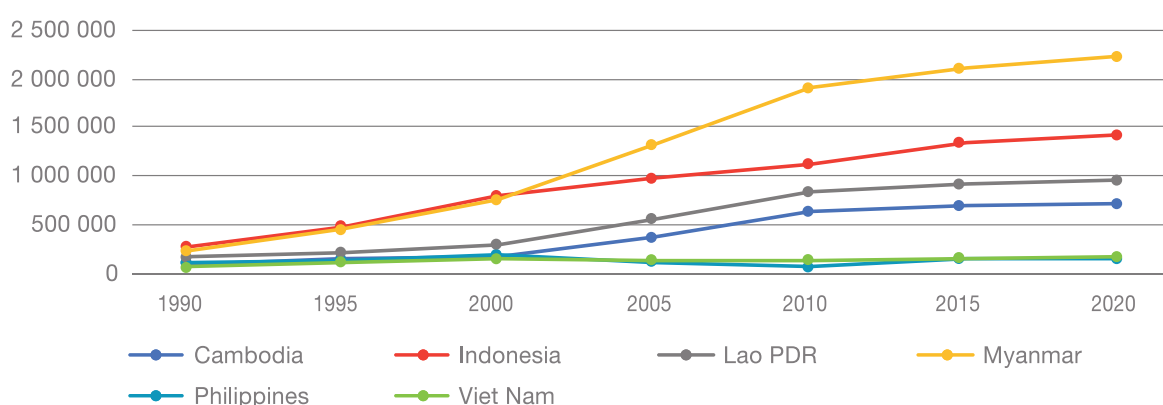
Longer-term trends are shown in figure 1. While intra-ASEAN migration has grown considerably over the last two decades (and increased dramatically from the four main countries of origin, namely, Myanmar, Indonesia, the Lao People's Democratic Republic, and Cambodia), most of it is headed to just a few countries. About 96 per cent of the 7.1 million intra-ASEAN migrants in 2020 moved to three countries in the region: Thailand (49.5 per cent), Malaysia (27.5 per cent), and Singapore (18.8 per cent). The importance of intra-ASEAN migration in the net destination countries is evident: 96 per cent of the migrants in Thailand are from ASEAN; as are 82 per cent in Brunei Darussalam, 56 per cent in Malaysia, and 52 per cent in Singapore.

**Figure 1.** Trends in the intra-ASEAN migrant stock and flows

**Panel A.** Stock of intra-ASEAN migrants in net destination countries



**Panel B.** Flows of intra-ASEAN migrants from net origin countries



**Source:** UN DESA 2020.

One of the most significant characteristics of labour migration in ASEAN is its feminization. Women form a considerable share of intra-ASEAN migrants – 48 per cent of all migrants were women in 2020.<sup>6</sup> This share has increased by about 2 percentage points since the 1990s. Country-wise trends reveal notable differences across ASEAN Member States with regard to the gender composition of intra-ASEAN migrant stock in the region's net destination countries. In Singapore, the share of women migrants has increased from 55 per cent in 1990 to 58.6 per cent in 2020. Similarly, the share has increased in Thailand between 1990 and 2020 from 47 per cent to 50.3 per cent. On the other hand, the proportion of women in the intra-ASEAN migrant population has remained fairly stable over the past two decades in Brunei Darussalam and declined in Malaysia (from 40 per cent to 36.7 per cent between 1990 and 2020). These destination country trends are depicted in annex table 1, and are confirmed by country-of-origin data as well (annex figure 2). The percentage of women among migrants from all net sending countries has increased rapidly since the 1990s, except for Viet Nam.

<sup>6</sup> This matches the global average of 48 per cent (UN DESA 2020).

## 2.2. Women migrant workers in ASEAN countries of origin

Many developed and middle-income countries across ASEAN are experiencing rising demand for women migrant workers, especially in the domestic and care work sectors. Population ageing, women's rising labour force participation rates, and nationals' unwillingness to undertake low-wage jobs are among the factors driving this demand. In addition, there is a huge unmet demand for care in destination countries, which is being fulfilled by women from countries of origin who are increasingly migrating for work to support their own families and themselves. However, these women face challenges in accessing safe and legal migration opportunities, and they are often concentrated in low-paid jobs with fewer legal protections, such as domestic work.<sup>7</sup> This reflects an undervaluing of occupations that are traditionally regarded as an extension of women's work at home. In addition, policies in some countries restrict women's movement by sector, destination or other circumstances. Since these barriers to regular migration do not remove the factors that push women to seek work overseas, many are left with no choice but to migrate through irregular channels<sup>8</sup> (ILO 2017a, as cited in Harkins, Lindgren, and Suravoranon 2017, 2).

Available data shows that for ASEAN net origin countries, the share of women in the total outflows of nationals for employment has increased since 2012 (see figure 2). Interestingly, the Lao People's Democratic Republic and Indonesia show an increasing outflow of women for employment, that is, more women are registering to work abroad than men (annex figure 3). In the Lao People's Democratic Republic, women's share has increased from 46 per cent to 50 per cent between 2012 and 2019;<sup>9</sup> while in Indonesia, it registered an impressive increment of 13 percentage points during 2012 and 2018 (even though during this period, the overall outflow of nationals registering to work abroad had in fact declined by 42.7 per cent due to restrictions on migration to specific destination countries). On the other hand, men still constitute the majority of annual migrant worker outflows in Myanmar (70 per cent), Viet Nam (64 per cent) and Cambodia (59 per cent).

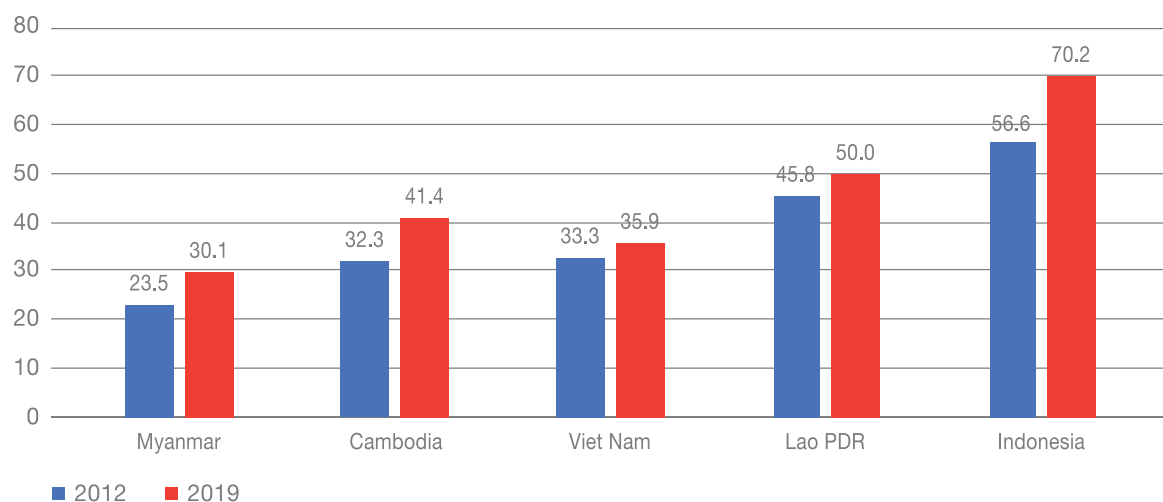
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7 Despite ASEAN's efforts to promote decent work for domestic workers, the region lacks an enabling environment for migrant domestic workers; they remain vulnerable and among the least protected workers, while also lacking skills and training opportunities (ILO 2018).

8 A 2016 study of over 1,800 migrant workers from Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam in Malaysia and Thailand reported that 74 per cent of respondents had migrated through irregular means (Harkins, Lindgren and Suravoranon 2017).

9 Thailand is the biggest destination country for Lao migrants and with cross-border migration mainly driven by wage differentials (the monthly minimum wage in Thailand is more than double of that of the Lao minimum wages). And the migration of Lao women to Thailand for domestic work (the major sector of employment) mostly occurs outside of formal channels (ILO 2022).

**Figure 2.** Share of women in annual outflows of nationals for employment in net origin countries, 2012 and 2019 (%)



**Note:** Data reported for Indonesia is for the year 2018; sex-disaggregated data is not available for the Philippines.

**Source:** ILOSTAT, ILMS database.

**Table 2:** Migrant remittance inflows to net origin countries of ASEAN (US\$ million)

Countries	Remittance inflows, 2020 (US\$ million)	Remittances as a share of GDP, 2020 (%)	Remittance inflows, 2021 (US\$ million)*	Remittances as a share of GDP, 2021 (%)*
Cambodia	1 272	4.9	1 175	4.5
Indonesia	9 651	0.9	9 168	0.8
Lao PDR	232	1.4	213	1.1
Myanmar	2 250	2.8	2 235	3.3
Philippines	34 913	9.6	36 240	9.4
Viet Nam	17 200	5.0	18 060	4.9

\* 2021 figures are estimates. Source: World Bank 2021a.

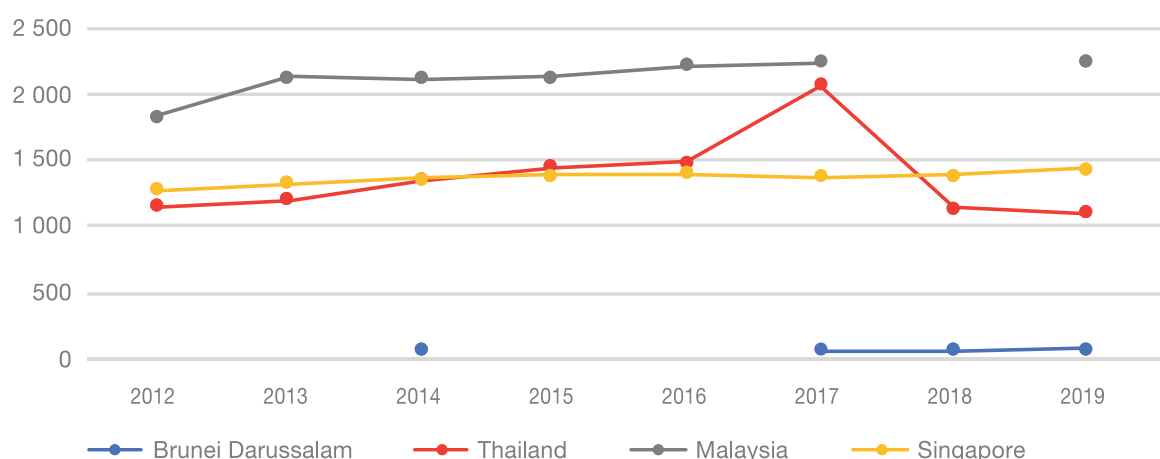
Financial remittances from migrant workers are a significant source of income for all net origin countries within the ASEAN (table 2). An estimated US\$36.240 billion in remittances was received in the Philippines in 2021 (equivalent to 9.4 per cent of GDP). Viet Nam is the second top receiver of remittances within the region, with remittances accounting for 5 per cent of GDP. While sex-disaggregated data on remittances is not available, research indicates that women migrants are notably more likely than men to reliably send remittances home to support their families (IOM 2019). The immediate impact of the COVID-19 crisis on remittance flows was perceived to be very deep; although remittances have registered a surprising pace of recovery (World Bank 2021b).

### 2.3. Women migrant workers in ASEAN countries of destination

The trend since 2012 shows that ASEAN countries of destination have had an increasing number of migrant workers residing within them (figure 3). In addition, the number of women migrating within ASEAN in search of work has also increased substantially, and they have also been migrating independently in large numbers.

As per the ILMS database in ILOSTAT (2020), the stock of international migrant workers in ASEAN countries of destination was estimated at 4.8 million. And Malaysia (with 2.2 million migrant workers) and Singapore (with 1.4 million) were top destinations for ASEAN migrant workers.<sup>10</sup> More often than not, the prospects for gainful employment and higher wages compel people from countries of origin to move to more prosperous economies within the region. However, many migrant workers continue to face exploitative conditions, abuse and exclusion with limited access to social protection for unemployment, sickness, and disability. In particular, workers employed in low-skilled and labour-intensive sectors are most vulnerable (Harkins, Lindgren, and Suravoranon 2017).

**Figure 3.** Total migrant workers in ASEAN net destination countries (in thousands)



**Note:** For Brunei Darussalam, data is not available for 2015 and 2016, and for Malaysia data is not available for 2018. Source: ILOSTAT 2020.

The 2030 Agenda for Sustainable Development includes a global joint commitment of countries to “implement nationally appropriate social protection systems for all, including floors”. The 2013 ASEAN Declaration on Strengthening Social Protection recognizes migrant workers as vulnerable, and although ASEAN Member States have progressed in extending legal coverage over the past decade (see Chapter 3 below), most migrants remain among the least protected workers in the region. Migrant workers in ASEAN have a twofold disadvantage, as they are often not adequately covered by the social security systems of either the receiving country or sending country. The ILO notes that any or a mix of the following factors could be responsible for this inadequate coverage:

- lack of extraterritorial application of domestic laws, nationality and/or residency requirements;

<sup>10</sup> It is important to note that these estimates only reflect documented migrants, and they are certainly underestimates given the limitations of official data.

- the contribution period required for long-term benefits (such as retirement benefits) is too long for migrants to be eligible;
- irregular work and work in the informal economy; and/or
- documentation and other administrative barriers.

In addition, social security portability arrangements appear to be either inadequately developed or completely lacking in ASEAN Member States (Olivier 2018).

There are also significant differences between labour force participation rates and employment-to-population ratios of migrants and non-migrants in destination countries. Migrants in these countries tend to have higher labour market participation rates. Also, men display higher participation than women across both the migrant and non-migrant groups in these countries. Men's labour force participation rates have historically remained higher than their female counterparts. But the higher labour force participation rates of migrant men could be ascribed to the fact that – more often than not – migrant women have fewer employment opportunities, are faced with discrimination, have unequal access to labour market information, and lack fair treatment. Moreover, they are frequently discriminated against because of both gender and migrant status. It is also worth noting that migrants' share in the total labour force<sup>11</sup> of Brunei Darussalam and Malaysia is very high, at 35 per cent and 15 per cent, respectively. Also, for Thailand, migrant women's share in the total labour force is slightly higher than men's share (for more details please refer to Table 1 in Annex B).

Regarding gender distribution, the available data indicates that the majority of employed migrant workers in Thailand, Malaysia and Brunei Darussalam are men, with women representing 42 per cent of migrant workers in Thailand, 32 per cent in Malaysia and 27 per cent in Brunei Darussalam. Prime-age adults – ages 25–54 – constitute the overwhelming majority of migrant workers in ASEAN countries of destination (table 3). Compared to younger and older migrants, this particular age group is assumed to have better financial means, more experience and larger social networks, and so are better equipped to migrate to a foreign country. The youth share among migrant workers has increased over time, for both women and men, which suggests a growing migration tendency among young workers.<sup>12</sup> The latest available estimates indicate that the share of young women migrant workers (ages 15–24) is relatively higher in Malaysia and Thailand, at 31 per cent and 22 per cent, respectively, compared to young men; while the reverse is true for Brunei Darussalam. Furthermore, women migrant workers in these countries, especially Thailand, have a more youthful age profile than the native labour force (ASEAN 2017c). The ILO notes that the combined effect of high youth unemployment rates and a “youth bulge” (a demographic phenomenon of a relatively high young population) in many developing countries may serve to grasp the increasing number and share of youth migrant workers (ILO 2021a).

11 As per ILOSTAT, the term “labour force” refers to those persons of working age who are actively engaged in the labour market. It is the sum of persons employed and the unemployed.

12 The ILO argues that from the perspective of destination countries, such a shift towards younger workers is presumably positive, as it increases the probability of a higher labour market participation rate and lower dependency ratio among migrant populations. However, for origin countries, the effect would be reversed, and would be especially challenging if youth workers permanently move to foreign countries, which could result in a shrinking labour force, brain drain and resulting negative impacts on economic growth and development potential (ILO 2021a).



**Table 3.** Age composition of migrant workers by country of destination and gender (%)

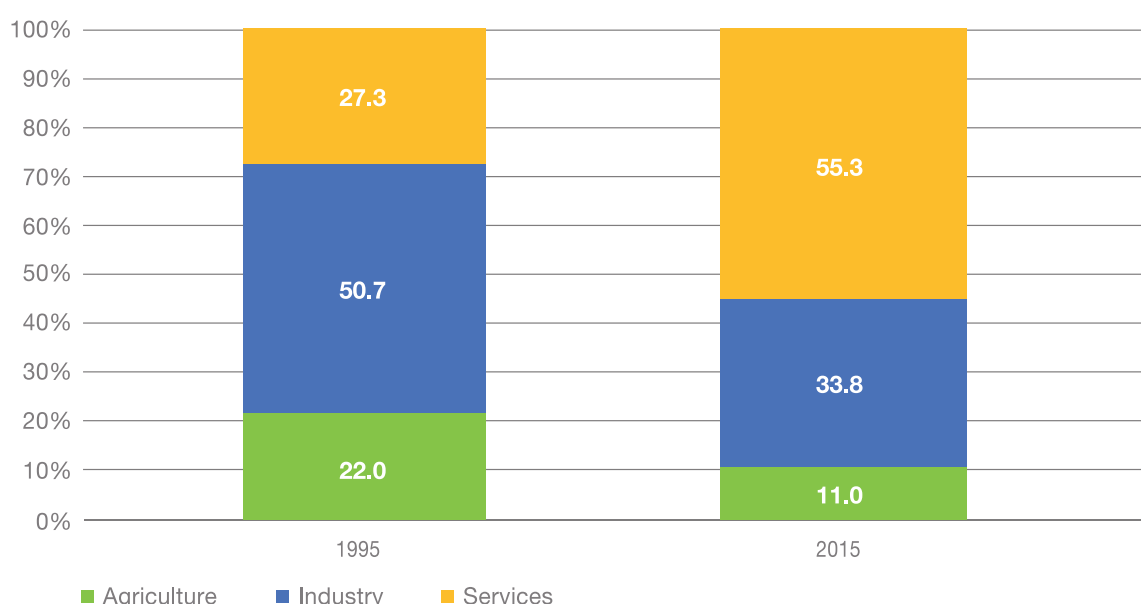
Country	15–24	25–54	55–64	65+
<b>Women</b>				
Brunei Darussalam	7	85.9	5.5	1.6
Malaysia	30.7	67.1	2.2	–
Thailand	21.9	76	1.9	0.2
<b>Men</b>				
Brunei Darussalam	11.3	81	6.7	1
Malaysia	25.5	71.8	2.7	–
Thailand	16.1	81.2	2.4	0.2

– = nil.

**Source:** ILOSTAT 2020.

It is exceedingly difficult to get a complete picture of the education attainment levels of migrant workers in ASEAN, given the lack of data availability. The only country for which latest data is available is Brunei Darussalam, which provides insights into the current state of educational attainment of men and women migrant workers. The majority of migrant workers, both women and men, in Brunei Darussalam have either primary or intermediate levels of education (see annex figure 4). Only 17 per cent of the women migrant workers have an advanced/tertiary education (compared to 20 per cent of men migrant workers).

**Figure 4.** Distribution of migrant workers in ASEAN countries of destination by broad category of economic activity and gender (%)



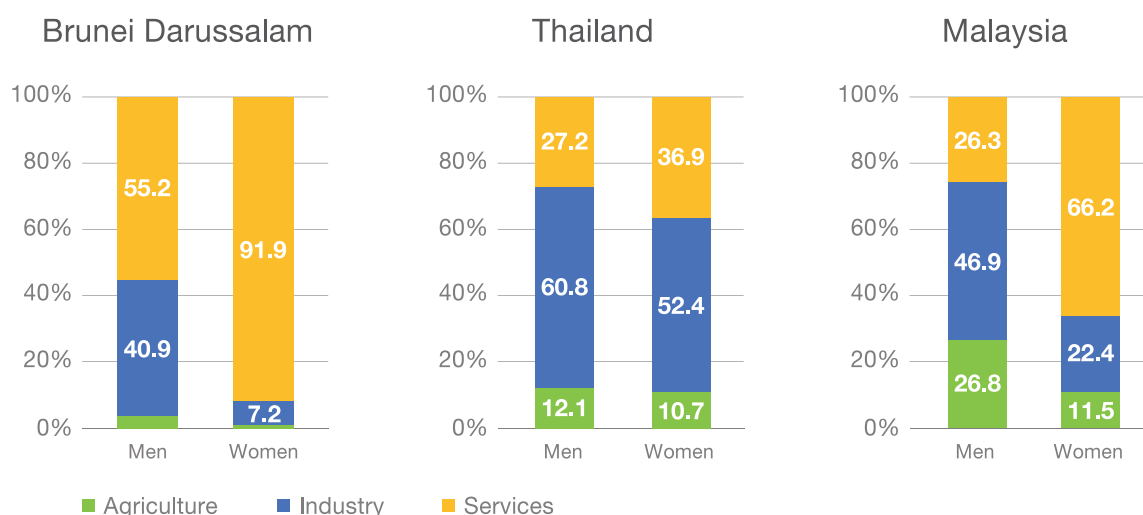
**Note:** This figure combines data for Malaysia, Thailand, and Brunei Darussalam. Sex-disaggregated data is not available for Singapore. Source: ILOSTAT 2020.

There are also notable differences in the economic activity profile of migrants and non-migrants in ASEAN countries of destination. Combined estimates for all four destination countries indicate that the majority of migrant workers are engaged

in the industry sector (44 per cent), followed by the service sector (43 per cent), compared to just 22 per cent and 53 per cent of non-migrants, respectively. And considerably more non-migrants are engaged in the agriculture sector (25 per cent), compared to just 13 per cent of migrants.

Similarly, the distribution of men and women migrant workers by category of economic activity shows substantial differences, with a far greater concentration of women in the services sector than men in ASEAN countries of destination (figure 4). In 2019, 55 per cent of women migrant workers in Brunei Darussalam, Malaysia and Thailand were in services, 34 per cent were in the industry and 11 per cent in agriculture. The economic activity profile of men migrant workers, on the other hand, is very different. Compared to women, men migrant workers were present in industry, with 51 per cent employed that sector, and 27 per cent were engaged in the services sector. The remaining men migrant workers (22 per cent) were in agriculture. The country-specific picture of the three destination countries is presented in figure 5.

**Figure 5. Country-specific**



Source: ILOSTAT 2020.

An overwhelming proportion of women migrant workers in the services sector may be the result of growing demand in the care economy, including in care, health and domestic work <sup>13</sup> (King-Dejardin 2019). These sub-sectors, which primarily involve women workers, tend to rely heavily on women migrant workers. On the other hand, men migrant workers are relatively more present in the industry sector, which includes migrant-dominated sub-sectors such as construction and manufacturing.

<sup>13</sup> However, migrant domestic workers are particularly at risk of discrimination, violence, abuse and exploitation.

**Table 4:** Gender-wise distribution of migrant workers by occupational skill level in select destination countries (%)

Category	High-skilled	Medium-skilled	Low-skilled
Brunei Darussalam			
Men	27.5	46.3	26.2
Women	22.1	33.3	44.6
Malaysia			
Men	6.8	53.5	39.7
Women	3.8	61.5	34.8
Thailand			
Men	2.3	61.2	36.5
Women	1.4	58.0	40.5

**Note:** Sex-disaggregated data for occupational skill level of migrant workers is not available for Singapore. Source: ILOSTAT 2020.

Available data on the occupational skills levels of migrant versus non-migrant workers highlights that in ASEAN destination countries more migrant workers were employed in low-skilled jobs (38 per cent) compared to non-migrants (9.6 per cent); while high-skilled occupations are dominated by non-migrants (annex figure 5). The gender breakdown of migrant workers' occupational distribution is presented in table 4 above.

Migrant workers also experience significant wage disparity compared to national workers. Available statistics on the average nominal monthly earnings for Brunei Darussalam, Thailand and Malaysia show that migrant workers earn significantly less than the non-migrant workforce (annex figure 6). It is also quite striking that women migrant workers earn almost half the average monthly wages of national women workers. And notable gaps can also be observed in the earnings of migrant men and migrant women across Brunei Darussalam, Malaysia and Thailand. Evidence presented here strongly suggests that women migrant workers often bear wage penalties/pay gaps based on gender and migrant status.

## 2.4. Global and regional frameworks for collecting migration statistics

It is well known that harnessing the potential of labour migration toward development gains requires well-informed and effective policymaking based on up-to-date and reliable data. And there are various global and regional frameworks emphasizing the importance of collecting and sharing timely, accurate, sound and comparable disaggregated data as a basis for evidence-based policies on migration (see box 1 for details on migration data in ASEAN).

The United Nations (UN) 2030 Sustainable Development Agenda recognizes migration as an essential aspect of development policy, urging governments all over the world to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies” (SDG target 10.7) and to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment” (SDG target



8.8). But more importantly, SDG target 17.18 specifically talks about strengthening migration databases by enhancing capacity-building: “By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.”

### **Box 1. Availability of migration data in ASEAN**

There are various global migration data sources that are relevant for ASEAN, namely UN DESA’s trends in [international migration stock](#), which estimates international migration stocks for 232 countries from the 1990s to 2020. The estimates of the number/stock of international migrants are disaggregated by age, sex and country of origin.

Another key data source is ILO’s International Labour Migration Statistics (ILMS) database. In ASEAN and world over, the effective governance of labour migration has emerged as an urgent policy priority. New approaches are needed to ensure the advancement of a fair migration agenda, and the ILMS Database in ASEAN is a step in this direction. This database is the first of its kind in the region and has been published annually since 2015. In validating, annotating and gathering the information from a range of statistical sources, such as the relevant surveys and administrative records produced in the ASEAN Member States, the ILMS database in ASEAN fills an important knowledge gap for national and regional policymakers and others to profile and monitor the international migrant labour force within the region. The ILO’s global ILMS database includes estimates of international migrant worker stocks and flows for 189 countries from 1991 to 2020, and is available on ILOSTAT (<https://ilostat.ilo.org/topics/labour-migration/>). Data is compiled from population censuses, population registers, nationally representative surveys and other economic data. It provides sex- and age-disaggregated data. From 2019 onwards, the ILMS has asked for sex-disaggregated data for all its 21 indicators. However, there are significant country-specific gaps in sex disaggregation across all the ILMS indicators (ILO 2020b).

The World Bank’s “[Migration and Remittances Data](#)” is the primary source for global reporting on remittance estimates and provides insight into migrants’ earnings. However, the database has neither disaggregation of migration data nor remittance flow data by gender variables.

Recognizing the importance of timely and sound labour migration statistics, the ILO has developed *Guidelines Concerning Statistics of International Labour Migration*, which identifies international labour migration as a rising policy priority. These guidelines were adopted by the 20th International Conference of Labour Statisticians in 2018 and promote relevant concepts, definitions and methodologies for measuring international labour migration and the production and dissemination of labour migration data that allow international comparison (ILO 2018a).

Similarly, the annual ASEAN Forum on Migrant Labour (AFML) ascribes high importance to collecting vital migration data and has developed recommendations in this regard. Recommendation No. 7 from the 5th AFML (2012) states: “Sharing existing sex-desegregated data and information on labour migration, job availabilities and employment conditions in accordance with the labour laws of ASEAN Member States that are useful to facilitate effective deployment of migrant workers” (ASEAN 2012). Recommendation No. 16 from the 10th AFML (2017) states: “Promote collection and sharing of standardised labour migration data disaggregated by sex and occupations including migrant domestic work” (ASEAN 2017d).

And more recently, the Global Compact for Safe, Orderly and Regular Migration (GCM), under its Objective 1 calls on States to “[c]ommit to strengthening the global evidence base on international labour migration by investing in and improving the collection, analysis and dissemination of accurate, reliable, comparable data, disaggregated by age, sex, migration status, and other relevant characteristics in national contexts” and for cooperation to collect robust migration data (UN General Assembly 2019a). With the adoption of the GCM in 2018 by the UN General Assembly, countries – including all ASEAN Member States – have committed to improved migration governance and collaboration to facilitate orderly migration.

## 2.5. Major challenges associated with migration data in ASEAN

Despite the commitment to and high relevance of migration in ASEAN Member States,<sup>14</sup> limited data availability has hampered the development of a clear and well-defined understanding of subnational differences in migration, with a notable lack of policies that take into account the needs of women migrants. To make better sense of basic migration features and the gender-dimensions of intra-ASEAN migration, all ASEAN Member States need to work towards continuously improving their bodies of data and evidence. Harmonized data on labour migration and migrant workers disaggregated by sex, occupation and several other variables is of utmost importance to inform labour market and migration policies.<sup>15</sup> Sex disaggregation particularly matters, as it allows for the identification and analysis of the specific vulnerabilities and capacities of women and reveals gender gaps and glaring inequalities. Without sex- and other disaggregated data – and gender analysis – robust policy development and implementation that benefits women remain a challenge.

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14 Subregional initiatives to improve migration data have also been developed. The [ASEAN Community Statistical System's 2016–2025 ACSS Strategic Plan](#) calls for improved migration data (ASEAN 2018, as cited in UN ESCAP 2020, 143).

15 Additionally, data and other relevant information can give migrants knowledge that allows them to migrate safely. For instance, pre-departure training contributes to more informed decision-making over the migration cycle.

Notwithstanding efforts to improve migration data, gaps in migration statistics persist within the region, including a lack of standard concepts and definitions and a lack of specialized surveys or migration modules within relevant labour force surveys/household surveys to facilitate the collection of more comprehensive national and international migration data.

#### **2.5.1. Lack of gender responsiveness in labour statistics**

Despite the growing focus and huge advantages of collecting sex-disaggregated labour migration data, some countries in the ASEAN region lack gender-sensitive data, which hampers mainstreaming gender in migration policies. And in most cases, ASEAN Member States do not record details of the employment, birthplace and nationality of migrants and thereby fail to provide adequate information for well-informed and targeted policymaking aimed at migrant workers in general and women migrant workers in particular. Therefore, it is critical to integrate gender issues in labour/migration statistics.

Additionally, there are issues concerning the sampling strategies of national surveys in some ASEAN Member States, as some countries do not sample a large enough population of migrant workers to reach any statistically viable estimates. Moreover, the unavailability of such data or gender-biased data collection methodologies is responsible for skewed/negative public perceptions of women migrant workers. And since the gender dimensions of migration are not fully captured, women mostly remain invisible, which in turn, has led to the development of policies that do not account for the barriers migrant women face and therefore fail to deliver equitable outcomes for them.

#### **2.5.2. Heavy reliance on administrative data sources**

ASEAN Member States rely to a great extent on a range of administrative sources – such as border records, visas, resident permits, population registers and other relevant sources – for labour migration statistics. However, such records are only reliable if the administrative system is well-kept, coverage is complete, and high-quality reporting is maintained (IOM 2008). And National statistical offices frequently face challenges collecting and monitoring the expanded arrays of disaggregated data needed for a comprehensive understanding of migration issues. In addition, data that is not in the public domain – including the administrative records of migrants, migrant workers, and nationals abroad – is also not available for public use. By ensuring that complete labour migration data is publicly available, it can be used to inform policy in both origin and destination countries. Also, entities involved with data collection often do not share information on their collection practices, and some national statistical offices lack the capacity to collect and disseminate data regularly.

#### **2.5.3. Missing data on return migrants**

With the exception of Indonesia, ASEAN net origin countries lack or fail to provide data on return migrants. Such information is of immense value for countries of origin, as it can be utilized for reintegration purposes. Additionally,



such data could also help prospective migrants to make informed decisions about their migration options. As such, countries of origin should gear themselves towards collecting information on return migrants by sex, age, place of residence abroad, duration abroad, occupation and current place of residence.

#### **2.5.4. Absence of a comprehensive database on social protection for migrant workers**

Data collection and dissemination mechanisms on social protection for migrant workers should be strengthened to inform policymakers. It is also critical to establish mechanisms for the portability of the social security entitlements and earned benefits of migrant workers. However, the systems needed to link the social security database with the immigration and population databases of ASEAN Member States are either completely lacking or inadequately developed.

#### **2.5.5. Lack of data on violence against women and harassment**

ASEAN lacks capacity in collecting administrative data on violence against women migrant workers. There are often inconsistencies in registering, recording and compiling administrative data on VAWG (violence against women and girls). Responsible ministries and agencies lack understanding of VAWG issues and the use of VAWG data and data analysis skills.<sup>16</sup>

#### **2.5.6. Missing data on the effects and benefits of migration within ASEAN**

Data on the economic and social contributions of migrants, the effects and benefits of migration, and the drivers and challenges of migration is currently scarce in the region. It is essential to collect, analyse and use such data to better understand migrants' contributions to both destination and origin countries and to develop programmes and strategies for migrants.

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<sup>16</sup> For more details see: ASEAN, *ASEAN Regional Guidelines on Violence against Women and Girls Data Collection and Use*, 2018.







## CHAPTER 3. REGIONAL AND INTERNATIONAL STANDARDS ON LABOUR MIGRATION AND GENDER EQUALITY

This chapter describes ASEAN outcome documents and tools and the various international treaties and non-binding declarations that provide the baseline and legal platform for this study's gender analysis of the migration laws and policies of the ten ASEAN Member States. These instruments form the framework of the gender analysis and provide the parameters for promising practices in Chapter 4.

### 3.1. ASEAN's principal instruments

ASEAN has been active in adopting frameworks for decent work in labour migration and gender equality through the following outcome documents:

1. **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration)** (2007), in which ASEAN Member States commit to promoting decent, humane, productive, dignified and remunerative employment for migrant workers.
2. **ASEAN Declaration on Strengthening Social Protection** (2013), which encourages ASEAN Member States to strive to adhere to the principle that everyone, including migrant workers, are entitled to have equitable access to social protection.
3. **ASEAN Declaration on the Elimination of Violence Against Women and Children** (2013), in which Member States resolve to strengthen national legislation for the elimination of violence against women and violence against children, especially migrant women and children.



4. **ASEAN Socio-Cultural Community Blueprint 2025** (2016),<sup>17</sup> which encourages regional initiatives for the protection and promotion of the rights of migrant workers.
5. **ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers** (2017), which constitutes the bedrock of both women and men migrant workers' rights in ASEAN. It covers, among a number of fundamental decent work rights, the right to receive a copy of the work contract with clear details of employment terms in the destination State in a language understood by the migrant worker and to file grievances with the relevant authorities and/or seek assistance from their embassies or consulate missions in the destination country.
6. **Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025 and Sustainable Development Goals** (2017), which (without specifying migrant workers) recognizes the need to work towards gender equality through gender mainstreaming, especially through the collection and use of high-quality, reliable and timely data disaggregated by sex, age and socio-cultural and economic characteristics.
7. **ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers** (2020), which guide ASEAN Member States on policies and services for effective and sustainable return and reintegration of migrant workers in line with international and ILO standards and ASEAN Consensus principles.
8. **ASEAN Guidelines on Gender Mainstreaming into Labour and Employment Policies towards Decent Work for All** (2020),<sup>18</sup> which aim to build capacity in ASEAN Member States to better mainstream gender equality into labour policies and practices in four focus areas: (1) employment promotion; (2) decent working conditions; (3) social and maternity protection; and (4) international labour migration.
9. **ASEAN Gender Mainstreaming Strategic Framework 2021–2025** (2021), which highlights the vulnerabilities facing women migrant workers in the region.

### 3.2. Other ASEAN texts, including on ending violence against women and girls

Many valuable tools exist to assist ASEAN Member States to examine their migration policy through a gender lens and specifically tracking the promotion and protection of women migrant workers:

1. Repository of Legislations and Policies on Migrant Workers in ASEAN (2012–present): <https://asean.org/wp-content/uploads/2021/09/2012-Repository-Matrix-for-an-ASEAN-Migrant-Worker-Dec.pdf>
2. ASEAN, *Study Report on the Portability of Social Security Rights between ASEAN Member States*, 2021.

<sup>17</sup> Section B.3.ix of the ASEAN Socio-Cultural Community Blueprint 2025 calls on ASEAN Member States to enhance regional initiatives, in accordance with the 2007 Cebu Declaration, to improve the protection and promotion of the rights of workers and of migrant workers.

<sup>18</sup> See the dedicated checklist on international labour migration (page 60).

3. ASEAN, *Women Migrant Workers in ASEAN Economic Community*, 2017.
4. Piyasiri Wickramasekara, *Effective Return and Reintegration of Migrant Workers with Special Focus on ASEAN Member States*, ILO (2019).
5. ASEAN, *Comparative Study on Laws and Policies in Management of Migrant Workers in ASEAN*, 2021 – [Regional report](#) and country reports.
6. ASEAN and UN Women, *Ending Violence against Women in ASEAN Member States: Mid Term Review of the ASEAN Regional Plan of Action on the Elimination of Violence against Women*, 2021.

### 3.3. CEDAW, ICMW and relevant UN texts

In addition to the 1995 Beijing Declaration and Platform for Action, which recognizes the specific barriers facing women migrant workers, the following UN texts are relevant:

1. **Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)**, which does not include specific references to migrant workers. Also the following non-binding recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee):
  - i. General Recommendation No. 26 on Women Migrant Workers (2008), which fills the gap on this issue in the Convention; and
  - ii. General Recommendation No. 35 on Gender-Based Violence against Women (2017), which proposes that States Parties repeal restrictive immigration laws that discourage women, including migrant domestic workers, from reporting such violence.

All ten ASEAN Member States have ratified CEDAW.

2. **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICMW)**, which requires respect for the human rights of all migrant workers without distinction as to sex. Also the following general comment from the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW Committee):
  - i. General Comment No. 1 on Migrant Domestic Workers (2011), which calls for the repeal of sex-specific bans and discriminatory restrictions on women's migration related to age, pregnancy and spousal permission to work overseas.

Among ASEAN Member States, Cambodia, Indonesia and the Philippines have ratified the ICMW.

3. The non-binding **Global Compact for Safe, Orderly and Regular Migration** (2018).
4. **UN General Assembly biennial resolutions on Violence against Women Migrant Workers**, adopted since 2001.<sup>19</sup>

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<sup>19</sup> A chronological listing of the resolutions is available at: <https://www.un.org/womenwatch/daw/vaw/v-work-ga.htm>.

5. The non-binding – but highly persuasive – **Agreed Conclusions of the UN Commission on the Status of Women**, particularly the:
  - i. Agreed Conclusions on Social Protection Systems, Access to Public Services and Sustainable Infrastructure for Gender Equality and the Empowerment of Women and Girls (2019); and
  - ii. Agreed Conclusions on the Elimination and Prevention of All Forms of Violence against Women and Girls (2013), which make special reference to the right of women migrant workers to live and work free from exploitation and abuse and to enjoy decent work.
6. **2015 Agenda for Sustainable Development**, particularly SDG target 8.5 requiring decent work for all women and men.

### 3.4. ILO Decent Work Agenda, migration and applicable labour Conventions <sup>20</sup>

Decent work involves:

- opportunities for work that is productive and delivers a fair income;
- security in the workplace and social protection for workers and their families;
- prospects for personal development and social integration;
- freedom for women and men to express their concerns, organize and participate in decisions that affect their lives; and
- equitable opportunities and treatment for all women and men. It naturally applies to migrant workers, women and men.

The ILO's ten fundamental Conventions likewise apply to women and men migrant workers, and 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) and the 2014 Protocol to the Forced Labour Convention, 1930
- 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)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

The ILO's two migration-related Conventions and their accompanying Recommendations are as follows:

- Migration for Employment Convention (Revised) (No. 97) and Recommendation (No. 86), 1949, which define the rights of migrant workers and the obligations of States to facilitate departure, journey and

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<sup>20</sup> For more details on migration-related standards, see: ILO, "[International Labour Standards on Labour Migration](#)"; as well as ILO, [Compilation of International Labour Conventions and Recommendations](#), 2015.

reception of migrant workers – both women and men – for employment. Convention No. 97 was ratified by the Philippines in 2009 and is applicable to Malaysia (Sabah) since 1964.

- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151), which aim to end abusive conditions and ensure equality of opportunity and treatment with national workers. Convention No. 143 was ratified by the Philippines in 2006 (ILO 2017a).

ILO technical standards that address equal treatment in social protection, certain aspects of job placement and violence and harassment include the following:

- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) – ratified by Indonesia in 1950, Malaysia (Peninsular) in 1957, Malaysia (Sarawak) in 1964, Myanmar in 1964, the Philippines in 1994, Singapore in 1965 and Thailand in 1968.
- Equality of Treatment (Social Security) Convention, 1962 (No. 118), ratified by the Philippines in 1994.
- Private Employment Agencies Convention (No. 181) and Recommendation (No. 188), 1997, which establish that workers shall not be charged “directly or indirectly, in whole or in part, any fees or costs” (Article 7(1)).
- Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011, which recognize that many domestic workers are migrants vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights. Ratified by the Philippines in 2012.
- Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, which require ratifying States to address violence and harassment in all relevant national policies, such as those on migration.







## CHAPTER 4. GENDER ANALYSIS OF PRINCIPAL LABOUR MIGRATION LAWS IN ASEAN MEMBER STATES

This chapter's gender analysis of the ASEAN Member States' laws and policies uses the international women's and migrant workers' rights frameworks and ASEAN's own outcome documents outlined in Chapter 3 above. Relevant UN treaty body concluding observations (see Annex III) and ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) comments inform the gender analysis. The situation of women migrant workers is examined across the main intra-ASEAN labour migration laws <sup>21</sup> identified in the *Repository of Legislations and Policies on Migrant Workers in ASEAN* (2012–present), and is enriched by all the ASEAN Member States' responses to this study's questionnaire (see Annex I) and workshop feedback.

### 4.1. Coverage of women's rights across the migration cycle

The aims of the gender analysis are to: (i) identify cross-ASEAN commonalities so that a regional overview emerges (see table 5 below); (ii) highlight promising practices;<sup>22</sup> and (iii) recommend areas for action, where appropriate. This study does not enter into municipal or provincial-level regulatory frameworks, neither does it target sectoral texts. However, given the profile of intra-ASEAN migration described in Chapter 2, additional sectoral perspectives are provided (where available in each country) for the three key sectors where women migrant workers either predominate or, on the contrary, appear to be excluded. The three selected sectors are:

<sup>21</sup> English language versions; status as at March 2022.

<sup>22</sup> The promising practices are selected from pre-existing curated collections and databases, such as the ILO's "[Good Practices Database – Labour Migration Policies and Programmes](#)". The examples are chosen based on their particular success in integrating aspects of labour migration that are a unique challenge for women in ASEAN Member States, because of their pertinence during the COVID-19 pandemic, and because of the inclusive – often tripartite – manner of being designed and implemented, which helps guarantee the workability of the policy or practice.

- i. domestic work, concerning which most ASEAN Member States have legislative mentions on migration;
- ii. tourism,<sup>23</sup> for which only a few ASEAN Member States have specific migration provisions; and
- iii. construction, concerning which few legislative and policy texts on migration were located.

The fact that laws on labour migration for jobs in specific sectors are relatively rare points to an ASEAN trend to cover labour migration through one or two key texts. It may, therefore, be interesting to engage in further studies into differences in practice concerning the recruitment and hiring of women migrant workers in these sectors – particularly in the construction sector, which is dominated by men – and to research whether (in practice) domestic work opportunities, currently dominated by women, could be opened more to men.

To present cross-ASEAN commonalities in laws and policies, the gender analysis follows the four stages <sup>24</sup> of labour migration:

1. **Pre-departure arrangements** – including recruitment processes and management of placement agencies, detailed orientations concerning the destination country, and recruitment costs borne by women migrant workers.
2. **Arrival/on site working conditions** – including access to fundamental rights in the world of work; contractual status; wages; working time and vacation; occupational safety and health (OSH) measures; social protection benefits (in particular maternity protection); protection from violence, abuse and sexual harassment (including if access exists to support services in case of abuse, such as those listed in ILO Recommendation No. 206 like hotlines and shelters); adequate or reasonable accommodation (where provided); remittance transfer arrangements; and accessible labour dispute mechanisms.
3. **Exit/return and reintegration measures**
4. **Enforcement machinery** – including general machinery for addressing labour law violations, such as labour inspection and, where applicable, procedures concerning the right to file a complaint under the labour dispute provisions in the destination State or country of origin when back home. For example, according to this study's questionnaire responses, complaints include issues such as:
  - discriminatory recruitment practices (where useful guidance exists in the ILO's General Principles and Operational Guidelines for Fair Recruitment);
  - non-payment or under-payment of wages;
  - sexual harassment;
  - termination of employment; and
  - breach of an employment contract

<sup>23</sup> Only tourism is among the eight sectors in which ASEAN encourages Mutual Recognition Arrangements that aim to give opportunities to ASEAN workers to work in other ASEAN Member States (the other sectors being engineering, architecture, surveying, nursing, medicine, dentistry, and accounting).

<sup>24</sup> These four stages correspond to the four areas used in the regional report ASEAN, *Comparative Study on Laws and Policies in Management of Migrant Workers in ASEAN*, 2021 and associated country reports. In these publications the four areas are named: entry and stay measures; incorporation measures; exit measures; and enforcement measures.

Concerning worker complaints, the study also considers the right of migrant workers, subject to national immigration laws, being allowed to continue staying in the country of destination pending the disposal of the worker's case. This thematic area also encompasses labour inspection systems<sup>25</sup> and the appropriateness of penalties against employers and employment placement agencies that violate the national laws, because the gender dimension of various sanctions means that women migrant workers might not be compensated appropriately when winning a process.

The fifth area analysed is the **current gender equality regime** in each Member State as it concerns the migration cycle themes. This is useful because most ASEAN Member States have enacted dedicated national laws on gender equality or on violence against women and/or domestic violence, and some have developed National Action Plans to support the implementation of laws and policies including shelters, hotlines and One Stop Crisis Centres, dedicated women's desks in police stations, and awareness-raising campaigns.<sup>26</sup> But not all national laws and policies cover women migrant workers, and not all domestic violence instruments extend beyond intimate partner violence as often narrowly defined in national texts.

**Table 5.** Common provisions in ASEAN relevant to women migrant workers

Themes relevant for women migrant workers	Common to all ASEAN Member States	Common to some ASEAN Member States	Variations in individual ASEAN Member States' laws and policies
<b>(i) Pre-departure arrangements</b>			
Gender-sensitive information provided	<b>X</b>		
Age not restricted		<b>X</b>	
Type of jobs for women not restricted		<b>X</b>	
No application/ placement fees		<b>X</b>	
Limit of length of stay	<b>X</b>		
Easy renewal of various permits		<b>X</b>	
<b>(ii) Arrival/on-site working conditions</b>			
Provide written contract in language understood by worker	<b>X</b>		
Equal pay	<b>X</b>		

25 Useful insights into the role of national labour inspection systems (as distinct from disputes settlement) for the protection of migrant workers' rights is found in a background report for the 8th ASEAN Forum on Migrant Labour (IOM 2015), especially the following recommendations:

- i. more women labour inspectors should be encouraged in relevant sectors to ensure gender sensitivity, in line with CEDAW General Recommendation No. 26 on Women Migrant Workers; and
- ii. investments should be made in conducting specialized capacity-building training programmes, with a focus on "gender and migration" for labour inspectors (IOM 2015, para.57(c-d).

26 See, for example: ASEAN, [ASEAN Regional Plan of Action on the Elimination of Violence against Women](#), 2015, 5.



Themes relevant for women migrant workers	Common to all ASEAN Member States	Common to some ASEAN Member States	Variations in individual ASEAN Member States' laws and policies
Gender-responsive working time and vacation	<b>X</b>		
Covered by social security, e.g., medical and sickness benefits		<b>X</b>	
COVID-19 helpful clauses		<b>X</b>	
Maternity protection clauses	<b>X</b>		
Sexual harassment and violence procedures	<b>X</b>		
Domestic workers covered		<b>X</b>	Eight ASEAN Member States have laws limiting some aspect of domestic workers' rights
<b>(iii) Exit/return and repatriation</b>			
Easy administrative process		<b>X</b>	
Skills upgrading and job placement services upon return		<b>X</b>	
<b>(iv) Enforcement measures</b>			
Gender-sensitive labour inspection		<b>X</b>	
Gender-sensitive complaints procedures		<b>X</b>	
Role for embassy staff /dedicated unit in destination country	<b>X</b>		
Adequate sanctions for violators and compensation for victims		<b>X</b>	
<b>(v) Current gender equality regime</b>			
Migrant workers specifically covered		<b>X</b>	
Role for national gender equality entities to protect all women's rights	<b>X</b>		

## 4.2. The impact of the COVID-19 pandemic

The UN human rights treaty bodies have called for joint action in the time of COVID-19, observing since its outbreak the unprecedented and protracted impacts, including harm to people's mental and physical health, work and livelihoods; escalating discrimination; and intensified violence. They urged governments to take extra

care of those who are particularly vulnerable as a result of the pandemic, including migrants (OHCHR 2020). It is indisputable that the COVID-19 pandemic has hit migrant workers hard, in particular women migrant workers in jobs away from their home countries. With lockdowns, exposure risks, travel restrictions, supply-chain disruption and enterprise closures, not only are employees' health and living conditions at risk, but so are the admission/recruitment policies under which they migrated, their wages and the amount of remittances able to be sent to their country of origin (UN Human Rights Council 2020a; ILO 2021d). COVID-19 measures gave extra insight into structural flaws in labour migration policies on wages and housing, on domestic work being accepted as work, and on the difficulty of maintaining equal treatment with nationals in social protection. According to the International Organization for Migration (IOM), the pandemic also highlighted the urgent need for an effective reintegration framework to help returning migrant women transition back into their local environment as a starting point in economically empowering them (IOM 2022). As the country profiles in section 4.4 show, regulations and policy in several ASEAN Member States (Cambodia, the Lao People's Democratic Republic, Myanmar, Philippines, Singapore, Thailand) were issued with provisions expressly protecting migrant workers' rights during the pandemic, many with a gender-responsive rationale, as shown by the positive proscriptions below.

#### **4.3. Positive legislative proscriptions**

The ASEAN Member State country profiles below reveal a number of positive provisions that are highlighted as "welcome". There are a number for each ASEAN Member State, covering a wide range of gender-responsive measures, and they often appear in recent amendments or new regulations under the respective country's employment laws. Across the migration cycle, these welcome provisions include:

##### **1. For pre-departure arrangements:**

- a ban on charging fees to migrant workers;
- very specific content to be included in pre-departure (and sometimes on-arrival) training courses regarding destination country working environments, labour law, religion, traditions and customs, language, human rights, and health and safety issues;
- mandatory education programmes for employers of foreign workers to ensure they understand their obligations to their employees, especially to domestic workers.

##### **2. For on-site working conditions:**

- prohibition on deployment to destination countries without social security and insurance systems that cover foreign workers and without decent work protected by the national labour law;
- permission for employees to end their employment contracts when faced with sexual harassment, mistreatment and violence (in line with ILO Convention No. 190);

- permission for employees to transfer to another employer before the end of their contract, subject to certain government verifications;
- compulsory insurance for migrant workers deployed by a recruitment agency;
- mandatory inter-agency cooperation among agencies involved with foreign nationals entering an ASEAN Member States to work so as to harmonize rules on the necessary work permits and visas (among other coordination functions).

### 3. **For exit/return and reintegration measures:**

- introduction of flexibility with regard to COVID-19 general restrictions on travel.

### 4. **For enforcement machinery:**

- the requirement that records be maintained with sex-disaggregated data;
- empowering of labour inspection and other law enforcement agencies to verify the implementation of migrant workers' rights, including the rights of women domestic workers;
- strengthening gender-responsive processes for resolving migrant workers' grievances;
- giving a complaint solving role to Migrant Worker Resource Centres (MRCs);
- no court fees being charged in the first instance in any proceedings commenced by an employee regarding alleged violations of labour rights;
- imposing strongly dissuasive sanctions for employers and employment agencies that violate the labour law provisions, applicable also for enforcing women migrant workers' rights;
- high-level representation in national decision-making forums for migrant workers, including from sectors dominated by women migrant workers.

## 4.4. **ASEAN Member State legislation gender profiles**

### 4.4.1. **Brunei Darussalam**

This section on Brunei Darussalam starts with an initial comment in reference to the English language versions of several pieces of legislation, where the pronoun "he" and the nouns "workman" and "seamen" are used. This may be simply a translation issue, but it was raised in Brunei Darussalam's 2011 reports submitted to the CEDAW Committee under Article 18 of CEDAW, where the Government indicated that section 4(a) of Brunei Darussalam's Interpretation and General Clauses Act "provides that the words importing the masculine gender include females" (CEDAW Committee 2013, 15). However, following CEDAW recommendations and modern legislative drafting techniques, it is recommended to check in the original that gender-inclusive language such as "worker" and "seafarer" is used, because it makes women visible in labour legislation.

## **Box 2. Promising practices in Brunei Darussalam: Making systems more accessible**

Brunei Darussalam's Department of Labour published a list of all registered recruitment agencies and their recruitment costs online in March 2017. The public posting of this information has increased transparency of the recruitment process, as both employers and migrant workers are better informed and less likely to be taken advantage of by recruitment agencies. To lower the recruitment costs borne by employers wishing to hire migrant domestic workers, the Department of Labour opened limited licensing registration for recruitment agencies willing to apply a flat-rate fee of B\$1,500 (US\$1,100) for recruitment of foreign domestic workers.

Moreover, the Brunei Darussalam Council on Social Welfare (MKM, launched on 8 March 2013 in the presence of the Attorney-General) operates a Legal Advice and Advisory Clinic that provides free advice and assistance to vulnerable groups, including migrant workers. The Clinic also offers legal services at a subsidized rate or on a pro bono basis to hearing women who have no avenue to access legal assistance following domestic violence. All their staff are trained on CEDAW and other international human rights instruments. MKM also operates a gender-responsive community outreach programme that aims to promote and protect the rights of socially and economically disadvantaged groups in society and improve their access to justice.

**What makes these promising practices?** The Government's measure demonstrates seriousness in ensuring that the functioning of the recruitment system is fair and transparent. The non-governmental organization practice shows how a non-government organization (NGO) can underpin formal legal services when vulnerable persons cannot access them.

**Source:** ILO 2019b and MKM, n.d.

### 4.4.1.1. Pre-departure arrangements

The Employment Agencies Order 2004 requires entities wishing to engage in recruitment services for employment to secure a licence, with conditions set by the Commissioner of Labour, including the posting of a security bond (section 8). Section 20 prohibits the charging of fees other than those prescribed in the Order. Section 36 applies a general penalty for violations of the Order as a fine and imprisonment not exceeding six months, or both.



Foreign workers (except Malaysian and Singaporean nationals) wishing to work in Brunei Darussalam must obtain an employment visa authorized by the Department of Immigration and National Registration from a Brunei Darussalam embassy overseas. Employers wishing to hire a foreign worker must obtain a foreign worker licence (Lesen Pekerja Asing, or LPA). This licence is acquired by first registering and advertising the vacancy so that nationals first have a chance to apply. If no nationals are available/interested, then the employer can receive clearance from JobCentre-Brunei. They must also obtain an endorsement from the Employees Trust Fund (which validates registration in the social security system and the employer's contributions) before applying for the licence. Once the foreign worker licence approval is received, a potential foreign hire must undergo a pre-employment medical examination at an accredited health centre in the country of origin at the expense of the hiring employer (as per section 16 of the Employment Order 2009), and then the worker must submit the documents needed to apply for their visa. Once the visa is issued, the foreign workers can collect their work pass from the relevant Brunei Darussalam diplomatic mission. The pass is valid for two years, renewable for another two years at a time. No quota system applies to employment agencies in bringing migrant workers into the country. Regarding the aforementioned medical examination, in addition to testing blood and urine, verifying vaccinations and getting chest X-rays, it appears that pregnancy tests are applied to women migrant workers prior to departure to Brunei Darussalam and at periodic intervals (UN Women, 2013). If being pregnant becomes a ground for discriminatory treatment, this would be contrary to CEDAW and ILO Maternity Protection Convention, 2000 (No. 183). It is noted that the various application procedures outlined here and in the supporting regulatory documents do not show sex bias.

#### 4.4.1.2. Arrival and on-site working conditions

The Employment Order 2009, section 2, defines an "immigrant employee" as "any employee who is normally resident outside Brunei Darussalam who has come to Brunei Darussalam for the purpose of performing work in Brunei Darussalam", and sections 112 and following regulate their working conditions. Section 2 also defines "domestic worker" and then proceeds to exclude domestic workers from the definition of "workman". While acknowledging that section 111 empowers the Minister of Home Affairs to order that certain provisions apply to domestic workers, and noting that the Labour (Domestic Servants) Rules 2002 do indeed list the provisions of the Labour Act (now the Employment Order 2009) that apply to domestic workers, ILO labour standards encourage the labour law to be fully applicable to all working women and men, including domestic workers. It is therefore recommended that while domestic workers are not included fully under the Employment Order 2009, their working conditions in the private home of employers should be clearly protected by the law.

Section 5 of the Employment Order 2009 empowers the Minister to appoint authorized officers to implement the Order. In light of CEDAW Committee advice on empowering women and ILO Labour Inspection Convention, 1947 (No. 81), stating that both men and women shall be eligible to be appointed to the labour inspectorate (Article 8), it is recommended to add a subsection to section 5 requiring gender parity in labour inspectorate appointments, so that women and men are seen to supervise the legal provisions. This legal recommendation is made while acknowledging the common practice in Brunei Darussalam that sexual harassment involving female victims will be handled directly by female labour inspectors.

Section 17 of the Employment Order 2009 protects employees from and opens the possibility to compensation for “mistreatment”, and section 18 permits an employee to end their contract when faced with immediate danger by violence. Such protections apply to women migrant workers, and section 114(e) covers their exit from the country in such circumstances. These are welcome provisions following the 2019 adoption of ILO Convention No. 190.

The Employment Order 2009 stipulates that foreign workers must leave the country at the end of each contract and their employer must re-apply for their return. Loss of one’s employment permit entails the loss of the residency permit. Under section 80, the employer must provide accommodation, water and “sufficient and proper” sanitary arrangements; little further detail is given, although ILO’s Decent Work Agenda calls for gender-responsive sanitation. It is noted that the guideline of standard housing for employees has been created administratively by the Labour Department and that in practice male and female workers’ accommodations are provided separately by their employers.

Under section 52 it is illegal for employers to fail to pay a worker’s salary; however, it is reported that some employers, notably of domestic workers and construction workers, do so in order to recuperate labour broker fees or recruitment fees or to compel continued service. It is recommended to engage a national conversation among authorized officers on the practical implementation of the Employment Order’s basic working conditions, such as wage payment, where opinions can be exchanged regarding strengthening enforcement of section 52.

According to the Ministry of Home Affairs’ Department of Labour (2018), under the Employment Order (section 91(2)) citizens and permanent residents are entitled to 15 weeks of maternity leave (of which 13 are paid). For foreign workers the maternity benefit is reported to be nine weeks’ leave, eight of which are paid. Since national women workers receive a longer leave period, this difference in treatment should be reviewed in light of the ICMW and ILO Convention No. 97, which require treatment no less favourable than that which applies to nationals. It is recommended to harmonize the maternity benefits of migrant working

women with that of nationals. Moreover, the general pre-condition of having worked for an employer for 180 days immediately preceding the day of one's confinement (applicable to both foreign and national women) is not in line with CEDAW and ILO Convention No. 183. It is therefore recommended to remove this pre-condition.

Section 112 proscribes employment of an immigrant worker without having obtained from the Commissioner a licence to do so; an employer in contravention is liable to a fine of between B\$6,000 and B\$10,000, imprisonment of six months to three years, or both. The Order allows the transfer of a worker (including women migrant workers) to another employer subject to the Commissioner verifying the worker's consent to the new arrangement. This is a welcome provision from the point of view of women migrant workers.

The Workplace Safety and Health Order 2009 regulates health and safety in workplaces, including factories, without making specific reference to sexual harassment or violence at work. The Penal Code (revised), section 509, punishes insults to the modesty of any woman (including sexual harassment) with imprisonment of up to three years and a fine; assaults or use of criminal force intending to outrage the modesty of a person shall be punished by caning and maximum imprisonment of five years. But lodging criminal complaints may be daunting for women migrant workers, and the outcome of a successful case may not change the situation for the woman. It is therefore recommended to include the following provisions, inspired by ILO Convention No. 190, in the Workplace Safety and Health Order 2009:

- define sexual harassment under section 4 "Interpretation";
- prohibit sexual harassment under Part IV "General duties of persons at workplaces", specifically section 12(3);
- add complaints procedures for workplace violence against women migrant workers and others under Part VI "Investigations, inquiries and reporting of accidents, dangerous occurrences and occupational diseases"; and
- list training on sexual harassment under section 31 "Safety and health training courses".

The Workplace Safety and Health (Construction) Regulations 2014 can apply to both men and women in construction. Regulation 33 on the duty to supply to workers (free of charge) personal protective equipment (PPE) requires it to be "appropriate", hence employers need to ensure that sizes are available for both sexes, in the interests of encouraging women to engage in construction jobs. The English version of the Regulations contains certain technical terms that reflect the historical dominance of male workers in construction. For example, Regulations 2 and 105 and following refer to "man-locks"; modern legislation avoids terms that imply only one sex works on the site, so it is recommended to change the wording to an inclusive technical term such as "safety chamber". Likewise, Regulation 99(d) requires communication

connections with “the man” and the medical lock attendants’ station, which should be changed to read “the person”.

Migrant workers do not have access to social security, but employers must insure their migrant employees are under their medical insurance and workers’ compensation schemes until the migrant workers leave the country. The Workmen’s Compensation Act 1984 appears to apply to migrant workers and covers domestic workers (referred to as “domestic servants” under section 3). The contingencies covered are personal injury caused by accidents at work, occupational diseases, disability and death arising from such injury or illness (sections 4 and 5), which shall be compensated by periodical payments or a lump sum (section 18) paid by the employer. Under section 27, employers are obliged to take insurance with an insurer approved by the Minister of Labour or to deposit a sum of money or furnish another form of security with the Commissioner of Labour to cover workers’ compensation claims. The Third Schedule lists the amount of compensation payable. Sanctions for violation of this Act include fines and imprisonment. The above recommendations regarding changing masculine pronouns and technical terms apply if the original language implies that only men work apply.

#### 4.4.1.3. Exit, return and reintegration measures

Under section 114 of the Employment Order 2009, every migrant employee has the right to return home at the expense of the employer. When employees make long journeys, they must be accompanied by a responsible person approved by the Commissioner; under section 116 an employer who fails in these exit duties is liable to a fine, being in default of which can lead to imprisonment. The Order does not contain provisions on reintegration programmes for returning migrant workers, including women workers. In view of the ICMW and the ILO migration Conventions (Nos 97 and 143), it is recommended that a new section be added to the Employment Order 2009 reflecting ASEAN Consensus advice to create an information hub and professionally-run programme for ensuring compliance of employers in ensuring safe returns of workers, especially for women.

#### 4.4.1.4. Enforcement machinery

In Brunei Darussalam migrant workers dominate most low-wage professions, such as domestic service and construction, where inspections for labour law compliance can take place regularly or where, under section 135 of the Employment Order 2009, the Commissioner is empowered to investigate possible offences against the Order and respond to complaints. A welcome aspect of gender-responsive enforcement and access to justice by women migrant workers is section 139, under which no court fees shall be chargeable in the first instance in any proceedings commenced by an employee or by the Commissioner on their behalf, against the employer under the Employment Order and,



in case of a judgement against the employer, the court fees and the general costs of the proceedings shall be paid by the employer.

The Employment Agencies Order 2004 regulates private sector entities set up for recruiting persons for employment, and is enforced through the issuing of a licence by the Commissioner of Labour. Under section 10, conditions to be fulfilled for being granted such a licence include that the business will be carried on “in a morally and irreproachable manner”. Under section 17 licences can be revoked for contravening the Order and for running the agency in a manner likely “to be detrimental to the interests of the clients” (that is, jobseekers). It is welcomed that these provisions are broad enough to cover acts of sexual harassment, fraudulent practices and abuse of women migrant workers who use such agencies. However, in the spirit of ILO Convention No. 181, which requires States to provide adequate protection for and to prevent abuses against migrant workers recruited or placed in its territory by private employment agencies, it is recommended that section 17 be re-worded to specifically mention revocation of licence for abusive treatment of men and women migrant workers during recruitment and placement process. It is noted that section 24(1)(a) (maintenance of records) requires certain information on jobseekers to be recorded and that the prescribed Form 4 “Register of applicants for employment” records, among other information, the sex of the workers/jobseekers. This is welcome in the interests of more thorough data collection on men and women migrant workers, but it is recommended that the labour officers administering the Order verify such forms when assessing licence renewal applications.

The Immigration Act 1956 (revised 2006), in section 15(2), makes it a civil offence to remain in the country after cancellation of a permit or pass. If the overstay lasts under 90 days the guilty party is subject to a B\$4,000 fine or imprisonment of up to six months, or both, and if the overstay exceeds 90 days the sanction increases to between three months to two years’ prison and whipping of not less than three strokes. People aiding overstay migrants are also liable to penalties of prison and whipping. Section 12 is entitled (in English) “Endorsement of name of wife and children on Entry and Re-entry Permits”, which implies that the holder of the Permit is always a man. It is recommended to adjust the wording to “Endorsement of name of spouse and children on Entry and Re-entry Permits”. Under section 55A, severe penalties apply to persons who knowingly permit their premises to be used as a place where a person is employed in contravention of the Act. Under section 50, senior immigration officers and police officers have powers of search and arrest, and under section 82, no woman shall be searched except by a woman officer. This gender-responsive provision is welcomed. Employers shall pay for the migrant worker’s safe return at end of their contract; and whoever fails to comply with the Commissioner’s order is liable to a fine, being in default of which can lead to six months’ imprisonment (section 116).

Under the 1984 Passport Act, section 12(1)(g), persons who without lawful authority retain workers' passports are liable to a fine of B\$10,000 and five to seven years' imprisonment. However, it is reported that retention of migrant workers' travel documents by employers or agencies may be a common practice. It is recommended that penalties under the Passport Act be reviewed to verify their dissuasive impact on employers and employment agencies.

#### 4.4.1.5. Current gender equality regime

The current gender equality regime rests on the provisions mentioned above (and certain other laws not pertaining to work). There is no specific policy on women's equality, and no specific law beyond the Penal Code (amended in 2012), which prohibits violence against women, foreigners or citizens and which gives legal protection from sexual harassment, with criminal penalties of imprisonment for up to three years and a fine (section 509). Under the Penal Code, rape is a criminal offence and is punishable by up to 30 years of imprisonment and a whipping (section 376). According to its most recent Universal Periodic Review report (UN Human Rights Council 2019a. para. 144), Brunei Darussalam has continued its efforts through training programmes for labour and immigration officials and NGOs. Awareness campaigns have been conducted which include offences under immigration, passport, trafficking and smuggling of persons related laws as well as on the penalties applicable for violating workers' rights under national labour laws.

The Department of Community Development under the Ministry of Culture, Youth and Sports is the focal agency for women's affairs in Brunei Darussalam, but it is not clear whether its services, such as providing protection, counselling and advice to women who suffer sexual abuse, extend to women migrant workers. It is recommended to engage in a national dialogue regarding adopting a new law regarding women's equality, covering all the articles of CEDAW, that will also apply to women migrant workers.

#### 4.4.1.6. Summary of recommendations

In summary, Brunei Darussalam's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Check the original language of several pieces of legislation to reflect gender-inclusive language (for example, in the English-language versions change the noun "workman" to "worker" and "seamen" to "seafarers").
- Include domestic workers fully under the Employment Order 2009.

- Add a subsection to section 5 of the Employment Order 2009 requiring gender parity in the appointment of authorized officers and labour inspectors.
- Engage a national conversation for authorized officers on the practical implementation of the basic working conditions found in Employment Order 2009, where opinions can be exchanged regarding strengthening enforcement of section 52 on non-payment of wages.
- Remove the pre-condition for enjoying paid maternity leave currently found in section 91(3) of the Employment Order 2009.
- Harmonize the maternity benefits of migrant working women with that of nationals, under the relevant provisions of the Employment Order 2009.
- Include, in the Workplace Safety and Health Order 2009 provisions inspired by ILO Convention No. 190, including defining sexual harassment under section 4; prohibiting sexual harassment under Part IV (specifically section 12(3)); adding complaints procedures for workplace violence against women migrant workers and others under Part VI; and listing training on sexual harassment under section 31.
- Change certain technical terms in the Workplace Safety and Health (Construction) Regulations 2014 to gender-inclusive terminology, such as “man-locks” being changed to “safety chambers”.
- Concerning repatriation, add a new section to the Employment Order 2009 reflecting ASEAN Consensus advice to create information hubs and professionally-run programmes for returning workers, especially for women.
- Amend section 17 of the Employment Agencies Order 2004 to specifically mention revocation of an employment agency’s licence for abusive treatment of men and women migrant workers.
- Regarding data collection, engage in awareness training of labour officers who administer the Employment Agencies Order 2004 so that they verify sex-disaggregation of data on forms and in registers when assessing licence renewal applications.
- Under the Immigration Act 1956 (revised 2006), amend the wording of section 12 to “Endorsement of name of spouse and children on Entry and Re-entry Permits”.
- Review penalties under the Passport Act to verify their dissuasive impact on employers and employment agencies, such as section 12(1)’s penalty for retaining migrants’ travel documents.

- Engage in a national dialogue regarding adopting a new law regarding women's equality, covering all the articles of CEDAW, so that women migrant workers' rights are clearly enunciated alongside the rights of national women workers.

#### **4.4.2. Cambodia**

Generally, Cambodia's Policy on Labour Migration 2019–2023 outlines the national framework for developing a sustainable and rights-based governance system for labour migration, covering skills recognition, reducing the cost of migration borne by migrant workers, strengthening support and reintegration services, increasing access to social protection programmes and improving women's opportunities to migrate through formal migration channels. The Policy also aims to improve mechanisms to resolve complaints made by immigrant workers, as well as to establish cooperation with financial institutions in Cambodia to help overseas workers send their remittances home safely and at a reduced cost. The Policy embraces the 2017 ASEAN Consensus, the Global Compact for Migration, and the SDGs, and aims to develop a law for overseas migration, with a focus on gender aspects (Objective 1.1). The Committee for Implementing Labour Migration Policy for Cambodia 2019–2023 was established on 30 December 2019 and is chaired by the Minister of the Ministry of Labour and Vocational Training (MLVT).

##### **4.4.2.1. Pre-departure arrangements**

For Cambodians hoping to work abroad, MLVT Prakas No. 108 on Education on HIV/AIDS, Safe Migration and Labour Rights for Migrant Workers Abroad (2006) covers a number of migrant worker rights related to pre-departure and return. According to article 1, the MLVT encourages relevant ministries and entities working on migration healthcare and human rights as well as receiving companies to conduct pre-, during and post-departure training for Cambodian workers as well as programmes on reintegration into society upon return.

Under article 2 of the Prakas, the MLVT and the Committee for the Control of HIV/AIDS must provide awareness-raising on HIV to Cambodian workers and their families who are to move abroad. Given the vulnerability of women migrant workers to exposure to HIV infection, it is recommended that MLVT Prakas No. 108 be changed to read that "women and men workers" shall receive training on methods of protection and risk avoidance.

Under article 3, workers who are prepared to work abroad shall be trained on health issues, safe migration and labour rights and "anything else" that potentially increases their vulnerability. While this provision is welcomed, in the light of women's vulnerability to sexual harassment and in the spirit of ILO Conventions Nos 189 and 190, it is recommended to add a specific reference to training on gender stereotyping, unequal power relations that give rise to a heightened risk of workplace violence, and types of work arrangements where violence and harassment



are more likely, especially against women migrant workers, such as domestic work.

### **Box 3. Promising practice in Cambodia: Simplifying the red tape**

Brunei Darussalam's Department of Labour published a list of all registered Cambodia's Ministry of Labour and Vocational Training (MLVT), in partnership with the IOM, has developed a labour migration information system (LMIS) that collects sex- and sector-disaggregated data on the number of Cambodian workers migrating through regular channels. The Foreign Worker Centralized Management System is the online one-stop service to make it easy to apply for a foreign worker quota and the documents required for the foreign worker, as well as work permits, which saves time and red tape for the employer.

**What makes this a promising practice?** As Chapter 1 of this study demonstrated, all ASEAN Member States need to improve their labour migration data collection systems, and this centralized management system promises sustainable results for policymakers. In addition, employers face less red tape and save time in applying for permission to hire foreign workers.

A welcome, gender-responsive provision is article 4, under which companies receiving Cambodian workers for work abroad shall collaborate to share information on working environments, traditions and customs, language, labour law, human rights and other customary laws of the destination countries. Under article 7, private employment agencies shall provide reports and training data about their workers sent abroad both before and after their departure, and upon return, to both the Committee for the Control of HIV/AIDS and the MLVT. It is recommended that article 7 be strengthened to require that all data and statistical information, which is so important for migration strategic planning, be sex-disaggregated.

For coming into Cambodia to work, migrant workers are required by law to enter into a contract with their recruitment agency in Cambodia, which is often a sub-agency to the principal recruiting agency in the destination country. It is reported that many women migrant workers complain that they do not understand the terms of their contracts, and are not allowed to keep a copy, which makes it difficult to pursue legal action in cases where there are disputes. Since the ASEAN Consensus and CEDAW Article 11 require equal rights in employment, it is recommended that the Government include more specific wording in the law to ensure that prospective women migrants understand the contents of their employment contracts, as well as the general employment and cultural conditions in Cambodia.

#### 4.4.2.2. Arrival and on-site working conditions

The Labour Law (1997) applies to all workers in Cambodia irrespective of nationality, except domestic workers. Key articles of the law with regard to women migrant workers include the following:

- Article 12 prohibits discrimination by employers.
- Articles 169 and 182 stipulate maternity leave of 90 days, and article 183 provides that maternity leave is paid at 50 per cent by the employer if the worker has been in employment there for 12 consecutive months.
- Articles 184 and following regulate breastfeeding.
- Article 172 bans sexual harassment.
- Article 261 requires foreign workers to have a work permit valid for one year (which is extendable) and an employment card with the quota determined by the relevant MLVT prakas.
- Article 264 sets the categories of foreign workers to which the prakas quota applies.

The prakas referred to in the last two dot points above is MLVT Prakas No. 196 on the Use of Foreign Workers (2014), which sets the quotas as: 3 per cent office employees, 6 per cent specialized technicians and 1 per cent non-specialized workers, making a total of 10 per cent foreigners permitted in a company's total workforce. On the basis of available information, it appears that there is no sex bias in this process.

Regarding social protection, Cambodia has two systems – one social assistance system and a social security system. Pursuant to the Law on Social Security Schemes (2019), coverage is for: persons under the public sector; persons defined by the provisions of the Labour Law, including personnel serving in air and maritime transportation as well as domestic workers, and the self-employed. The National Social Security Fund (NSSF) implements social security schemes on occupational risk, healthcare, pension and unemployment, and covers all workers in Cambodia (including foreign workers) who register with the Fund. Occupational risk benefits consist of medical care benefits, daily allowances for temporary disability, pensions for permanent disability, allowances for permanent disability, funerary grants and rehabilitation services. It is compulsory for employers and workers to contribute to the NSSF. According to article 92 of the Law on Social Security Schemes, the NSSF shall sign agreements with the social security institutions of destination countries with a view to establishing a protection mechanism of social security for migrant workers and in line with applicable formalities and procedures. However, the unemployment benefit is not yet in force and this has had repercussions for COVID-19-related job loss, especially where women have been laid off or forced to resign. It is recommended that the unemployment benefit scheme be activated rapidly.

Concerning healthcare benefits, to receive the daily allowance, workers shall fulfil their paid contribution to the Health Care Scheme over a

qualifying period of two consecutive months or at least six months within the last 12 months and have paid contributions for at least nine months within the last 12 months until the month of delivery to get the maternity benefit.

One interesting aspect of Cambodia's attention to public health for migrant workers of both sexes can be found in the Government's Instruction No. 48 of 29 April 2020 on the Protection of Health and Livelihood of Migrant Workers Staying and Working Abroad or Having Returned to Hometowns During COVID-19 Prevention. It instructs Cambodian workers abroad to respect all orders regarding COVID-19 and to contact their local Cambodian Embassy if encounter problems. For returning Cambodians, it asks them to obey all rules on COVID-19, including 14 days' quarantine, and to help their family farm and do agricultural work while awaiting a new job at home or abroad. Other Cambodian Government measures for migrant workers during the COVID-19 pandemic include: written medical information in a language that migrant workers understand; inclusion of migrant workers in the vaccination campaign; and availability of unemployment benefits during COVID-19 closures.

For foreign workers coming to Cambodia, MLVT Prakas No. 360 on Determination of Categories of Occupations and Jobs Prohibited for Foreigners (2019) determines, under article 1, the categories of self-employed foreigners. Under article 2 several occupations are banned for women and men migrant workers, including drivers, street vendors, masseuses, barbers and beauticians, sewing services and shoeshine service, tire and car repair work, work with gold and gems, and producing Khmer souvenirs and Buddha statues. Under article 3, violations incur fines under the Labour Law and regulations. Of particular interest to foreign wage earners who come to Cambodia for factory jobs is MLVT Prakas No. 307 on Conditions of Occupational Hygiene and Safety in Garment and Shoe Factories (2007). Workshop conditions are stipulated under article 2, but they do not include separate toilets for each sex. It is recommended that, in the interests of decent work for female factory workers – both national and foreign – who predominate in such factories, that the Prakas be amended to state the employer's responsibility to provide separate sanitation areas for women and men employees. It is welcomed that Prakas No. 307 states, under article 5, that the employer must provide workplace safety training for employees that includes "possible risks caused by night work", which is good for mitigating the risk of night-time violence and harassment. Similarly, Prakas No. 307 includes balanced protective clauses for pregnant women in garment and shoe factories; article 7, for example, specifies that pregnant workers in their third month may engage only in light work and bans their exposure to chemicals.

#### 4.4.2.3. Exit, return and reintegration measures

There is no limit on the number of years that foreign workers entering Cambodia with an employment card can work, because annual renewals are always permitted. All migrant workers leaving Cambodia to return to their home need to have an exit visa. MLVT Prakas No. 108 encourages training for Cambodian workers and programmes on reintegration into society upon return.

It is reported that there is a government programme for one element of reintegration, namely information on job opportunities, through the National Employment Agency. Given the ICMW and ILO Conventions' call for active reintegration measures so that skills obtained abroad can be best utilized by women and men migrant workers upon return, it is recommended that Prakas No. 108 be augmented by a dedicated article on decent work options for returnees in wage earning jobs and as self-employed. The COVID-19 pandemic has seen Cambodians returning home in great numbers, and the Government has been mobilizing support for women and men returnees and host communities.<sup>27</sup>

#### 4.4.2.4. Enforcement machinery

The MLVT, in cooperation with the Ministry of Foreign Affairs and the Ministry of Interior, manages the sending of Cambodian workers abroad. Its mandate includes:

- selecting and licensing employment agencies;
- monitoring and evaluating recruitment agencies;
- withdrawing licenses from employment agencies who do not follow relevant laws;
- issuing prakas and other regulations;
- providing medical checks to migrant workers prior to departure;
- resolving labour disputes between migrant workers and domestic employment agencies and between migrant workers and their employers;
- supporting employment agencies in sending workers abroad; and
- preventing illegal recruitment.

The MLVT's Manpower Training and Overseas Sending Board acts as a public recruitment agency for Cambodians wishing to work abroad. Article 5 of MLVT Prakas No. 108 is strong on gender-responsive enforcement of the education provisions for Cambodian workers abroad: MLVT inspection officials shall conduct inspections of private employment agencies and, at least once a year, evaluate working conditions, the livelihood rights of workers, gender issues, sex discrimination, and verify any solutions offered to disputes, with

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<sup>27</sup> See the ILO's COVID-19 and the World of Work: Country Policy Responses database. Cambodia's policy responses are available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#KH>.



the cost being borne by the companies. In practice, when reports are received concerning abuse and exploitation of Cambodian domestic workers employed abroad, the Government responds swiftly. For example, the Cambodian Government suspended “first-time” migration to Malaysia for domestic work in 2011 due to reported mistreatment. After several years of bilateral negotiation between Cambodia and Malaysia, an MOU to resume deployment of domestic workers was signed in 2015 and standard operating procedures for sending domestic workers abroad were agreed (ILO 2017).

In addition, Joint Prakas No. 2662 on Inspection of Foreign Workforce in Cambodian Enterprises (2014) establishes, under article 3, a combined team from the MLVT and Ministry of Interior with the exclusive mandate to carry out inspections of foreign workforce in Cambodian enterprises. In light of CEDAW and ILO Convention No. 81, it is recommended to strengthen this Joint Prakas by requiring gender balance in the appointment of members to the inspection teams; having women and men on such visits will make it easier for women migrant workers to speak openly and report any workplace harassment or indecent working conditions.

In 2021, article 300 of the Labour Law was amended so that individual labour disputes can now be brought to the Labour Court or to the Arbitration Council if the disputing parties cannot settle with the labour inspector.

Also, regarding enforcement, following the promulgation of MLVT Prakas No. 249 on the Complaint Receiving Mechanism for Migrant Workers (2013), the MLVT in 2018 released its Dispute Resolution Guidelines for Resolving Migrant Worker Grievances. These Guidelines are welcome because they clarify the process for resolving migrant workers grievances, thereby better ensuring that all migrant workers have access to dispute resolution mechanisms and that migrant workers are able to obtain protection, remedies and compensation both from employers in the country of destination, as well as from recruitment agencies or migration officials in Cambodia or in the destination country. The dispute resolution process starts with lodging complaints at Migrant Worker Resource Centres (MRCs) and/or with consulates/competent authorities in the destination country (for complaints outside Cambodia) or directly with the Provincial Departments of Labour and Vocational Training (PDOLVTs) and the Department of Employment and Manpower of the MLVT itself. In the spirit of ILO Convention No. 190’s emphasis on easy access to safe, fair and effective dispute settlement mechanisms and procedures, it is recommended that Prakas No. 249 be augmented: (1) by requiring gender balance in the appointment of dispute resolution teams; and (2) by requiring regular, mandatory training of dispute resolution officials at all levels regarding the gender dimensions of grievance and complaint management. For example, the new clauses on such training could cover:

- protection against victimization of or retaliation against complainants, witnesses and whistle-blowers;
- how to advise on legal aid and other support during the procedures, including contact with female staff and counsellors;
- gender-responsive interview techniques and balanced note-taking and report drafting;
- how to run gender-responsive conciliation hearings;
- how to build the trust of women migrant worker complainants; and
- how to reach out to women migrant who may hesitate to travel alone to lodge a complaint.<sup>28</sup>

#### 4.4.2.5. Current gender equality regime

The Law on the Prevention of Domestic Violence and the Protection of Victims (2005) provides broad coverage, ranging from premeditated homicide and torture through to harassment causing mental, psychological, emotional or intellectual harm (sexual harassment). Article 2(3) states that “persons living under the roof of the house who are dependent on the household” are within the scope of this important law. Article 10 authorizes the Ministry of Women’s Affairs to take action to initiate complaints. And under article 35, any acts of domestic violence that are considered to be criminal offences shall be punished under the penal law. These are welcome provisions that assist women migrant workers employed in domestic work and living in households. In addition, the National Action Plan to Prevent Violence Against Women 2019–2023 recognizes that women migrant workers are more likely to face violence and less likely to have access to justice, and hence they are covered by the multi-sectoral prevention and response strategies.

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28 The ILO has noted several gender concerns with the procedure and already identified training needs including ensuring that “MRC and PDOLVT staff providing outreach counselling are well trained in gender sensitivity and that teams include both men and women” (ILO 2016a, 23).

#### **Box 4. Promising practice in Cambodia: Migrant Worker Resource Centres**

The ILO assists migrant workers and their communities through its network of Migrant Worker Resource Centres (MRCs), which provide information and legal support services in Cambodia and eight other ASEAN countries. There are presently 16 MRCs, and they are supported through the following projects: ILO TRIANGLE in ASEAN (8), ILO–UN Women Safe and Fair programme (5), and ILO Ship-to-Shore Rights South East Asia (3). These MRCs are managed in partnership with government institutions, trade unions and civil society organizations (CSOs), and provide a range of services to migrant workers wishing to get jobs overseas, including safe migration counselling before workers decide about migration in order to support a more informed decision-making process. For example, in Safe and Fair-supported MRCs have collaborated with the National Employment Agency and Provincial Departments of Labour and Vocational Training (PDOLVTs) to provide trainings and counselling sessions on legal and labour rights, pre-departure information, how to look at labour contracts, violence against women prevention measures, how to file complaints, and financial literacy. A total of 1,384 women migrants have benefitted from these trainings and counselling sessions, and an additional 14 women migrant workers have received legal assistance from PDOLVTs. Additionally, three Community-Based Protection Networks have been established through collaboration with Cambodian Women Crisis Centre, and currently have 54 women members. These networks are increasing knowledge in migrant communities on women's rights, safe migration, violence against women and its prevention, anti-human trafficking laws, essential services, and social protection. This promising practice is being shared with other ASEAN Member States. For example, in 2019, there was a study visit from the Lao People's Democratic Republic to visit a Cambodia MRC to learn about their operations and build networks with the MRC providers.

What makes this a promising practice? Coordinating the roles of the many government agencies involved in labour migration is a challenge. Having a Migrant Worker Resource Centre reaching out to prospective local migrant workers avoids any confusion so migrant workers can get correct and credible information. Empowering such centres to handle complaints streamlines processes and can build trust among workers.

**Source:** ILO.

#### 4.4.2.6. Summary of recommendations

In summary, Cambodia's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations.

- Expand the wording of article 2 of MLVT Prakas No. 108 so that “women and men workers” shall receive training on methods of protection and risk avoidance regarding HIV/AIDS.
- Add to article 3 of MLVT Prakas No. 108 a specific reference to training on gender stereotyping, unequal power relations that give rise to heightened risk of workplace violence, and types of work arrangements where violence and harassment are more likely, especially against women migrant workers (such as those in domestic work).
- Strengthen article 7 of MLVT Prakas No. 108 to require that all data and statistical information, which is crucial for strategic migration planning, be sex-disaggregated.
- Activate the unemployment scheme rapidly under the Law on Social Security Schemes.
- Add to article 2 of MLVT Prakas No. 307 a new clause stating that in the interest of decent work for female factory workers – both national and foreign – that the employer is responsible for providing separate sanitation areas for women and men employees.
- Augment MLVT Prakas No. 108 by adding a dedicated article on repatriation and its decent work options for women migrant workers as wage earners and self-employed.
- Strengthen Joint Prakas No. 2662 by requiring gender balance in the appointment of members to the MLVT/Ministry of Interior inspection teams.
- Strengthen MLVT Prakas No. 249 by: (i) requiring gender balance in the appointment of dispute resolution teams; and (ii) requiring regular, mandatory training of dispute resolution officials at all levels regarding the gender dimension of grievance and complaint management. For example, the new clauses on such training could be inspired by Convention No. 190, and cover:
  - protection against victimization of or retaliation against complainants, witnesses and whistle-blowers;
  - how to advise on legal aid and other support during the procedures, including contact with female staff and counsellors;
  - gender-responsive interview techniques and balanced note-taking and report drafting;



- how to run gender-responsive conciliation hearings;
- how to build the trust of women migrant worker complainants; and
- how to reach out to migrant women who may hesitate to travel alone to lodge a complaint.

#### 4.4.3. Indonesia

A large number of laws and regulations cover both Indonesian workers wishing to find jobs overseas (Indonesian migrant workers, or IMWs) and workers from other ASEAN Member States wishing to work in Indonesia, for example, on palm oil plantations. Several have been updated in recent years (only available in Bahasa Indonesia in the *ASEAN Repository on Migrant Workers' Legislation and Practices of ASEAN Member States*).

##### 4.4.3.1. Pre-departure arrangements

Presidential Regulation No. 20/2018 on Foreign Workers Utilization creates a “one door” online system managed by the Ministry of Manpower (MOM) for easier and faster issuance of the required employment permit and visa for foreign workers. MOM Decree No. 228/2019 on Certain Positions that Can Be Occupied by Foreign Workers identifies what jobs are open to migrant workers, with most being at high and middle skill levels.<sup>29</sup> The entry process appears to be as follows: once the applicant employer has submitted all required documents, passed a video call with an MOM verifying officer and uploaded further documents (such as a copy of the employer’s application letter to the Director General of Immigration), approval is given and the payment billing code is issued (US\$1,200 to be paid to the designated Bank using the printed order for payment). Once payment is completed the final status notification appears as “Successfully sent to the Director-General of Immigration” and MOM then submits the Notification to the Director-General of Immigration so as to be able to process the Visa Approval Letter. An Immigration Officer carries out a background check of the foreign worker, and if that is in order, issues the Visa Approval Letter to enter Indonesia within 60 days of issue. While this “one door” policy is a time-saver for the employer, it is not clear if all companies based in Indonesia have the IT accessibility to make the most of the system, especially women entrepreneurs who wish to hire overseas workers. While no change to the legislation is proposed, it is recommended that at regular intervals this policy be evaluated to identify any gender bias in its use. This can be done by measuring the type and number of local firms run/owned by women vis à vis those run/owned by men which use the system in a given time period, and by surveying women and men clients for their opinions on the system’s accessibility.

<sup>29</sup> The Appendix of MOM Decree No. 228/2019 lists these jobs by category and number of positions, for example, for mining and excavation there are 592 posts listed.

### Box 5. Promising practice in Indonesia: Award-winning one-stop service

The MOM awarded the integrated “One-Roof Integrated Shop” and Gender-Responsive Migrant Worker Resource Centre (MRC) in Cirebon district with an Indonesian Migrant Worker Award for providing the best labour migration services for Indonesian migrant workers. The award was given by Minister of Manpower Ida Fauziyah and Regent of Cirebon Imron Rosyadi on 18 December 2021 in conjunction with the commemoration of International Migrants Day. The award was given to Cirebon as the first “One-Roof” that has been integrated with an MRC, a first not only in Indonesia but also in ASEAN. This integration has the benefit of cementing a multi-stakeholder partnership between the Government, migrant worker unions and the women’s crisis centre. Such integration expands the functions and services of the “One-Roof” to be more gender-responsive and accessible for the optimal placement and protection of migrant workers across all cycles of labour migration from the village level to the country of destination. In practical terms, since its launch in June 2021, the integrated “One-Roof” and MRC has been busy providing outreach services to villages, pre- and post-employment consultations, psychosocial counselling, complaint case handling, legal aid, training for prospective migrant workers, and the provision of authoritative information for migrant workers and their families in Cirebon. The MRC is supported by the ILO’s Safe and Fair Project, a joint programme by the ILO and UN Women, under the EU–UN Spotlight Initiative to eliminate violence against women and girls and to ensure safe and fair labour migration in the ASEAN region, including Indonesia.

**What makes this a promising practice?** The integration of two really useful service providers is cost-effective and forces different stakeholders in the labour migration field to work together. Physically joined premises mean that workers can save time by visiting one place. Integration of this sort leads to sustainability.

**Source:** ILO 2021e.

For Indonesian workers wishing to work overseas, Law No. 18/2017 on the Placement and Protection of Indonesian Migrant Workers regulates migration abroad for employment, including for employment as a domestic worker, through licenced placement agencies. Law No. 18/2017 has been supplemented by the New Presidential Decree on Placement of Migrant Workers in the New Normal and a number of Standard Operating Procedures (SOPs) that apply in response to the impact of COVID-19. Law No. 18/2017 covers: socio-economic and legal protection for IMWs before, during and after placement; social

security systems for IMWs via the Social Security Administering Body; integrated services for IMWs at any level of governance; and skills improvement programmes for IMWs. The Law restricts private sector agency roles to IMW placement, but does not allow recruitment. It requires all workers to sign employment contracts with their employers before departure for the country of employment.

Article 2 of Law No. 18/2017 lays down that overseas placement of Indonesians shall follow, among other principles, equality of rights, dignity and human rights, gender and equity as well as non-discrimination; this is a welcome provision for Indonesian women wishing to migrate for work. Article 5 lays down 18 years as the minimum age for Indonesians seeking work abroad. Article 13(b) requires, among other documents for working abroad, the certified consent of the worker's spouse, or parents or guardian acknowledged by the village chief. Under Regulation No. 9/2020, this requirement continues (article 2(b)). For adult married women (and men), international migration law does not consider it reasonable to expect them to obtain spouse or parental permission, especially since the 18 years age restriction already applies. While recognizing that the original intent may have been to safeguard vulnerable women moving to another country, it is recommended that this written permission be removed from the Law so that women's autonomy and opportunity for economic empowerment is respected in line with CEDAW.

Under article 15(2), employment contracts must contain:

- the name, profile and address of the employer;
- name and address of the worker;
- worker occupation and type of job;
- rights and obligations of the parties;
- working conditions covering hours of work, wage and payment arrangements, leave, rest time, and social security;
- duration of the contract; and
- safety and security guarantees during the employment.

While welcoming this specificity for migrant workers, given the ICMW and ILO Conventions on migration and on domestic workers (Nos 97, 143 and 189), it is recommended that article 15 be widened to include a provision on: food and accommodation, if applicable; terms of repatriation; probation periods if any; and dismissal/termination of employment conditions. Also, in view of ILO Convention No. 189, it is recommended that article 15 require that employment agreements for domestic work specify that IMWs, especially women, shall not be subject to abuse, harassment and violence.

Articles 30(1) and 72(a) prohibit placement fees being charged to IMWs. Under Regulation No. 9/2020 this prohibition continues (article 3). This is a very welcome clause because the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in their 2017 Concluding Observations had requested that Indonesian legislation reflect a "no placement fee" policy for

women and men intending to work abroad (CMW 2017, para. 53(e)). Article 38 stipulates the “one door” service for IMWs for efficiency and transparency and service quality improvement. In view of CEDAW and ILO Convention No. 111, it is recommended, without prejudice to the required government regulation to be issued, that article 30 of the Law be strengthened by adding a new provision that the services and staff of the one door service centres shall be appointed on a gender parity basis and benefit from mandatory gender-responsiveness training. In addition, it is not clear under Law No. 18/2017 if the implementing agency will maintain the previous database concerning IMWs. It should be clarified in this text that any such job search/job match database does not indirectly discriminate against women migrant workers by diverting them to certain professions or jobs that could be described as “typically feminine”. It is therefore recommended to add a new article requiring that the one door service system contains no gender bias and is easily accessible for women wishing to work in traditionally “male jobs” and likewise for men seeking employment in areas traditionally offered to the other sex.

Migrant worker placement companies are regulated under Chapter VII of Law No. 18/2017. Articles 54 and 57 lists the requirements for such private placement companies to obtain their licence (called a SIP3MI), among which financial stability levels and success rates in placement are mentioned. Under the Omnibus Law No. 11/2020, the definition of the SIP3MI shall adapt to the requirements regarding business licensing. Given the importance placed upon keeping track of gender trends in labour migration in the ASEAN Consensus, ICMW and ILO Conventions Nos 97 and 143, it is recommended that when reviewing the success rates of placement companies and the reasons given for unsuccessful placement, account be taken of how many women and how many men are matched to appropriate overseas jobs, as well as verification that women and men are offered access to a wide variety of jobs, for example, women in construction and men in care and domestic work.



#### **Box 6. Promising practice in Indonesia: A platform that enables workers' feedback**

Pantau PJTKI is an initiative of an MRC in Indonesia, managed by the Institute for Education Development, Social, Religious, and Cultural Studies. This is a platform for Indonesian migrant workers, particularly women domestic workers, to rate recruitment agencies/Private Indonesian Migrant Worker Distribution Company (PJTKI/PPTKIS) by posting information on agencies' practices vis-a-vis the law. The platform is designed to facilitate access to user-generated reviews about the quality of services offered, incentivize recruiters to improve their performance, and enable civil society to engage in more informed advocacy. The platform allows for online reviews by migrant workers and offline reviews through partner organizations' corresponding efforts to visit migrant workers in their communities and countries of destination. The platform also provides an avenue for recruitment agencies to engage with the platform by updating basic information about their agency and their license status, uploading registration certificates, or responding to worker complaints. It has proved helpful for government agencies, especially concerning assisting human trafficking investigations.

**What makes this a promising practice?** Use of IT is a time-saver. On the one hand, this platform encourages a trusting relationship with those who upload their opinions on the services offered. On the other hand, it permits the agencies to enter up-to-date information on their status: a win-win for all users of the platform. An open platform like this provides transparency concerning the services provided by recruitment agencies, which allows comparison and therefore the making of informed migration decisions.

**Source:** Pantau PJTKI, n.d.; ADBI, OECD, and ILO 2021.

#### 4.4.3.2. Arrival and on-site working conditions

Law No. 13/2003 on Manpower covers work relationships and guarantees the right to three months of paid maternity leave in the period around childbirth and the right to six weeks of paid leave for women who suffer a miscarriage. The Law also grants women the right to a flexible breastfeeding schedule during office hours, which was strengthened by Joint Regulations issued in 2008 by the Minister for Women Empowerment and Child Protection, the Minister for Manpower, and the Minister for Health. The treaty body overseeing the UN ICMC has noted with concern that domestic workers are excluded from the protections afforded to other workers under Law No. 13/2003 (CMW 2017, para. 50(b)). Indeed, regarding domestic workers, it is argued that Law No. 13/2003 does not provide them protection because the

relationship between domestic workers and employers is not a work relationship as referred to in the Law, namely one between employers (defined as persons who run a company) and workers. The lack of coverage of domestic workers under Law No. 13/2003 is ostensibly addressed through Minister of Manpower and Transmigration Regulation No. 2/2015 on the Protection of Domestic Workers, but this Regulation does not adequately answer a number of problem areas, including:

- the need for reasonable limits on working hours for domestic workers;
- guaranteeing adequate wages for a decent standard of living; and
- giving a clear definition of weekly rest and leave days, including annual leave, public holidays, sick leave and maternity leave.

Nor is it clear that Regulation No. 2/2015 has a law enforcement mechanism. It is therefore recommended that Law No. 13/2003 be amended to clearly state that it covers domestic workers and to clarify that “employers” include individuals.

Law No. 13/2003, article 88A, guarantees equal remuneration for work of equal value between women and men, including women migrant workers in the country; however, the Omnibus Law on Employment No. 11/2020 amends this clause to remove the employer's obligation to pay wages in accordance with the statutory provisions, leaving wage protections limited to what is agreed between the parties in their contract, provided that the wages are not lower than the stipulated provisions. This means that women migrant workers can no longer rely on article 88A's standard of pay equality, but must try to secure an agreement with their employer to meet that standard in their contract. Given the power imbalance between the parties when negotiating individual contracts, particularly on the part of women migrant workers who fear reprisals that could jeopardize their right to be in the country, the gender dimension of the amendment to article 88A is evident.

Law No. 13/2003, article 81, provides for women workers' leave during the first two days of menstruation. It is recommended to hold a tripartite dialogue to reconsider this clause that may give rise to indirect sex-based discrimination against both nationals and migrant women of child-bearing age.

Sexual harassment at work is not explicitly covered by Indonesian labour law, although article 76(3)(b) of Law No. 13/2003 requires employers with female employees to maintain morality and security for women at the workplace, and article 86 states:

- (1) Every worker has the right to receive:
  - a. Occupational safety and health protection;
  - b. Protection against immorality and indecency;
  - c. Treatment that shows respect to human dignity and religious values.
- (2) In order to protect the safety of workers and to realize optimal productivity, an occupational health and safety scheme shall be administered.

Concerning IMWs, Law No. 18/2017, article 27(e), permits IMWs to return home if abused or subjected to violence. The MOM's voluntary Guidelines: Equal Employment Opportunity in Indonesia (2005) encourage employers to eliminate sexual harassment in the workplace. As a consequence of the lack of legal protection against sexual harassment, employees who wish to take action on a sexual harassment case must take a case to the criminal courts. In the light of CEDAW and ILO Convention No. 190, it is recommended that Law No. 13/2003 be amended to include a specific prohibition of sexual harassment with a full definition and commensurate sanctions for employers and co-workers violating the provision. It is also recommended, as stated in the CEDAW Committee (2021) Concluding Observations, that Indonesia adopt a comprehensive, inclusive law on gender equality in the world of work.

Regarding social security, the employer must include their foreign workers in a programme for accident insurance and health benefits if the worker is employed for at least six months (Presidential Regulation No. 20/2018 and Law No. 40/2004 on Social Security).

For Indonesian workers abroad, Law No. 18/2017 regulates their protection, in particular through Labour Attachés (articles 21, 22 and 39(n)) and includes mandatory social security coverage, details of which are to be set by Ministerial Regulation (article 29). Article 31 of Law No. 18/2017 bans migration to destination countries without social security and insurance systems that cover foreign workers. Article 34 requires the Government to ensure social protection by establishing IMW "protection centres" in destination countries. These are welcome provisions that assist women IMWs who may feel disempowered with regard to asking for social protection benefits.

#### 4.4.3.3. Exit, return and reintegration measures

Law No. 18/2017 on the Placement and Protection of Indonesian Migrant Workers regulates return as well, with article 24 regulating after-work protection through central and local government measures for social reintegration. Article 28 states that details will be given under government regulation. Article 40 assigns roles to provincial governments

for repatriation of IMWs, and article 41(d) and (h) assign responsibilities to districts and cities for such repatriation and reintegration. Village administrations have a data collection role to play regarding repatriation (article 42). It is recommended that all data collection follow the CEDAW Committee's guidance that it be sex-disaggregated.

Law No. 18/2017, article 6(1)(l), enshrines the right of Indonesian migrant workers to repatriate to their hometown, and article 6(2) lays down their duty to report repatriation to the Indonesian mission/embassy in the destination country. Article 24 states that "after working protection" includes repatriation to the worker's hometown and social reintegration. Article 27(1)(e) specifies when repatriation can occur, including when the migrant worker has suffered assault or other forms of violence. Conforming with ILO Convention No. 190, this is a welcome provision for women migrant workers, who are more likely than their male counterparts to work in situations of vulnerability to violence and harassment. The MOM offers training on entrepreneurship and initiating business activities for returned labour migrants and the Government encourages banks to provide facilities for the development of cooperatives and credit for businesses run by returned migrant workers.

For foreign workers leaving Indonesia, they must obtain an "Exit Sign" from the Immigration Officer, being a stamp affixed to the travel document both manually and electronically, and given at departure.



### **Box 7. Promising practice in Indonesia: Productive Migrant Workers Village (Desmigratif)**

The Productive Migrant Workers Village (Desmigratif) is a breakthrough effort by the MOM in collaboration with various institutions to empower migrant workers and their families. This programme was launched in 2017 and targets the home villages of migrant workers to improve services and to protect Indonesian migrant workers, migrant families and former migrants. The programme is a follow-up to Law No. 18/2017 on the Protection of Indonesian Migrant Workers, which prescribed decentralization of migrant services down to the village government level. The overarching objective of the Desmigratif programme is to ensure safe migration and improve their families' economic self-reliance and living standards. The programme is funded by the national government, local government budgets and private sector partners. Due to budget constraints of the MOM, the programme operates in a limited number of villages. Still, the number has been expanding: from 120 migrant villages in 2017 to 150 migrant villages in 2019. Desmigratif has four functions:

- i. An information service through establishing a Migrant Service Centre – the centre disseminates information directly to prospective migrants on official placement procedures, labour market, vocational guidance and potential problems in destination countries. The centre also collects data on returnees and provides advice to return migrants on options for remigration;
- ii. Developing productive business enterprises for the families of migrant workers and returned migrant workers through skills/entrepreneurial training and business assistance;
- iii. Conducting community parenting; and
- iv. Facilitating the development of cooperatives to strengthen village-owned business enterprises.

**What makes this a promising practice?** The Government is strengthening efforts to ensure that prospective/returning migrant workers can access decent work by promoting entrepreneurial training and supporting sustainable reintegration. For this, they are collaborating with multiple stakeholders and developing synergy with various local-level government offices. There have also involved a private company for financial literacy training. At the same time, strong social networks through local-level migrant worker villages play an important role in transmitting information about jobs abroad and thereby reducing information asymmetry.

**Source:** Wickramasekara 2019.

#### 4.4.3.4. Enforcement machinery

Law No. 18/2017 on the Placement and Protection of Indonesian Migrant Workers regulates government oversight and the development of systems for Indonesians working abroad. Under article 46 the President shall establish an implementing agency charged with overseeing the placement of protection of IMWs, the duties of which will extend beyond workers' recruitment and time abroad to include furthering the social and economic empowerment of returned IMWs (article 47(f)). The UN treaty body overseeing the ICMW recommended specifying that staff of this important agency include women and men (CMW 2017).<sup>30</sup> It is therefore recommended that Chapter VI of Law No. 18/2017, which covers this institution, be made more specific with a new article concerning gender balance among staff at all levels of the institution so that their services are perceived to be equally accessible for Indonesian women and men who are considering working abroad, are working abroad or have returned from working abroad. In addition, the agency will be developing training materials covering a wide range of migration issues and topics. Given the emphasis in the ASEAN Consensus, ILO migration Conventions (Nos 97 and 143) and the ICMW on migrant workers' needing awareness of the cultural and social environment in destination countries, it is recommended that an article be added after article 47 to require that social and cultural materials and training be provided to prospective migrant workers by the implementing agency, including information on gender equality in destination countries.

In general, analysis shows that Law No. 18/2017 is a vast improvement on the previous law,<sup>31</sup> but could be even more gender-responsive by the addition of details, as prospective migrant workers – especially women, who are often in a weaker position to access or to negotiate more information before signing for overseas jobs – may find themselves asked to sign employment contracts on the spot even if they not sure what is on offer. Without prejudice to MOM regulations that may aim to give more specificity on pre-departure information sessions, it is recommended that Law No. 18/2017 be strengthened by adding more specific clauses on understanding the cultural and social conditions in the destination country, the content of offered employment contracts (such as specifying that such contracts are written in a language understood by the worker), and specific details regarding applicable employment laws.

Law No. 18/2017, under article 74, lists administrative sanctions – written reminders, partial or complete suspension of business activity, or revocation of the licence to act as an IMW placement company. Similarly, Ministerial Regulation No. 5/2005 empowers the MOM to apply sanctions to recruitment agencies, including a written

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30 It should be noted that the ICMW Committee was in its recommendation referring to the previous legislation regulating IDWs – Law No. 39/2004 on Placement and Protection of Indonesian Workers Overseas – but the recommendation still applies to the new law.

31 That is, Law No. 39/2004 on Placement and Protection of Indonesian Workers Overseas.

reprimand; temporary suspension of placement activities; revocation of permits; cancellation of deployment of workers; or return of workers from abroad at the company's cost. However, these sanctions could be made stronger, for example, by listing fines, so as to dissuade placement companies from violating the Law through negligence or poor performance. Chapter XI includes penal sanctions (fines and imprisonment), but these apply only to a certain number of deliberate violations of the Law.

Article 77 of Law No. 18/2017 provides for disputes settlement first “by deliberations”; secondly, where successful resolution fails, by turning to the district, provincial or central government units responsible for manpower affairs; and thirdly, by filing complaints with the courts. Despite this framework, it is reported that having returned home, IMW faces difficulties in accessing justice, such that few returning migrant workers report cases of abuse. It is therefore recommended that Chapter VIII of Law No. 18/2017 on supervision specifies concrete measures to enable returned workers – both women and men – to report complaints, in accordance with the CEDAW Committee (2021) Concluding Observations, which urge the Government to ensure assistance for migrant women seeking redress for violations of their rights.

Under Law No. 13/2003, foreign workers have the same rights as national workers to access the Industrial Relations Court to settle employment disputes and the District Courts for private and criminal complaints. The focal point within the MOM for issues relating to women's labour protection is the Directorate of Women and Child Labour Inspection, which sits under the Directorate-General of the Supervision of Labour and Occupational Health and Safety. In addition, the National Commission on Violence Against Women (Komnas Perempuan) has a mandate to enhance public understanding of all forms of violence against women; to develop an environment that supports its elimination and the protection of women's rights; and to enhance comprehensive efforts in this direction. This is a welcome interplay of potential enforcement mechanisms in favour of women migrant workers coming to Indonesia.

#### 4.4.3.5. Current gender equality regime

On 12 April 2022 the Law on Sexual Violence Crimes (Law No. 12/2022) was passed, punishing, among other offences, non-physical and physical sexual harassment. The new statute supports the gender workplace protections found under Law No. 23/2004 on the Elimination of Domestic Violence and certain provisions of Law No. 13/2003 on Manpower. Article 2 of Law No. 23/2004 extends the scope of protection against domestic violence to individuals working to assist the household and living in the household (that is, live-in domestic workers). Article 9 on neglect also clarifies that any worker under contract in the household is protected.

Law No. 13/2003, article 1(13), defines expatriates as “foreign citizens holding a visa with the intention of working in Indonesian territory”. Articles 5 and 6 stipulate equal opportunity and treatment at work, and article 33 makes it clear that the placing of workers covers overseas manpower. Articles 42 and following explain that foreigners may only be employed by employers who have an approved expatriate plan, in which the employment of Indonesian workers as counterparts to the foreigners is laid out.

Article 38 of Law No. 39/1999 on Human Rights guarantees the right to fair and adequate remuneration and equal pay for men and women workers, but equal pay for work of equal value is not directly guaranteed by Law No. 13/2003. It is nevertheless noted that Regulation No. 78/2015 on Wages does decree that workers – including migrant workers – have the right to a similar wage for similar categories of work. Under Regulation No. 78/2015, the local government (the Governor) shall set, annually, the minimum wages as a safety net for the lowest monthly wage of a worker/labourer in their territory using criteria without mention of the sex of the worker. It is welcome that the provisions related to violations of Regulation No. 78/2015 are strongly dissuasive: employers who pay late and/or do not pay wages in accordance with the employment contract or collective agreement are subject to fines, written warnings, limitation of business operations, temporary suspension of some or all the production processes, and outright termination of business. It is recommended to add a new clause to Law No. 13/2003 and Regulation No. 78/2015 that echoes the equal pay between women and men for work of equal value requirement stipulated in CEDAW and ILO Convention No. 100.

Lastly, under Regulation No. 78/2015, article 24(3)(b) and article 26(2), payment of wages is due even if the female worker is absent due to her monthly menstruation making her unable to do her assigned job, and under articles 24(3)(c) and 24(5) wages must be paid if the worker is absent due to maternity and other listed family responsibilities. This attention to the rights of both women and men to statutory paid leave is welcome. However, a modern trend – as discussed above in relation to menstruation leave provisions in Law No. 13/2003 – is to negotiate menstruation-related benefits (such as paid leave) through collective bargaining, because consecrating such leave in law perpetuates stereotypes of women’s weakness and incapacity to work. It is recommended to undertake a national dialogue on the need to remove or retain the references to paid menstruation leave in articles 24 and 26. Article 43(2) states that the appropriate standard of decent living shall be the standard of living “for a bachelor worker/labourer based on the physiologic need for one month”. It is recommended that the word “bachelor” be replaced by “unmarried” so as to cover women workers, including women migrant workers.



#### 4.4.3.6. Summary of recommendations

In summary, Indonesia's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Engage in a national dialogue on Presidential Regulation No. 20/2018 so as to evaluate the "one door" online system's accessibility to women, as well as men.
- Remove from Law No. 18/2017 on the Placement and Protection of Indonesian Migrant Workers the requirement of written permission of adult women's parents or guardians for women to migrate for work, so that women's autonomy and opportunity for economic empowerment is respected.
- Widen article 15 of Law No. 18/2017 to:
  - i. include a provision on food and accommodation (if applicable), terms of repatriation, probation periods (if any), and dismissal/termination of employment conditions that will apply equally to women and men IMWs; and
  - ii. require that employment agreements for domestic work specify that Indonesian migrant workers, especially women, shall not be subject to abuse, harassment and violence.
- Add a new provision to article 30 of Law No. 18/2017 so that the services and staff of migrant workers centres shall be appointed on a gender parity basis and benefit from mandatory gender-responsive training.
- Add a new article to Law No. 18/2017:
  - i. clarifying that the job search/job match database must not indirectly discriminate against women migrant workers by diverting them to certain professions or jobs that could be described as "typically feminine"; and
  - ii. ensuring that the "one door" service system contains no gender bias and is easily accessible for women wishing to work in traditionally "male" jobs, and likewise for men seeking employment in areas traditionally offered to women.
- When reviewing the success rates of placement companies registered under Law No. 18/2017, ensure that account is taken of how many women and how many men are matched to appropriate overseas jobs, as well as verifying that women and men are being offered access to a wide variety of jobs, for example, women in construction and men in care and domestic work.

- Amend Law No. 13/2003 on Manpower to clearly state that it covers domestic workers.
- Engage in a national tripartite dialogue to reconsider article 81 of Law No. 13/2003, and whether the employer obligation to provide two days' paid menstruation for women workers gives rise to indirect sex-based discrimination against both national and migrant women of child-bearing age. Also include a discussion of the references to paid menstruation leave in articles 24 and 26 of Regulation No. 78/2015 on Wages.
- Amend article 86 of Law No. 13/2003, to include a specific prohibition on sexual harassment, with a complete definition and commensurate sanctions for employers and co-workers violating the provision, drawing inspiration from ILO Convention No. 190.
- Regarding the gender equality framework, adopt a comprehensive, inclusive law on gender equality in the world of work.
- Strengthen article 42 and all data collection articles of Law No. 18/2017 by requiring that statistics be sex-disaggregated.
- Make Chapter VI of Law No. 18/2017 more specific by:
  - i. adding a new article concerning gender balance among staff at all levels of the implementing agency so that their services are perceived to be equally accessible for Indonesian women and men; and
  - ii. adding after article 47 a requirement that social and cultural materials and training be provided, including the provision of information on gender equality in destination countries.
- Strengthen Law No. 18/2017 and any subsidiary regulations issued by the MOM in regard to pre-departure information sessions, by adding more specific clauses on understanding the cultural and social conditions in the destination country and on the content of offered employment contracts (for example, specifying that such contracts be written in a language understood by the worker), as well as clauses on the need to impart specific details regarding the employment law applicable and how it affects women workers.
- Broaden Chapter VIII (on "Supervision") of Law No. 18/2017 by adding new articles requiring the authorities to take concrete measures to enable returned IMWs – both women and men – to report complaints, in accordance with the CEDAW Committee's Concluding Observations (2021), which urge the Government to ensure assistance for migrant women seeking redress for violations of their rights.

- Add to Law No. 13/2003 and Regulation No. 78/2015 a new clause requiring equal remuneration between women and men for work of equal value.
- Change the wording of article 43(2) of Regulation No. 78/2015 from “bachelor worker” by “unmarried worker”, so as to cover women workers, including women migrant workers.

#### **4.4.4. Lao People’s Democratic Republic**

##### **4.4.4.1. Pre-departure arrangements**

The Labour Law (2013) provides quotas on the ratio of foreign workers who can enter the Lao People’s Democratic Republic in relation to national workers, which are set at 15 per cent for foreign workers undertaking physical labour; 25 per cent for technical experts; and for big scale projects and government priority projects lasting up to five years the percentage of foreign workers can be negotiated with the Government (article 68). For companies wishing to hire foreign workers, they must possess an investment fund and a labour requirement plan detailing how knowledge will be transferred to Lao workers (article 42). Foreign employees must meet several requirements to be employed in the Lao People’s Democratic Republic, including being over the age of 20 years, possessing skills and a professional level required for the position, having no criminal record, and being in good health (article 43). In view of CEDAW and ILO Convention No. 111 regarding the right of adults to access work without discrimination, it is recommended to reduce the age restriction from 20 years to the age of adulthood, namely 18 years of age, for both sexes. Foreign employees may work under a contract for 12 months, which may be extended for 12 months at a time up to a maximum of five years. The 2013 Labour Law provides that extensions beyond five years for management level employees and specialists will be considered on a case-by-case basis. Thus, exemptions from the limitation appear possible depending on the position and skills of the employee and the needs of the company. While acknowledging the labour force management background to this discretion, it may be that gender bias influences the case-by-case decisions on longer stays to work in the country. In view of CEDAW and ILO Convention No. 111, it is recommended that this article of the Labour Law be augmented with a provision clarifying that the extensions for work permits beyond five years for management level employees and foreign specialists be decided without distinction based on the sex of the foreign worker.

In a similar vein, the Law on Immigration and Foreigner Management (2014) sets limits on the percentage of foreign workers that companies may hire, and the Government must approve foreign hires. Prime Minister’s Decree No. 136 on the Management of Immigration and of Foreigners (2009) explains that the issuance of a Working Visa (LA B2) must be subject to permission from the Ministry of Foreign Affairs (articles 9–11). In addition, there is a new Ministerial Agreement No.

0600/MOLSW (2021), which explains the roles of the Ministry of Labour and Social Welfare (MOLSW), the Ministry of Foreign Affairs, and the Ministry of Public Security in regard to the employment of foreign workers. The MOLSW approves a foreign employment application lodged by employers and issues the Work Permit Card for foreign workers. The Ministry of Foreign Affairs approves the labour visa (LA-B2 Visa), and the Ministry of Public Security checks its blacklist and approves the Stay Permit Card. Foreign workers need to possess a health certificate. This brief schema demonstrates the numerous entities involved, for both the employer and the foreign worker, which could lead to a burdensome barrier for women wanting to come to work in the Lao People's Democratic Republic. Moreover, the CEDAW Committee's Concluding Observations (2018) request the Government to develop and implement regulations concerning employment agencies for migrant workers, with sanctions for non-compliance, so as to ensure that migrant women are protected from exploitation. It is therefore recommended that such regulations be added to the Labour Law.

Regarding Lao workers wanting to work overseas, Decree No. 245 on the Placement of Lao Workers to Work Abroad (2020) sets requirements for the licensing of recruitment agencies to send Lao workers overseas. It clarifies that domestic work is a potential sector for regular migration, thus eliminating the previous ban on migration for domestic work, but regular recruitment has not yet commenced in the current COVID-19 context. The adoption of Decree No. 245 is a welcome step for women's economic empowerment and towards recognizing women's human right to seek employment.

The MOLSW continues to oversee 38 recruitment agencies authorized to recruit for jobs abroad, although most of these agencies were closed during the COVID-19 pandemic. These agencies act as gatekeepers to the formal migration process in the Lao People's Democratic Republic, and by law are allowed to charge workers various recruitment fees.<sup>32</sup> It appears that Decree No. 245 removes some of the limitations formerly in place under Ministerial Decree No. 3824/MOLSW on the Types of Jobs Prohibited for Sending Lao Workers to Work Abroad (2013). This earlier decree had banned migration for employment in vocations or areas that are "dangerous", including carrying loads or manual digging, or "contrary to Lao customs and traditions", which could be interpreted to include domestic work. Given the risk that these previous limitations had a greater impacted on women than men because women are frequently channelled into domestic wage work, it would be recommended to restrict that old limitation to dangerous work for both sexes, thus removing the possibility of women suffering restrictions on their free choice of work that men do not suffer.

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<sup>32</sup> It must be noted that the ILO General Principles and Operating Guidelines recommend no placement fees or related costs should be charged to, or otherwise be borne by, workers or jobseekers.



#### **Box 8. Promising practice in the Lao People's Democratic Republic: Streamlining service delivery regarding labour migration**

According to information supplied by the Lao Government, there are currently six Migrant Resource Centres (MRCs) across the country, operated by the MOLSW and the Lao Federation of Trade Unions (LFTU). One Stop Service Centres (OSSC) have also been established in the Lao People's Democratic Republic with the support of several ILO projects, namely ILO TRIANGLE in ASEAN, ILO--UN Women Safe and Fair, and ILO Ship to Shore Rights South East Asia. The MRCs are working well; for example, 439 women migrant workers received services through MRCs operated by the LFTU in Savannakhet Province, including 181 women migrant workers who were provided with face-to-face and phone counselling on migration information and access to services by MRC staff, and 258 women migrant workers who were provide basic information on migration, violence against women and trafficking, which includes a safety plan, how to apply for a job, information on remittances, document safeguarding and useful contact numbers. In addition, 2,443 women migrant workers were reached through community outreach to factories, education institutions and training centres by the LFTU in Savannakhet as well as in Vientiane. They received information about formal migration channels and processes, and increased their understanding of labour exploitation, violence and harassment at work, and trafficking in persons. The Safe and Fair programme support for the MRC operations helps ensure that workers seeking jobs abroad, especially women, can get cutting-edge information and counselling before deciding to migrate overseas. Returning migrants can also find information about opportunities for vocational/skill training or possibilities of remigration.

**What makes this a promising practice?** These MRCs are providing a promising practice where resources are stretched. Partnering with the national workers' organization is a win-win strategy for gaining trust and ensuring sustainability.

**Source:** Spotlight Initiative 2020a, 65.

#### **4.4.4.2. Arrival and on-site working conditions**

Under the Labour Law, there is no distinction between foreign and national employees. Both have identical rights and protections (such as equal pay under articles 6 and 69). "Migrant labour" is defined under article 3(5) and "foreign employee" under article 3(9). However, under article 6 (Scope) "household workers" (that is, domestic workers) are only covered if they comply with having an employment contract under the Labour Law. According to article 141(2) and (4), employers

are prohibited from engaging in direct or indirect gender discrimination (among other grounds) and from violating the personal rights of employees, especially female workers, through speech, visuals, texts, touching (sexual harassment). Article 144 prohibits co-workers from likewise violating the personal rights (dignity) of others within the work unit (enterprise).

Article 71 requires every labour unit (enterprise) and employee to be registered with the National Social Security Fund so as to receive the benefits of the Social Security Law (see below). Articles 77 and 78 of the Labour Law stipulate the contents of contracts, which must be in writing. The 2013 Labour Law limits fixed-term employment contracts to a maximum term of three years. Employees working on fixed-term contracts that are for a term of three years or which are consecutively renewed or extended for more than three years, will be considered as indefinite-term employees (article 75).

Article 39 lists agencies that may send Lao workers abroad, namely the Labour Administration Agency and private recruitment companies, which, under article 40(5) must pay all fees, taxes and service costs in full. Chapter 4 (articles 66 and 67) regulates Lao workers working abroad by possible appointment of labour administration officials (*attachés*) in Lao embassies overseas, with duties including to collect and supply information on overseas workers and to assist in dispute resolution. In view of CEDAW and ICMW standards on gender-responsive management of migration, it is recommended that Chapter 4 be made stronger with a new article concerning the gender balance among staff appointed to Lao embassies for these activities, so that their services are perceived to be equally accessible for Lao women and men who are working abroad. Having women labour *attachés* makes it easier for women migrant workers to speak openly and report any workplace harassment or indecent working conditions.

Under articles 82 and 83(4) of the Labour Law, if an employee is harassed, molested or sexually harassed by their employer or by another employee, and their employer does nothing, the employee can terminate the employment contract with severance pay. When this protection is read together with the Law's prohibition of sexual harassment (articles 141 and 144), it initially appears to present a welcome framework that applies also to women migrant workers. However, the CEDAW Committee's Concluding Observations (2018) ask the Government to amend article 83 of the Labour Law to define sexual harassment expressly, impose sanctions for perpetrators and adopt measures to prevent sexual harassment at work, including by developing a system for filing complaints. It is therefore recommended to amend article 83 along such lines.

Under article 98 of the Labour Law, employees are entitled to at least 105 days of maternity leave with full pay, at least 42 days of which must be taken after the birth of the child. Under article 55, foreign workers are

entitled to one day's paid leave on their respective national days. This is a welcome provision for migrant workers, especially women domestic workers, who often work in isolation, and therefore can appreciate the opportunity for socializing and celebration afforded by this paid holiday.

Under article 119, employers are obliged to fulfil certain OSH requirements. In view of ILO Convention No. 190, it is recommended to strengthen this provision by adding new clauses on the employer engaging in consultations for a workplace policy to prevent and end violence and harassment, including sexual harassment, with definitions and references to complaints procedures that would apply equally to national and migrant workers.

Chapter IX of the Labour Law concerns migrant labour, with article 132 stating that Lao workers moving abroad have rights and obligations in accordance with their employment contracts and the rules of the destination country. Article 133 makes it clear that foreign workers in the Lao People's Democratic Republic have rights and obligations in accordance with their employment contracts, article 69 of the Labour Law and other relevant laws. Under articles 136 and 137 there is established a Labour Fund for the development of labour skills and for assistance to both Lao workers abroad and foreign workers coming to the Lao People's Democratic Republic, with the employer and worker making contributions.

The Law on Social Security (2013) does not explicitly cover migrant workers in the Lao People's Democratic Republic. Article 7 on the scope of the Law indicates that all employers, employees and their dependents, self-employed persons, and voluntarily employed persons "countrywide" are covered by the system. Therefore, it could be understood that if the Law on Social Security is read in conjunction with article 71 of the Labour Law, foreign workers are indeed covered by the benefits regime provided under the Law on Social Security. It is recommended, however, to clarify in the text the legal coverage of the Law on Social Security.

Under article 2 of the Law on Social Security, the National Social Security Fund covers the contingencies of healthcare, childbirth or abortion, work capacity losses, human organ loss, sick leave, old age, death, family allowances and unemployment. Article 3 defines "employee" to include persons in a labour unit (enterprise) who are being paid by an employer. An insured person who is unable to work because of accidents, sickness, childbirth, miscarriage or stillbirth receives sickness and maternity benefit equivalent to 70 per cent of their salary averaged over the previous six months for a period not exceeding six months. If the health condition is expected to improve, the benefit is extended by another six months at 60 per cent of the wage (articles 23 and 30). The MOLSW is the responsible agency, through a hierarchy down to village level (article 77). However, the beneficiary group under the Law only accounts for a small part of the population, because

the formal economy constitutes only 17.3 per cent of the workforce (the rest being self-employed workers and workers in non-standard forms of employment). In view of the CEDAW Committee's Concluding Observations (2018), it is recommended to remove barriers that prevent migrant women from gaining access to social protection, including by modifying the eligibility requirements regarding documentation, minimum qualifying periods and sectors covered.

Article 72 of the Labour Law sets the retirement age and entitlement to retirement benefits of employees at 60 years for men and 55 women (and both sexes having accomplished at least 15 working years). This discriminatory age difference will not affect most migrant workers, as they could never reach the 15 working years pre-condition because article 45 of the Labour Law restricts their Work Passes as follows: "In total, the total working period may not exceed five years". However, because extensions can be exceptionally granted (as noted above), a small number of migrant workers may possibly be faced with the retirement age provision. According to CEDAW and ILO Convention No. 111, the different minimum ages for accessing retirement benefits constitutes a discriminatory barrier to women's participation in the economy. It is, therefore, recommended to harmonize the retirement ages for women and men.

Under article 8 of the Law on Social Security, the State is to promote foreign, regional and international social security cooperation, which is a welcome commitment for women migrant workers.

#### 4.4.4.3. Exit, return and reintegration measures

Article 69 of the Labour Law requires that foreign workers exit from the Lao People's Democratic Republic within 15 days of the end of the employment contract. According to article 70(3), the labour units responsible for administering foreign labour must facilitate the exit of foreign workers at the end of their contracts.

In regard to returning Lao migrant workers, there is little in the way of detail in the Labour Law. In view of the CEDAW Committee's Concluding Observations (2018), it is recommended that the Labour Law be supplemented with provisions on the legal requirement of the Labour Administration Agency (or other appropriate entity) to assist the reintegration of returning migrant workers, especially women, through the provision of income-generating opportunities.

#### 4.4.4.4. Enforcement machinery

Ministerial Agreement No. 0600/MOLSW (2021) provides for rewards for well-performing employers and penalties for violators, including re-education, warnings, suspension of business and fines. Under the Labour Law, the MOLSW (and its subsidiary branches at the provincial, district and local levels) is designated as the enforcement/implementing authority for labour-related matters. The MOLSW's duties include



drawing up and administering strategic plans on a variety of labour-related topics, including migrant labour. Under articles 139 and following, the MOLSW is to gather labour market information, including through surveys, for sharing. In addition, article 156(12) requires the Ministry to create a “database on labour”. In view of CEDAW, the ICMW and ILO Conventions Nos 11 and 181, it is recommended that these provisions be strengthened with the addition of requirements that all survey/data collection methodologies be gender-responsive, all data be sex-disaggregated, and that gender analysis be part of the methodology in the Ministry’s research, planning and implementing measures.

**Box 9. Promising practice in the Lao People’s Democratic Republic:  
Digital database of the MOLSW**

In 2016 the Ministry of Labour and Social Welfare (MOLSW) developed a digital database system that keeps information and data on outbound migrant workers. The database is used by the Ministry’s Department of Skills Development and Employment, employment service centres, and recruitment agencies to help issue work permit cards for migrant workers in a speedy and transparent manner. The system also tracks recruitment agencies, links workers to particular agencies, and identifies which workers’ contracts are due to expire. The database is designed to collect administrative data on Lao migrant workers’ demographics and other characteristics, such as gender, age and sector of work, which assist the MOLSW to develop evidence-based systems for the management and protection of Lao migrant workers.

**What makes this a promising practice?** Use of IT is not only a time-saver, but also ensures accuracy and accountability within the system’s data parameters. Having up-to-date and reliable sex-disaggregated data underpins informed policy choices regarding labour migration.

**Source:** ILO 2018b.

Article 161 of the Labour Law creates a tripartite National Labour Committee (NLC) to guide the Government on a large number of labour issues, including ILO Conventions and standards (which would include labour migration matters). Noting that details on the functioning of the NLC are determined by subsidiary legislation, and without prejudice to any rules that may have already been issued, it is recommended that the Labour Law state, in a separate provision, that gender balance be a consideration in nominating members of the NLC. By so doing, the Labour Law would send the message that both men and women’s right to decent work are to be considered.

Lastly, the Labour Law (article 171) established the Labour Inspectorate to oversee the implementation of the Law and to verify the functioning of the MOLSW and its subsidiary branches. Under article 172(4), the Labour Inspectorate covers supervising “foreign labour both in formal and informal sectors”. Under article 173, the results of every inspection must be disseminated in each period (to be set under subsidiary legislation) for the public good, complete with data on the number of labour inspection officers, statistics on the labour unit visited, the number of labour units that have violated the law, the number that have been disciplined, and other measures in relation to labour inspection. In view of CEDAW and ILO Conventions Nos 111 and 181, it is recommended that this provision specify that these regular public reports be compiled to reflect sex-disaggregated statistics and contain gender-responsive analysis of the enterprises visited.

#### 4.4.4.5. Current gender equality regime

The Law on the Development and Protection of Women (2004) and the Law on the Prevention and Elimination of Violence against Women and Children (2015) – which complements the provisions on domestic violence set out in the 2004 Law – list, among others, unequal wages as a form of psychological and economic violence towards women (articles 12–17). The 2015 Law assigns to the MOLSW responsibility for implementing certain elements of the Law, including “preventing and combating violence in factories, enterprises and other working spaces” (article 64). Article 11 of the 2015 Law defines violence against women to include act or negligence by persons other than family members that “results in physical, psychological, sexual, property or economic harm or suffering to women” in workplaces and other settings, like public spaces or educational institutions. Article 29 mandates reporting of any violence against women to entities such as village authorities, the organization where the incident occurred and the Lao Women’s Union. Article 47 stipulates that settlement of violence against women complaints is conducted in two ways: (i) re-education, compromise or mediation; or (ii) judicial proceedings, but for serious violence, it must be settled by judicial proceeding only. Under article 54, sanctions include an apology, warning and re-education, a period of community service, and “other measures”. These are welcome provisions that appear to protect women migrant workers and national women workers when faced with workplace violence and harassment. As mentioned above, the 2013 Labour Law contains provisions prohibiting gender discrimination and sexual harassment (by both employers and co-workers), which cover women migrant workers as well.

#### 4.4.4.6. Summary of recommendations

In summary, the laws of the Lao People’s Democratic Republic that are relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Reduce, in article 43 of the Labour Law, the age restriction for those who wish to work in the Lao People's Democratic Republic from 20 years to the age of adulthood. This should be the case for both sexes.
- Add an article to the Labour Law clarifying that extensions of work permits beyond five years for management-level employees and foreign specialists are decided without distinction based on the sex of the foreign worker.
- Add to the 2013 Labour Law, in accordance with the CEDAW Committee's Concluding Observations (2018), provisions concerning employment agencies for incoming migrant workers, with sanctions for non-compliance, to ensure that migrant women are protected from exploitation.
- Clarify that Decree No. 245 on Placement of Lao Workers to Work Abroad (2020) removes the job bans that had formerly existed under Decree No. 3824/MOLSW on the Types of Jobs Prohibited for Sending Lao Workers to Work Abroad (2013), that might have restricted women being hired overseas for domestic work and verify that bans on dangerous work apply to both sexes, thus removing the possibility of women suffering restrictions on their free choice of work that men do not suffer.
- Strengthen Chapter 4 of the Labour Law by adding a new article concerning gender balance among staff appointed to Lao embassies for activities related to protecting and supporting Lao workers overseas, so that their services are perceived to be equally accessible for Lao women and men migrant workers.
- Amend article 83 of the Labour Law, in accordance with the CEDAW Committee's Concluding Observations (2018), to be more specific in preventing sexual harassment, for example, by defining sexual harassment expressly, imposing dissuasive sanctions for perpetrators, and adopting measures to prevent sexual harassment at work, including by developing a system for filing complaints.
- Add to article 119 of the Labour Law (on employers' OSH requirements), a provision requiring the employer to engage in consultations for a workplace policy to prevent violence and harassment, including sexual harassment, with definitions and details on complaints procedures.
- Amend the Law on Social Security so as to explicitly cover migrant workers in the Lao People's Democratic Republic, thereby complying with the CEDAW Committee's Concluding Observations (2018), which call for the removal of barriers that prevent migrant women from gaining access to social

protection, such as by modifying the eligibility requirements regarding documentation, minimum qualifying periods and sectors covered.

- Amend article 72 of the Law on Social Security (setting the retirement ages at 60 years for men and 55 women) so as to harmonize the retirement ages for women and men and thereby remove this discriminatory barrier to women's full participation in the economy on an equal footing with men.
- Supplement the Labour Law, in accordance with the CEDAW's Concluding Observations (2018), with provisions requiring the MOLSW (or other appropriate entity) to assist in the reintegration of returning migrant workers, especially women, through the measures such as income-generating opportunities.
- Strengthen article 156(12) of the Labour Law (creation of a "database on labour") by adding the requirement that all data be sex-disaggregated and that gender analysis be part of the methodology in the MOLSW's research, planning and implementing measures.
- Insert after article 142 of the Labour Law a new article requiring that all data collection and survey methodologies of the MOLSW be gender-responsive and that there be sex-disaggregation of all statistics.
- Add to article 161 of the Labour Law (creation of a tripartite National Labour Committee) a separate provision stating that gender balance shall be a consideration in nominating members of the NLC.
- Strengthen article 173 of the Labour Law (Labour Inspectorate's role in disseminating data regularly "for the public good") by adding a provision requiring that these public reports be compiled to reflect sex-disaggregated statistics and contain gender-responsive analysis of the enterprises visited.

#### **4.4.5. Malaysia**

On 30 March 2022 the Employment (Amendment) Act 2021 was passed. This Act amends portions of the Employment Act 1955 with the aims, among other purposes, to bring that older Act into line with the standards and practices required by the Trans-Pacific Partnership Agreement and ILO standards. Section 2 of the Employment Act 1955 defines "sexual harassment" to mean "any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to their well-being, arising out of and in the course of the employment". The Employment (Amendment) Act 2021 adds section 69F to the Employment Act 1955, which introduces a new power for the Director-General of Labour to



inquire into and decide any dispute relating to discrimination in employment, and to make an order where necessary. Failure to comply with the Director-General's order is an offence and can result in a fine not exceeding 50,000 Malaysian ringgit, and for ongoing offences, a daily fine of up to 1,000 ringgit for each day the offence continues. There is, however, apparently no definition of what constitutes discrimination.

#### 4.4.5.1. Pre-departure arrangements

The Foreign Employment Act sets the minimum age for migration into Malaysia for domestic work at 21 years.

Regulation 9 under the Immigration Act 1959/63 states that the Employment Pass is only issued by the Malaysian Immigration Department to migrant workers to enable them to work for a minimum period of two years. It is open to extension on the employer's application for up to five years. Regulation 9(3) prohibits the foreign worker from moving to another employment from that stated in the Pass without the Controller's consent (a controller being an immigration officer). Under section 55B of the Immigration Act 1959/63, any person who employs a foreign worker who is not in possession of a valid Pass shall be liable to a fine of between 10,000 and 50,000 ringgit per person so employed.

Employers can apply to hire foreign workers directly through the Department of Labour of Peninsular Malaysia online system. Applications must fulfil the prescribed conditions, such as foreign workers must be from permitted countries only, and there must be investigations regarding the workers by labour officers and immigration authorities in accordance with the relevant laws. Moreover, the applicant employer shall provide an undertaking letter before an application is approved in which they agree to:

- pay the levy on foreign workers in accordance with the Fees Act 1951;
- sign the employment contract as per the format in appendix of the Employment Act 1955;
- not withhold passports of foreign workers, in accordance with the Passports Act 1966; and
- accept responsibility for the medical expenses of foreign workers, including repatriating foreign workers who have been diagnosed with an illness.

Employment contracts are typically for three years. It is reported that, when completing the Quota Request Form (to officially ask for foreign workers), employers have the option to choose the desired characteristics of migrant workers, including specification of whether an employer wants a man or woman worker. In view of CEDAW, the ICMW and ILO Convention No. 111, this practice permits direct discrimination unless the sex of the worker needs to be specified due to the specific requirements of the particular job. It is therefore recommended that in the Quota Request Form, the instructions clarify that the applicant

employer must restrict the desired skills, qualifications and experience to match exactly the work to be done; an instruction, in the heading of the Form, could state clearly that discrimination on the basis of sex, among other grounds, shall not be permitted in the process.

**Box 10. Promising practice in Malaysia: Using labour attachés for practical, on-the-spot assistance**

Since 2014 a series of consultations with labour attachés and consular officials from 12 countries sending workers to Malaysia have been organized jointly with the Malaysian Bar Council under the ILO TRIANGLE in ASEAN and GMS TRIANGLE projects. The objectives of the consultations are to provide labour attachés with a better understanding of Malaysia's laws and procedures and to improve cooperation between the Malaysian Government and social partners. The consultations cover recruitment regulation, complaint channels, trafficking in persons, and the Comprehensive Settlement of Foreign Workers programme. These gatherings and exchanges of labour attachés allow for the sharing of information on case management of specific complaints concerning alleged abuses and indecent work. Because of the demonstrated value of the initiative in Malaysia, labour attachés consultation gatherings have been replicated in Thailand. In April 2018, a consultation on forced labour was organized. The consultation was aimed at strengthening national and global efforts to eliminate forced labour by tackling root causes and enhancing labour migration policies and practices.

**What makes this a promising practice?** Peer-to-peer exchanges are an effective learning methodology. Having clarity concerning the provisions of pertinent laws' provisions means that the diplomats (and specifically labour attachés) will be more efficient in assisting their nationals who work outside Malaysia.

**Source:** ILO 2015a.

4.4.5.2. Arrival and on-site working conditions

Under the Employment Act 1955, foreign employees are entitled to all protections provided to any employee in Malaysia. Reading section 2(5) of the First Schedule to the Employment Act 1955, it would appear that domestic workers are included for most labour rights protections, in particular as regards the right to notice of termination. Section 10 specifies that employment contracts shall be in writing and have clauses regarding procedures for termination. This is a welcome provision, so that migrant workers, in particular women migrant workers, can read their rights.

The Employment (Amendment) Act 2021 repeals Part VIII of the Employment Act 1955, which had contained restrictions on the work women are entitled to carry out (at night and underground), being a welcome measure as it removes old barriers to women's access to employment.

Part IX of the Employment Act 1955, on “domestic employees”,<sup>33</sup> allows an employer to terminate a domestic worker's contract simply by giving 14 days' notice (section 57A) or by paying an indemnity equivalent to the wages which the domestic employee would have earned in 14 days. The employer must inform the Director-General of Labour of such terminations, failing which a fine is imposed of not more than 10,000 ringgit (section 57B). This means that women migrant domestic workers can be immediately sent home for essentially no reason or for reasons that are independent of their performance and ability to do their work, for example, upon becoming pregnant. Given ILO standards regarding termination of contracts generally, the ILO migration Conventions (Nos 97 and 143) and the ICMW, such flexibility for employers to terminate foreign domestic workers' contracts without just cause is problematic. It is recommended to remove this right of employers and to introduce into the Employment Act 1955 the dismissal standards that apply to national workers.

Part XVA of the Employment Act 1955 covers sexual harassment, with section 81D stating that a complaint can be lodged with the Director-General of Labour, who can assess it and direct the employer to engage in an inquiry into the allegations. Section 81H, inserted by the Employment (Amendment) Act 2021, requires employers to exhibit conspicuously a notice to raise awareness of sexual harassment in the workplace. This is a welcome provision for women migrant workers (indeed all women workers).

Minimum wage provisions apply equally to all employees, both national and foreign. Employers who hire foreign workers must provide suitable accommodation under the Workers' Minimum Standards of Housing and Amenities Act 1990. Under section 23(1) of this Act, the employer is responsible, where it provides such housing, to ensure that, among other health requirements, all communal latrines and bathrooms are kept in a clean, sanitary and working condition.

Regarding social protection, since 1 January 2019, all employers are required to register foreign workers employed by them (except domestic workers) with the Social Security Organisation (SOCSO) for protection under the Employment Injury Scheme, as per the Employees Social Security Act 1969. Contributions for this scheme are set at a rate of 1.25 per cent of the worker's monthly salary and are paid monthly by the employer. Benefits under the scheme include medical benefits, temporary disability allowance, permanent disability allowance,

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33 Under the Employment Act 1955, domestic workers are referred to as “domestic employees”. This report, however, will continue to use the term “domestic worker”.

constant-attendance allowance, survivors' pension and a 6,500-ringgit repatriation or funeral payment. However domestic workers are excluded from this Act (along with certain other workers, such as any person whose wages exceed 3,000 ringgit a month). In view of ILO Convention No. 189, it is recommended to remove the exclusion of domestic workers from section 2 of the Employees Social Security Act 1969, thus ensuring that domestic workers, both national and foreign, can access the benefits, as is their right.

In general, the Employees Social Security Act 1969 takes care to use gender-inclusive language in most sections; nevertheless, it does contain discriminatory language when defining the "dependant" of a deceased covered employee. Section 2(3)(b)(i) and (iii) give rights to the "daughter" and "daughter-in-law", without extending the same rights to male offspring of a deceased female worker. It is recommended to add "son" and "son-in-law" to the relevant subsections so that equal treatment is respected. Moreover, the Act should be amended to reflect inclusive language in titles, because under sections 59B, 59C and 59Q, the board of the Social Security Organisation is described as being led by a "Chairman" and different committees can elect their "chairman". Section 75A(2) refers to "Chairman" of the Investment Panel. Preferred gender-inclusive language could read "Chairperson".

#### 4.4.5.3. Exit, return and reintegration measures

Employers cover the costs associated with returning foreign workers home. The Private Employment Agencies Act 1981 governs the licencing of individuals, companies and agencies that conduct recruitment and placement services. Section 7 of the Act stipulates the necessity to obtain a licence from the Director-General of Labour, subject to fulfilling certain prerequisites such as entering a bond with two sureties (section 9). Section 14 prohibits charging fees for services beyond the amount prescribed by the Minister of Labour.

Under section 16(3) concerning registering or recruiting any person residing in Malaysia for overseas employment, the licenced private employment agency must furnish the Director-General of Labour with certain details such as name and address of prospective employer, evidence of the specific requirement for workers by an overseas employer, terms and conditions under offer, and under section 19 the agency must maintain records with details of registered workers, vacancies and placements, but the sex of the workers is not mentioned. In view of CEDAW and ICMW advice for managing migration data, it is recommended that section 19(a) add the "sex of the workers" as one of the pieces of information to be maintained.

#### 4.4.5.4. Enforcement machinery

The Employment Act 1955 allows all workers, including migrant workers, to file a complaint about their dismissal through the industrial relations



department of the Department of Labour and through the courts. However, Malaysia's immigration policy forbids dismissed workers from working for any other employer, which means that, without the right to work, there is effectively no right of redress for migrant workers, as they have no means of earning a livelihood while the complaint is being addressed. It is therefore recommended that the Employment Act 1955 be amended to expressly allow dismissed migrant workers to work while pursuing their complaints.

In addition, the Employment (Amendment) Act 2021 amended section 99A of the Employment Act 1955 on the general penalty for violations of the Act, increasing the maximum fine from 10,000 ringgit to 50,000 ringgit. In addition, the Employment (Amendment) Act 2021 replaced section 60K of the Employment Act 1955, introducing new penalties for employers who fail to obtain prior approval from the Director-General of Labour to hire foreign employees: on conviction the employer shall be liable to a fine not exceeding 100,000 ringgit and/or to imprisonment for a term not exceeding five years. Under the 1981 Private Employment Agencies Act, agencies that violate the Act may have their licence cancelled (section 25) and penalties include fines, imprisonment, or both (section 32).

#### 4.4.5.5. Current gender equality regime

The Employment Act 1955 covers sexual harassment at work to some extent, and the Domestic Violence Act 1994, amended in 2017, covers only family and incapacitated adult violence, so it is welcomed that a bill specifically on anti-sexual harassment that aims to improve existing legislation is being discussed in Parliament. In this respect, the CEDAW Committee's Concluding Observations (2018) request the Government to adopt a comprehensive law on sexual harassment that enables complainants to seek redress without the expenditure in time and money and without the public exposure associated with going to court. In view of this, and in conformity with ILO Convention No. 190 as well as CEDAW General Recommendation No. 26, it is recommended that such a dedicated law, covering the world of work and public spaces and applicable to women migrant workers, be adopted.

#### 4.4.5.6. Summary of recommendations

In summary, Malaysia's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Re-word sections in the Employees Social Security Act 1969 to reflect gender-inclusive language in titles, for example, in sections 59B and C and Q (of the English-language text), the Social Security Organisation is said to have a board led by a "Chairman", and different committees can elect their "chairman", and section 75A(2) refers to "Chairman" of the

Investment Panel. This title should be changed in all such instances to read “Chairperson”.

- In the Quota Request Form, re-word the instructions so as to clarify that the applicant employer must restrict its listing of the desired skills, qualifications and experience to match precisely the work to be done and that discrimination based on, among other grounds, sex shall not be permitted in the process.
- Remove from Part IX of the Employment Act 1955 (on domestic employees) the right of employers to terminate a domestic worker’s contract simply by giving 14 days’ notice or by paying out with an indemnity of 14 days’ wages. Instead, introduce into the Act that domestic employees shall share the same dismissal standards that apply to national workers.
- Change the wording in certain sections of the Employees Social Security Act 1969 when defining “dependant” of a deceased covered employee so as to cover all sexes. For example, section 2(3)(b)(i) and (iii) give rights to the “daughter” and “daughter-in-law” of a deceased female worker, without extending the same rights to any male offspring, as such, the words “son” and “son-in-law” should be added.
- Strengthen section 19(a) of the Private Employment Agencies Act 1981 (maintenance of records) by adding “sex of the workers” as one of the pieces of information to be maintained.
- Amend the Employment Act 1955 such that dismissed migrant workers are permitted to work for other employers while pursuing a complaint against their previous employer, thereby protecting the right of redress for migrant workers.
- Adopt, in accordance with the CEDAW Committee’s Concluding Observations (2018), a comprehensive law on sexual harassment.

#### **4.4.6. Myanmar**

This profile builds on the *ILO Guide to the Myanmar Labour Law 2017*. There, it is reported that the Government was drafting a Foreign Workers Law because currently there is no legislative comprehensive work permit system. The draft law would cover processes for both foreign workers wishing to work in Myanmar and the national employer wishing to hire them, as well as duties of landlords providing accommodation to women and men foreign workers and of registrars and immigration officers.

##### **4.4.6.1. Pre-departure arrangements**

According to the Law Relating to Overseas Employment, 1999, Myanmar workers wishing to leave for employment must register with

the Department of Labour, which coordinates with overseas entities to secure matching jobs, ensures the rights of the departing workers, organizes job proficiency training for overseas work, and maintains an Overseas Workers Seekers Register and a Workers Register for those who secure the jobs they want. Also under the Law Relating to Overseas Employment, 1999, service agents must be registered and obtain a licence subject to paying the requisite fee and having insurance for the workers. Under section 20, Myanmar workers who have secured a job overseas must undergo a medical examination and obtain a health certificate. Under section 24 overseas workers have the right to take civil or criminal action for violations of their rights relating to overseas employment. For nationals considering working abroad, the Ministry of Labour (MOL) has been operating pre-departure orientation course centres for migrant workers in Yangon and Mandalay since 2017. In addition, labour attachés in Myanmar embassies can protect the rights of Myanmar migrant workers, settle workers' disputes with their employers and provide updated information for the Ministry.

#### **Box 11. Myanmar: Live information on Yay Kyi Yar**

Produced by BBC Media Action, *Yay Kyi Yar (Towards Clearer Waters)* is a live-audience TV programme in Myanmar providing information on the risks and opportunities of migrating for work internationally and within Myanmar so that potential migrants know their rights and can make informed migration decisions. It is an informative, educational and inspirational TV programme that brings together key stakeholder representatives to discuss decent work and labour mobility policy issues in real time, and provides information on labour rights, jobs, financial management and migration. The discussions provide an opportunity for workers to ask questions directly to decision-makers. In its initial phase in 2016–2018, *Yay Kyi Yar* started as a weekly radio show and was supported by social media, digital content and outreach events to share information with audiences in Myanmar's rural, urban and border areas and across the border in Thailand. In 2019, the show entered its second phase, switching from radio to TV.

**What makes this a promising practice?** The programme has contributed to positive behavioural changes related to safe migration and money management by providing accurate information about the potential risks and benefits of migrating for work within Myanmar and internationally. It presents a significant opportunity to strengthen the links between multiple stakeholders to encourage good governance, make migration safer and improve the working conditions of migrants.

**Source:** BBC Media Action, n.d.

Regarding incoming migrant workers, there is no quota for hiring foreign workers, but in reality, very few seek to come to work in Myanmar. The process is the responsibility of the MOL, and proceeds as follows:

- i. the foreign worker applies for a visa by submitting documents to the Immigration Department;
- ii. after getting the approval letter of the Myanmar Investment Commission, which approves the appointment of foreign workers proposed by the company, the rest of the process can be performed. The approval letter of the Myanmar Investment Commission helps in requesting a Foreign Workers Registration Certificate (FWRC);
- iii. the worker then applies to the Labour Department for an FWRC;
- iv. then the employer must apply for the work permit to the Department of Labour;
- v. once the employer has the Myanmar Investment Commission endorsement, it must apply to the MOL's Department of Foreigners Affairs or MOL's Department of Labour to hire the worker.

There is also the Foreign Investment Law (2012, revised in 2016), which distinguishes between skilled and unskilled workers, and provides that the latter must be Myanmar nationals. The original 2012 version of the Law stipulated a minimum quota (25 per cent) of Myanmar citizens in skilled jobs, which will increase over time, although the timeframe may be increased by the Myanmar Investment Commission for businesses based on knowledge. Gradually increasing restrictions on foreign skilled labour may serve to effectively transfer knowledge to national employees, but restricting foreign personnel without a parallel initiative to develop the skills base of nationals may serve to discourage potential investors from choosing to locate in Myanmar, and may amount to barriers to skilled workers from other ASEAN Member States coming to Myanmar, contrary to the ASEAN Consensus and the ICMW. As a reform, the Myanmar Investment Law (2016) has liberalized the requirements of Myanmar citizens in skilled jobs. There is also a gender dimension to ceilings on the percentage of skilled foreign workers entering the country, first, as the number of skilled foreign worker places dry up companies may feel pressure to send only men because the role-model effect of seeing women managers and high-level women employees is lost. In view of CEDAW General Recommendation No. 26 and ILO Convention No. 111, it is recommended to revise regularly the legislative ceiling on the percentage of skilled foreign workers – both women and men – allowed to enter Myanmar, including in the dialogue the lead agencies responsible for implementing the Foreign Investment Law, the Myanmar Investment Commission and the responsible departments of MOL – as well as workers' and employers' representatives.

In Special Economic Zones, different rules apply under the Special Economic Zones Law (replaced by a new Industrial Zone Law in 2020 – English version unavailable), but under section 75, the same ceiling



on the percentage of foreign workers applies, namely, citizens must represent at least 25 per cent of the total number of skilled workers, technicians and staff during the first two years of operations in such zones. As noted above, this high ceiling has a gender impact, as mainly men skilled workers will likely be sent to Myanmar as a result, and therefore national workers will see fewer and fewer women in skilled jobs in the country. It is recommended that user-friendly labour migration management provisions be introduced, with streamlined government entities so that workers are no longer faced with the above-described heavy and time-consuming processes across many different government agencies and departments.

#### 4.4.6.2. Arrival and on-site working conditions

The regulation of arrival and working conditions is spread across various national laws, some of which date back to the 1950s. Under section 5 of the Employment Skill and Development Law (2013), the employment contract must be concluded within 30 days of hiring a worker, and the agreement must be in writing for all businesses employing five or more workers. The employer must lodge a copy of the written contract with the concerned Labour Exchange Office for confirmation.

The Leave and Holidays Act 1951, amended 2014, covers any employee in factories, railways, ports, oilfields, mines, shops and establishments, and government-controlled factories, but does not apply to domestic workers. Given ILO Convention No. 189 and CEDAW's attention to occupations where women workers predominate, it is recommended to remove this exclusion from the Leave and Holidays Act.

Under the Factories Act (1951), which applies to national and foreign workers employed on any premises with more than ten workers, it is welcome to read in sections 21(b) and 44(b) that separate toilet facilities and washing facilities must be provided for women and men workers.

Sections 24(2) and 36(1), however, prohibit women from cleaning or adjusting machinery in motion and from lifting, carrying or moving a load so heavy as to be likely to cause injury, respectively. These protective provisions, rather than assisting women, may be indirectly working against women's equality in the workplace. As CEDAW and ILO Convention No. 111 point out, such bans perpetuate stereotypes of women's capability to work, and if such work is harmful to human beings, the ban should apply to both sexes. It is recommended to remove these bans on women from sections 24 and 36. Such deletions should be easy since sections 24(3) and 36(2) already appear to recognize the risks for both men and women of exposure to moving machinery and excessive weights, stipulating that the Ministry of Labour, Employment and Social Security may make rules prescribing the cleaning of machinery in motion and maximum weights that may be lifted by persons employed in factories.

Chapter V of the Factories Act deals with “Welfare”, but contains no provisions on sexual harassment as part of occupational safety and health. Given ILO Convention No. 190, it is recommended to add a new section after section 50 defining sexual harassment and stipulating complaints mechanisms available to the national and migrant workers, both women and men alike. Noting, however, that section 51 empowers the Ministry of Labour, Employment and Social Security to make rules to supplement Chapter V when further provision is required for securing the welfare of workers, it may be preferred national practice to add provisions on protection against sexual harassment by that method.

Discrimination at work is protected under Myanmar’s customary law and the Penal Code, where prosecuting cases, including allegations of violence against women workers, comes under provisions on assault and intentional infliction of injury. Despite the lack of employment or migration law clauses, the Department of Social Welfare of the Ministry of Social Welfare, Relief and Resettlement has established One Stop Women Support Centres that provide psychosocial counselling and other social services for women who suffer from or are vulnerable to violence, and has a nationwide 24-hour help line to effectively investigate any complaints, including crimes relating to sexual violence, human trafficking and domestic violence. These measures presumably apply equally to women migrant workers. According to Myanmar’s 2015 Universal Periodic Review National Report, the Myanmar Women’s Affairs Federation can receive written complaints of all types of violence against women, including domestic violence; women migrant workers can also file complaints in person at various Counselling Centres or at the Myanmar National Human Rights Commission and Myanmar National Committee on Women (UN Human Rights Council 2015, paras. 150, 152).

In the area of social security, the 2012 Social Security Law provides that all companies with more than five workers must compulsorily register their employees with the local office of the Social Security Board and pay regular contributions to protect their workers, with the exception of fishing. Moreover, other workers mentioned in section 20 of the law, including domestic workers and those in seasonal farming, shall voluntarily register with and pay contributions to the Social Security Scheme. The contingencies are as follows: healthcare (section 21), sickness (section 22), maternity (section 26), death (section 30), family assistance (section 31), invalidity (section 32), old age (section 34), unemployment (section 37), work injury (section 47) and survival (section 62).

Maternity leave under the Social Security Law, 2012, is six weeks prenatal, and eight weeks postnatal, amounting to 14 weeks total, and up to a maximum of six weeks in cases of miscarriage that are not punishable ones (section 25 (c) and (d)). Women workers also receive paid time off for prenatal checks (section 25(e)). Female insured workers enjoy payment during maternity leave at the rate of 70 per cent

(section 27). Men and women workers are eligible to receive maternity/paternity benefits after 12 months continuous employment as well as contributions to the system for a minimum of six months within that year (section 26).

Under section 66 of the Social Security Law, the employer shall not dismiss or terminate from work or demote to lower wage level for sickness or maternity. The CEDAW Committee's Concluding Observations (2016) expressed concern at:

the wide gender wage gap, the limited implementation and monitoring of the principle of equal pay for work of equal value, and women's concentration in the informal sector of employment [as well as] the limited disaggregated data on cases of sexual harassment in the workplace and measures taken to address them. It notes with concern that the right to maternity leave is not applicable in all sectors of employment

*CEDAW Committee 2016a, para. 36*

It is therefore recommended to extend the application of the 2012 Social Security Law to domestic work and to seasonal farming and fishing, where women migrant workers might be seeking jobs.

#### 4.4.6.3. Exit, return and reintegration measures

Any person leaving Myanmar must obtain a certificate from the tax authorities that no liabilities are outstanding. In addition, under Rule 15 of the Registration of Foreigners Rules, every foreigner about to leave the country must produce her Foreigner Registration Certificate (FRC) before the relevant district registration officer and such officer shall sign, seal and endorse the FRC and retain the FRC in return for a temporary certificate stating that the FRC has been surrendered. FRC holders are expected to pay a fee (approximately US\$6) for every re-entry. It appears there are no further requirements beyond stamping the foreign worker's passport at the place/airport of departure.

Concerning returning Myanmar migrants, in view of CEDAW General Recommendation No. 26, ICMW and the ILO migration Conventions (Nos 97 and 143), it is recommended that Myanmar's laws contain requirements on the detailed measures that the Government must offer for returning women and men migrants, not only so that their newly acquired skills are put to the best use for the nation, but also so that women migrant workers maintain the empowerment they gained overseas and can establish themselves in wage employment or self-employment.

The impact of the COVID-19 pandemic can be seen through the events following the Thai border lockdown in March 2020: approximately 29,337 migrants (73 per cent men, 36 per cent women) returned to Myanmar.

The MOL received support from the ILO to compile data on returnees; to provide assistance for repatriation; to undertake knowledge sharing on COVID-19 for adults, children, the aged, and particularly, for women; and to establish quarantine facilities in local communities. Immediate practical assistance came from trade unions and CSOs, supported by the ILO, which worked with Myanmar authorities at the four crossing points between Thailand and Myanmar to supply PPE materials, products and shared COVID-19 health information.<sup>34</sup> It is worth noting that the 2014–19 government ban on Myanmar women migrating for domestic work in Singapore and Thailand had been lifted.

#### 4.4.6.4. Enforcement machinery

Employment complaints can be settled via the Settlement of Labour Disputes Law (2012), which expressly covers domestic workers and appears to cover migrant workers. The Law offers an alternative to litigation in the courts, which is attractive to migrant workers, particularly women who may be intimidated by judicial staff and procedures. Under the Law, every workplace employing more than 30 persons shall establish a coordinating committee comprised of worker and employer representatives to promote a good relationship between the parties and settle grievances lodged with it (sections 3 and 5). Section 10 requires the MOL to establish tripartite Conciliation Bodies at the level of townships and regions to settle interest disputes. Employers of workers, may apply to the relevant departments or the competent court about their rights dispute by themselves or by their legal representatives (section 23). Under section 16, the MOLIP established an Arbitration Body, also for dispute settlement, and under section 19, the MOL established a 15-person tripartite Arbitration Council, to which complaints can be appealed if settlement fails at the other levels. Under sections 29 and 30, the Arbitration Council appoints three-person Tribunals from its members to hear the disputes, whose decisions are copied to the Minister of Labour and the relevant region and state governments. Tribunal decisions are final and binding (although section 36 makes provision for the parties to agree to amend the decision within three months, and appeal from the Arbitration Council is available to the Supreme Court under the Constitution).

Assessments of how this disputes settlement system is working point to many cases concerning dismissal and wages issues, without specifying whether migrant women were lodging complaints. Under CEDAW and ILO Convention No. 111, it is important that women workers feel at ease using such complaints mechanisms. Convention No. 190 specifies that enforcement systems available for violence and harassment at work should be safe, gender-responsive and effective; they should protect complainants (and witnesses and whistleblowers) against retaliation;

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34 See the ILO's COVID-19 and the World of Work: Country Policy Responses database. Myanmar's policy responses are available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#MM>.



and set effective remedies. In addition, in the interests of a system that is seen to be fair to women as well as men workers, there should be gender balance provisions concerning appointment of staff to the various settlement bodies. Such details are missing from the Settlement of Labour Disputes Law.

Without prejudice to any subsidiary regulations that might cover the following process issues, it is recommended that:

- i. to Chapter VI on procedures to settle disputes, several new sections be added prohibiting retaliation for lodging complaints, guaranteeing the confidentiality of proceedings where appropriate, protecting whistleblowers and guaranteeing remedies appropriate to the violation; and
- ii. that a new stand-alone Chapter be added between current Chapters V and VI specifying that representatives appointed to each of the four layers of dispute resolution machinery include both women and men (or at least that gender balance be taken into consideration in nominations); that all representatives at whatever level receive training on gender-responsive dispute settlement procedures; and that there be gender balance in appointing government civil servants to support the functioning of the bodies and that they also undergo mandatory regular training on gender-responsive dispute settlement procedures and methodologies.

For social security claims, foreign workers can submit complaints to their relevant township social security office for settlement. Section 76 of the Social Security Law allows the Social Security Board to investigate whether employers are respecting the Law, for example, by keeping complete lists of employees, contributions paid on their behalf, and so on. Under section 78, the Social Security Board can recover unpaid contributions from an employer in default as if a civil suit order has been issued, it being a privileged/priority debt owed to the State. Section 89 describes settlement of disputes at the level of relevant township social security offices; section 90 allows for appeal to the Regional or State Social Security Office; and section 91 establishes a Social Security Appellate Tribunal. Under section 94, sanctions against violating employers can include imprisonment not exceeding one year, fines or both. There is no information about the gender dimensions of this enforcement process.

#### 4.4.6.5. Current gender equality regime

Sexual harassment (including at work, against female migrant workers) appears to be covered by section 354 of the Penal Code (1861), which reads: "Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." Given

the age of this Code and CEDAW advice on keeping abreast of modern forms of violence against women, including online violence, which is on the rise during COVID-19-related restrictions involving working from home, it is recommended to engage in a national debate, with all stakeholders, about updating the provisions of the Penal Code that can be used to punish offences carried out in the world of work, especially such provisions that could protect women migrant workers. To this end, it is welcomed that the Department of Social Welfare of the Ministry of Social Welfare, Relief and Resettlement has been drafting a Prevention and Protection of Violence Against Women Bill, which will also cover migrant women.

Challenges to gender equality in Myanmar stem partially from the plural legal system with different gender equality and women's rights standards, policy and practice deficits, and contradictory trends between related sectors (such as education and employment) – and these challenges affect women migrant workers' rights too. The Government's response to these challenges includes the National Strategic Plan for the Advancement of Women (2013–2022). The Plan echoes the 12 priority areas of the Beijing Platform for Action, of relevance here in relation to women's economic empowerment and job rights vis à vis men, and ending violence against women. Launched by the Myanmar National Committee on Women, the Plan includes:

- i. an assessment of the situation of female migrant workers, both in Myanmar and among Myanmar women working in destination countries; and
- ii. action to end sexual harassment of women at the workplace and workplace responses, including reporting.

Among the Plan's implementation targets under first point above is to: "Increase in the number of women participating in the decision-making of agencies and Government Departments related to the economy and development projects" (Myanmar, MOSWRR 2013, para. 12(c)(2)). This target corresponds to the recommendation in this study to have gender balance in the staff of the various foreign worker-related entities. Also among the Plan's implementation targets for point (i) above is: "Development of women's access to employment, credit, resources, assets and economic benefits" (Myanmar, MOSWRR 2013, para. 12(c)(5)). That is a welcome target, in view of the above recommendation that Myanmar laws contain provisions for the economic reintegration of returning women – and men – migrant workers.

#### 4.4.6.6. Summary of recommendations

In summary, Myanmar's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Regularly revise the legislative ceiling on the percentage of skilled foreign workers (25 per cent) – women and men – allowed

to enter Myanmar). Including in the dialogue on this issue the lead agencies responsible for implementing the Foreign Investment Law, the Myanmar Investment Commission and the responsible departments of MOLIP, along with workers' and employers' representatives.

- Generally, introduce a user-friendly labour migration management system with streamlined government entities so that workers seeking to work in Myanmar are no longer faced with burdensome and time-consuming processes across many different government agencies and departments.
- Remove from the Leave and Holidays Act the exclusion of domestic workers.
- Remove from sections 24(2) and 36(1) of the Factories Act the prohibitions on women that do not apply to men, specifically the prohibition on women cleaning or adjusting machinery in motion and the prohibition on women lifting, carrying or moving a load so heavy as to be likely to cause injury.
- Add after section 50 of the Factories Act a new section defining sexual harassment and stipulating the complaints mechanisms available to national and migrant workers, women and men alike, with protections and enforcement inspired by Convention No. 190.
- Remove the non-application of the Social Security Law to domestic work and to seasonal farming and fishing, where women migrant workers might be seeking jobs.
- Augment the current national migration laws so that they contain requirements on the detailed measures that the Government must offer for returning women and men migrants, not only so that their newly acquired skills are put to the best use for the nation, but also so that women migrant workers maintain the empowerment they gained overseas and can establish themselves in wage employment or self-employment.
- Strengthen Chapter VI (procedures to settle disputes) of the Settlement of Labour Disputes Law, by adding several new sections prohibiting retaliation for lodging complaints, guaranteeing the confidentiality of proceedings where appropriate, protecting whistleblowers, and guaranteeing remedies appropriate to the violation, inspired by Convention No. 190.
- Add to the Settlement of Labour Disputes Law a new chapter specifying that representatives appointed to each of the four layers of dispute resolution machinery include both women and men (or at least that gender balance be taken into consideration in nominations); that all representatives at

whatever level receive training on gender-responsive dispute settlement procedures; and that there be gender balance in appointing government civil servants to support the functioning of these bodies who also undergo mandatory, regular training on gender-responsive dispute settlement procedures and methodologies.

- Engage in a national debate, with all stakeholders, about updating the provisions of the Penal Code that can be used to punish offences carried out in the world of work, especially such provisions that could protect women migrant workers.

Some observations are also made as follows:

- The 1951 Leave and Holiday Act excludes domestic workers. The Domestic Workers Law is being drafted by Myanmar.
- Section 24(2) and 36 (1) of the 1951 Factories Act prohibits women (that do not apply to men) cleaning or adjusting machinery in motion and lifting, carrying or moving a load so heavy as to be likely to cause injury.
- The Criminal Law includes provisions to prohibit sexual harassment on women. However, the 1951 Factories Act does not define sexual harassment nor stipulate complaints mechanisms.
- The 2012 Social Security Law is not applicable to domestic work, seasonal farming and seasonal fishing, where women migrant workers might be seeking jobs.
- According to the second amendment of the Settlement of Labour Dispute Law that was enacted on 3 June 2019, the industrial grievances are settled at the Workplace Coordinating Committee (WCC). If the dispute is not settled at WCC, it must be settled by the relevant department in accordance with their respective laws. The dispute must be settled according to the dispute settlement mechanism. Women are represented in dispute settlement bodies and may attend the training on gender-responsive dispute settlement procedures. The cases of violence against women must be settled in accordance with the Penal Code.

#### **4.4.7. The Philippines**

Respected for its historic attention to protecting overseas Filipino workers (OFWs), the Philippines has a strong arsenal of laws to back up its policy, in place since the 1970s. The comprehensive institutional and legal framework governs all stages of migration from pre-departure to return and reintegration, with different rules for land-based OFWs and for seafarers. However, a general point at the outset is that certain laws, given their original date, contain inappropriate terminology regarding gender equality at work, which it



is recommended to change. For example, the Labor Code, 1974 (Presidential Decree No. 442), as amended in 2016, could be updated so that gendered terms are replaced: “seamen” to be changed to seafarer, “chairman” to chairperson, and “manpower” changed to human resources or employment. The same recommendation applies to the Immigration Law 1940.

It is also noted regarding Filipino workers wishing to work abroad, in addition to the laws analysed below, the Government has signed bilateral labour agreements (BLAs) with major countries of destination to ensure ethical and fair recruitment standards, to adopt standard employment contracts and to establish mechanisms for cooperation. For example, BLAs limit the hours of Filipino domestic workers to a maximum of eight hours per day, six days per week, and specify that work in excess of eight hours should be compensated with overtime pay. This study does not examine BLAs.<sup>35</sup>

#### 4.4.7.1. Pre-departure arrangements

The Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act (RA) 8042, as amended by RA 10022 – hereafter referred to as the “Overseas Filipinos Act”) requires gender sensitivity in the overseas migration framework under section 3. Under section 2(d), the Act recognizes the particular vulnerability of women migrant workers, and section 2(i) states that government services to migrant workers shall be provided free of cost (the Labor Code covers fees – subject to a schedule set by the Secretary of Labor – payable to private recruitment agencies). Section 14 requires information sharing on employment conditions in destination countries and “adherence of particular countries to international standards on human and workers’ rights, which will adequately prepare individuals into making informed and intelligent decisions about overseas employment”. Part II of the Act defines and sets forth penalties for illegal recruitment of Filipinos for work overseas. Part III establishes government services to assist migrant workers, including an Emergency Repatriation Fund; a Re-placement and Monitoring Centre with the function of reintegrating returning Filipinos into the economy; a Migrant Workers and Other Overseas Filipinos Resource Centre; and a Shared Government Information System for Migration. Regarding the Resource Centres (open 24/7, under the coordination of a Labor Attaché), section 19(f) requires them to provide gender-sensitive programmes and activities to assist particular needs of women migrant workers and section 19(g) stipulates the need for orientation programmes for returning workers. The Act requires recruitment agencies to purchase insurance coverage for their enlisted workers. Section 20 provides details on the Shared Government Information System, aimed to allow free-flow data exchanges. Section 20(h) requires this database to be capable of tracking past and present gender-disaggregated cases involving male and female migrant workers. These are all welcome provisions from the point of view of protecting women migrant workers.

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<sup>35</sup> Bilateral labour migration agreements, if based on international labour standards, can be a key tool in labour migration governance that ensures safe, orderly and regular labour migration (ILO 2022a).

### **Box 12. Promising practice in the Philippines: Taking gender-responsive information systems seriously**

The Overseas Workers Welfare Administration Act and DOLE's International Labor Affairs Bureau created the Foreign Labor Operations Information System (FLOIS) in 2015. FLOIS's sex-disaggregated data has a number of uses, including the development and monitoring of gender-specific provisions in bilateral labour agreements (BLAs) with destination countries, as the Philippines Government insists on specific provisions in BLAs ensuring the protection of women migrant workers. For example, the Kuwait–Philippines 2018 Agreement on Employment of Domestic Workers requires that recruitment and employment be governed by a standard contract; the agreed wage in the contract and minimum age requirement must be strictly enforced; legal measures must be taken against erring employers, domestic workers, Kuwaiti or Philippine recruitment agencies for any violation of contractual or legislative provisions; and employers may not keep domestic workers' ID documents.

**What makes this a promising practice?** Well-designed data systems make evidence-based policy making easier. This promising practice shows how to translate policy goals and Philippine's long-established arsenal of labour migration regulations into workable clauses in bilateral agreements, providing sustainability.

**Source:** ASEAN 2021b, 106.

The Department of Health is mandated to regulate the activities and operations of all clinics that conduct health examinations on Filipino migrant workers as a requirement for their overseas employment. Under section 23(c.2) of the Overseas Filipinos Act, only those health examinations that are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted. The latter phrase leaves open the possibility for pregnancy checks contrary to CEDAW and ILO Convention No. 111 norms. It is recommended that section 23(c.2) be expanded to include a ban on medical clinics undertaking pregnancy checks of aspiring women migrant workers (irrespective of whether this is required by the country of destination).

According to the Philippines' 2016 National Report submitted to the CEDAW Committee, the policy for sending workers overseas for domestic service contains an age restriction of 23 years, introduces a "no-placement fee" policy, imposes mandatory skills and language training, and sets a minimum monthly wage standard of US\$400. Pursuant to this policy, the Philippine Overseas Labor Offices (POLOs) and the Philippine Overseas Employment Administration (POEA) blacklist

employers who have been found guilty of abuse and maltreatment against Filipino workers, or those who violate employment contracts (CEDAW Committee 2015, para. 84). The 2011 POEA Governing Board Resolution No. 4 allows exemptions to be made to the age requirement of 23 years for the overseas deployment of domestic workers. In view of this national flexibility and given CEDAW and ILO Convention No. 111 norms on equal access to jobs without age discrimination, it is recommended that the age limit of 23 years be changed to the age of adulthood, thereby opening decent work opportunities to all adult migrant women.

Government-run Jobs Fairs bring together jobseekers and domestic and overseas recruiters and employers at a specific time, date and place in order to reduce costs, time and effort for jobseekers. These also support the anti-illegal recruitment campaign by facilitating access to legitimate employers and licensed recruitment agencies.

The 2010 Implementing Rules and Regulations for the Overseas Filipinos Act include Rule VI(23) obliging the POEA to conduct seminars that will discuss topics such as legal modes of hiring for overseas employment; rights, responsibilities and obligations of migrant workers; health issues; prevention of illegal recruitment; how to access redress mechanisms; and gender sensitivity. Given the advice in the ICMW, ILO Convention No. 190 and the ILO migration Conventions (Nos 97 and 143), it is recommended to expand the mandatory Pre-Employment Orientation Seminars by requiring dedicated classes on cultural and traditional contexts where expectations concerning working women are clarified and risks of violence and harassment at work, including gender-based abuse, are explained.

Rule VIII clarifies the role of the Department of Foreign Affairs to formulate and implement policies and programmes to promote the rights and welfare of OFWs, and to provide consular and legal assistance to overseas Filipinos in distress. Rule X clarifies the role of the Department of Labor and Employment (DOLE) to ensure that labour and social welfare laws in foreign countries are fairly applied to Filipino migrant workers, including POEA and Overseas Workers Welfare Administration (OWWA) mandates. Rule XVI explains the functioning of the compulsory insurance for agency-hired overseas workers: each migrant worker deployed by a recruitment agency shall be covered by a compulsory insurance policy that shall be secured at no cost to the worker, covering among other contingencies, death, disability, repatriation and a subsistence allowance of US\$100/month for a migrant worker involved in litigation over his/her rights. All of these are welcome provisions for women migrant workers.

The COVID-19 pandemic impact was seen in the DOLE's issuance of Labor Advisory No. 4/2020 "Guidelines on Coronavirus prevention and control at the workplace" dated 31 January 2020, which applies to all employers and workers in the private sector. In addition to OSH and

leave aspects, this Labor Advisory states that for OFWs, the POEA, OWWA and DOLE's International Labor Affairs Bureau shall ensure that COVID-19 prevention and control information is provided during the pre-departure orientation seminars.<sup>36</sup>

For foreign workers wishing to take up jobs in the Philippines, Labor Code section 40 stipulates the requirement of obtaining an Alien Employment Permit from the DOLE. The Department of Justice must also grant the employer an Authority to Employ an Alien. This is issued after a determination of the non-availability of a person in the Philippines who is competent, able and willing to do that job. After securing their Alien Employment Permit, foreigners need to apply for their related visa – the Pre-arranged Employment Visa (called 9G) – from the Bureau of Immigration, valid for one year, with the need to guarantee their ability to support themselves financially. The 9G visa is issued when the worker is still in their country of origin through diplomatic posts under the Department of Foreign Affairs.

Employers in special economic zones can apply to hire a foreign worker under another special visa, subject to not exceeding the foreign worker 5 per cent quota and which requires a Certificate of No Objection to such hiring with several supporting documents. A welcome measure of inter-agency cooperation is found in the Joint Memorandum Circular and Guidelines No. 001/2019 of the Bureau of Immigration, DOLE, Department of Justice, Department of Finance and other agencies related to foreign nationals entering the country to work. It harmonizes rules on the necessary work permits and establishes a technical working group tasked with creating a central repository listing of foreign workers in the Philippines, under the DOLE's administration. In view of CEDAW General Recommendation No. 26 and the ICMW, this central repository should collect sex-disaggregated data. It is recommended to add to Joint Circular No. 001/2019 that the central database contents will use sex-disaggregated data and that the DOLE's administration of the collection and dissemination of the information shall follow gender-responsive methodologies.

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36 See the ILO's COVID-19 and the World of Work: Country Policy Responses database. The Philippine's policy responses are available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#PH>.

### **Box 13. Promising practice in the Philippines: “One-stop shop” the Philippines way**

In 2019 DOLE piloted a streamlined “one-stop shop” in Manila with staff from the Bureau of Internal Revenue, Bureau of Immigration, Professional Regulation Commission and DOLE in one physical location to enable foreign workers to secure their Taxpayer Identification Number and Special Temporary Permit documents, which are needed for them to obtain their Alien Employment Permit. Moreover, a Department of Migrant Workers was created in December 2021 to expedite the delivery of services by taking on an inter-agency mandate to provide such services. The Department is expected to be operationalized by 2023.

**What makes this a promising practice?** Migrant workers, particularly women with low education levels, may be daunted by the varied legal provisions and roles of different government departments involved in obtaining their lawful labour migration. And a lot of documentation is required from both employers wishing to hire foreign workers and from women and men who wish to find a job overseas. This administrative streamlining demonstrates that several departments can work together to make document processing easier, harmonizes procedures, and enable the collection of accurate sex-disaggregated data.

#### 4.4.7.2. Arrival and on-site working conditions

The Labor Code applies to foreign migrant workers coming to the Philippines, but also has components that apply to OFWs. For example, section 22 requires certain categories of OFWs, such as seafarers, to remit “a portion” of their foreign exchange earnings to their families and dependents back home. While acknowledging this important source of revenue for families, communities and the economy as a whole, it is recommended that this clause be changed to read that “a reasonable portion” of a worker’s foreign exchange earnings may be remitted. Such wording would ensure that women migrant workers do not reduce their own purchasing power abroad by remitting too large a percentage, as it is reported that women migrant workers sometimes remit up to 80 per cent of their earnings. This change would also respond to the CMW’s 2014 Concluding Observations, which requested the Government to review its legislation in this regard (CMW 2014, para. 41).

Under section 32 of the Labor Code, the Secretary of Labor shall promulgate the amount of fees to be paid by prospective migrant workers using a private fee-charging employment agency to seek work abroad, and such fees shall be payable only when the worker is in



employment or has commenced work. Given that the ICMW, the ILO migration Conventions (Nos 97 and 143), ILO Convention No. 181 and the CMW's 2014 Concluding Observations all adopt a "no placement fee" policy for persons intending to work abroad, it is recommended to prohibit the charging of fees to workers themselves. Under section 34, no individual or licenced agency shall withhold travel documents of the placed worker, nor shall such agencies fail to file reports on vacancies and placements, remittances organized, worker separation from jobs, and departures from the country of origin to the destination country, as required by the Secretary of Labor.

Section 41 forbids the transfer of a foreigner working in the Philippines to another job or to change their employer without prior approval from the Secretary of Labor, which appears to be a management of the labour force provision rather than a denial of workers' rights to access jobs, including women migrant workers who may wish to leave domestic employment where they are suffering violence or abuse. Any change of employer without first applying to the Secretary of Labor is subject to strict penalties, including deportation of the worker.

DOLE Labor Advisory No. 10/2018 reaffirms the entitlements of domestic workers in the Philippines to rights and benefits under the Domestic Workers Act 2013 (RA 10361) (see below) and to the labour standards that are enjoyed by workers in the formal sector, such as special leave benefits, solo parent leave and violence against women leave. These are welcome provisions for women migrant workers.

The Labor Code prohibits sex discrimination in terms and conditions of employment, including promotion, training, study and scholarship grants. It also prohibits pay discrimination between men and women where they do work of equal value. In addition to administrative penalties for violations of the Code, aggrieved employees can also claim for monetary damages and affirmative relief.

The Domestic Workers Act provides a broad range of rights and duties to domestic workers in the Philippines, both nationals and foreign migrant workers, extending, for example, to the employer's duty to allow domestic workers access to education and training (section 9) with Technical Education and Skills Development Authority (TESDA) facilitation (section 18). Under section 11, written contracts must be executed in a language understood by both parties, with the DOLE preparing a model employment contract to assist. Section 13 prohibits charging domestic workers recruitment fees. According to section 30, domestic workers who have served at least one month shall be covered by the Social Security System and the Philippine Health Insurance Corporation (PhilHealth), among other benefit schemes. Section 31 provides rescue and rehabilitation of abused domestic workers. Welcome protection appears in section 33, which states that a domestic worker may terminate the employment relationship at any time before the expiration of the contract for a number of reasons including:

(i) verbal or emotional abuse by the employer or any member of the household; and (ii) inhuman treatment, including physical abuse of the domestic worker by the employer or any member of the household. Under sections 36 and following, the DOLE is responsible for regulating, through a licence system, domestic work private employment agencies, referring specifically to the corresponding provisions of the Labor Code. Under section 36I, private employment agencies shall provide a pre-employment orientation briefing to the domestic worker and the employer about their rights and responsibilities under the Domestic Workers Act.

#### 4.4.7.3. Exit, return and reintegration measures

Under the Overseas Filipinos Act returning migrant workers, including women, are supported through programmes developed jointly by the DOLE and POEA in order to plan for productive options, such as entry into highly technical jobs, livelihood and entrepreneurial development, better wage employment, and investment of savings. For this purpose, the TESDA, the Technology Livelihood Resource Centre and other government agencies involved in training and livelihood development shall give priority to returnees who had been employed as domestic helpers and entertainers.

#### **Box 14. Promising practice in the Philippines: Using IT to help returning women migrant workers**

The Technical Education and Skills Development Authority (TESDA) offers an interesting IT example through its development of various programmes targeting workers in and out of the country, including special training sessions for women, skills assessment, e-courses and scholarships. Project Tulay, offered by Microsoft in cooperation with the Government of the Philippines, provides information technology skills training to improve communication between migrant workers and their households as well as to help women and men workers find employment with their new skills upon return home. The Microsoft small-scale training programmes on offer have proved very popular, particularly among women workers. Such training demonstrates innovative reintegration programmes for returning Filipina workers to be more employable, using gender-sensitive training techniques that take into account the learning styles of women and their needs as regards content (which might be different to the needs of returning men).

**What makes this a promising practice?** Migrant workers, especially women working in homes as domestic workers, often only have their mobile phones – an IT solution – to keep in touch with their family and friends back home as well as to find news regarding jobs. This promising practice links the possibilities of IT learning solutions to the practical challenges of best utilizing the women's new skills when back home.

**Source:** Viet Nam, DOLAB 2015.

The 2009 Overseas Filipinos Act (RA 10022, amending RA 8042), changed section 17 to create a National Reintegration Centre for OFWs (NRCO) within the DOLE, so as to provide a mechanism for the reintegration of OFWs into Philippines society, serve as a promotion house for their local employment, and tap their skills and potentials for national development (Wickramasekara 2019). The NRCO's activities consist of five areas: (i) counselling; (ii) wage employment referral assistance; (iii) enterprise development; (iv) skills training and capability enhancement; and (v) assistance to distressed OFWs. The DOLE has identified and collaborated with all agencies involved in reintegration, such as the OWWA, the Development Bank of the Philippines, and TESDA, and the NRCO collaborates with the overseas network of Philippines Overseas Labor Offices (POLOs) and embassies. Section 18 of RA 10022 requires the NRCO to create and maintain computer-based data and services, but fails to specify that all data must be sex-disaggregated, as is the advice of CEDAW General Recommendation No. 26 and the ICMW. But, usefully, section 20 requires gender-sensitive tracking capabilities (see section 4.4.7.1. above). The CEDAW Committee's Concluding Observations (2016) requested the Government to raise awareness among women

migrant workers about their rights and provide gender-responsive support to returning women migrant workers for their reintegration. It is therefore recommended to strengthen the Overseas Filipinos Act by adding the adjective “sex-disaggregated” whenever data collection is mentioned. It is also recommended to add a subsection to section 18 of the Overseas Filipinos Act regarding, in particular, the reintegration measures for women migrant workers, covering their specific challenges after years of working abroad.

For foreign workers leaving the Philippines, they must downgrade their 9G visa to a 9A temporary visa and secure an “Emigration Clearance Certificate” (fee of 1,210 Philippine pesos) from the Bureau of Immigration (with some exceptions).

#### 4.4.7.4. Enforcement machinery

Under the Overseas Filipinos Act, section 34, there shall be representation in Congress of representatives for migrant workers, appointed by the President from the ranks of migrant workers having at least two years’ experience, of whom one must be from the women migrant workers’ sector. This inclusiveness and high-level measure to give voice to women migrant workers is welcomed, and is in accordance with CEDAW and ILO Convention No. 111 norms. Such provisions also meet the social dialogue expectations of the ILO’s Decent Work Agenda.

The Labor Code creates, among other supervisory entities, the Overseas Employment Development Board, with operational powers to protect OFWs through fair and equitable employment practices (section 17). Sections 25 and 27 of the Labor Code set conditions for private sector entities engaging in worker placement – both locally and overseas – including a schedule of fees for registering licenced recruitment operators (section 30). Applicant entities must post cash and surety bonds (section 31), and a worker cannot be charged fees until they have obtained a job or commenced work. Section 33 requires reports on the status of job offers, job fillings and other employment data. Given CEDAW General Recommendation No. 26 and ICMW insistence on understanding the gender dimension of migrant work, it is recommended to add to section 33 a requirement that all such reporting and data be sex-disaggregated. The POEA conducts inspections every two years of licensed recruitment and placement agencies deploying domestic workers overseas, checking that the “no-placement fee” notice for such workers has been posted and examining the work contracts of all workers placed by the agency under inspection. Sections 35 and 39 set down the penalties for recruitment operators that violate the Labor Code and other relevant regulations, which include licence suspension or cancellation and fines/imprisonment.

The Bureau of Immigration relies on citizens denouncing illegal entry or overstay of visa. For example, Immigration Memorandum Circular No. SBM-2014-017 creates a “Reward & Incentive Programme” granting a financial reward (2,000 pesos) to any person reporting an overstaying foreigner that results in capture and arrest.

Generally, regarding the settlement of labour disputes, there is a need to strengthen grievance mechanisms to resolve workplace discrimination and sexual harassment cases. Under the Domestic Workers Act, section 40, a violation of the Act shall be punishable with a fine of between 10,000 and 40,000 pesos (without prejudice to the filing of appropriate civil or criminal action by the aggrieved party). A 2020 Direct Request by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to Convention No. 189, recalls past observations and urges the Government to ensure that the Domestic Workers Act is effectively applied and that sufficiently dissuasive penalties are imposed in practice on persons who subject children under 18 years of age to domestic work in hazardous or exploitative conditions.<sup>37</sup> The CEACR raises the issue of whether the penalties for violating any provisions of the Domestic Workers Act are sufficiently persuasive. It is recommended that a national dialogue, including all agencies involved in regulating domestic work, take place regarding increasing fines and other sanctions and inspection practices for all domestic workers.

Regarding outgoing workers, the Overseas Filipinos Act prescribes a "one country team" approach for assisting migrant workers, with social welfare attachés, labour attachés and foreign service officers working together in countries, particularly where there is a high concentration of OFWs, to respond to social, employment and other concerns of the workers. According to the 2009 Overseas Filipinos Act (RA 10022, amending RA 8042), section 5, the POEA can at any time disallow the deployment of Filipino workers to destination countries that are non-compliant with its policy norms. RA 10022 also increased penalties for violations on the Overseas Filipinos Act (section 7), which include imprisonment and fines.

The CEDAW Committee's Concluding Observations (2016) requested the Government to strengthen the regulation and inspection of recruitment agencies for migrant workers and the sanctions applicable for breach of relevant regulations, and to investigate, prosecute and punish perpetrators of exploitation and abuse of women migrant workers, in particular domestic workers, who are under its jurisdiction and to adopt pending bills to expand the definition of sexual harassment to include peer sexual harassment and to strengthen efforts to investigate and impose sanctions for sexual harassment in the workplace. It is therefore recommended that the Government: (i) examine and revise where necessary the provisions on sanctions to make them genuinely dissuasive; and (ii) adopt any bills pending regarding improved workplace protection against sexual harassment.

#### 4.4.7.5. Current gender equality regime

The 2009 Magna Carta of Women (RA 9710) guarantees women and men equal rights in all matters and, of relevance here, guarantees women

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<sup>37</sup> CEACR, [Direct Request – Domestic Workers Convention, 2011 \(No. 189\) – Philippines](#), adopted 2020, published 109th session, International Labour Conference, 2021.



the right to decent work. It applies to national and migrant women. The Anti-Sexual Harassment Act 1995 (RA 7877) applies to the world of work, covering both quid pro quo sexual harassment and the creation of an intimidating, hostile, or offensive environment (section 3(a)). Women victims of violence, in particular domestic violence, are protected under the Anti-Violence Against Women and Their Children Act 2004 (RA 9262), but its scope covers intimate partner acts rather than women employed in a household as domestic workers (there is no recommendation here to expand its scope). It is welcomed that RA 9262 recognizes violence against women as a “public crime” and provides the possibility for any citizen with knowledge of the crime to file a complaint. The Safe Spaces Act 2019 (RA 11313) penalizes wolf-whistling, catcalling, misogynistic and homophobic slurs, unwanted sexual advances and other forms of sexual harassment in, among other settings, workplaces, and offers welcome protection to women migrant workers both at work and when they enjoy their away-from-work time.

#### 4.4.7.6. Summary of recommendations

In summary, the Philippines’s laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Update the wording of the Labor Code 1974 (as amended in 2016) as well as the 2009 Immigration Act to use gender-inclusive nouns and titles, for example, change “seamen” to “seafarers”, “chairman” to “chairperson” or “chair”, and “manpower” to “human resources” or “employment planning”.
- Amend section 23(c.2) of the Overseas Filipinos Act to include a ban on medical clinics being required to undertake pregnancy checks of aspiring women migrant workers.
- Expand Rule VI (23) of the 2010 Implementing Rules and Regulations for the Overseas Filipinos Act to require that the mandatory Pre-Employment Orientation Seminars include dedicated classes on cultural and traditional contexts where expectations concerning working women are clarified, and risks of violence and harassment at work, including gender-based abuse, are explained.
- Add to Joint Circular 001/2019 a new section that the central database contents will use sex-disaggregated data and that the DOLE’s administration of the collection and dissemination of the information shall follow gender-responsive methodologies.
- Review section 22 of the Labor Code to establish a maximum percentage of a worker’s wage that may be remitted, thereby ensuring that women migrant workers are able “transfer their earnings and savings as they may desire” in accordance with the CMW’s Concluding Observations (2014).

- Change section 32 of the Labor Code so as to prohibit private recruitment agencies from charging fees to workers, in accordance with the CMW's Concluding Observations (2014).
- Strengthen the 2009 Overseas Filipinos Act (RA 10022, amending RA 8042) by adding the adjective "sex-disaggregated" whenever data collection is mentioned.
- Add a subsection to the Overseas Filipinos Act on reintegration measures for women migrant workers, covering their specific challenges after years of working abroad, in accordance with the CEDAW Committee's Concluding Observations (2016).
- Add to section 33 of the Labor Code a subsection requiring that all data in reports on job offers, job filling and other employment data be sex-disaggregated.
- All agencies involved in regulating domestic work (including for OFWs entering into domestic work jobs abroad) should engage in a national dialogue on increasing fines and other sanctions and improving inspection practices for all domestic workers, in accordance with the CEACR Direct Request concerning Convention No. 189.
- Revise, where necessary, the provisions of the 2009 Overseas Filipinos Act (RA 10022, amending RA 8042) on sanctions, to make them genuinely dissuasive, especially for agencies that recruit migrant workers, in accordance with the CEDAW Committee's Concluding Observations (2016).
- Adopt any pending bills regarding improved workplace protections against sexual harassment, in accordance with the CEDAW Committee's Concluding Observations (2016).

#### **4.4.8. Singapore**

##### **4.4.8.1. Pre-departure arrangements**

The employer, sometimes working with an employment agency, identifies suitable foreign job candidates and then applies to the Work Pass Division of the Ministry of Manpower (MOM) to sponsor these candidates. If the MOM approves the worker, they are first granted an In-Principle Approval letter while the actual visa is issued after other health, safety, bonds (for non-Malaysian workers only), and security regulations are fulfilled. The Employment of Foreign Manpower Act 2009 (amended 2012) regulates the terms and conditions for hiring a migrant worker and the issuing of Work Passes.<sup>38</sup> The Act requires payment of salaries, health coverage, accommodation, repatriation, mandatory health check-ups (including

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<sup>38</sup> Employment Pass for managers and high-skilled workers; S Pass for middle-level skilled workers; and Work Permits for semi-skilled workers with no salary level requirement.

six-monthly pregnancy testing),<sup>39</sup> restrictions on marriage and pregnancy, and prohibitions of undesirable and immoral activities. Women migrant workers do not have maternity protection; they are deported if they become pregnant. Domestic workers must be women of 23–50 years of age, have eight years of formal and certified education (required for the domestic work sector only) and come from an approved source country, which for ASEAN includes Cambodia, Indonesia, Malaysia, Myanmar, Philippines and Thailand. Malaysian nationals face the least restrictions being able – if they possess the qualifications – to work in all sectors; they also have more choices of accommodation, can be older when applying for a work permit, can work for an unrestricted period and are not required to have a security bond.

Based on the above and in view of CEDAW, it is recommended to explore amending the Employment of Foreign Manpower Act by:

- i. ending mandatory pregnancy testing for migrant workers and deportation on grounds of pregnancies;
- ii. restricting the periodic health checks to fitness-for-work examinations and to make pregnancy testing illegal; and
- iii. removing the age limits so that adult women migrants are able to make employment choices concerning their economic empowerment and autonomy.

The Employment Agencies Act 1958 requires all entities that carry out employment agency activities in Singapore to be licensed and their personnel to be registered. Under the Act, fees charged by employment agencies to workers cannot exceed two months of their salary. Employment agencies that place migrant domestic workers are responsible for the accommodation, upkeep and maintenance of these workers while they are in transit and before they are deployed to their employers' households.

In some sectors, special pre-conditions for securing a job apply (for example, in construction and services). Malaysians applying for Work Passes must be below 58 years old, and non-Malaysians must be younger than 50. All Work Permit holders – excluding domestic workers (who must leave at 50 years old) and confinement nannies (who may work up to 70) – can work in Singapore until 60 years of age. The indirect discrimination in the 50/58 years old limitation for migrants in certain sectors works to bar women's entry into such sectors at a time when they may be free of family responsibilities related to raising their own children, and as such they may have acquired precious skills for such sectors. Given this and as per CEDAW General Recommendation No. 26, it is recommended to change the upper age limit for migrant workers of both sexes and to adjust to the retirement age applicable in Singapore.

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39 See MOM's "Full Medical Examination Form For Foreign Workers", Part II(2)(c), available at: [https://www.mom.gov.sg/-/media/mom/documents/services-forms/passes/medical\\_form.pdf?la=en&hash=021C-F7AE5739742F11DAB74413066251](https://www.mom.gov.sg/-/media/mom/documents/services-forms/passes/medical_form.pdf?la=en&hash=021C-F7AE5739742F11DAB74413066251).

Apart from confinement nannies and performing artists, Work Pass holders subject to certain conditions for their respective pass category may change their employer after completing the necessary paperwork with the MOM. In September 2021, the MOM changed the rule for Work Permit holders in the construction, manufacturing and services sectors such that the change of employer without consent period is extended by 30 days from the end of the contract. This has helped moderate the outflow of workers in these sectors during the restricted inflow of new workers due to COVID-19 border controls. The scheme was announced to be in place until 28 February 2022, subject to further review (Singapore, MOM 2021).

One positive measure currently in place, particularly for women migrant workers, is the MOM encouraging the Centre for Domestic Employees to work with various embassies from countries of origin for migrant domestic workers to encourage them to screen a pre-departure video for migrant domestic workers who intend to work in Singapore. The videos are available in ten different languages and cover topics such as living and working in Singapore, basic employment regulations and channels of assistance. The Centre for Domestic Employees is an initiative of the National Trades Union Congress.

#### 4.4.8.2. Arrival and on-site working conditions

On arrival in Singapore, most new migrant workers are required to attend a one-day Settling-in-Programme, where they are educated on basic knowledge in living and working safely in Singapore, with topics covering local practices and social norms, employment law, rights and obligations, and avenues of help. The workers are given a handbook in their native languages, containing important contact numbers of the Police Force, the relevant embassies and NGOs, and the MOM's dedicated toll-free hotline for migrant domestic workers. Workers are educated to seek assistance through the hotline, should they require it. They are also given a postage-paid envelope to send complaints to the MOM. The programme is for all first time non-Malaysian Work Pass holders in all sectors, except services. This one-day orientation is conducted in the workers' native language, and must be attended within 14 days of arrival in Singapore with the employer paying the S\$75 fee. For foreign domestic workers the course must be attended within three days of arriving in the country. No integration programme is required for mid- to highly-skilled workers, nor for confinement nannies and performing artists.

In addition, new migrant domestic workers are interviewed in their first year of working in Singapore, in their native language, to ensure that they are settling into their new working and living environment. The MOM is working with the Centre for Domestic Employees to double the frequency of such interviews with migrant domestic workers in their first year of working in Singapore. During the interview, the migrant domestic worker will be asked about their employment conditions and will also be provided an opportunity to voice their concerns. These interviews allow the MOM

to determine if they have adjusted to Singapore's work environment and to reiterate to them the importance of safe working conditions and their rights and responsibilities.

**Box 15. Promising practice in Singapore: NGOs assist training and onboarding for migrant domestic workers**

Several NGOs provide training courses and certification primarily for migrant domestic workers in Singapore. The Humanitarian Organization for Migrant Economics (HOME) established The Home Academy in 2010 to provide skills training to all migrant domestic workers in cooking, baking, caregiving, dressmaking, cosmetology, English language, computer literacy and financial management so as to foster economic empowerment and entrepreneurship among migrant women. The Foreign Domestic Worker Association for Social Support and Training (FAST) was founded in 2005 as a non-profit organization and has over the years made significant contributions to enhance social support for migrant domestic workers, having provided upskilling to more than 25,000 domestic workers annually in culinary arts, nursing care, infant and elder care, hairdressing, English language, computer literacy and entrepreneurship. FAST works with training providers and community centres to provide these courses at a subsidized rate for migrant domestic workers. They also conduct a two-day onboarding and induction programme to help new migrant domestic workers adjust to Singapore's work life. The Centre for Domestic Employees, set up in 2016 by the National Trades Union Congress, conducts migrant domestic worker interviews on behalf of the MOM and champions for the fair treatment of migrant domestic workers through a balanced and pragmatic approach towards issues concerning resolution, humanitarian aid, social integration and support. Through outreach programmes, the Centre for Domestic Employees creates better awareness among domestic workers and employers on their obligations and responsibilities. In 2019, the Centre also initiated an Assessment-Only Pathway skills certification framework for migrant domestic workers to help them perform their duties effectively upon deployment. This certification also enhances the employability of migrant domestic workers who have successfully completed the assessment. Lastly, the NGO Aidha, a charity founded in 2006, offers courses in communication, money management, computer skills and entrepreneurship for migrant domestic workers and low-income Singaporean women to achieve economic independence through financial education, wealth creation and entrepreneurship. Those trained have started their own businesses and increased their savings and assets.

**What makes this a promising practice?** These programmes provide concrete measures for migrant women's economic empowerment and they do so without imposing burdensome fees. Certification also underpins the sustainability of the measures undertaken.

**Source:** HOME, n.d.; FAST, n.d.; CDE, n.d.; Aidha, n.d.



The Employment Act 1968 provides for the basic terms and working conditions for every employee in Singapore, regardless of nationality, who is under a contract of service with an employer, including migrant workers. The Act makes provisions for basic employment entitlements such as salary protection, minimum employment terms, and recourse for resolving employment-related disputes. It also regulates working conditions such as hours of work and overtime payment. The Employment Act covers all national and foreign employees except seafarers, statutory board employees and civil servants. All domestic workers – national or foreign – are also excluded from the Employment Act (section 2(1)). According to the Government's response to this study's questionnaire, domestic workers are excluded given that the nature of their work differs from non-domestic workplaces. To account for their unique protection needs, migrant domestic workers are instead protected under the Employment of Foreign Manpower Act and the Employment Agencies Act, which regulate the employment of migrant domestic workers and protect their well-being.

Under the Employment of Foreign Manpower Act, employers are obliged to:

- i. Send the In-Principle Approval letter to all workers, including migrant domestic workers, prior to their departure for Singapore. The In-Principle Approval letter must contain important employment terms and conditions, such as the basic monthly salary (as declared by the employer) and the costs/fees that the employer is responsible for paying.
- ii. Provide their worker with adequate food, adequate rest, acceptable accommodation and bear the costs of such upkeep and maintenance.
- iii. Ensure safe working conditions and bear the medical expenses of their workers. This includes purchasing medical insurance for the worker's inpatient expenses, with additional personal accident insurance for domestic workers in case of accidental death or permanent disability.
- iv. Pay their workers' salaries no later than seven days after it is due, as well as bear the costs of repatriation of the worker and ensure all outstanding salaries or moneys due to the worker are paid before the worker's repatriation.

The Employment Act specifically excludes domestic workers, who, as noted above, are covered by the Employment of Foreign Manpower Act. Recognizing that the Employment of Foreign Manpower Act does not permit migrant workers to become pregnant and, if they do become pregnant, requires that they are not to remain in Singapore, it is nevertheless important under international labour standards that pregnant workers – be they national or foreign – be protected for their own health and that of their future child. In light of the CEDAW Committee's Concluding Observations (2017), it is recommended to explore removing the exclusion of domestic workers from the

Employment Act, as amended by the Employment, Parental Leave and Other Measures Act 2013, so that working time provisions are extended to migrant domestic workers.

Gender-sensitivity in Singapore's labour migration policy, particularly as it relates to migrant domestic workers, could be improved to reduce the risk of abuse of migrant domestic workers living in isolation in homes. For example, there is a requirement on employers to post a security bond of S\$5,000 for each migrant domestic worker hired, with the employer forfeiting the bond if a migrant domestic worker in their employ runs away or if they fail to pay for the migrant domestic worker's repatriation. This results in a tendency among employers to restrict the movement of their domestic workers, in contravention of CEDAW Article 15 on freedom of movement. It is therefore recommended to engage in a national tripartite dialogue, including representatives of migrant workers where possible, regarding the effect that the domestic workers bond paid by employers may have on thwarting the principles of decent work and non-discrimination, as currently seen in restrictions placed on freedom of movement that disproportionately affect women migrant workers. Also, the policy of linking visas and Work Permits to one specific employer – who must give approval for a change to another employer – contributes to the specific vulnerability of many women migrant workers, who fear reprisals if they ask to be able to transfer to a new workplace. Yet for some sectors, change of employer without consent provisions already exist. For example, due to COVID-19 labour shortages in the construction and services sectors, the Government has introduced flexibility for workers there to transfer to another employer until February 2022 (see above). In the light of the CEDAW Committee's Concluding Observations (2017), it is recommended to explore lifting the requirement that the current employer consent to a change to another employer, as this potentially binds a worker to just one employer, and to adopt regulations governing the transfer of Work Permits and the right of migrant workers to change jobs.

The impact of the COVID-19 pandemic on migrant workers in Singapore is seen in the MOM's decisions to provide temporary housing support to help employers who were affected by Malaysia's implementation of a Movement Control Order and to provide assistance to employers of migrant domestic workers.<sup>40</sup> The Government is working with dormitory operators and employers on housing arrangements for foreign workers, some of whom have been housed temporarily in army camps and sports halls, as well as in vacant high-density housing blocks and private apartments slated for redevelopment. To reduce the current density in the migrant workers' dormitories, the Government will be building more, with higher standards by the end of 2022 (Singapore, Government of Singapore 2020). It is recommended that current and future dormitories

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40 See the ILO's COVID-19 and the World of Work: Country Policy Responses database. Singapore's policy responses are available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#SG>.

follow building protocols so that women migrant workers enjoy private facilities of a high standard. Other measures undertaken by Singapore include:

- new dormitory standards to strengthen public health resilience and improve liveability, introduced from 18 September 2021 with details still being worked out;
- a new COVID-19 Control Order for Foreign Employees Dormitories;
- amendments to the Employment of Foreign Manpower Regulations to introduce a slew of safe living measures to ensure the health and safety of migrant workers residing in dormitories; and
- a requirement that employers of migrant workers pay salaries electronically to ensure that workers receive their salaries promptly during the pandemic.

Regarding sexual harassment, the Penal Code was amended in 2019 to enhance penalties for employer offences against domestic workers, who are defined as “any female house servant employed in, or in connection with, the domestic services of her employer’s private dwelling house and who is required to reside in her employer’s private dwelling house”. In addition, sections 3 and 4 of the Protection from Harassment Act 2014 (as amended) prohibit threatening, abusive or insulting words or behaviours under pain of fines or imprisonment of up to six months, or both. Section 7 bans unlawful stalking, whether in the physical or online space. The provision gives examples of acts or omissions which, in particular circumstances, are ones associated with stalking. These examples make specific reference to the person’s place of business and other places frequented by the victim (work). Violators of section 7 are subject to fines, to imprisonment for a term not exceeding 12 months or to both. In 2015 a Tripartite Advisory on Managing Workplace Harassment was issued to increase employers’ and employees’ awareness of how to better prevent and manage harassment at the workplace, including the remedies available under the Protection from Harassment Act. In view of the CEDAW Committee’s Concluding Observations (2017), it is recommended that the provisions under the Protection from Harassment Act regarding protection orders be reviewed and that implementing the Tripartite Advisory on Managing Workplace Harassment be made mandatory for all employers.

According to the Government’s response to this study’s questionnaire, it continually reviews its policies to ensure that they are adequate to safeguard the well-being of all migrant workers in Singapore. Some of the measures specific to women migrant workers that the Government cited in their response include:

- i. From August 2021, the six-monthly medical examination regime that migrant domestic workers undergo was enhanced to explicitly require doctors to check for signs of suspicious

- and unexplained injury. While doctors already reported possible abuse prior to the August 2021 enhancements, these new measures make the requirement more salient by including a checkbox for doctors to complete and requiring that all completed forms be submitted directly to the MOM. Doctors must also record the migrant domestic workers' weight and height and Body Mass Index. Any unexplained significant weight loss over time may be a trigger for a more extensive examination for possible signs of abuse, and these records will ensure that cases of potential abuse are uncovered earlier; and
- ii. From 1 December 2021, all employment agencies will be required to conduct at least one post-placement check within three months after the migrant domestic worker has joined their household workplace. This is to ensure that migrant domestic workers and their employers are adjusting well to the new employment relationship.

These are welcome measures to protect women migrant workers, particularly domestic workers. In light of the Government's commitment to improve decent work for women migrant workers, it is recommended to explore if further specific legislation on sexual harassment at the workplace – including sanctions, civil remedies and compensation for victims – is needed, and to ensure all migrant workers are covered by the law. Policy advice here can be sought in ILO Convention No. 190.

Regarding social security, the Work Injury Compensation Act 2019 covers any national or foreign employee under a contract of service, regardless of nationality, but – like the Employment Act – it does not cover domestic workers. Employers of domestic workers are instead required to buy personal accident insurance to cover migrant domestic workers for death or disability while in Singapore, and are also required to cover medical expenses incurred by their migrant domestic worker. Employers of Work Pass holders must also purchase medical insurance. For confinement nannies, employers must cover their medical treatment when in Singapore. As with other legislation above, in order to comply with CEDAW, it is recommended to explore removing the exclusion of domestic workers from the Work Injury Compensation Act.

#### 4.4.8.3. Exit, return and reintegration measures

The employer bears the cost of repatriation, such as buying an air ticket with a checked luggage allowance, and must cancel the employee's Work Permit within one week after the worker's last day of notice. If an employer appeals to the MOM for their Work Permit reinstatement outside of this time period, that late appeal will not be accepted and the employer must send the migrant worker home immediately. There will be an overstaying fine charged to the employer if the worker overstays, and the employer's S\$5,000 security bond may be forfeited if the worker is not sent home.

#### 4.4.8.4. Enforcement machinery

During their stay in Singapore, the MOM furnishes migrant domestic workers with educational materials such as quarterly newsletters to keep them apprised of new efforts. There are also readily accessible channels through which workers may seek assistance, including the MOM's Services Centre for walk-ins, NGO 24-hour helplines, employment agencies and the Singapore Police Force. Complaints from all migrant workers, including women, of physical and sexual abuse by employers are investigated by the Singapore Police Force. The Inspections Department of the MOM's Foreign Manpower Management Division enforces migrant workers' well-being and living condition regulations through inspections.

The revised Employment Agencies Act and Rules govern the licencing of employment agencies by the Commissioner for Employment Agencies (section 6). They prohibit recruitment agencies from charging jobseekers more than one month's salary per year for a maximum of two years and generally address unethical practices by employment agencies. It is recommended to explore, reviewing the control over licenced employment agencies charging migrant workers "no more than one month's salary" so as to ensure that the international standard of "no placement fee" beyond reimbursement of certain direct costs is respected by recruitment agencies. An applicant for an agency licence is required to pay a security bond (not more than S\$60,000), pay an application fee (S\$400) and have no previous court convictions, violations of which are punished by fines and imprisonment. Employment agencies and employers face enforcement and administrative actions if they fail to abide by the legislation. For example, employers who fail to abide by Work Pass conditions will be punished with a fine of up to S\$10,000 and/or jail of up to one year. Errant employers may also be barred from employing migrant workers, with those convicted of abuse against any migrant worker being permanently barred from employing another such worker. These are welcome safeguard provisions against potential abuse of women migrant workers. A particularly welcome provision from the point of view of gender responsiveness exists in section 21(2) of the Employment Agencies Act, which stipulates that for searches of a person arrested under the Act, employment agency inspectors shall be of the same sex as the arrested person, with strict regard for decency being observed.

The Government's response to this study's questionnaire specifies that all migrant workers, including women, have full access to legal recourse and channels of assistance if required. There are no restrictions preventing migrant workers from filing grievances in Singapore. The avenues of recourse mentioned by the Government in their response include the following:

- i. Tripartite Alliance for Fair and Progressive Employment Practices – Employees, including women migrant workers, can



seek help from the Alliance if they are a victim of workplace harassment, including through the Alliance's hotline. The Alliance also provides employers with advice on preventing and managing workplace harassment.

- ii. Tripartite Alliance for Dispute Management, the Employment Claims Tribunal, the Singapore Police Force and the courts. Victims can also report sexual crimes at hospitals, schools and social services organizations.
- iii. The MOM's own measures to facilitate the filing of grievances by migrant domestic workers. For example, the MOM operates a migrant domestic worker hotline.
- iv. As part of their onboarding (Settling-in-Programme), all newly arrived migrant workers are provided the contact details of NGOs with which they can file grievances as necessary.
- v. There are no restrictions preventing women migrant workers from seeking assistance from their home embassies, consulates or missions in Singapore. For example, specific to trafficking in persons cases, there are established channels to facilitate reporting of such cases to diplomatic missions.

#### **Box 16. Promising practice in Singapore: MOM looking out for migrant workers' conditions**

The MOM provides enough credible and followed-through sanctions that employers and agents are more likely to follow the country's labour migration policy than in other countries of destination in the region. Also, the MOM has the authority to approve migrant domestic workers' applications to seek new employment if they are abuse survivors or are acting as witnesses in criminal proceedings. Still, it remains unclear how many women migrant workers avail themselves of this promising practice for fear of being perceived as "troublemakers". The Government has laws in place to protect the well-being of all migrant workers, including female migrant workers.

**What makes this a promising practice?** Sanctions are among the tools that can be employed to check that employers and agents apply the legal provisions on decent work for foreign workers.

**Source:** TAFEP 2017.

Regarding survivor care, the Government's response to this study's questionnaire highlights (in addition to trafficking examples) that in the event a woman migrant worker is a victim of harm, victim care is provided to minimize further trauma and to provide support for the victim. For example, officers from the Singapore Police Force are trained to respond to and support victims of crime as part of their basic police

training. They are made aware of the vulnerabilities of victims of sexual crimes and are taught to provide the necessary support and assistance to victims of crime, including women migrant workers. Officers who handle sexual crimes receive further specialized training in interviewing victims and investigating sexual crimes. There are private areas, such as separate interview rooms, that provide victims with personal space and privacy, so that they can feel comfortable while providing information to assist in the investigations. In certain cases where victims need greater specialist support, police officers also work with relevant agencies and medical social workers to provide information about the criminal justice process and additional support for victims, such as counselling and aftercare services.

Recognizing the need to deal sensitively with victims do to the trauma they have experienced and their vulnerability, the Police Force also established the Victim Care Cadre Programme (VCCP) to provide psychological first aid to distressed victims of crime. The VCCP consists of a group of selected volunteers who have relevant qualifications in psychology, counselling or social work and who are specially trained by the Police Psychological Services Department as Victim Care Officers (VCOs). These VCOs provide victims with acute emotional and practical support during investigations and throughout the criminal justice process. Given the sensitive role they play in supporting the victims, VCOs undergo a very rigorous selection process that includes psychometric testing, selection interviews, and continual assessment during their basic training. They are trained in topics such as court processes, psychological first aid and suicide risk awareness. The Police Force has also established the One-Stop Abuse Forensic Examination (OneSAFE) Centre at the Police Cantonment Complex to provide privacy and convenience to victims of sexual assault. The OneSAFE Centre allows victims of sexual crimes involving sexual penetration to undergo the necessary forensic medical examinations and interviews by the Investigation Officer at a single location. The police work closely with key public hospitals, such as the Singapore General Hospital, the National University Hospital and the KK Women's and Children's Hospital, to provide forensic medical services to victims of sexual crimes at the OneSAFE Centre. For victims requiring immediate medical attention, the forensic medical examination is conducted at a hospital instead.

#### 4.4.8.5. Current gender equality regime

The Penal Code was amended in 2019 to double the maximum punishment for employers, members of the employers' household and employment agents convicted of committing Penal Code offences against migrant domestic workers, including hurt and sexual offences. For example, for the offence of voluntarily causing hurt, the usual maximum penalty would be three years' imprisonment and/or a fine up to S\$5,000. However, if the offender is an employer, a member of

the employer's household or an employment agent, and the victim is a migrant domestic worker, the maximum penalty would be four years' imprisonment and a fine of S\$10,000. Similarly, for the offence of rape of migrant domestic workers, the maximum penalty for employers, members of employers' household and employment agents is 40 years' imprisonment and a fine or caning.

The 1961 Women's Charter, amended several times, applies to all persons resident in the country (except persons married under Muslim law) in the areas of marriage, divorce and prohibition of trafficking and prostitution. Its 2019 amendment targeted irresponsible lease of premises to prevent women and girls from being used for vice activities; enhanced penalties to achieve greater deterrence; and strengthened law enforcement against vice syndicates that organize and facilitate prostitution, especially those operating through online means. Section 148 permits the Director-General of Social Welfare to receive a woman or girl who so requests into a place of safety if the Director is satisfied that such woman or girl is in urgent need of refuge. It remains to be clarified if this provision could be used by women migrant workers in fear of violence and harassment at work.

The Protection from Harassment Act provides the legal framework on socially acceptable behaviour within and outside the workplace. It was amended in 2019 to enhance protection against harassment through increased penalties for offences committed against vulnerable victims and victims in intimate partner relationships. On 1 June 2021, a dedicated and specialist Protection from Harassment Court came into operation to hear all criminal and civil matters under the Protection from Harassment Act, and is available to women migrant workers as well as nationals. A White Paper on women's rights and sex discrimination at work will be discussed in Parliament in early 2022 following 12 months of engagements and national dialogue.

#### 4.4.8.6. Summary of recommendations

In summary, Singapore's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Amend the Employment of Foreign Manpower Act by:
  - i. removing the pregnancy and marriage bans;
  - ii. restricting the periodic health checks to fitness-for-work examinations so as to make pregnancy testing illegal; and
  - iii. lowering the 23 years old age limit to the legal adulthood age, so that adult women migrants are able to make employment choices concerning their economic empowerment and autonomy.

- Change the Employment of Foreign Manpower Act by adjusting the 50 years old age limit (58 for Malaysians) to the legal retirement age in Singapore, thus allowing women access to employment opportunities.
- Remove from the Employment, Parental Leave and Other Measures Act the exclusion of domestic workers, in accordance with the CEDAW Committee's Concluding Observations (2017).
- Engage in a national tripartite dialogue, including with representatives of migrant workers where possible, regarding provisions in the Employment of Foreign Manpower Act specific to domestic workers that may disproportionately affect women – namely the bond to be paid by employers.
- Explore lifting the requirement in the Employment of Foreign Manpower Act that the current employer must consent to a change to another employer and adopt regulations governing the transfer of Work Permits and the right of migrant workers to change jobs in light of current practice for certain sectors where there is a "change of employer without consent" period.
- Review the provisions under the Protection from Harassment Act regarding protection orders, and make mandatory for all employers the implementation of the Tripartite Advisory on Managing Workplace Harassment, in accordance with the CEDAW Committee's Concluding Observations (2017).
- Explore whether further specific legislation on sexual harassment at the workplace is needed, including sanctions, civil remedies and compensation for victims is needed, and ensure that all migrant workers are covered by such provisions, if enacted.
- Explore removing the exclusion of domestic workers from the Work Injury Compensation Act.
- In view of the strains placed on migrant workers' accommodation by the COVID-19 pandemic, ensure that current and future dormitories follow building protocols such that women migrant workers enjoy private facilities of a high standard.
- Review the revised Employment Agencies Act and Rules regarding control over licenced employment agencies charging migrant workers "no more than one month's salary", so as to ensure that the international standard of "no placement fee" beyond reimbursement of certain direct costs is respected by such agencies.

- Use the feedback from any tripartite dialogue and representatives of women migrants, if possible, to enrich the parliamentary discussion on the White Paper on women's rights and sex discrimination at work, which was scheduled for early 2022.

#### **4.4.9. Thailand**

##### **4.4.9.1. Pre-departure arrangements**

The 2017 Emergency Decree on the Management of Employment of Foreign Workers (hereafter the "2017 Emergency Decree") regulates, through the Ministry of Labour's Department of Employment (DOE), the granting of Work Permits, jobs prohibited to foreigners (section 7), and the quota of foreign workers allowed in proportion to the number of Thai workers engaged in a particular type of work (currently set at only 20 per cent foreigners, unless a special fee is paid by the employer). Noting that this restriction on foreign labour can be waived and acknowledging the destination country's wish to offer job opportunities to national labour, there is nevertheless the risk that restricting foreign staff under such a percentage without a parallel initiative to develop the skills base of nationals may serve to discourage potential investors from choosing to locate in Thailand and may constitute a barrier to workers from other ASEAN Member States coming to Thailand, contrary to the ICMW and the ASEAN Consensus. There is also a gender dimension to ceilings on the percentage of foreign workers entering the country, because the restriction forces other ASEAN Member States' women, desperate to occupy jobs in Thailand because of societal discouragement over engaging in paid work in their country of origin, into irregular migration paths. In view of CEDAW General Recommendation No. 26 and ILO Convention No. 111, it is therefore recommended to regularly revise the legislative ceiling on the percentage of foreign workers – women and men – allowed to enter Thailand.

Section 27 of the 2017 Emergency Decree stipulates the requirements to operate a recruitment agency that recruits foreign workers to work in Thailand; for example, the business must be a company with three-quarters Thai ownership and shareholders. Section 28 states the agency's security bond must be not less than 5 million Thai baht. If such conditions are met, the recruitment agency is granted a (renewable) licence for five years subject to annual fees being paid on time (section 30, previously set at two years but amended by the 2018 Emergency Decree – see below). Under section 41, the agency must prepare and share a list of incoming foreign workers who have employment contracts (with names, nationalities and passport numbers) and submit the list with copies of the contracts to the Registrar (Director of the DOE), who – after verification – shall notify the Immigration Bureau. Given the need to track sex-disaggregated data regarding incoming workers and the importance given to this by CEDAW and the ICMW,



it is recommended that section 41 be augmented with a requirement to register the sex of the migrant workers. Thereafter the agency may apply for the work permits on behalf of the foreign workers and deliver the permits to the employer. Under section 42, recruitment agencies are prohibited from demanding money or any other property from the employer or the foreign worker other than a service fee/cost due from the employer. Under section 46, individual employers may directly hire foreign workers under an MOU or BLA made by the Thai Government with another government, and the application process mirrors that for recruitment agencies. Under section 49, individual employers may not claim a fee from the foreign workers, but may be reimbursed any costs that the employer paid on the worker's behalf (for example, for the worker's passport, health checks, work permit) and may deduct the actual costs from the foreign worker's wages up to an amount not exceeding 10 per cent of the worker's monthly wage. Under the ICMW and the ILO migration Conventions (Nos 97 and 143), fees should not be recuperated from migrant workers. So it is welcomed that the 2018 amendments to the 2017 Emergency Decree (see below) introduced zero recruitment fees to be charged to migrant workers; however, "recruitment fees" were not defined. It is recommended that recruitment fees be clearly defined so that the "no placement fee" policy is strictly applied for migrant workers, both women and men, and that the Emergency Decree provisions be changed so that the employer is responsible for all costs associated with its hiring of foreign workers. Disputes regarding the hiring of foreigners are to be addressed in the Labour Court (section 16 of the 2017 Emergency Decree).

The 2018 Emergency Decree on the Management of Employment of Foreign Workers (hereafter the "2018 Emergency Decree") replaced certain problematic sections of the 2017 Emergency Decree, such as:

- bringing it more in line with ILO Convention No. 181 by stating that no recruitment fees may be charged to migrant workers;
- requiring that written contracts be provided in the language of the migrant worker; and
- providing more flexibility for migrant workers to change employers.

Importantly, the 2018 Emergency Decree creates a tripartite committee to oversee migration policy. As a result of the amendments, section 7 of the 2017 Emergency Decree empowering the Minister to ban jobs for foreigners must now also take into account, among other criteria, the promotion of "Thai wisdom and uniqueness" and demand for foreign workers that is necessary for the country's development, including the relationships and obligations to which Thailand is a party, and reciprocity. The new sections 8 and 9 of the amended 2017 Emergency Decree ban foreign workers from working in a job without a Work Permit, or outside the exact job for which their Work Permit has been issued. There is no information on whether these new limitations have a gender impact.

#### 4.4.9.2. Arrival and on-site working conditions

The 1998 Labour Protection Act B.E. 2541 (Amended) covers national and foreign workers' working conditions. Under section 22, however, agriculture, sea fishing, loading or unloading of marine cargoes, home work and transport work – all sectors where migrant workers are highly represented – are subject to different labour regulations. The Minister of Labour is responsible for implementing the Act, under which employers shall treat male and female employees equally with regard to employment, unless such treatment is not possible due to the inherent requirements of the particular job (section 15). A person who is a work chief, a work supervisor or a work inspector is not allowed to sexually harass or abuse an employee who is a female (section 16), and section 147 punishes violators with a fine not exceeding 20,000 baht. These are welcome general provisions, but section 16 only applies to acts of harassment committed by superiors against their subordinates, and so it should be broadened to address behaviour from co-workers and third parties, as recommended by CEDAW and ILO Convention No. 190. In addition, section 147's penalty may be insufficiently dissuasive. It is recommended that sections 16 and 147 be reviewed, with consideration being given to strengthening the quantum of penalties to reflect the potential severity of sexual violence and harassment, including for women migrant workers.<sup>41</sup> Moreover, in view of ILO Convention No. 190, it is recommended to augment section 16 with more details regarding preventing and prosecuting violence and harassment, including sexual harassment, at work.

Section 38 of the Labour Protection Act prohibits an employer from obliging a female worker to perform mining or construction work that is underground or underwater, on high scaffolding or involving the production/transportation of explosives unless the work does not pose a risk to the health and body of the female employee. CEDAW and ILO Convention No. 111 allow work bans for women only if they are directly related to their reproductive role (which in the Labour Protection Act is covered by section 39) and which should be regularly reviewed to take account of medical and scientific advances. It is therefore recommended that consideration be given to reviewing section 38's ban on jobs that women can undertake – which does not apply to men, even if that work is dangerous – to assess whether the nature of the work remains unsuitable for women. Section 41 provides maternity leave of not more than 98 days per pregnancy, with wages paid equivalent to those wages of her working days throughout the leave period but not exceeding 45 days per year.

It is welcomed that section 53 of the Labour Protection Act (on equal remuneration) was amended in 2019 so as to prescribe that an employer shall set equal rates of wage, overtime pay, holiday pay, and holiday

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<sup>41</sup> These recommendations correspond to recommendations Nos 4, 5, 6, 9 and 13 in ILO, *"Who Is Going to Believe Us?" – Work-Related Sexual Harassment in Thailand, with a Focus on Women Migrant Workers*, 2021.

overtime pay for men and women for “work of equal value”. Under section 89 the minimum wage rates prescribed the Wages Committee shall apply to employers and employees regardless of their nationality, religion or sex. This is a welcome specification in labour law, which ensures that women migrant workers have a justiciable right and can complain against wage under-payment.

Section 108 on supervision requires enterprises with 10 or more workers to have work rules on working conditions posted “in the Thai language” in a place where the workers at their places of work can see them conveniently. This requirement presumes for enterprises that use foreign labour that the migrant workers – both women and men – are able to read the Thai language. If work rules information is so important that the Law requires it to be posted where workers can conveniently read it, then it is recommended that section 108 be amended to read “in a language that the majority of workers can read and understand” or similar wording so as not to exclude migrant workers.

The 2012 Ministerial Regulation No. 14 (B.E. 2555) entitles all domestic workers to one day off per week, traditional public holidays, 30 days of paid sick leave per annum, and payment of unused leave and overtime pay for working on holidays, but domestic workers remain excluded from working hours limitations, overtime compensation, minimum wage coverage, the majority of provisions regarding the employment of young workers, and maternity benefits. It is recommended that domestic workers – national and foreign – be covered fully with these decent work rights, through either amendment of the 2012 Ministerial Regulation No. 14, or a specific new regulation.

Under the 2017 Emergency Decree on the Management of Employment of Foreign Workers, section 51, migrant workers may leave their employer to work with another employer subject to justifying the termination of the employment relationship before the Registrar or proving that the worker has bought out the original employer. Failure to provide adequate reason for quitting their first employer or that there was a payout shall be sanctioned by termination of the foreign worker’s Work Permit from the date of the employment termination, and this will represent the end of their permission to stay in Thailand pursuant to immigration law. It is welcome that women migrant workers can change employers; however, more could be done to strengthen their freedom of mobility by simplifying the procedure.

Regarding social security, the Social Security Act B.E. 2533 (1990) and its amendments comply with the International Convention on the Elimination of All Forms of Racial Discrimination. Under the Act, insured persons are entitled to receive protection from the Social Security Scheme without discrimination, distinction, or preferential treatment on the basis of race, skin colour, sex, religion, political opinion, nationality or social status. Section 8 of the Act established a Social Security Committee consisting of the Permanent Secretary of the Ministry of

Labour as Chairperson and representatives of the Ministries of Finance, Social Development and Human Security, Interior, and Public Health as well as the Bureau of the Budget, together with seven representatives of employers and seven representatives of insured persons (employees) appointed by the Minister as members. The Secretary-General of the Social Security Office shall be a member and secretary. Section 8 as amended states: "The representatives of employers and the representatives of insured persons ... shall be selected ... taking into account actual participation by the employers and insured persons, male and female proportions, and effective participation by disabled and disadvantaged persons". This statutory requirement of gender representation is a welcome provision from the viewpoint of protection of women migrant workers.

Under section 54, contingencies covered by the Social Security Act for insured persons are:

- i. injury or sickness benefits, including health promotion and disease prevention;
- ii. maternity benefits, which ensures the welcome coverage of women working in Thailand (including women migrant workers) up to 90 days maternity leave paid at 50 per cent of past wages;
- iii. disability benefits;
- iv. death benefits;
- v. child benefits;
- vi. old-age benefits; and
- vii. unemployment benefits.

Under section 65 first paragraph, entitlement to maternity benefits depends on a pre-contributory period of not less than five months during the 15 months before the date of receiving medical services, and under section 65 second paragraph, the benefit also applies to unmarried but cohabiting couples.

Thailand's universal health coverage encompasses the entire Thai population as well as non-Thai individuals. The 2021 Thailand report of the Working Group on the Universal Periodic Review states the following: "Regarding migrant workers, the Government aimed to ensure access to health services for registered migrant workers in the formal sector, through the social security scheme, and for migrants in the informal sector and those who are not registered with the initiatives to help migrant workers overcome the language barrier, through the Migrant Health Insurance Scheme" (UN Human Rights Council 2021a, para. 45).

### **Box 17. Promising practice in Thailand: Access to healthcare for migrants**

Women and men migrants – irrespective of their migration status – are eligible for Thailand's Universal Healthcare Coverage Scheme, which was introduced in 2001 and extended to spouses and children in 2005. A number of measures have been taken to access hard-to-reach migrant communities, such as mobile clinics, bilingual information services, one-stop centres and workplace outreach. Health workers have been recruited from migrant communities to do outreach, including home visits, and provide culturally appropriate health services in various languages. This has become a crucial health service during the COVID-19 pandemic, as it helps ensure that all workers have access to COVID-19 testing and concurrent information on test results, irrespective of migration status.

**What makes this a promising practice?** This major social security improvement is proof that the human right to social protection applies to all. Having this scheme in place before the COVID-19 pandemic meant that Thailand was better equipped to provide much needed services swiftly.

**Source:** UN Women 2020.

Under section 49 of the Social Security Act the penalty for an employer who fails to remit the mandatory social security contributions within the prescribed period of time shall be the payment of a surcharge at the rate of 2 per cent per month of the unremitted contributions from the day following the date on which the contributions must have been remitted, provided that the calculated surcharge shall not exceed the amount of contributions required to be remitted by the employer.

During the COVID-19 pandemic, the Social Security Office provided relief measures for migrant workers. For example, if a business is temporarily closed, then foreign workers at that business receive 62 per cent of their daily wages for up to 90 days once they submit an unemployment claim to the Social Security Office. Additionally, the National Health Security Office approved and granted all COVID-19 patients (foreigners and Thai) access to the Universal Coverage for Emergency Patients. This service allows patients to seek free medical treatment (within 72 hours) at their nearest public or private hospital. The Government also approved the inclusion of testing and treatments of COVID-19 in the universal healthcare programme; COVID-19 vaccinations were available by 2022 for all foreigners and migrant workers, regardless of their status. The COVID-19 impact can be seen in the Government's early decision to allow migrant workers whose visa had expired to continue their temporary stay in Thailand until 30



June 2020, with the fine for overstay exempted. The Labour Protection Act provisions relevant to COVID-19 (absences and illness) continue to apply.<sup>42</sup> These are welcome provisions for women migrant workers, who may have been less protected.

#### 4.4.9.3. Exit, return and reintegration measures

Under the 2017 Emergency Decree, at the normal end of a contract or if a migrant worker has failed to justify quitting their job, the recruitment company or individual employer is responsible for the costs of sending the foreign worker back to their country of origin. The Ministry of Labour's Foreign Workers' Management Fund can assist migrant workers who entered Thailand under the 2017 Emergency Decree in their repatriation (section 77). Under the 2017 Emergency Decree, employers must within seven days repatriate foreign workers on expiry of their contracts and inform the Director-General of the DOE (section 50). Any person who withholds a Work Permit or a migrant worker's personal documents/passport shall be punished with six months' prison or a fine not exceeding 100,000 baht or both (section 131).

Regarding the return of Thais from overseas work, since 1997 an Office of Reverse Brain Drain (ORBD) has functioned within the National Science and Technology Development Agency (ILO 2015b). The ORBD constitutes a quick and effective way of getting qualified Thai women and men to work back at home, and thereby also act as role models for future Thai science, technology, engineering and mathematics (STEM) workers. The process is a welcome gender-responsive one. The ORBD recruits Thai professionals overseas and facilitates their return to work in State agencies or the private sector using various incentives – money in the form of grants, as well as services, including visa/work permit assistance, schools for children of men and women professionals, and information centres all provided in a “one-stop-shop” format. The ORBD offers short-term visits involving knowledge and technology sharing, seminars and tech-transfer workshops (for example, through Distinguished Professor or Scholar posts where travel, lodging and daily expenses are paid), and works to develop institutional linkages between Thai agencies and Thais abroad. Through e-newsletters, the ORBD also disseminates information about Thailand's science and technology needs among its network of overseas Thai professionals, Thai government agencies, academic communities and the industrial sector. It also has an online Job Mart.

#### 4.4.9.4. Enforcement machinery

Under the Labour Protection Act, an employer who violates various requirements under the Act faces penalties ranging from fines to imprisonment. For example, under section 159, where the Director-

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42 See the ILO's COVID-19 and the World of Work: Country Policy Responses database. Thailand's policy responses are available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#TH>.

General of the DOE or the provincial governor consider that imprisonment is not deserved, they can order an inquiry and compound the offence by payment of a fine, but if violators of the Act refuse such settlement, or consent to but fail to pay the fine within the period specified in the law, the case shall be pursued in legal proceedings. The Cabinet Resolution of 26 July 2019 establishes Migrant Worker Assistance Centres (MWACs) for information, advice and consultation regarding enforcement of labour rights. This is a welcome institutional measure for women migrant workers, who might feel disempowered or fear retaliation if they complain to Thai authorities of decent work violations.

#### 4.4.9.5. Current gender equality regime

The Gender Equality Act (2015) establishes procedures for filing complaints of unfair gender discrimination, apparently in all spheres of life including the workplace, and is accessible by all workers, including women migrant workers. Section 10(2) of the Act envisages the adoption of special measures to eliminate gender-based violence, which is a welcome provision for women migrant workers. Implemented by the Department of Women's Affairs and Family Development within the Ministry of Social Development and Human Security, the Act (section 5) created the 20-person Gender Equality Promotion Committee (hereafter the "SorTorPor Committee") comprising multiple government ministry representatives as well as CSOs, and chaired by the Prime Minister. Its duties include data collection, research and issuance of guidelines. Regarding data collection and analysis, given CEDAW General Recommendation No. 26 and ILO Convention No. 111 advice, it is recommended that in the section listing the data collection duties of the SorTorPor Committee it be specified that all data shall be disaggregated by sex and that analysis methodologies shall be gender-responsive. Section 13 of the Act creates the Committee on Consideration of Unfair Gender Discrimination (hereafter the "WorLorPor Committee"), comprised of between eight and ten qualified persons drawn from members of the SorTorPor Committee. Under section 18, decisions issued by the WorLorPor Committee shall be final and its rules and procedures around the submitting of complaints, consideration of those complains, and delivering of decisions shall be detailed in regulations prescribed by the Minister of Social Development and Human Security as recommended by the SorTorPor Committee. However, having submitted a complaint under this section does not eliminate the right of the complainant to take legal action to demand compensation from the court of jurisdiction, and the court shall have the power to decide the form of compensation other than in the form of money for the complainant. Under section 19, the WorLorPor Committee can issue temporary orders to stop the violation which is making the victim suffer, presumably covering protection orders against violence and harassment at work. Under section 26, remedies ordered by the WorLorPor Committee can include financial compensation for loss of income, reimbursement of medical costs for physical and mental rehabilitation and other non-

specified remedies. These are welcome enforcement procedures that enable women migrant workers to enforce their rights. Under section 34, violation of any WorLorPor Committee order is sanctioned by fines, imprisonment or both. These provisions are welcomed because they appear to be applicable to gender discrimination in all aspects of work, such as under-payment of women's wages and sexual harassment against women migrant workers.

CEDAW and ILO Convention No. 111 advise to ensure gender balance in the staff of dispute settlement bodies, and ILO Convention No. 190 specifies that governments should provide training on violence and harassment at work to, along with other groups, relevant authorities, with guidelines and other tools specifically on gender-based violence. Since the Gender Equality Act does not specify these useful elements, it is recommended that:

- i. the provisions on establishing committees are strengthened by the addition of a section to address the importance of gender balance in nominations to these important bodies for decision-making and dispute settlement; and
- ii. a new section be added generally requiring regular, mandatory gender-responsive training for staff at all levels so that they are knowledgeable about and skilled in handling the gender dimension of grievance and complaint management. For example, the new clauses on such training could cover protection against victimization of or retaliation against complainants, witnesses and whistleblowers; how to advise on legal aid and other supports during the procedures, including through contact with female staff and counsellors; gender-responsive interview techniques and balanced note-taking and report drafting; how to run gender-responsive conciliation hearings; how to build the trust of women migrant worker complainants; and how to reach out to migrant women who may hesitate to travel alone to lodge a complaint.

In addition, the amended section 397 of the Penal Code regarding the punishment of acts involving sexual harassment or intimidation both in public and domestic realms (in force in February 2015) is a welcome measure to prevent and address sexual violations and harassment in the workplace, including for women migrant workers. The sanctions for violations of section 397 are one month's imprisonment, 1,000 baht or both. The Criminal Code Amendment Act (27th edition) (2019) includes a revised definition of the term "sexual assault" to provide more clarity and accuracy based on the nature of the action. The Protection of Domestic Violence Victims Act (2007) applies only to family members; so it does not protect domestic workers, national or foreign.

Under section 49 of the Social Security Act the penalty for an employer who fails to remit the mandatory social security contributions within the prescribed period of time shall be the payment of a surcharge at the rate of 2 per cent per month of the unremitted contributions from the day following the date on which the contributions must have been remitted, provided that the calculated surcharge shall not exceed the amount of contributions required to be remitted by the employer.

During the COVID-19 pandemic, the Social Security Office provided relief measures for migrant workers. For example, if a business is temporarily closed, then foreign workers at that business receive 62 per cent of their daily wages for up to 90 days once they submit an unemployment claim to the Social Security Office. Additionally, the National Health Security Office approved and granted all COVID-19 patients (foreigners and Thai) access to the Universal Coverage for Emergency Patients. This service allows patients to seek free medical treatment (within 72 hours) at their nearest public or private hospital. The Government also approved the inclusion of testing and treatments of COVID-19 in the universal healthcare programme; COVID-19 vaccinations were available by 2022 for all foreigners and migrant workers, regardless of their status. The COVID-19 impact can be seen in the Government's early decision to allow migrant workers whose visa had expired to continue their temporary stay in Thailand until 30 June 2020, with the fine for overstay exempted. The Labour Protection Act provisions relevant to COVID-19 (absences and illness) continue to apply. These are welcome provisions for women migrant workers, who may have been less protected.

#### 4.4.9.3. Exit, return and reintegration measures

Under the 2017 Emergency Decree, at the normal end of a contract or if a migrant worker has failed to justify quitting their job, the recruitment company or individual employer is responsible for the costs of sending the foreign worker back to their country of origin. The Ministry of Labour's Foreign Workers' Management Fund can assist migrant workers who entered Thailand under the 2017 Emergency Decree in their repatriation (section 77). Under the 2017 Emergency Decree, employers must within seven days repatriate foreign workers on expiry of their contracts and inform the Director-General of the DOE (section 50). Any person who withholds a Work Permit or a migrant worker's personal documents/passport shall be punished with six months' prison or a fine not exceeding 100,000 baht or both (section 131).

Regarding the return of Thais from overseas work, since 1997 an Office of Reverse Brain Drain (ORBD) has functioned within the National Science and Technology Development Agency (ILO 2015b). The ORBD constitutes a quick and effective way of getting qualified Thai women and men to work back at home, and thereby also act as role models for future Thai science, technology, engineering and mathematics (STEM) workers. The process is a welcome gender-responsive one. The ORBD

recruits Thai professionals overseas and facilitates their return to work in State agencies or the private sector using various incentives – money in the form of grants, as well as services, including visa/work permit assistance, schools for children of men and women professionals, and information centres all provided in a “one-stop-shop” format. The ORBD offers short-term visits involving knowledge and technology sharing, seminars and tech-transfer workshops (for example, through Distinguished Professor or Scholar posts where travel, lodging and daily expenses are paid), and works to develop institutional linkages between Thai agencies and Thais abroad. Through e-newsletters, the ORBD also disseminates information about Thailand’s science and technology needs among its network of overseas Thai professionals, Thai government agencies, academic communities and the industrial sector. It also has an online Job Mart.

#### 4.4.9.4. Enforcement machinery

Under the Labour Protection Act, an employer who violates various requirements under the Act faces penalties ranging from fines to imprisonment. For example, under section 159, where the Director-General of the DOE or the provincial governor consider that imprisonment is not deserved, they can order an inquiry and compound the offence by payment of a fine, but if violators of the Act refuse such settlement, or consent to but fail to pay the fine within the period specified in the law, the case shall be pursued in legal proceedings. The Cabinet Resolution of 26 July 2019 establishes Migrant Worker Assistance Centres (MWACs) for information, advice and consultation regarding enforcement of labour rights. This is a welcome institutional measure for women migrant workers, who might feel disempowered or fear retaliation if they complain to Thai authorities of decent work violations.

#### 4.4.9.5. Current gender equality regime

The Gender Equality Act (2015) establishes procedures for filing complaints of unfair gender discrimination, apparently in all spheres of life including the workplace, and is accessible by all workers, including women migrant workers. Section 10(2) of the Act envisages the adoption of special measures to eliminate gender-based violence, which is a welcome provision for women migrant workers. Implemented by the Department of Women’s Affairs and Family Development within the Ministry of Social Development and Human Security, the Act (section 5) created the 20-person Gender Equality Promotion Committee (hereafter the “SorTorPor Committee”) comprising multiple government ministry representatives as well as CSOs, and chaired by the Prime Minister. Its duties include data collection, research and issuance of guidelines. Regarding data collection and analysis, given CEDAW General Recommendation No. 26 and ILO Convention No. 111 advice, it is recommended that in the section listing the data collection duties of the SorTorPor Committee it be specified that all data shall be disaggregated



by sex and that analysis methodologies shall be gender-responsive. Section 13 of the Act creates the Committee on Consideration of Unfair Gender Discrimination (hereafter the “WorLorPor Committee”), comprised of between eight and ten qualified persons drawn from members of the SorTorPor Committee. Under section 18, decisions issued by the WorLorPor Committee shall be final and its rules and procedures around the submitting of complaints, consideration of those complains, and delivering of decisions shall be detailed in regulations prescribed by the Minister of Social Development and Human Security as recommended by the SorTorPor Committee. However, having submitted a complaint under this section does not eliminate the right of the complainant to take legal action to demand compensation from the court of jurisdiction, and the court shall have the power to decide the form of compensation other than in the form of money for the complainant. Under section 19, the WorLorPor Committee can issue temporary orders to stop the violation which is making the victim suffer, presumably covering protection orders against violence and harassment at work. Under section 26, remedies ordered by the WorLorPor Committee can include financial compensation for loss of income, reimbursement of medical costs for physical and mental rehabilitation and other non-specified remedies. These are welcome enforcement procedures that enable women migrant workers to enforce their rights. Under section 34, violation of any WorLorPor Committee order is sanctioned by fines, imprisonment or both. These provisions are welcomed because they appear to be applicable to gender discrimination in all aspects of work, such as under-payment of women’s wages and sexual harassment against women migrant workers.

CEDAW and ILO Convention No. 111 advise to ensure gender balance in the staff of dispute settlement bodies, and ILO Convention No. 190 specifies that governments should provide training on violence and harassment at work to, along with other groups, relevant authorities, with guidelines and other tools specifically on gender-based violence. Since the Gender Equality Act does not specify these useful elements, it is recommended that:

- i. the provisions on establishing committees are strengthened by the addition of a section to address the importance of gender balance in nominations to these important bodies for decision-making and dispute settlement; and
- ii. a new section be added generally requiring regular, mandatory gender-responsive training for staff at all levels so that they are knowledgeable about and skilled in handling the gender dimension of grievance and complaint management. For example, the new clauses on such training could cover protection against victimization of or retaliation against complainants, witnesses and whistleblowers; how to advise on legal aid and other supports during the procedures, including through contact with female staff and counsellors; gender-

responsive interview techniques and balanced note-taking and report drafting; how to run gender-responsive conciliation hearings; how to build the trust of women migrant worker complainants; and how to reach out to migrant women who may hesitate to travel alone to lodge a complaint.

In addition, the amended section 397 of the Penal Code regarding the punishment of acts involving sexual harassment or intimidation both in public and domestic realms (in force in February 2015) is a welcome measure to prevent and address sexual violations and harassment in the workplace, including for women migrant workers. The sanctions for violations of section 397 are one month's imprisonment, 1,000 baht or both. The Criminal Code Amendment Act (27th edition) (2019) includes a revised definition of the term "sexual assault" to provide more clarity and accuracy based on the nature of the action. The Protection of Domestic Violence Victims Act (2007) applies only to family members; so it does not protect domestic workers, national or foreign.

#### **Box 18. Promising practice in Thailand: Making music work for women migrant workers**

The Thai ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) – supported by the IOM, UN Women and the Safe and Fair Project – hired the company SideKick to map the daily lives of women migrant workers. The service provider found that music, almost solely through digital mobile consumption (for example, TikTok, Facebook), was a prominent part of migrants' daily lives. Downloading, uploading and listening to music while doing other house chores takes up 50 to 75 per cent of their leisure time on a workday. Based on that analysis, SideKick developed an innovative campaign aimed at female migrant workers in Thailand. Its "Migrants and Music" campaign produced knowledge set to music for such women with crucial information in its lyrics, including where to get support, hotline numbers, gendered-based exploitation, and the rights of women migrant workers. The final prototype – available for download in Thai, Khmer, Burmese and Lao – was launched during the 16 Days of Activism against Gender-Based Violence on 25 November 2019, via both offline and on regional online channels, through the ACWC, its partners and in collaboration with the Thai Ministry of Social Development and Human Security.

**What makes this a promising practice?** The music initiative is able to have a wide outreach through its use of IT tools. The songs provide thorough messaging of important practical information – and make it fun too.

**Source:** Sidekick, n.d.

#### 4.4.9.6. Summary of recommendations

In summary, Thailand's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Regularly revise the legislative ceiling on the percentage of foreign workers – women and men – allowed in proportion to the number of Thai workers engaged in a particular type of work. It is currently set at 20 per cent.
- Augment section 41 of the 2017 Emergency Decree on the Management of Employment of Foreign Workers by adding the requirement to register the sex of the migrant worker.
- Strengthen the “no placement fee” provision in the 2018 Emergency Decree on the Management of Employment of Foreign Workers by defining what is included in the expression “recruitment fees” and by clarifying that the employer is responsible for all costs associated with its hiring of foreign workers.
- Review sections 16 and 147 of the Labour Protection Act to widen the definition to include behaviour and threats thereof by co-workers and third parties, and to strengthen the quantum of penalties so as to reflect the potential severity of sexual violence and harassment, including for women migrant workers.
- Augment section 16 of the Labour Protection Act by adding several new sections regarding preventing and prosecuting violence and harassment, including sexual harassment at work, prohibiting retaliation for lodging complaints, guaranteeing the confidentiality of proceedings where appropriate, protecting whistleblowers and ensuring that the current remedies are appropriate to the violation, inspired by Convention No. 190.
- Consider reviewing section 38 of the Labour Protection Act's ban on jobs that women can undertake – which does not apply to men, even if that work is dangerous – to assess whether the nature of the work remains unsuitable for women; or, if scientifically and medically assessed to be dangerous to human beings, then expand the section 38 ban to apply to all workers performing such work, both men and women.
- Amend section 108 of the Labour Protection Act to read “in a language that the majority of workers can read and understand” or similar wording so as not to exclude women and men migrant workers.
- Extend the decent work rights in Ministerial Regulation No. 14 (2012) by removing the exclusion of domestic workers – national and foreign – from working hours limitations, overtime

compensation, minimum wage coverage, the majority of provisions regarding the employment of young workers, and maternity benefits.

- Under the Gender Equality Act, specify in the section listing the data collection duties of the SorTorPor Committee, that all data shall be disaggregated by sex and that analysis methodologies shall be gender-responsive.
- In the 2015 Gender Equality Act:
  - i. strengthen the provisions on establishing decision-making and dispute settlement committees by the addition of a section to address the importance of gender balance in nominations to these important bodies; and
  - ii. add a new section generally requiring regular, mandatory gender-responsive training for staff at all levels so that they are knowledgeable about and skilled in handling the gender dimension of grievance and complaint management.

#### **4.4.10. Viet Nam**

There are many legal documents in Viet Nam that relate to labour migration, whether about migrating for jobs overseas, or the generally applicable Labour Code, or the Social Insurance Law, all of which have several implementing decrees and decisions. A modern approach to working abroad, responding to ILO recommendations, appears in the new Law No. 69/2020/QH14 on Contract-Based Vietnamese Overseas Workers, which came into force on 1 January 2022. In brief, the new law:

- repeals the obligation for migrant workers to pay brokerage commissions, and explicitly prohibits recruitment agencies passing on such costs to workers;
- repeals the obligation for migrant workers to pay service fees in addition to a brokerage commission to public employment services;
- guarantees that if part or all of the service fee is covered by employers or overseas worker receiving parties, then workers will only pay for any remaining amount required under law;
- entitles migrant workers to unilaterally terminate contracts when facing threats, sexual harassment, maltreatment or forced labour, a protection that should be especially beneficial to women migrating for work;
- includes definitions for discrimination and forced labour in line with ILO Convention No. 111 and the 2014 Protocol to the Forced Labour Convention, 1930;
- provides legal aid in cases of abuse, violence or discrimination while working abroad;
- includes specific wording about gender equality in the State goals;
- bans deceitful advertising for the purpose of trafficking in persons,

abusing recruitment activities to collect fees illegally, and charging brokerage fees, and breaching these prohibitions results in recruitment agency license revocation;

- pre-departure training must include information on forced labour, trafficking in persons prevention, gender equality, sexual abuse, gender-based violence and prevention skills; and
- for both women and men, working abroad or sending Vietnamese workers abroad for certain jobs is prohibited, including: massage jobs at restaurants, hotels or entertainment centres; jobs regularly exposed to explosives and toxic substances in extractive metallurgy of non-ferrous metals (copper, lead, mercury, silver, zinc); hunting dangerous beasts, crocodiles or sharks; jobs involving high pressure environments such as underground or undersea; and professions linked to shrouding cremating and bone collection; and work in combat areas, near radiation and in areas with particularly dangerous epidemics (ILO 2021c).

#### 4.4.10.1. Pre-departure arrangements

Article 65(1) of Law No. 69/2020 lists the content of orientation courses for migrant workers, which includes content on gender equality, sexual harassment, gender violence and prevention measures. Article 65(2) clarifies which entities may run such orientation courses, that is, enterprises, service providers, Vietnamese organizations and individuals providing Vietnamese guest worker services. The Ministry of Labour, Invalids and Social Affairs (MOLISA) prescribes the content, duration and certificate for course completion for both women and men. Pre-departure information sharing is secured through article V(1) (b) of MOLISA Circular No. 21/2007/TT-BLDTBXH dated 8 October 2007. As noted in Viet Nam's responses to this study's questionnaire, article 26(2)(b) of Law No. 69/2020 stipulates that service enterprises are obliged to post on their websites complete and accurate information on quantity and selection criteria, working conditions, rights and obligations of employees according to the content of the labour supply contract; and the list of employees participating in the preparation of the source and being selected. MOLISA Circular No. 21/2021/TT-BLDTBXH dated 15 December 2021 details the programme, content and duration of orientation education: after completing the orientation education course, the employee is granted a certificate of completion before going to work abroad. This is a welcome policy and practice under ILO Conventions Nos 189 and 190, in light of the large number of Vietnamese women migrant workers who otherwise may have felt disempowered and lacking knowledge of their labour rights while abroad.



### **Box 19. Promising practice in Viet Nam: Gender-sensitive pre-departure orientation training**

Since 2012, Viet Nam has cooperated with international organizations (including UN Women) in developing a gender-sensitive training curriculum for both men and women migrant workers. The training is the first package developed in Viet Nam that specializes in gender issues during the migration process. In 2013, the Department of Overseas Labour of MOLISA, with the support of UN Women, organized the capacity-building of 40 enterprises sending Vietnamese workers to work overseas to implement these training components. The success of the training resulted in other companies requesting the expansion of the capacity training for more than 100 other companies in Viet Nam. In early 2014, the Government officially institutionalized the training as a compulsory pre-departure orientation course for men and women migrant workers.

During 2015–17, Viet Nam continued to set up training of trainers courses for service enterprises on gender-sensitive curriculum, designing brochures and making video clips supporting the curriculum. The curriculum was also introduced at a workshop on “Sharing Good Practices in the Management of Sending Workers Overseas within ASEAN Countries”. In 2019, the National Assembly of Viet Nam decided to revise the Law on sending Vietnamese workers overseas, and various international organizations (UN Women, ILO among others) were invited to work closely with experts in the Law Drafting Committee to mainstream gender aspects into the Revised Law and subsequent Decree and Circulars. In 2021, when the Revised Law on sending Vietnamese workers and other sub-law documents had been issued and entered into effect, Viet Nam proceeded to revise the gender-sensitive curriculum with an update on the new regulations and policies on migrant workers, both male and female. The new version of the curriculum will be introduced for manpower supplying companies in 2022.

**What makes this a promising practice?** The training supplies inclusive messaging through private sector enterprises and service providers, creating a quality compulsory service that gives important practical information. The trainings make good use of IT and videos, and the content is being updated as legislation changes.

**Source:** MOLISA.

Decree 145/2020/ND-CP dated 14 December 2020 governs labour dispatch, and among other amendments to the Labour Code, sets licencing conditions for labour dispatch agencies, such as lodging a deposit/bond of 2,000,000,000 Vietnamese dong to cover payment of salaries, social insurance, health insurance, unemployment insurance, occupational accident and disease insurance and other benefits for dispatched employees (articles 21 and 15(2)). The Provincial Department of Labour, Invalids and Social Affairs (DOLISA) shall examine the application of an enterprise wishing to register as a labour dispatch agency and propose issuance of the license to the President of the People's Committee of the relevant province (article 25). There appears to be no negative gender impact in these multiple legal requirements.

#### 4.4.10.2. Arrival and on-site working conditions

The Labour Code No. 45/2019/QH14 (2019), article 2(3), states that it applies to foreign workers who work in the territory of Viet Nam. Article 4 expressly lists, among the state policies on labour, to ensure gender equality and to stipulate labour and social policies that protect female, among other, workers. Article 5(1)(a) states the right of workers to be free from discrimination, forced labour and sexual harassment at the workplace. Article 6(2)(a) and (d) respectively require employers to respect the honour and dignity of workers and to prevent sexual harassment at the workplace. Article 8 completes this gender-responsive message of the Labour Code by listing several prohibited acts in the world of work, including sexual harassment, labour exploitation and deceiving workers contracted to work abroad. Moreover, under article 84 of Decree No. 145/2020/ND-CP (2020), which supplements article 3(9) of the Labour Code, the definition of sexual harassment is further clarified by stating that sexual harassment “may occur in the form of a request, demand, suggestion, threat, use of force to have sex in exchange for any work-related interests; or any sexual act that thus creates an insecure and uncomfortable work environment and affects the mental, physical health, performance and life of the harassed person”, and examples of sexual harassment, including through electronic media, are given. Article 84 also provides a wide definition of “workplace”. These are all welcome provisions that display the Government’s strong commitment to protecting decent work for women and men workers, including women migrant workers.

Article 11 of the Labour Code permits employers to recruit workers directly or through employment service agencies, stipulating that workers shall not pay any recruitment fee. Written employment contracts are mandatory, with the worker having the right to retain their copy, and article 21(1) lists the required primary contents of such contracts, which are to include the sex of the worker. Article 34 lists the circumstances that would lead to the termination of an employment contract, with the only migrant worker-specific circumstances being if a foreigner working in Viet Nam is deported according to a legally effective judgment or decision of

the court or a decision of a competent state agency (article 34(5)) or if the work permit of a foreign worker in Viet Nam expires as stipulated in article 156 of the Labour Code (article 34(12)).

Article 136(3) of the Labour Code requires employers to provide sufficient and appropriate bathrooms and toilets at the workplace, which is a welcome provision for all females at work, including migrant women.

Under article 139 of the Labour Code, women workers have six months' paid maternity leave, but until recently the maternity benefit regime had been covered solely by compulsory social insurance that did not apply to non-citizens, as stipulated in article 4 of the Law on Social Security. However, as of 1 January 2022, foreign workers will be covered by compulsory social insurance, including maternity benefits (see below), which is a welcome change given the focus of the ICMW and the ILO migration Conventions (Nos 97 and 143) on equal treatment between migrant workers and national workers.

Under article 169(2) of the Labour Code, by 2035, women must retire at age 60 and men at age 62 (being a staged increase in the retirement ages from the previous age limits of 55 and 60, respectively). Under CEDAW this difference in retirement ages constitutes a sex-based discriminatory working condition.<sup>43</sup>

Article 151 governs foreigners working in Viet Nam, linking the duration of the employment contract to the duration of the worker's Work Permit (which amounts to a maximum of four years). Articles 161 and following regulates domestic workers, including their employer's obligation to contribute to social insurance and health coverage so as to enable them to participate in the national schemes. Article 164(4) obliges domestic workers to report maltreatment and sexual harassment to the authorities.

Under article 212 on state management of labour there shall be a system for collecting and analysing scientific research on labour and labour market statistics, but the provision is silent on the gender dimension. In view of CEDAW General Recommendation No. 26, the ICMW and ILO migration Conventions (Nos 97 and 143), it is recommended that a new provision be added to section 212 stating that all research activities – especially data collection and analysis – be carried out using gender-responsive techniques and sex-disaggregated data.

Regarding sexual harassment, in addition to the various articles referenced above and provisions in Law No. 69/2020, the Labour Code states that it is state policy to prevent sexual harassment at the workplace (article 135(1)) and lists sexual harassment of domestic workers as a strictly prohibited act (article 165). The Labour Code allows workers to unilaterally end their employment contract over maltreatment, abuse

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43 This may not be an issue for those women migrant workers who will not still be working in Viet Nam at that age (the maximum duration of a work permit is four years), but in view of the CEDAW Concluding Observations and the ILO Convention No. 111, the harmonization of the retirement age for women and men is recommended.

and/or sexual harassment (article 35(2)(c–d)). It also requires employers to take measures to prevent such incidents and to establish grievance mechanisms at their workplace. As noted above, Decree No. 145/2020/ND-CP expands the Labour Code's provisions on sexual harassment, for example, by defining it to include both sexual blackmail for favours at work and an insecure and intimidating environment (article 84). Online harassment is also specifically covered. The Decree explains the assurance of gender equality to female workers (article 78), which is a welcome provision for women migrant workers because employers cannot argue that they have mistreated such women because they are unsure of the Labour Code's meaning.

Under articles 88 and following, Decree No. 145/2020/ND-CP's provisions protecting domestic workers are detailed, in particular the elements to be included in the written employment contract.

For Vietnamese working abroad, the handbook and pre-departure instructions they receive provide the hotline number to call if experiencing violence or harassment. The hotline will connect them to the labour management board or consular staff who will provide help. These are all welcome provisions that ensure protection of women migrant workers' rights.

Decree No. 145/2020/ND-CP also details the implementation of several provisions of the Labour Code regarding working conditions and labour relations, such as article 58(4) on paid rest periods for female workers who are pregnant, raising a child under two years old or menstruating, as per article 137(4) of the Labour Code. Article 80(3) of the Decree perpetuates paid menstruation leave of 30 minutes/day for a minimum of three days per month. Article 80(3)(c) introduces flexibility to this paid leave but requires the employer to pay the woman worker a "supplement" if she does not need to take menstrual leave. CEDAW and ILO Convention No. 111 warn that burdening employers with extra, non-essential provisions based on stereotypes of women workers' capacity might discourage the recruitment of women of child-bearing age; it is therefore recommended that continuing the paid menstruation leave be the subject of national dialogue.

In addition, the 2019 Labour Code changed the bans on certain types of work by women, which applied equally to women migrant workers. The new approach reflects modern scientific and medical assessment of work that is dangerous to the reproductive function of women, and is a welcome development.

Regarding social security, before 1 December 2018, the Law on Social Insurance only applied to Vietnamese citizens, but from 1 December 2018 onwards, according to the Law on Social Insurance 2014 (No. 58/2014/QH13) and Decree No. 143/2018/N-CP dated 15 October 2018, the reach of the legislation was expanded to all workers who are working in Viet Nam, including foreign workers. The contingencies covered, as of 1 January 2022 when both employers and foreign workers must

make monthly contributions are: sickness, maternity, work accident and occupational disease. This change in legal protection is a welcome provision, especially for women migrant workers who previously lacked maternity benefits. Foreign workers in Viet Nam have for some time been eligible to public health services under the 2014 Law on Health Insurance.

The Law on Social Insurance deems Vietnamese workers going to work overseas under contract to be subject of compulsory insurance schemes in Viet Nam, and Law No. 69/2020 states that these workers must participate in social insurance in accordance with the regulations of Viet Nam and the country of destination. Law No. 69/2020 provides that workers are entitled to social insurance entitlements while abroad; however, maternity-related provisions are not explicit. So, under article 2(1) of the Social Insurance Law 2014, Vietnamese workers abroad must participate in any compulsory social insurance and health insurance schemes. It is reported that MOLISA is scheduled to submit a revised Social Insurance Law to the National Assembly in 2022, which would be an excellent opportunity to ensure full coverage of all women workers – including women migrant workers – on an equal footing with men.<sup>44</sup>

#### 4.4.10.3. Exit, return and reintegration measures

Under Law No. 69/2020 (article 60), MOLISA shall cooperate with ministries in guiding the People's Committees of provinces to:

- implement policies to assist workers in creating employment and start-ups;
- connect databases on Vietnamese guest workers with databases on the job market so as to allow employers and workers to access and utilize information and look for appropriate jobs;
- rely on socio-economic conditions and the budget capacity of local governments to issue policies on assisting local workers to find jobs and organize training courses to upgrade local workers' skills; and
- engage with employment agencies that shall provide adequate information on the job market and recruitment demand of employers to enable workers to select professions suitable for their knowledge, skills and experience gained overseas.

Yet there appears to be no government database covering the sex, age, qualifications, experiences and competencies of migrant workers when they return. It is reported that few Vietnamese female workers access better employment opportunities upon their return because women are often encouraged to focus on domestic duties such as housework and taking care of families (Viet Nam, DOLAB 2015). Law No. 69/202 (article 67) indicates that the Fund for Overseas Employment affiliated to MOLISA can be used to support returning migrant workers who return prematurely. Prime Minister Decision No. 40/2021/Q-TTg dated 31 December 2021 on

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<sup>44</sup> This follows the recommendations in UN Women, ADB, and ILO, *Country Gender Equality Profile: Viet Nam 2021*, 2021.



the Fund for Overseas Employment support (article 12) states: “Support workers who return before the term of contract expired due to unilaterally termination of contract as the result of mistreatment, forced labour or under clear threat of harm to the worker’s health or life or in case of sexual harassment. The support level ranges from VND5,000,000 to VND20,000,000 per case.”<sup>45</sup> This is a welcome measure for women in particular, because their wages may not have been sufficient for them to amass savings for such a contingency. In view of CEDAW General Recommendation No. 26, the ICMW and the ILO migration Conventions (Nos 97 and 143), it is recommended to fill the gaps in legislative detail by adding articles to Law No. 69/2020 concerning improved, sex-disaggregated data collection and gender-responsive analysis for policymaking. In addition, regarding re-entry, it is recommended that Law No. 69/2020 or its implementing decrees require training courses to be offered specifically to assist women migrant workers who return home, and that the courses give: (i) clear information about and incentives for better use of remittances, especially by women workers who may not have financial skills; and (ii) details on gender-responsive measures of support regarding social and health issues.

#### 4.4.10.4. Enforcement machinery

Under article 42 of the Gender Equality Law, anyone who violates that Law shall be subject to disciplinary measures, administrative sanctions or criminal prosecutions, as well as paying compensation for having caused damages. Details will be issued in government regulations. In addition, the Law on Complaints and Denunciations (No. 09/1998/QH10) provides overall provisions on grievance redress. This is a welcome system that also protects women migrant workers’ rights.

Law No. 69/2020 (articles 71–72) stipulates the responsibilities of Viet Nam representative offices located overseas to take taking action against violations of Vietnamese guest workers; and specify that conflicts between Vietnamese workers and foreign employers shall be resolved on the basis of agreements reached by the parties, the law of host countries, international agreements to which Viet Nam is a signatory and international agreements signed by ministries, ministerial agencies or government agencies and foreign parties.

The Labour Code provisions on labour disputes apply equally to migrant workers in Viet Nam (article 179(1)(a)). Article 181(2) requires MOLISA to organize training to improve the professional capacity of labour mediators and labour arbitrators who comprise the tripartite Labour Arbitration Council mandated to settle complaints (article 185). Decree 145/2020/ND-CP expands these provisions of the Labour Code to detail the appointment of labour mediators. While the nomination and appointment process is well explained in the Decree, articles 92 and following do not specify that there should be gender balance among such

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<sup>45</sup> VND refers to the Vietnamese dong.

mediators. Having this gender balance would help women workers – including women migrant workers – have trust in the disputes settlement procedure. It is therefore recommended to add a new provision to article 93 of Decree 145/2020/ND-CP requiring that consideration be given to gender balance when DOLISAs assess the applications and when the President of the People’s Committee of the relevant province designates these officers. Article 97 charges MOLISA with designing and running training programmes for labour mediators. In view of CEDAW, the ICMW and ILO Convention No. 190, it is recommended to add a new provision to article 97 stating that there shall be regular, mandatory training sessions on gender-responsive dispute settlement with particular attention paid to the handling of complaints lodged by women migrant workers. The same recommendation applies to articles 98 and following on the labour arbitrators who comprise the tripartite Labour Arbitration Council. The Labour Code provisions on the steps to follow in resolving individual disputes by labour mediators require both parties to be present at the mediation but allows them to be accompanied by another person during the meeting. This is a welcome procedure for women migrant workers, whose weaker power in face of their employer and fear of reprisals otherwise might hamper a fair outcome of the mediation.

As regards enforcement roles for diplomats, it is a welcome practice that every year, Viet Nam’s Ministry of Foreign Affairs organizes two training courses for diplomats prior to their deployment abroad. The courses focus on migration-related issues, including steps and skills for protecting the rights and interests of Vietnamese migrants, especially women and children (Viet Nam, Government of Viet Nam 2021).

#### 4.4.10.5. Current gender equality regime

The Gender Equality Law, article 2(2), specifically stipulates that it covers foreigners residing in Viet Nam. Article 7 explains that there shall be gender mainstreaming in the process of drafting legal normative documents (with details in article 21), so migration policy should be gender-responsive too. Article 8 requires the State to, among other actions, engage in gender training and deal with complaints and violations of the Law. Article 10(3) prohibits gender-based violence. Article 13 covers gender equality in the field of labour. Under article 31(2)(b), state agencies are responsible for ensuring the participation of male and female officials, civil servants and public employees in law development and implementation, among other programmes and plans, which is a welcome provision for guaranteeing that state agencies involved in aspects of labour migration enjoy gender balance in the implementing entities. Article 37 consecrates the right of agencies and individuals to complain about gender inequality and violations of their rights under this Law, and under article 40(3) gender violations of labour rights include: applying different qualifications in recruiting male and female workers to the same job; discriminatory job allocation and unequal pay based only on the gender of the worker; and not respecting the specific provisions for female workers contained in the Labour Code. Moreover, the 2007 Law on Prevention of and Control

over Domestic Violence (No. 02/2007/QH12) covers work in homes by domestic workers. These are welcome legal protections for women migrant workers as well.

#### 4.4.10.6. Summary of recommendations

In summary, Viet Nam's laws relevant to women migrant workers could be even stronger if consideration could be given to the following recommendations:

- Add to article 212 of the Labour Code a new provision requiring that all the activities within the ambit of state management of labour, especially data collection and analysis, be carried out using gender-responsive techniques and on the basis of sex-disaggregated statistics.
- Engage in a national tripartite dialogue to reconsider articles 58(4) and 80(3) of Decree 145/2020/ND-CP, and whether the employer obligation to provide three days' paid menstruation leave per month for women workers gives rise to indirect sex-based discrimination against both nationals and migrant women of child-bearing age. Include a discussion of the references to menstruation paid leave in the Labour Code.
- Fill the gaps in Law No. 69/2020 concerning improved, sex-disaggregated data collection and gender-responsive analysis for policymaking.
- Add a new article to Law No. 69/2020 or its implementing decrees requiring the Government to offer training courses specifically to assist women migrant workers who return home, and that the courses provide: (i) clear information about and incentives for better use of remittances, especially by women workers who may not have financial skills; and (ii) details on gender-responsive measures of support regarding social and health issues.
- Add a new provision to article 93 of Decree 145/2020/ND-CP requiring that consideration be given to gender balance when DOLISAs assess applications for appointment of labour mediators and when the President of the People's Committee of the relevant province designates these officers, so that women workers – including women migrant workers – have trust in the dispute settlement procedure.
- Add a new provision to articles 97–98 and following of Decree 145/2020/ND-CP stating that there shall be regular, mandatory training sessions for labour mediators and arbitrators on gender-responsive dispute settlement, with particular attention paid to the handling of complaints lodged by women migrant workers.







## CHAPTER 5. WAY FORWARD AND NEXT STEPS

This chapter builds on the observations concerning complex and emerging issues affecting women migrant workers and labour migration data in Chapter 2 and the gender analysis of country-specific legislation and policy in Chapter 4 to make practical ASEAN-wide proposals for the best possible way forward for women migrant workers in ASEAN. All of the proposals below are underpinned by the regional and international norms and standards summarized in Chapter 3.

The way forward for starting to set priorities regarding this study's findings will rely on social dialogue and consultations with all the main stakeholders across the migration cycle. This could take a whole-of-government approach, with representatives of different national departments attending together (in a joint delegation) at some of the roll-out events proposed below. Additionally, women must be included in the design of and decision-making concerning all migration policies and programmes to ensure that the needs and vulnerabilities of migrant women are adequately taken into account. Social dialogue is the privileged way to obtain sustainable, improved intra-ASEAN labour migration governance that is so important to ASEAN. After all, the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, under "General Principles", highlights that ASEAN Member States will act "to pursue a constructive, non-confrontational and cooperative approach to enhance the protection and promotion of rights of migrant workers", and its paragraph 54(b) explicitly encourages "constructive dialogue, consultation, cooperation, and regular exchange of information, for the purpose of effective enforcement of policies and programs concerning migrant workers".

Entering the findings of this study on the agenda of existing mechanisms and developing a new series of online workshops (more details below) could be the place to start. Such a way forward aligns with many ASEAN Member States' responses to this study's questionnaire regarding structures to assist the implementation of labour migration laws and policies.



Some of the ASEAN-wide recommendations below may be tangentially covered in existing ASEAN work plans or workshop outcomes. For example, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) has an action plan based on the rights reflected in the ASEAN Consensus. Nevertheless, the study proposes the below recommendations because the gender analysis of the principal laws affecting women migrant workers and Member States' responses to the questionnaire demonstrate that further specific measures are needed to transform ASEAN-wide commitments to ensuring the well-being of women migrant workers into concrete improvements on the ground.

## **5.1. Recommendations for ASEAN**

### **5.1.1. Review of the implementation status of the principal laws and roadmap for revision if considered necessary**

At the outset, it is noted that international labour migration rules across the ten ASEAN Member States follow no set pattern. Despite adherence to the ASEAN Consensus and the women's rights consecrated in CEDAW (ratified by all ASEAN Member States), there is no unified approach to ratification of the UN and ILO treaties on labour migration governance. As this study examines intra-ASEAN migration, the sets of national laws reviewed are not necessarily the same. For States that are both origin and destination countries (see Chapter 2), two different types of legislation come into play: (i) the local labour laws or other applicable rules for incoming migrant workers; and (ii) the national laws governing nationals migrating for jobs abroad. For the other ASEAN Member States that are primarily countries of origin, the study surveyed only those national laws covering workers seeking employment abroad. For net receiving countries, the working conditions were analysed from the point of view of local laws applicable to such workers. It is recalled here that BLAs and MOUs between countries were not examined.

For some ASEAN Member States, labour migration rules are found in a combination of labour laws and immigration laws (Cambodia, Indonesia, Myanmar, Thailand). In others, the rules are located mainly in national employment laws (Brunei Darussalam, the Lao People's Democratic Republic, Malaysia). In other ASEAN Member States, bespoke labour migration/overseas employment laws are available (Philippines, Singapore, Thailand, Viet Nam). In addition, a number of ASEAN Member States are addressing migrant workers specifically in recent revisions of their social security laws: Cambodia under the National Social Security Fund (NSSF); Malaysia under the Social Security Organisation (SOCSSO); and Philippines domestic workers under the Social Security System (SSS) and the Philippine Health Insurance Corporation (PhilHealth). In all, there are only four ASEAN Member States (Cambodia, the Lao People's Democratic Republic, Philippines, Thailand) where the law on social security does not explicitly differentiate between national and migrant workers. Other ASEAN Member States still have some requirements for migrant workers to access the national social security schemes.

In examining another aspect of labour regulation important to women migrant

workers, this study located no provisions that apply specifically to women migrant workers that guarantee the CEDAW and ILO Convention No. 100 norm of “equal pay for work of equal value”; it is the national labour codes and employment laws that capture this labour right for women and men workers generally.

As regards protection against violence and sexual harassment at work, on the other hand, this is a common issue under ASEAN Member States laws, particularly in recently amended texts. In sum, it can be seen that certain recently-revised texts (Cambodia, the Philippines, Viet Nam) are gender-aware, in that they acknowledge that economic and social power spheres can and do affect women migrant workers differently than men. Other positive examples of recent amendments (see Chapter 4) include:

- i. new bans on charging fees to migrant workers and better regulation of private job agencies;
- ii. very specific gender-related items to be included in pre-departure/post-arrival seminars;
- iii. permission for employees to transfer to another employer; and
- iv. mandatory inter-agency cooperation among agencies involved with foreign nationals entering an ASEAN Member State to ensure better coordination and management.

A review of how the various laws are being implemented in practice would be a welcome measure.

Table 6 below summarizes areas in the laws that could be improved from the viewpoint of women migrant workers. Details for each country appear in Chapter 4 above, but a roadmap for revising across several Member States could be considered, so that options are debated generally and so ASEAN Member States can learn from one another what legislative packages are best adapted to their domestic labour markets and international commitments.

Table 6's first common area for improvement involves systems change: revision of migration data-related rules could render data collection and analysis more gender responsive, and provisions on staffing of migration governance institutions could be re-examined to ensure gender balance and to provide training to all persons involved in aspects of intra-ASEAN migration so that they understand the gender dimension of migration for work and thus better perform their functions for women, as well as men. The second area for possible revision addresses legal provisions that place restrictions on women but not men regarding access to jobs. The third area covers provisions that disproportionately affect women migrant workers, such as rules on domestic workers. The fourth area that could be discussed for legislative review involves laws that apply out-of-date language and which, when read together, appear to be overly complicated, especially for women migrant workers.

**Table 6.** Areas identified in certain ASEAN Member States' laws that could be improved for women migrant workers

Country	Systems change		Direct discrimination change		Indirect, sectoral discrimination change		Regulatory modernization	
	Data	Gender balance	Job ban	Age ban	Indirect rules	Domestic work	Language	Simplification
Brunei Darussalam	✓	✓	✓		✓	✓	✓	
Cambodia	✓	✓	✓		✓			
Indonesia	✓	✓	✓		✓	✓	✓	
Lao PDR	✓	✓	✓	✓	✓			
Malaysia	✓		✓	✓	✓	✓	✓	✓
Myanmar		✓	✓		✓	✓		✓
Philippines	✓	✓	✓	✓	✓	✓	✓	
Singapore			✓ <sup>1</sup>	✓ <sup>2</sup>	✓	✓		
Thailand	✓	✓	✓	✓	✓	✓		✓
Viet Nam	✓	✓	✓		✓	✓		

<sup>1</sup> Source control is by sector, not by gender or occupation. <sup>2</sup> Age restrictions do not differentiate by gender.

### 5.1.2. Awareness-raising training

Given the responses to this study's questionnaire regarding improvements ASEAN Member States would like to see in their labour migration laws and policies to ensure decent work for women migrant workers, it is recommended to engage in a series of renewed awareness-raising trainings for all staff involved in labour migration on the gender dimensions of labour migration. Such awareness-raising should cover data collection issues, such as the lack of ASEAN-wide comparable and reliable migration statistics, disaggregated by sex, age and migration status – as noted in Chapters 2 and 3 above. Part of this series of renewed trainings could be a session devoted to exchanging current promising practices for safe labour migration within ASEAN and achieving effective, gender-responsive labour migration management (as described, for example, in the country examples in Chapter 4). Another session could be devoted to improving closer cooperation between destination countries, local migrant worker support organizations and international organizations <sup>46</sup> in order to improve migration data and to promote and protect the rights of migrant women.

### 5.1.3. Capacity-building for relevant officials and stakeholders

Along with awareness-raising, it is clear that more joint capacity-building is required for relevant officials and stakeholders, for example, by using the 2015 ILO Policy Brief on the "Role of the ASEAN Labour Attachés in the Protection of Migrant Workers" (as per Cambodia's questionnaire response).

<sup>46</sup> See, for example, the 2019 presentation by Myanmar's Ministry of Labour, Immigration and Population to the Asian Development Bank, available at <https://events.development.asia/system/files/materials/2019/01/201901-labor-migration-trends-and-policies-myanmar.pdf>.

Within the capacity-building and peer-to-peer sharing of promising practices, a session could be devoted to the success of Migrant Worker Resource Centres (MRCs). The ILO supports MRC services in nine of the ten ASEAN Member States, and the Centres are managed in partnership with government institutions, trade unions and CSOs and provide a range of services in countries of origin and destination.<sup>47</sup> For example, Cambodia's Policy on Labour Migration 2019–2023 already proposes the following measures:

1. Assess the ILO's and IOM's MRC operations in order to transform the centres to an official structure of the General Department of Labour of the Ministry of Labour and Vocational Training.
2. Study the possibility of establishing MRCs overseas to provide additional support and assistance to the Cambodian Embassy/ Consular General Bureau/Consular Office and Migrant Labour advisor/labour attachés to provide information, legal services and humanitarian assistance for migrant workers in countries of destination.
3. Mobilize resources from relevant stakeholders to support MRC operations in and outside the country (Cambodia, Government of Cambodia 2019, 23).

In the Lao People's Democratic Republic, five MRCs have been established under the umbrella and management of two different partners. Two are run by the MOLSW, and three by the Lao Federation of Trade Unions (LFTU). A pre-departure orientation manual has been developed as a reference. One example from the Philippines comprises Migrant Workers and Overseas Filipino Workers Resource Centres established by Philippines Government funding in various countries in addition to some host country governments and community groups and other actors also offering in-kind contributions. These centres provide protection services, such as maintenance of hotlines; 24-hours-a-day, 7-days-a-week operating hours; using a range of media for outreach; forming family circles to help migrant families support one another; and operating shelters for migrants in distress. In Singapore, the Migrant Workers Centre is a bipartite initiative of the Singapore National Trades Union Congress and the Singapore National Employers Federation. It provides a 24-hour helpline, handles complaints casework and mediations, provides food and shelter to workers awaiting case settlement, as well as offering free basic legal advice through Legal Clinics jointly organized with the Law Society of Singapore's Pro Bono Services Office. In Viet Nam, individual MRCs were established with ILO support in 2011 in five provinces with high numbers of outgoing migrant workers. These MRCs have provided support to over 10,000 migrant workers, over 40 per cent of whom were women. These examples show that much material exists for capacity-building ASEAN-wide on this option.

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47 ILO-supported MRCs have provided services to more than 284,032 migrant workers and their family members (47 per cent women) from 2011 to 2021. Crucially, MRCs provide legal support to migrant workers who seek to resolve complaints and receive due wages, compensation or other legal remedies in cases of abuse, exploitation or fraud. Since the ILO began tracking such settlements in 2014, a total of US\$10,876,898 has been awarded to migrant workers in compensation for legal complaints. A total of 4,707 legal cases were settled during 2014–2021 (UN Network on Migration, n.d.).

In addition, as seen in Chapter 2, capacity-building needs to consider that gender-responsive migration data has a strong potential to promote greater equality and, therefore, needs to be upgraded regarding data collection on an ASEAN-wide level.

#### **5.1.4. Agenda slots in ASEAN institutional bodies**

It is recommended that the following gender-related issues be placed for consideration on the agendas of the appropriate ASEAN institutional bodies, whether it be the:

- ASEAN Forum for Migrant Labour (AFML, meeting yearly with its coordinating committee consisting of SLOM chair/ILO/IOM/UN Women/ASEAN Secretariat/Task Force for ASEAN Migrant Workers and some CSOs for migrant workers);
- ASEAN Senior Labour Officials Meeting (SLOM);
- ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW); and/or
- ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC).

The following areas require in-depth review because they amount to barriers to achieving gender equality across ASEAN Member States generally and hinder women migrant workers' enjoyment of the right to decent work.

- i. **Over-protective provisions regarding entry and exit.** The 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and the ASEAN Socio-Cultural Community Blueprint 2025 are both strongly committed to promoting decent, humane, productive, dignified and remunerative employment for women and men migrant workers. Yet some ASEAN Member States' laws still contain labour migration prohibitions affecting women by age or type of work or requiring spousal/parental permission to work overseas. Policymakers worldwide, concerned about the risks associated with women's migration, used to respond with well-intentioned but over-protective gender-specific migration restrictions. In ASEAN Member States, these policies have included outright prohibitions on women's migration into certain jobs considered inappropriate for women but acceptable for men; prohibitions on migration for work to certain countries considered unsafe for women; migration prerequisites relating to age (wherein the age of adulthood at 18 is not regarded as sufficient protection, and so only older women can migrate); and parental or spousal permission despite the woman worker being of adult age, which assumes that women are not considered responsible for making their own decisions. While such restrictions are supposed to protect women, they amount to a barrier to equal opportunity and must be lifted. This is all the more so because these limits may actually force women into migrating via irregular channels where migration costs increase, as informal payments have to be paid along the route,



and dangers increase as there are no protections. In addition, any single country's ban on women's migration shifts regional recruitment to other countries and potentially drives the ASEAN labour market towards lower working conditions and wages. In short, out-of-date protectionism limits women's work opportunities. If the evils underlying such restrictions are so serious for human beings, then the policy and legislative impositions should apply to both men and women workers. Alternative strategies can reduce the risk factors and make migration safer for all migrant workers, especially women.

- ii. **Pre-departure – Banning placement or recruitment fees being placed on workers.** It is clear from ASEAN and international labour law norms and standards that workers should not be burdened with such costs. Payment of fees associated with the recruitment and hiring of migrant workers – both women and men – through private agencies are the responsibility of the future employer, and should be treated as such. Public and private employment agencies, when appropriately regulated, play an important role in the efficient and equitable functioning of labour markets by matching available jobs with suitably qualified workers. Certain ASEAN Member States already have laws restricting (Singapore, Indonesia) or prohibiting (Philippines) recruitment agencies from charging fees to migrant domestic workers. As part of the consideration of an ASEAN-wide approach to ending fee-charging of employees, there could be a more general discussion on how to strengthen the management of private recruitment agencies in accordance with paragraph 51 of the ASEAN Consensus.
- iii. **Pre-departure – Coordinated information and services through “one-stop” service centres.** The gender analysis of laws and many ASEAN Member States' responses to this study's questionnaire point to the benefits of this approach. In accordance with paragraph 24 of the ASEAN Consensus, a debate needs to occur regarding creating “one-stop” service centres throughout ASEAN in single dedicated physical locations that are recognizable and accessible. Such cost- and time-efficient centres for both migrant workers and employers of migrant workers could be run by not just immigration officials, but by an entity of tripartite composition led by the ministry responsible for labour and employment. Different models already exist, such as Myanmar's One-Stop Women Support Centres, Indonesia's “One Door” service, and Viet Nam's One-Stop Service Office, which opened in 2020 for returning women migrants. This practical measure ensures better coordination between agencies responsible for labour and agencies responsible for immigration. It represents a win-win model for users and for service providers both. If a region-wide model is adopted, migrant workers – both women and men – will benefit from knowing what to expect at such one-stop service venues and will feel comfortable accessing them because their services will be broadly similar across ASEAN Member States (while naturally having the specificity of providing information on that particular destination country's labour laws).

- iv. Pre-departure – Awareness-raising events/orientation trainings.** Many ASEAN Member States already offer or require such courses. To promote safe and regular migration within the region, ASEAN Member States should promote gender-responsive, multilingual and evidence-based information campaigns and organize pre-departure training and awareness-raising events in countries of origin. Such events/training provide an excellent opportunity to highlight the risks associated with irregular migration and help prospective migrant workers make informed decisions. These events/trainings can be organized in close cooperation with national authorities, consular/diplomatic missions, academia, migrant workers' organizations and civil society.
- v. Arrival/on-site working conditions – Provide information and legal guidance.** ASEAN Member States should ensure that newly arrived migrants receive accessible, gender-responsive, comprehensive knowledge and legal advice on their rights and obligations. This should include information on compliance with national laws, work and resident permits, registration with authorities, access to justice to file complaints about rights violations, and access to relevant essential services. This could include access to lawyers deployed to consular offices in particular in countries with a high concentration of women migrant domestic workers, such as occurs through the Philippines Overseas Employment Administration (POEA).
- vi. Working conditions – Forcing migrant workers to remain with one employer.** Refusing to allow migrant workers the right to choose their remunerated activities freely appears to be based on the rationale that employers need a secured labour force and that there should be no competition with national workers for available jobs. Under such "tied-employment" situations, migrant workers are especially vulnerable, including to potential exploitation, if their resident status is dependent on employment with one specific employer, and women migrant workers are particularly vulnerable given that they often lack knowledge of their labour rights and are fearful to ask questions. Indeed, such a system makes it possible for employers to abuse migrant workers with impunity. The restrictions of this nature in ASEAN Member States' laws have a disproportionate impact on women migrant workers because women tend to find employment in sectors where this restriction is common, such as services and domestic work. Yet Article 52(2)(b) of the ICMW and Article 14 of ILO Convention No. 143 both state that such restrictions may only be applied during the first two years of residence. The general principle that migrant workers should be able to choose their jobs freely and to change their employer at the earliest possible time is also supported by Objective 22(g) of the Global Compact for Safe, Orderly and Regular Migration, under which signatory States commit "to allow migrants to change employers ... with minimal administrative burden". Reassessing in ASEAN institutional bodies the need for "tied-employment" could be beneficial.

**vii. Working conditions – Coverage of domestic workers.** As Chapter 2 shows, the share of women migrating across ASEAN for jobs in the services, care economy and domestic work sectors has been rising in recent decades. But, apart from a few exceptions, ASEAN Member States have not kept pace in developing policies and laws to guarantee domestic workers the same rights as other employees under labour codes. Even when separate laws and regulations purport to cover domestic workers, the guarantees are frequently below those afforded to the rest of the workforce. This exclusion of domestic work from full employment rights coverage disproportionately impacts women, who predominate in this sector across ASEAN. Domestic work is work, and it deserves the same treatment as other jobs. Given the ILO Domestic Workers Convention, 2011 (No. 189), the time has come to remove from all laws all provisions that leave domestic workers behind. According to ILO standards, if the specificities of working in households need attention, that can be drafted into labour code provisions. When this issue is placed on the agendas of the pertinent ASEAN institutions, consideration could also be given to engaging experts to present in detail ILO Convention No. 189 with a view to all ASEAN Member States ratifying it.

**viii. Working conditions – Social security portability.** The gender analysis of the principal laws revealed that many social security benefits are not available to migrant workers, particularly women migrant workers, because of direct exclusion or complicated administrative requirements. In view of the 2017 ASEAN Consensus and international standards on decent work, this is an area ripe for change. Discussions have already commenced in ASEAN's 2021 *Study Report on the Portability of Social Security Rights between ASEAN Member States*. The social security (and social protection) systems across the ten ASEAN Member States differ widely. Their historical design means that it may appear challenging to extend them to women and men migrant workers. But there are many measures available to remove such legal and practical barriers, starting with:

- amending regulations so that social security laws apply to migrant workers of both sexes;
- reducing legal contribution conditionality for short-term benefits such as unemployment benefits;
- mandatory language classes in destination countries to understand social security terminology, which can be linked to improved “know your rights” information courses pre-departure and upon arrival in destination countries;
- disseminating form-filling information in a language migrant workers understand; and
- training of social security institution staff to be gender-responsive and sensitive to assisting migrants and their employers in making regular contributions and accessing the benefits when they become due.

As proof that measures for social security coverage are not that difficult to accomplish, Cambodia proposed a concept note on an “ASEAN Declaration on Portability of Social Security Benefits for Migrant Workers in ASEAN” during the 17th SLOM Meeting and the 14th SLOM-Working Group Meeting. Indeed, Cambodia has played an important role in establishing the social security systems for migrant workers in Cambodia, the Lao People’s Democratic Republic, Myanmar, Thailand and Viet Nam (CLMTV), which is an entry point to expand this system to all ASEAN Member States. Laws in origin countries can be improved, using a “step-by-step approach”, to allow migrant workers overseas to maintain the social security rights they have built up back home and access social security when living and working in destination countries, as outlined in the CLMTV *Joint Statement on the Results of the 3rd CLMTV Labour Ministerial Conference on Labour Cooperation in CLMTV “Toward the Protection of Migrant Workers in CLMTV Countries: Cooperation in Social Security”*. Another solution is for origin and destination countries to sign bilateral labour agreements and memoranda of understanding to ensure the protection of migrants by providing for the portability of social security entitlements.

- ix. Enforcement machinery – Better ASEAN-wide rules on labour inspection.** The legislative gender analysis showed that across the ten ASEAN Member States there are very different inspection powers and sanctioning regimes. Some ASEAN Member States have already signalled that ASEAN needs a more effective legal framework in various sectors.<sup>48</sup> One method of improving an ASEAN-wide understanding of labour migration situations, as well as improving data collection, is to entrust to the responsible entities broader inspection powers, especially regarding domestic workers’ workplaces (that is, private households). Discussion of this issue in appropriate ASEAN institutional bodies could also address the need to modernize outdated sanction provisions in certain national laws (such as in Cambodia, Indonesia and Myanmar). An ASEAN-wide consideration of this regulatory modernization point could extend to making all ASEAN Member States’ principal laws more comprehensive and coherent. This is an ambitious approach, but an attainable one because several ASEAN Member States have already been trying to update their laws and regulations and have made impressive efforts to address very recent challenges such as the impact of the COVID-19 pandemic on migrant workers, including women migrant workers (such as in Cambodia, the Lao People’s Democratic Republic, Myanmar, the Philippines, Singapore and Thailand). Yet an overall modernization of relevant national laws may well be a fail-safe method to capture the various gender-responsive improvements highlighted in this study (and others).

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48 See the aforementioned presentation by Myanmar’s Ministry of Labour, Immigration and Population (2019).

- x. **Current gender equality regimes.** A dedicated agenda item discussion – at least once a year, perhaps coinciding with International Women’s Day (8 March) – could drill down into the benefits that could be reaped by ASEAN Member States if they aim for thoroughly CEDAW-compliant laws with respect to women and men’s equality, including for migrant workers. Several ASEAN Member States have had improvement-oriented legislative drafts pending for some years; so an ASEAN-wide discussion is timely. For example, because of the 2013 ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children, several ASEAN Member States have introduced new self-standing domestic violence laws or adopted workplace violence bans in existing employment laws and labour codes. But across ASEAN, the sexual harassment provisions differ widely and often lack clear international labour standard-compliant definitions and stipulations as to roles and obligations under the law. ASEAN entities can use the ILO’s fundamental Conventions and the recent Conventions Nos 189 and 190 (see Chapter 3), as well as UN human rights standards in discussions that could lead to ASEAN-wide reviews and consolidations, as well as serve as benchmarks for better implementation of legal provisions that assert and support women migrant workers’ equality.

#### 5.1.5. Policy briefs

ASEAN-wide policy briefs on practical improvements could be prepared and disseminated to all government staff working directly on labour migration. This could be done by leveraging the ASEAN Migration Outlook, which provides analysis on recent developments in migration movements and policies across ASEAN Member States, as well as forecasts on future trends of migration in the region. Such briefs could be aimed at improved understanding regarding the following points, being issues that arose in the gender analysis of the principal migration laws and in responses to this study’s questionnaire:

- i. institutionalizing an ASEAN-wide standard employment contract that applies to all migrant workers, with particular emphasis on stipulating women migrant workers’ rights;
- ii. institutionalizing mandatory detailed pre-departure information and orientation (currently included in only a few laws, for example, in Cambodia and Viet Nam);
- iii. providing better access to complaints mechanisms. According to ILO–IOM’s 2017 report on intra-ASEAN migration benefits, the existing official complaints mechanisms remain out of reach for most migrant workers because of lack of awareness about their rights under the law, constraints posed by language barriers, lack of legal status, fears about accessing government services, and the possibility of retaliation by employers, and such challenges are particularly felt by women migrant workers in work situations of disempowerment and vulnerability to retaliation (Harkins, Lindgren, and Suravoranon 2017);
- iv. separating immigration enforcement from labour law (the “firewall” approach) to enable migrant workers to make complaints without fear of deportation; and



- v. enhancing the role of trade unions and NGOs like women's civil society organizations, so that they can be valuable actors in information sharing and advocacy for migrant workers. Organizations of this sort can help migrant workers integrate more quickly into destination countries and better understand and comply with local labour laws, while also playing a support role in ensuring migrant workers' legitimate rights.

#### **5.1.6. Public campaigns on safe migration for women**

Depending on the time availability of newly-trained staff involved in intra-ASEAN labour migration, the various ASEAN entities could add to their work plans a coordinated roll-out of public campaigns on safe migration and successful migration experiences, particularly for women migrant workers. These campaigns could possibly coincide annually with 18 December, which is International Migrants Day. For example, the on-going Public Campaign on Safe and Fair Migration, led by the Philippines, develops audio-visual presentation materials to promote better understanding among aspiring ASEAN migrant workers about their rights and regulations related to migration. The campaign will also identify post-pandemic measures towards safe journeys of migrant workers, for an initiative that is to launch in 2022.

#### **5.1.7. Regional centres for migration research and training**

Lastly, regional centres for research and training on migration could be established, or existing regional migration think tanks leveraged, to cross-fertilize information sharing, share achievements of evidence-based migration policies, and streamline resources. Such centres could facilitate and strengthen disaggregated data collection and analysis on migrants' contributions, promising practices, benefits and challenges of migration in origin and destination countries, in line with UN standards and in close coordination with existing regional mechanisms. Moreover, such facilities could also develop country-specific migration profiles, which could be used to formulate evidence-based migration policies.

### **5.2. Next steps for ASEAN to follow-up on this study**

#### **5.2.1. Social dialogue on “hot issues” in a cross-department setting**

As pointed out above, consultations among the broad range of stakeholders across the migration cycle is a winning approach to securing the best frameworks for women migrant workers. Such dialogue often underlies the processes already existing within ASEAN institutions, where work plans have well-laid out goals, timelines, resource listings and performance indicators. But this study is timely in that it offers the evidence-based opening for deeper social dialogue on what works and what is lacking across ASEAN specifically for women migrant workers.

For example, the agenda item ideas and policy briefs suggested above cover several “hot issues” that need whole-of-government attention, such as all-ASEAN coverage of domestic workers, removing women-only age and type-

of-work migration bans, and ending fee-charging on workers who wish to migrate for work, which indirectly raises barriers against women from ASEAN Member States who wish to take up employment in other ASEAN Member States. One next step could be to establish a regular dialogue forum for ASEAN Member State departments dealing with labour migration, immigration, home affairs, as well as social partners, migrant NGOs and women's CSOs. Such a measure will facilitate arriving at practical, concrete measures, including whole-of-government responses to sudden challenges, such as the COVID-19 pandemic. The social dialogue should be open to all levels for gender aspects of migrating for work, from higher-level policy advice to simple suggestions on ASEAN-wide measures that will help overcome daily hurdles to safe, well-governed labour migration by women.

Such institutionalizing of social dialogue specifically on issues regarding women migrant workers could build on existing regional platforms such as the ASEAN Forum for Migrant Labour (AFML),<sup>49</sup> which already meets yearly with its own coordinating committee consisting of the SLOM chair, ILO, IOM, UN Women, the ASEAN Secretariat and the Task Force for ASEAN Migrant Workers,<sup>50</sup> comprising CSOs directly representing migrant workers. The new social dialogue platform – or new iteration of the AFML – would be innovative by having a mandate directly targeting women migrant workers' rights across ASEAN. These platforms can provide technical inputs to improve policies, laws and implementation back at the country level. There are already calls for more regular meetings of responsible officials from across ASEAN Member States. Its meeting reports could be tabled – once a year – for information, and action if necessary, with at least three of ASEAN's existing governance bodies:

- ASEAN Senior Labour Officials Meeting (SLOM);
- ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW); and
- ASEAN Committee on Women (ACW).

Institutionalizing social dialogue, especially on women migrant workers' rights, by feeding into existing platforms is being canvassed among ASEAN Member States. For example, Cambodia's Policy on Labour Migration 2019–2023 already proposes the following measures:

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49 The annual AFML meeting is a regular activity under the ASEAN Consensus on Migrant Workers Work Plan.

50 The Singapore-based Task Force on ASEAN Migrant Workers (TF-AMW) comprises trade unions, human rights and migrant rights NGOs, and migrant worker associations. It aims at supporting the development of a rights-based framework for the protection and promotion of the rights of migrant workers. For more information see: <https://apmigration.ilo.org/network/organizations/task-force-on-asean-migrant-workers>.

1. Hold national tripartite consultations to develop an action plan to implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.
2. Participate in regional consultations/dialogues and develop instruments related to the protection of migrant workers' rights, and provide recommendations in the ASEAN Forum of Migrant Labour.

*(Cambodia, Government of Cambodia 2019, 21).*

### **5.2.2. Scheduling of training seminars, webinars and workshops**

Depending on existing work plans, the ASEAN Secretariat could immediately engage in online exchanges regarding, for example, challenges associated with data gathering and definitions that make a comprehensive analysis of key aspects of migration difficult (see Chapter 2 above), with international and regional experts sharing promising practices and gender-responsive sustainable system designs for better intra-ASEAN labour migration governance and evidence-based policies. ASEAN-wide training sessions on a number of specific issues raised by this study would undoubtedly lead to better coordination between ASEAN Member States regarding the gender dimension of labour migration management. Such sessions would also be beneficial in building and enhancing national capacities in data collection, analysis and dissemination. To avoid knowledge loss in ASEAN Member States that may have large-scale staff turnover, protocols could be adopted to ensure that debriefings and file notes on the trainings are given before rotation.

### **5.2.3. Enhance collaboration to improve data collection**

The ASEAN Secretariat could promote close collaboration between ASEAN Member States' national statistical offices and state units responsible for migration data to produce user-friendly, appropriately disaggregated, accurate and timely migration-related statistics by using administrative records and integrating migration-related schedules in national censuses, household surveys, labour force surveys or other survey instruments. This could be considered in relation to strengthening the region's labour migration information systems (LMIS), which are an important tool for assessing and managing labour mobility.

### **5.2.4. Dialogue symposia on new ASEAN-wide frameworks, such as a framework for portability of social security contributions**

From the point of view of immediate next steps, one process could be to institute an ASEAN-wide symposium on an issue that is already brewing among ASEAN Member States: the portability of social security contributions.

Migrant workers are disproportionately excluded from social protection schemes. Their economic vulnerability is compounded by underrepresentation in the labour market, concentration in precarious and low-paid work, and directly or indirectly discriminatory laws (see Chapter 4 above). Legal

exclusions to accessing social protection benefits, insufficient build-up of social security contributions within destination countries, lack of possibilities to transfer social security contributions, and practical barriers to accessing benefits are particular barriers for women migrant workers, whose lack of empowerment and poor understanding of how to navigate such systems exacerbate their lack of access. The ILO's 2021 Recurrent Discussion on Social Security at the International Labour Conference highlighted that migrants are disproportionately affected by a lack of coverage in social protection and by inadequate levels of protection, whether in destination countries or upon returning to their countries of origin (ILO 2021f, 4). As a preliminary step towards a social security agreement across ASEAN, the *Study Report on the Portability of Social Security Rights between the ASEAN Member States* recommends each ASEAN Member State nominate a contact person who sends information relating to the social security scheme of the country to the ASEAN Secretariat; the ASEAN Secretariat may also coordinate between ASEAN Member States and after collecting such information, publish an annual report about changes in social security systems in ASEAN for wide distribution to stakeholders such as governments, employers, employees, and the general public (ASEAN 2021, 132). The widely different responses to the COVID-19 pandemic demonstrate that some form of harmonization of standard norms– for example, social security health benefits and income support – is needed. Moreover, such a symposium would dovetail with the recommendations of the 14th ASEAN Forum on Labour Migration, which had the theme of “Recovery and Labour Migration in the Post-Pandemic Future in ASEAN”, in particular, the following recommendations:

12. *Extend social protection, including sickness benefits and government provided unemployment benefits* or basic income security, during the pandemic or another crisis to all migrant workers in all sectors of the economy, and ensure migrant workers' equitable access to social protection, healthcare and social security benefits. Collaborate to explore the portability of social protection benefits for migrant workers in the region. Data collection and dissemination mechanisms on social protection of migrant workers should be strengthened to inform policymakers, respect privacy and be harmonised regionally. ...
14. *Review national labour laws* and policies to cater for new work environments and to holding governments accountable, as necessary, to ensure equitable protection of migrant workers with respect to labour rights including, job security, wage protection, working conditions and minimum wage coverage (in countries implementing minimum wage policies), *especially migrant workers in sectors that are currently excluded from these protections, and their responsiveness to the current and future changes in labour markets*. Updated and new legislations should be evidencebased, respect fundamental rights of migrant workers in accordance with the relevant ILO and UN instruments and be communicated effectively to stakeholders. *Enhance the capacities of labour inspection* and adopt humancentred approach in order to better respond to the specific challenges posed by the pandemic.

(ASEAN 2021d, *emphasis added*).

In conclusion, this study has highlighted many promising practices and legislative improvements related to women migrant workers in recent legislation and policies of a number of ASEAN Member States. Yet several technical challenges remain. The way forward encourages consultations and social dialogue, proven approaches to maintaining decent work. The recommendations offered here represent possible next steps; ASEAN-led trainings, campaigns and symposia can assist in discussing what is doable and over what time frame. The 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers – as well as CEDAW and the relevant ILO labour standards – provide inspiration for all ASEAN Member States to achieve full equality for women migrant workers in their intra-ASEAN pathways, for the benefit of individuals, communities and economies across the region and for ASEAN's sustainable growth as a whole.



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# ANNEXES

## ANNEX I. QUESTIONNAIRE ADMINISTERED TO ASEAN MEMBER STATES OFFICIALS RESPONSIBLE FOR LABOUR MIGRATION

### Identification

Particulars	Response
Country Name	
Respondent's Name	
Affiliation (Ministry/Department Name)	
Designation	
Email of the respondent	
Date of filling the questionnaire	

### Section I. International labour migration

No.	Question	Code	Please record your response here	Use this space to provide remarks/ comments/other critical information
1	In your country, which entity/ organization collects the migration data?			Name; if there are several, please name them all

No.	Question	Code	Please record your response here	Use this space to provide remarks/comments/other critical information
2	Does your country have/maintain a dashboard on international migration statistics?	1: Yes 2: No 9: NA		Please give links to the dashboard/other sources  Could you also state the year for which the most recent migration data is available?  And if any challenges were encountered in data collection since early 2020
3	Do the collected data show in which of the following job categories are women migrant workers dominant? <i>(Multiple responses; rank in descending order of importance)</i>	1: domestic work 2: construction work 3: hotels & tourism 4: hospital care 5: nursing home/aged care 99: others (specify)		In contrast, what are some of the dominant occupations for men migrant workers?

## Section II: Pre-departure

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/other key information
1	Does the government disseminate practical, up-to-date information and pre-departure training to help women and men decide whether to migrate?	1: Yes 2: No 9: NA		In your opinion do men and women have equal access to information about work opportunities abroad
2	If yes, does the information cover the following: <i>(Multiple responses)</i>	1: the conditions of work abroad 2: the cultural setting in the destination country		Please explain briefly about other components of the training or information disseminated

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/ other key information
		3: the economic and social costs & benefits of overseas employment		
		4: specially designed training for women with a discussion on gender issues		
3	Have there been any reports that there is discrimination in the recruitment and hiring for overseas work?	1: Yes 2: No 9: NA		If yes, please describe briefly, e.g., media reports, social messaging; labour inspection reports, formal complaints
4	Are there data showing that more women experience discrimination??	1: Yes 2: No 9: NA		Please list reason/s for discrimination: sex/ gender, age, ethnic origin, educational level, language spoken, country of origin, etc.
5	Are men and women subject to illegal recruitment?	1: Yes 2: No 9: NA		Please list by name any laws and regulations that prohibit this.
6	If yes, is there data or information from supervisory sources like courts showing that illegal recruiters victimize more women than men?	1: Yes 2: No 9: NA		Please describe briefly



### Section III: Arrival and On-Site: Conditions of Work

			Use this space to give remarks/comments/ other critical information
No.	Question	Code	Please record your response here
1	Are there arrival orientation seminars conducted for new migrant workers?	1: Yes 2: No 9: NA	
2	If yes, do they include discussions on (Multiple responses)	1: migrant workers' rights 2: culture of the country 3: where to go for assistance when in distress 4: gender sensitivity 99: others	
3	Are the working conditions of migrant workers in accordance with the standards outlined in their work contracts?	1: Yes 2: No 9: NA	
4	Are migrant workers able to undergo training, including finance management, & upgrade their skills while working abroad?	1: Yes 2: No 9: NA	Please describe briefly
5	Do you have a record of how many men and women experience violations of their work contracts?	1: Yes 2: No 9: NA	Please explain briefly
6	Do migrant workers suffer the following: (Multiple responses)	1: underpayment of wages 2: unpaid overtime 3: unsafe workplaces 4: Inadequate food 5: debt bondage	Please specify other deprivations they might be facing  Please also explain briefly if there are indications that more women migrant workers face such conditions compared to men

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/ other critical information
		99: others (specify)		
7	Are migrant workers able to send money to their home country without difficulty?	1: Yes 2: No 9: NA		If no, please describe what sort of difficulties do they encounter. In your opinion, do women find it more difficult to send money than men?
8	Are there restrictions on the mobility of women migrant workers in certain countries?	1: Yes 2: No 9: NA		Please describe briefly
9	Are there data and/or reports of women migrant workers experiencing abuses, violence or sexual harassment in their work?	1: Yes 2: No 9: NA		Please describe briefly: what forms of abuse do women experience, such as rape, physical or emotional abuse, etc. Please cite data points (if any)

#### Section IV: Social Protection

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/ other critical information
1	Are there social security and safety nets for migrant workers in either country of origin or destination?	1: Yes 2: No 9: NA		Briefly describe the mechanism for extending social protection to migrant workers
2	If yes, what social safety nets are available for women and men?			Please describe briefly
3	Are social security benefits excluded in the contracts of women migrant workers?	1: Yes 2: No 9: NA		In your opinion, do women migrant workers get dismissed from work due to pregnancy?

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/ other critical information
4	In case of violence & harassment against migrant workers (e.g., rape, sexual harassment, physical or emotional abuse), do they get help from the country of origin's government? (e.g., labour attaché, welfare attaché, consulate, emergency contact numbers or other reporting mechanisms?)	1: Yes 2: No 9: NA		If yes, explain briefly what assistance.  In your experience, do they get any help from the destination country.

## Section V: Migration Governance

No.	Question	Code	Please record your response here	Use this space to give remarks/comments/ other key information
1	Does your country have a specific migration employment policy and a specialized entity/unit to deliver that policy?	1: Yes 2: No 9: NA		Please explain briefly
2	If yes, do policy measures consider the specific vulnerability of adolescent girls and women in migration for work?	1: Yes 2: No 9: NA		Please describe briefly
3	Does the policy provide measures for cultural, social and economic integration of migrant workers in the destination countries?	1: Yes 2: No 9: NA		
4	Does your country have programmes to create work opportunities/ reintegration into the labour market for migrant workers on their return?	1: Yes 2: No 9: NA		Explain briefly—what type of support does your government provide for migrants' reintegration (e.g., finance management, livelihood and entrepreneurship etc.)

## Section VI: Implementation of Migration for Work Laws and Policies

No.	Question	Code	Please record your response here	Use this space to give remarks/ comments/other key information
1	Given your response to Q1 of Section V, is your country's labour migration policy working well for women migrant workers?	1: Yes 2: No 9: NA		
2	If "no", based on which of the reasons do you make that assessment (see codes) <i>(Multiple responses)</i>	1: the policy/law itself is weak? 2: little knowledge of the policy/law among employers? 3: little knowledge of the policy/law among women workers and workers' organizations? 4: the policy/law is generally known, but the administrative requirements are too cumbersome? 5: the policy/law are generally known, but enforcement is weak? 6: because enforcement is weak, illegal migration agents and unscrupulous recruiters for overseas work are continuing/ increasing? 7: poor coordination between various government departments? 99: other reasons (specify)?		Several reasons are possible. Please describe briefly

No.	Question	Code	Please record your response here	Use this space to give remarks/ comments/other key information
3	Does your country have one over-arching coordination body that meets to assess labour migration policy?	1: Yes 2: No 9: NA		
4	If “Yes”, which of the following measures apply to it (see codes): (Multiple responses)	1: regular - at least once annually - meetings? 2: chaired by senior policymakers from relevant departments/ agencies/ministries? 3: agenda that includes the specific concerns of women migrant workers? 4: are reports from the meetings tabled with parliament or a parliamentary committee? 5: are such reports available for public scrutiny? 6: is there a mandate to engage with ASEAN entities, e.g., ASEAN Committee on Migrant Workers (ACMW), ASEAN Forum for Migrant Labour (AFML), ASEAN Labour Ministers Meeting (SLOM) and ASEAN Committee on Women (ACW)?		Please describe briefly
5	If there is engagement with such ASEAN entities, please list the MAIN contact and explain the tracking methodology for recording the results of this coordination			Please describe



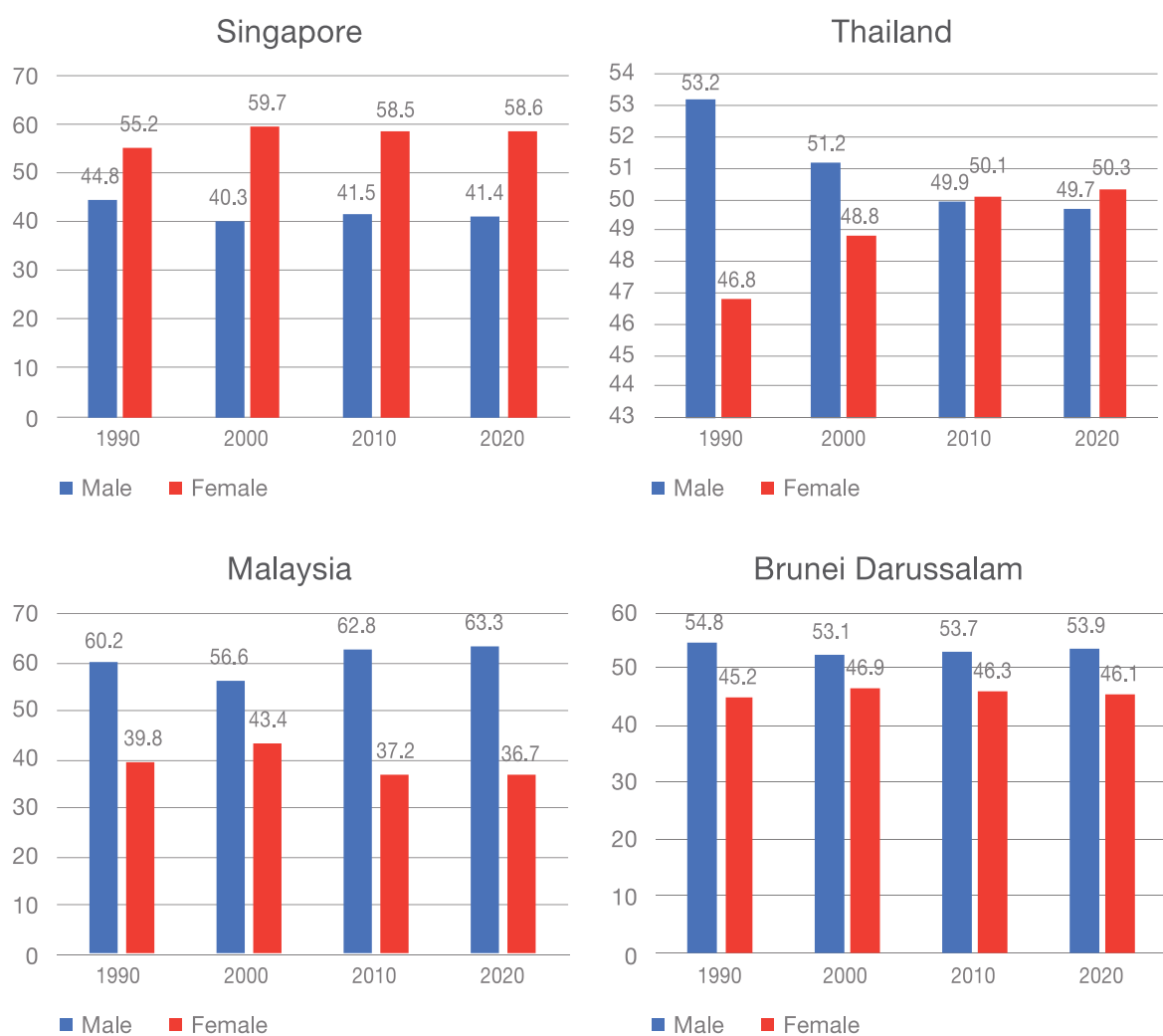
No.	Question	Code	Please record your response here	Use this space to give remarks/ comments/other key information
6	OPEN QUESTION: Please indicate what improvements you would like to see in your country's labour migration policy/laws to ensure decent work for women migrant workers?			e.g., more training for labour officers? More budget? More public campaigns on the benefits/ downside for women who might wish to migrate for work abroad?

## Section VII: Impact of COVID-19 on Migrants

No.	Question	Code	Please record your response here	Use this space to give remarks/ comments/other key information
1	Do you think migrants are more exposed to the corona virus due to their living and working conditions?	1: Yes 2: No 9: NA		Please describe briefly—what other challenges do migrant workers face due to COVID-related restrictions
2	Is there data available on the incidence rate and death rate of migrants (due to COVID infection)?	1: Yes 2: No 9: NA		Please give links to such data
3	Are the working conditions of migrant workers in accordance with the standards outlined in their work contracts?	1: Yes 2: No 9: NA		Please explain if it is especially true for those working in low-paid and informal jobs
4	What measures were taken by the destination country to ensure the medical safety of migrant workers? (See codes) (Multiple responses)	1: free PPE 2: written medical information in a language that migrant workers understand 99: others (specify)		Please describe, if possible, with an example of the brochures distributed to employers for their migrant workers
5	Do you have statistics on the total number of migrants who left their jobs and returned to their countries of origin due to the pandemic?	1: Yes 2: No 9: NA		Please give descriptions and links to such data

## ANNEX II. ADDITIONAL DATA ON MIGRANTS AND MIGRANT WORKER IN ASEAN

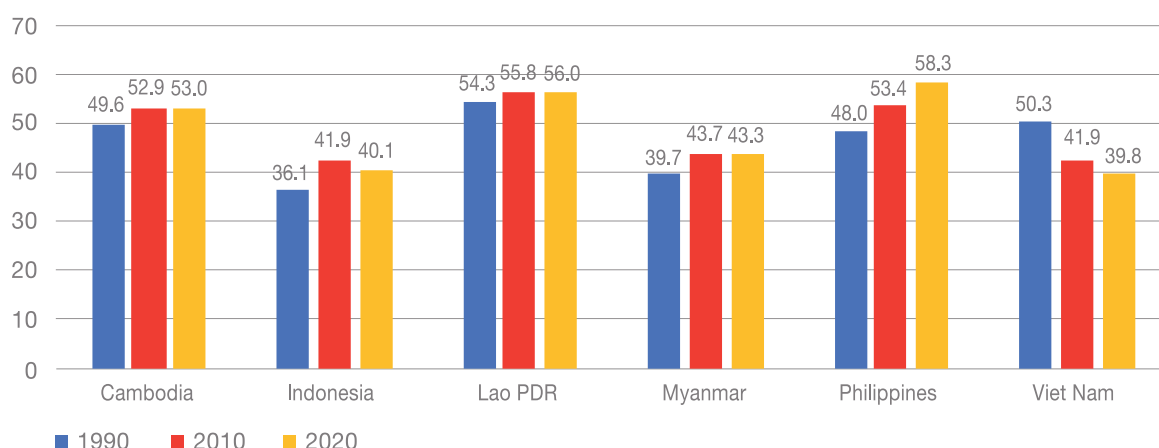
**Annex Figure 1.** Gender composition of intra-ASEAN migrants in net destination countries (%)



**Source:** UN DESA 2020.

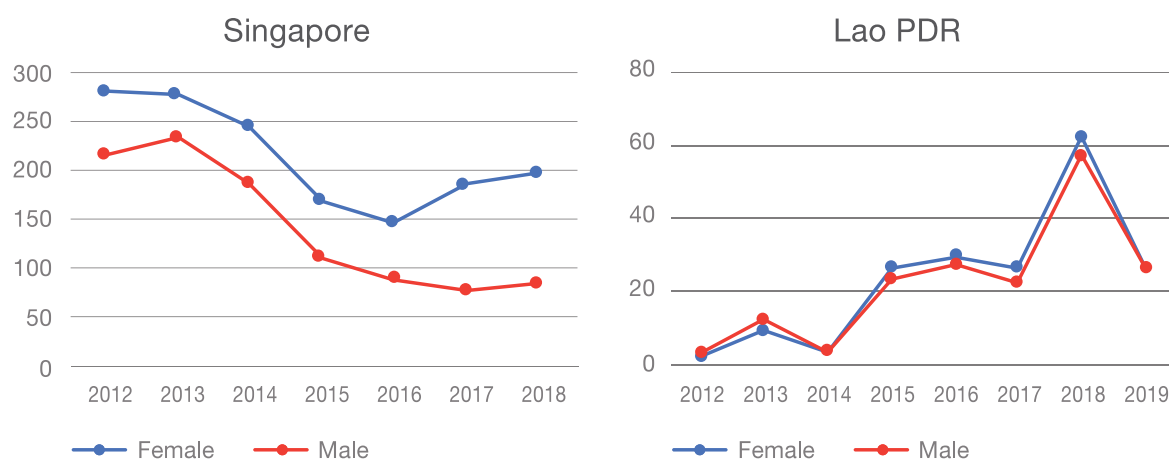
**Note:** Data refers to migrant stocks.

**Annex Figure 2.** Female share of intra-ASEAN migrants from net origin countries (%)



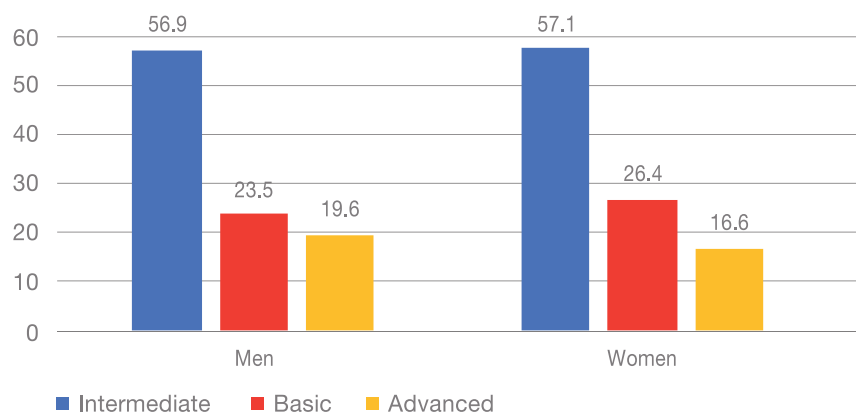
Source: UN DESA 2020.

**Annex Figure 3.** Trends in outflows of Indonesian and Lao nationals for employment abroad, by sex (in thousands)



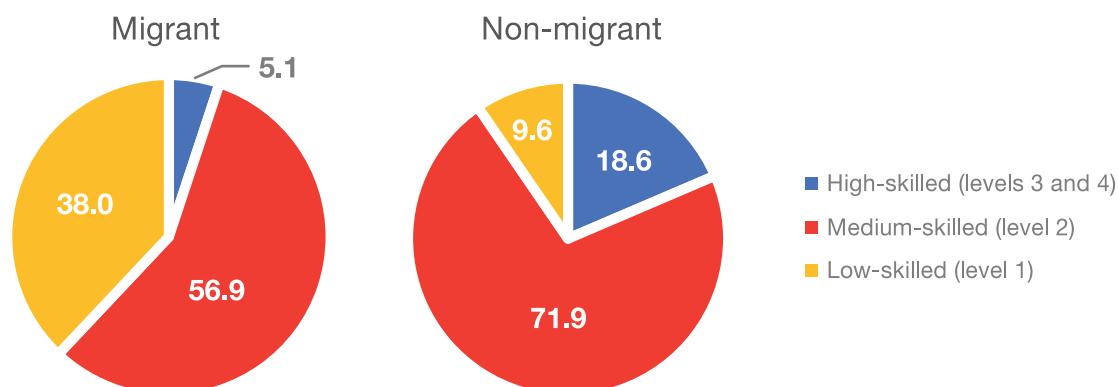
Source: ILOSTAT 2020.

**Annex Figure 4.** Brunei Darussalam: Educational attainment of migrant workers (2020)



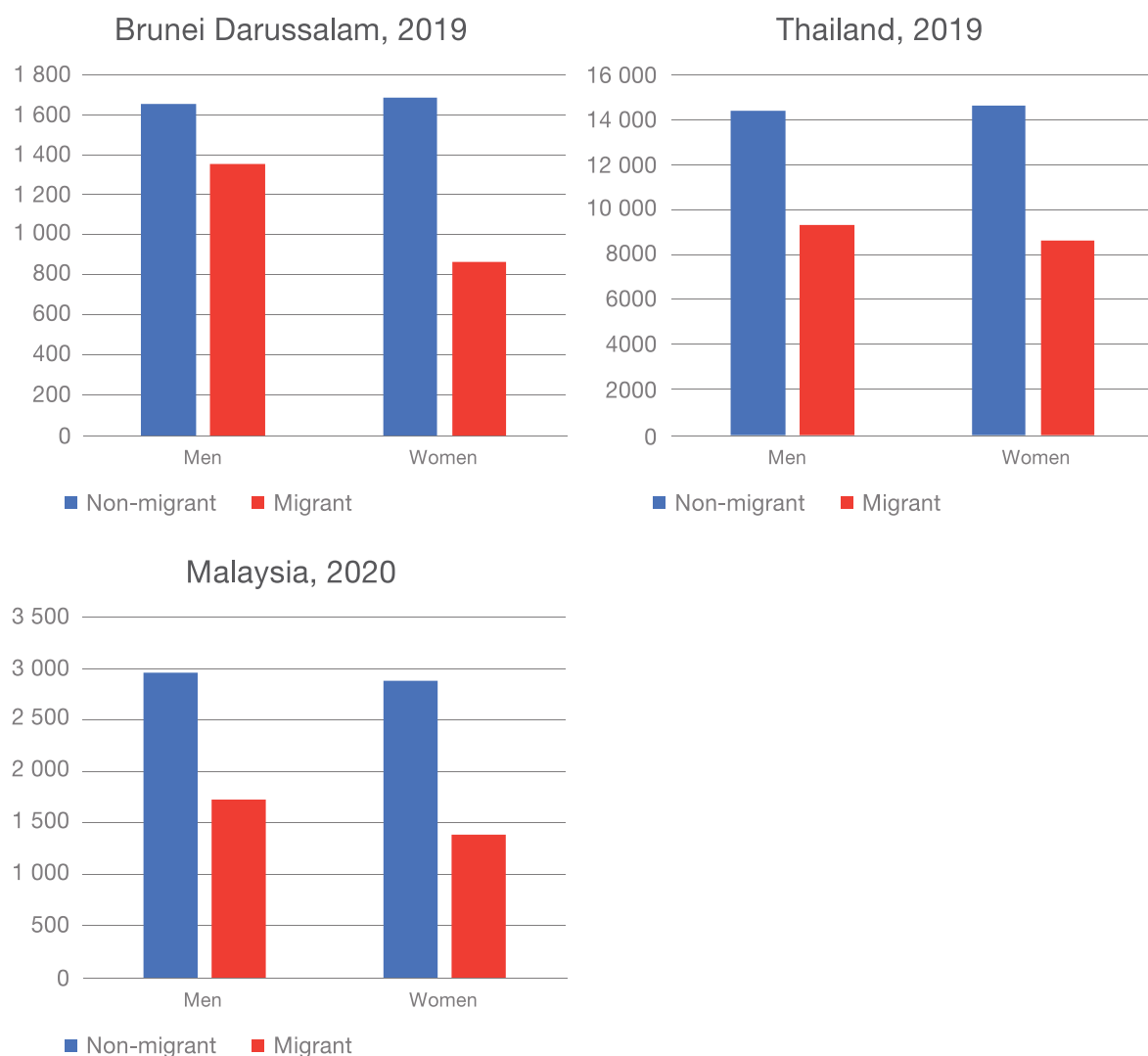
**Notes:** **Basic education** is defined as International Standard Classification of Education (ISCED 2011) groups 0 (less than primary education), 1 (primary education), and 2 (lower secondary education). **Intermediate education** is defined as ISCED groups 3 (upper secondary education), and 4 (post-secondary non-tertiary education). **Advanced education** is defined as ISCED groups 5 (short-cycle tertiary education), 6 (bachelor's or equivalent levels), 7 (master's or equivalent level), and 8 (doctoral or equivalent level). Source: ILOSTAT, ILMS database.

**Annex Figure 5.** Employment of migrants and non-migrants by occupational skill level<sup>1</sup> in ASEAN countries of destination (%), 2019



<sup>1</sup> Occupational skills are coded with the following three groups: Highly-skilled (ISCO categories 1, 2 and 3); Medium-skilled (ISCO categories 4 and 5, 6, 7 and 8; and Low-skilled (ISCO category 9). Note: This combines data for three destination countries: Malaysia, Thailand and Brunei Darussalam. Sex-disaggregated data for the occupational skill level of migrant workers is not available for Singapore. Source: ILOSTAT 2020.

**Annex Figure 6.** Mean nominal monthly earnings of migrants and non-migrants in ASEAN destination countries, by gender (national currency)



**Note:** Data on wage levels for Singapore is not available.

**Source:** ILOSTAT 2020.



**Annex Table 1.** Selected labour market indicators for migrants and non-migrants in ASEAN net countries of destination

Country	Brunei Darussalam			Malaysia			Singapore			Thailand		
Reference year	2019			2019			2019			2019		
	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women
Number (in thousands)												
Working age population	369.8	199.2	170.7	22 685.2	11 757	10 928.2	n/a	n/a	n/a	56 678.9	27 346.6	29 332.3
– Non-migrants	264.8	132.7	132.1	19 956.8	10 061.8	9 895	n/a	n/a	n/a	55 400.9	26 650.1	28 750.7
– Migrants	105	66.5	38.5	2 728.4	1 695.2	1 033.2	n/a	n/a	n/a	12 78.1	696.5	581.6
Labour force	238.2	144.5	93.7	15 581.6	9 503.5	6 078.1	n/a	n/a	n/a	37 854.4	20 627	17 227.4
– Non-migrants	155.9	84.8	71.1	13 305.5	7 946.4	5 359.3	n/a	n/a	n/a	36 749.2	19 987.5	16 761.7
– Migrants	82.3	59.7	22.6	2 276	1 557.2	718.8	n/a	n/a	n/a	1 105.2	639.5	465.7
Employed	221.7	135.8	85.9	15 073.4	9 202.4	5 871	3 784.3	n/a	n/a	37 482.9	20 408.2	17 074.7
– Non-migrants	139.8	76.2	63.6	12 836.8	7 672.6	5 164.3	2 356.8	n/a	n/a	36 380.3	19 769.9	16 610.4
– Migrants	81.9	59.6	22.3	2 236.6	1 529.9	706.7	1 427.4	n/a	n/a	1 102.6	638.3	464.3
Percentage (%)												
Labour force participation rate	64.4	72.5	54.9	68.7	80.8	55.6	n/a	n/a	n/a	66.8	75.4	58.7
– Non-migrants	58.9	63.9	53.8	66.7	79.0	54.2	n/a	n/a	n/a	66.3	75.0	58.3
– Migrants	78.4	89.8	58.7	83.4	91.9	69.6	n/a	n/a	n/a	86.5	91.8	80.1
Employment-to-population ratio	60.0	68.2	50.3	66.4	78.3	53.7	n/a	n/a	n/a	66.1	74.6	58.2
– Non-migrants	52.8	57.4	48.1	64.3	76.3	52.2	n/a	n/a	n/a	65.7	74.2	57.8
– Migrants	78.0	89.6	57.9	82.0	90.2	68.4	n/a	n/a	n/a	86.3	91.6	79.8
Migrant share in (%)												
Working-age population	28.4	33.4	22.6	12.0	14.4	9.5	n/a	n/a	n/a	2.3	2.5	2.0
Labour force	34.6	41.3	24.1	14.6	16.4	11.8	n/a	n/a	n/a	2.9	3.1	2.7
Employed	36.9	43.9	26.0	14.8	16.6	12.0	n/a	n/a	n/a	2.9	3.1	2.7

n/a = not available.

**Notes: Brunei Darussalam:** International migration defined based on birthplace. **Malaysia:** International migration defined based on citizenship. **Singapore:** International migration defined based on citizenship. Thailand: International migration defined based on birthplace.

**Source:** ILOSTAT 2020;

## ANNEX III. ASEAN MEMBER STATE RATIFICATIONS AND CONCLUDING OBSERVATIONS OF UN TREATY BODIES

ASEAN Member State	ICMW ratification and Concluding Observations	CEDAW ratification and Concluding Observations	ICMW and CEDAW recommended actions (extracts) on: a) migrant worker comments; b) violence against women and sexual harassment
Brunei Darussalam	n/a	Ratified: 2006  Concluding Observations: 2014	Urgently adopt comprehensive legislation to combat discrimination and sexual harassment in the workplace.  Adopt specific legislation to criminalize all forms of violence against women, including women migrant workers, women domestic workers and stateless women.
Cambodia	(signed 2004)	Ratified: 1992  Concluding Observations: 2019	Strengthen efforts to protect the rights of Cambodian women who migrate abroad.  Amend the labour law so that domestic workers enjoy the same labour protection as workers in other sectors.  Adopt and implement comprehensive legislation to prevent and respond to violence and harassment, including sexual harassment, in the workplace, and establish an independent complaints mechanism to ensure that victims have adequate access to redress and that perpetrators are held accountable.
Indonesia	Ratified: 2012  Concluding Observations: 2017	Ratified: 1984  Concluding Observations: 2021	a) Adopt a comprehensive law on migration and take the steps necessary to ensure its national laws, including Law No. 6/2011 on Immigration and the draft amendment to Law No. 39/2004 on the Placement and Protection of Indonesian Overseas Workers, accord with international norms.  Amend the Constitution and national legislation to prohibit direct and indirect discrimination on all the grounds enumerated in the ICMW on all aspects of employment and covering all workers.  Ensure that domestic workers are included under the protections afforded to other workers under Law No. 13/2003 on Manpower.  Strengthen the welfare services and consular assistance provided to Indonesian migrant workers, including by having female officers to deal with cases of sexual abuse.  Adopt a “no placement fee” policy for persons intending to work abroad.  b) Without further delay, (i) adopt the draft law on domestic workers which provides equal working conditions as Law No. 13/2003 on Manpower; (ii) ratify ILO Convention No. 189 on domestic workers; and (iii) implement Law No. 18/2017.  Adopt and implement comprehensive legislation to prevent and respond to gender-based violence and harassment, including sexual harassment in the workplace, and establish an independent complaints mechanism to ensure that victims have effective access to redress and that perpetrators are held accountable, including by prosecuting and punishing those responsible and by ensuring access to healthcare and essential services, including for women migrant workers, without fear of arrest or deportation.

Expedite, as a matter of priority and within a clear timeframe, the adoption of the Sexual Violence Law and ensure the effective participation of women at all stages.

Ensure that all perpetrators of gender-based violence against women are prosecuted and adequately punished by a competent court, that victims and witnesses receive protection and that victims are adequately compensated.

Lao PDR	n/a	Ratified: 1981 Concluding Observations: 2018	<p>Adopt a comprehensive gender-sensitive migration policy to protect Lao migrant workers abroad and assist the reintegration of returning women migrant workers through the provision of income-generating opportunities.</p> <p>Develop and implement regulations concerning employment agencies for migrant workers, with sanctions for non-compliance, to ensure that migrant women are protected from exploitation.</p> <p>Remove barriers that prevent migrant women from gaining access to social protection, including by modifying the eligibility requirements regarding documentation, minimum qualifying periods and sectors covered.</p> <p>Ensure that women victims of gender-based violence have direct access to legal remedies and victim and witness assistance and protection programmes, and that village mediation units do not constitute an obstacle to women's access to formal justice, in particular in cases of domestic and sexual violence.</p> <p>Amend article 83 of the Labour Law to define sexual harassment and impose sanctions for perpetrators, and adopt measures to prevent sexual harassment at work, including by developing a system for filing complaints.</p>
Malaysia	n/a	Ratified: 1995 Concluding Observations: 2018	<p>Ensure that migrant women employed as domestic workers are guaranteed the same level of protection and benefits as other migrant workers in law and in practice and that they have access to effective remedies and redress against employer abuse, and repeal the policy of banning these women workers from becoming pregnant.</p> <p>Adopt a comprehensive law on sexual harassment that enables complainants to seek redress without the expenditure in time and money and without the public exposure associated with going to court.</p>
Myanmar	n/a	Ratified: 1997 Concluding Observations: 2019	<p>Adopt a definition of violence against women and rape in accordance with international standards. Ensure civilian courts have jurisdiction over the military for violence against women cases.</p> <p>Adopt the delayed draft law on violence against women.</p>
Philippines	Ratified: 1995 Concluding Observations: 2014	Ratified: 1981 Concluding Observations: 2016	<p>a) Ensure that the Shared Government Information System on Migration receives adequate human and financial resources and collaborates with the country's embassies and consulates to compile data.</p> <p>Adopt a "no placement fee" policy for persons intending to work abroad.</p> <p>Review the Labor Code to allow free transfer of remittances by Filipino workers abroad.</p> <p>b) Strengthen the regulation and inspection of recruitment agencies for migrant workers and the sanctions applicable in case of breaches of relevant regulations.</p> <p>Investigate, prosecute and punish perpetrators of exploitation and abuse of women migrant workers, particularly domestic workers.</p>

Continue efforts to raise awareness among women migrant workers about their rights, and provide gender-responsive support to returning women migrant workers for their reintegration.

Adopt pending bills to expand the definition of sexual harassment to include peer sexual harassment and strengthen efforts to investigate and impose sanctions for sexual harassment in the workplace.

Singapore	n/a	Ratified: 1995 Concluding Observations: 2017	<p>Ensure that women migrant domestic workers are guaranteed the same level of protection and benefits as other workers regarding public holidays, maximum weekly working hours and regular days of rest, and extend the Employment Act to migrant domestic workers.</p> <p>Revise the criteria allowing women migrant workers to change employers, particularly those who have experienced exploitation and abuse, without requiring them to assist in investigations or be prosecution witnesses.</p> <p>Repeal the law requiring work permit holders, including migrant domestic workers, to undergo mandatory testing for pregnancy and sexually transmitted diseases and be deported on pregnancy grounds.</p> <p>Review obstacles to obtaining protection orders under the Protection from Harassment Act and ensure implementation of the Tripartite Advisory on Managing Workplace Harassment by all employers.</p>
Thailand	n/a	Ratified: 1985 Concluding Observations: 2017	<p>Strengthen efforts to protect women migrant workers from abusive and exploitative conditions, including by prosecuting and punishing those responsible and providing effective channels for seeking protection and redress.</p> <p>Increase the availability, accessibility and quality of essential services and support to victims of gender-based violence, including legal assistance and appropriate healthcare services and psychosocial support.</p> <p>Ensure sexual harassment is prohibited by law including in the workplace. Develop a system for filing confidential complaints and ensuring effective access to redress.</p>
Viet Nam	n/a	Ratified: 1982 Concluding Observations: 2015	<p>Revise the Law on Vietnamese Guest Workers Working Abroad Under Contract (2007) to make it gender-sensitive and responsive to the specific needs of migrant women.</p> <p>Designate an agency responsible for the protection of migrants and ensure the regulation and monitoring of recruitment agencies.</p> <p>Adopt legislation for the protection of domestic workers and strengthen the inspection of workplaces, including private households.</p> <p>Encourage women to report cases of violence and abuse by destigmatizing victims, raising awareness about the criminal nature of such acts, and ensuring that all reported cases are effectively investigated and that perpetrators are prosecuted and adequately punished.</p>

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