



The 8th ASEAN Forum on Migrant Labour (AFML): Labour Inspection for the Protection of the Rights of Migrant Workers

Exploring the Use of Labour Inspection to Ensure
Minimum Employment Rights in the ASEAN
Workplace

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FOREWORD

International labour migration has acted as an engine of global economic and social development, and it has gained increased attention in the global agenda. Aided by the international development community, both countries of origin and destination are fast recognizing the various macro and microlevel benefits of international labour migration, and the crucial role each of them play in ensuring effective labour migration management. Likewise, the ASEAN Member States are aware of the positive impacts of migration and have been striving to reap all its benefits.

However, despite the various efforts that have been made, many challenges are still preventing the optimal realization of the benefits from migration. In the ASEAN region, the nature of these challenges is such that it often becomes difficult to ensure the protection and promotion of the rights of migrant workers, and this leads to dilemmas in ensuring decent working conditions. In this regard, the significance of labour inspections for ASEAN Member States has become widely recognized in recent years.

The IOM has been supporting the ASEAN Forum on Migrant Labour since its inception, together with the ASEAN Secretariat, Task Force on ASEAN Migrant Workers, ILO, and UN Woman. IOM's contribution has not been limited to only technical contributions to ASEAN nations, but it has also worked to maximize stakeholders' engagement. The IOM's labour migration programmes are designed to support ASEAN in implementing recommendations made at the ASEAN Forum, as well as the ASEAN Labour Ministers' Workplan.

Exploring the Use of Labour Inspection to Ensure Minimum Employment Rights in the ASEAN Workplace, Background Paper for the 8th ASEAN Forum on Migrant Labour (AFML) looks at the state of labour inspections in the ASEAN Member States in the light of the ratification of international labour standards and conventions. It examines the need for labour inspections in ASEAN, the challenges faced, good practices observed, and some recommendations to inform the discussions at the 8th ASEAN Forum on Migrant Labour scheduled to take place between 26 and 27 October 2015. It represents the result of the work done by Mr Sinapan Samydorai, the Convenor–Consultant for the Task Force on ASEAN Migrant Workers, with technical comments and relevant information from a number of officials from UN-Women, the International Labour Organization, and the International Organization for Migration.

It is our hope that this paper will be fruitful in leading to constructive and goal-oriented discussions at the 8th ASEAN Forum, and will support ASEAN Member States to better manage labour migration through the implementation of appropriate and adequate labour inspection policies and mechanisms.



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EXECUTIVE SUMMARY

In 2015, the eighth ASEAN Forum on Migrant Labour (AFML) will be hosted by the Government of Malaysia as the ASEAN Chair, on 26-27 October 2015, in Kuala Lumpur, Malaysia. This Background Paper provides information to the 8th AFML participants and other stakeholders on “Labour Inspections to Ensure Workplaces Provide Minimum Employment Rights within ASEAN”. This will enable the 8th AFML participants to develop relevant recommendations to better implement “labour inspection” procedures and thus improve minimum employment rights and ensure decent work opportunities inside ASEAN. The ASEAN Economic Community (AEC) is the key initiative in advancing the goal of economic integration by the end of 2015. However, ASEAN members have to develop their capacity to provide better protection for migrant workers across all sectors by ensuring minimum employment rights. Thus, this 8th AFML is a very important forum for the discussion and recommendation of a mechanism to ensure minimum employment rights.

Despite the various challenges faced due to the diversity in levels of economic development and internal capacity to implement the ASEAN Declaration on the Protection and Promotion of the Rights of the migrant workers, there is a broad consensus shared among all ASEAN members to implement progressive labour standards and to promote decent work. Labour inspections are an essential component, and they ensure minimum employment standards and decent work. If implemented effectively, it should contribute to the overall efforts of ASEAN Member States in fostering an environment that creates opportunities for all migrant workers to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

This background paper presents existing practices of labour inspections in ASEAN. There are some good practices that are already in place or were implemented in recent years to bolster the compliance of labour laws. However, despite these commendable efforts, issues and challenges continue to exist, especially in regards to protecting minimum employment rights applicable to migrant workers. This paper serves to vitalize discussions for the 8th ASEAN Forum. The paper proposes recommendations for the 8th AFML participants as food for thought. The IOM and the Task Force on ASEAN Migrant Workers believe that further collaboration is necessary to improve the current state of labour inspections relating to the protection of the rights of migrant workers.

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ACRONYMS AND ABBREVIATIONS

ACMW	ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers
AEC	ASEAN Economic Community
ACE	ASEAN Confederation of Employers
AFML	ASEAN Forum on Migrant Labour
AMS	ASEAN Member States
ASEAN	Association of Southeast Asian Nations
ASETUC	ASEAN Services Employees Trade Union Council
BNP2TKI	National Board for the Placement and Protection of Indonesian Overseas Workers (Badan Nasional Penempatan Dan Perlindungan Tenaga Kerja Indonesia)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DLPW	Department of Labour Protection and Welfare, Thailand
DLPWOs	District Labour Protection and Welfare Offices, Thailand
DOLAB	Department of Overseas Labour
DOLE	Department of Labour and Employment, Philippines
DOLISA	Departments of Labour, Invalids and Social Affairs, Viet Nam
IALI	International Association of Labour Inspection
ILC	International Labour Conference
ILO	International Labour Organization
IOM	International Organization for Migration
LSCW	Legal Support for Children and Women
MOLES	Ministry of Labour, Employment and Social Security, Myanmar
MOLISA	Ministry of Labour, Invalids and Social Affairs, Viet Nam
MoLSW	Ministry of Labour and Social Welfare, Lao People's Democratic Republic
MoLVT	Ministry of Labour and Vocational Training, Cambodia
MOM	Ministry of Manpower
MOU	Memorandum of Understanding
MRC	Migrant Workers' Resource Centre
MWC	Migrant Worker's Centre
NGO	Non-Government Organization

OSH	Occupational Safety and Health
OSSC	One Stop Service Centre
PLPWOs	Provincial Labour Protection and Welfare Offices, Thailand
POEA	Philippine Overseas Employment Administration
PRA	Private Recruitment Agencies
SGA	Security Guard Agency
SLOM	Senior Labour Officials Meeting
TAP	Employees Trust Fund (Tabung Amanah Pekerja)
TFAMW	Task Force for ASEAN Migrant Workers
UN	United Nations
UNIFEM	United Nations Development Fund for Women
VAMAS	Vietnam Association of Manpower Supply
VMS	Vessel Monitoring System

INTRODUCTION

1. The Association of South-East Asian Nations (ASEAN) will evolve into a single market and production base when the ASEAN Economic Community (AEC) becomes operational towards the end of 2015. The AEC is expected to facilitate a freer flow of trade, investment, services and labour. Supported by a sizeable labour force of 300 million workers, ASEAN's Gross Domestic Product is worth USD 2.4 trillion in 2013 (ASEAN, 2014). ASEAN leaders hope that the AEC would further boost the growth of the regional economy, while workers across all sectors are concerned if the AEC will increase more opportunities for them to attain decent work.
2. Managing the massive flows of migrant labour is an important element and it cannot be ignored. In parallel with ASEAN's focus on the AEC, ASEAN officials have been organizing the annual ASEAN Forum on Migrant Labour (AFML) since 2009 (ILO, 2014:2-7). After seven years, this forum has evolved into a sustainable platform for governments, employers, workers and civil society organizations (CSOs) to discuss measures to improve the protection of migrant workers and enhance regional labour mobility.
3. The AFML is a notable platform for social dialogue among all stakeholders. Through this inclusive and progressive platform, guided by applicable UN human rights standards and International Core Labour Standards, ASEAN is working towards the establishment of a common regional basis for the fair treatment of all workers and their rights in the workplace.
4. The theme for this year's 8th ASEAN Forum on Migrant Labour is ***"Empowering the ASEAN Community through the Protection and Promotion of the Rights of Migrant Workers"***. It is a very relevant theme as the region gears towards the end of 2015. The forum will discuss the following sub-themes to develop recommendations for implementation:
 - a. Occupational safety and health to foster a safe and healthy working environment
 - b. Labour inspection to ensure workplaces provide minimum employment rights
5. This paper focuses on the second thematic issue, theme (a), and "Labour inspection to ensure workplaces provide minimum employment rights".

"MINIMUM EMPLOYMENT RIGHTS" AND THE 2007 ASEAN DECLARATION ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS

6. ASEAN took a major step forward when the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (hereafter, the Cebu Declaration) was adopted in 2007. The ASEAN Committee on the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) was subsequently established in 2008 to bring forward ASEAN's commitments to protect the rights of migrant workers (ILO, 2014:2).
7. The Cebu Declaration is the first major, and perhaps the most comprehensive, policy commitment on migrant workers that ASEAN has ever developed. It serves to promote the potential and dignity of migrant workers in accordance with the laws, regulations, and policies of respective ASEAN Member States. It also defines the obligations of the sending and receiving States, and the commitments of the entire ASEAN community in protecting and promoting the rights of migrant workers (ILO, 2013:2).
8. The assurance of "minimum employment standards" for migrant workers and their protection can be drawn from the commitments made by ASEAN in the Cebu Declaration, where it clearly establishes ASEAN's intent to promote the development of decent work for all, including the decent treatment of workers. This is found in Article 8 of the Cebu Declaration which spells out the obligation of receiving States towards the: "Promotion of fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers."

9. Receiving States also agree to enhance their system of labour relations in order to allow migrant workers to access “fair and appropriate” employment protection (particularly to the legal and judicial system) and also to consular functions of their own embassies, especially in regards to issues such as the fair payment of wages, access to decent work, and accommodation. At the same time, sending States are obliged to: “Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, the regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies”(Cebu Declaration, Article 14).

THE ASEAN FORUM ON MIGRANT LABOUR (AFML)

10. The AFML was conceived of for the purpose of being the primary platform in formulating concrete and practical measures to implement the Cebu Declaration. The organizing of the forum is supported by the ASEAN Member States represented by its presiding Chair, the ASEAN Secretariat, the International Labour Organization (ILO), and the International Organization for Migration (IOM), UN Women, and the Task Force on ASEAN Migrant Workers (TFAMW).
11. Participants at the forum are comprised of tripartite representatives from ASEAN Member States (governments, national trade unions and employers associations), and civil society representatives (CSOs). The unique feature is that CSOs (organized via the TFAMW) play a very active role in the process.
12. The past AFMLs’ thematic discussions on the implementation of the ASEAN Declaration on the Protection and Promotion of the rights of migrant workers were:
 - a. Second AFML: “ASEAN Declaration on migrant workers: Achieving its Commitment”;
 - b. Third AFML: “Enhancing awareness and information services to protect the rights of migrant workers”;
 - c. Fourth AFML: “Development of a public campaign to promote understanding, rights and dignity of migrant workers in countries of destination: Return and reintegration and development of sustainable alternatives in countries of origin”;
 - d. Fifth AFML: “The protection and promotion of the rights of migrant workers: Towards effective recruitment practices and regulations”;
 - e. Sixth AFML: “Enhancing policy and protection of migrant workers through data sharing, and adequate access to the legal and judicial system during employment, including effective complaints mechanisms”;
 - f. Seventh AFML: “Towards the ASEAN Community by 2015 with enhanced measures to protect and promote the rights of migrant workers; *Promotion of fair and appropriate employment protection, payment of wages and adequate access to decent working and living conditions for migrant workers; and “Coordination and role of key stakeholders to set up and implement policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation, protection abroad, and return and reintegration.”*
13. Relevant points that were raised at the previous AFML forum on labour inspections were highlighted in Table 3. These points are included in a set of conclusions and action points that were agreed to and adopted by all the stakeholder representatives attending the forums. Progress on the implementation of the recommendations is measured through voluntary reporting of achievements by the ASEAN Member States, with the results being assessed for the development and implementation of good practices. Periodically, The ILO compiles, publishes and disseminates these results.

INTERNATIONAL STANDARDS ON LABOUR INSPECTION

14. In Philadelphia, on 10 May 1944, the International Labour Conference declared that “labour is not a commodity” and that “poverty anywhere constitutes a danger to prosperity everywhere.”¹ Leading on from that, three years later, the international standards for labour inspections were accordingly codified in the ILO Convention No. 81 on Labour Inspection in Industry and Commerce (1947), and later, Convention No. 129 on Labour Inspection in Agriculture (1969). An additional Protocol of 1995 (P081) to the 1947 labour inspection Convention, covering all work activities taking place in workplaces that are not considered as industrial or commercial, was also adopted. In addition, the ILO Maritime Labour Convention (MLC) adopted in 2006 had strong provisions for labour inspections in the seafaring sector. It stipulates inspections to be conducted by competent authorities in accordance with Part A of the Code.²
15. In general, Convention No. 81 is one of the most widely ratified ILO Conventions, and together with the accompanying Recommendation No. 81, serves as the basic international rule on how labour inspections should be conducted. They also function as a model for ratifying States to harmonize national laws and regulations, taking into account varying levels of economic development, political and administrative support, and differing national priorities, in the construction of their respective inspection systems (ILO, 2012a). Altogether these conventions define, in all the applicable sectors, the “functions, duties and responsibilities of labour inspection systems, the requirements for staff recruitment, the actions of inspectors, enforcement powers, and the obligations of inspectors in relation to ethics and the reporting of activities; as well as the reporting of accidents and diseases” (ILO, 2012a:8).
16. According to the ILO (2010:8), labour inspections are a public function of labour administration, which ensures the application of labour legislation in the workplace. It is the most important interventionist instrument that a State can use to “design, stimulate and contribute to the development of a culture of prevention” in all aspects of “industrial relations, wages, general conditions of work, occupational safety and health, and issues related to employment and social security.” In this respect, the vulnerability of migrant workers often arises from their irregular status, which hampers their right to access employment protection and social security support.

LABOUR INSPECTION AND MIGRANT WORKERS

17. The link between labour inspection and migration in the context of intensifying globalization, was only clearly identified as a key determinant to regulating labour migration and ensuring decent work for all workers in 2005 (Taran, 2005). Labour inspection and migration then became a new focus. Therefore, given that ASEAN only started discussing the management of migrant labour flow in 2007, it is not surprising that ASEAN has yet to examine this linkage in a comprehensive manner.
18. The challenges in protecting migrant workers through labour inspections are manifold and relate to the situations and sub-standard conditions under which they exist. The ILO (2012b) identified a number of these factors. In particular, due to many migrant workers having little or no knowledge of legal standards, poor understanding of the prevalent language in a host country, and with the majority of them having little formal training or education, they face difficulties upholding claims for wages, especially if the contracts issued to them are informal. The use of outsourcing and sub-contracting also makes it difficult for labour inspectors – either through proactive education and advice, or through issuing sanctions – to ensure that all employers comply with labour laws. One very important challenge lies in the fact that for a variety of reasons, labour inspectors are

1 See ILO Constitution, Annex. Available at www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration

2 “The Convention comprises three different but related parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Code contains the details for the implementation of the Regulations; it comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).” See Explanatory Note to the Regulations and Code of the Maritime Labour Convention. Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLC_N1

increasingly obliged to conduct immigration enforcement activities as part of their workplace inspection agenda. This can intimidate migrant workers, especially those with an irregular status, and thus discourage them from disclosing any exploitative conditions they may be facing (Abella, Gächter and Tschank, 2014: 34).

THE GENERAL SITUATION OF MIGRANT WORKERS IN ASEAN

19. More than half of all the workers in ASEAN are employed in the informal economy. Recent data indicates that 58.8 per cent of ASEAN workers (179 million) were working in vulnerable employment, compared to 48 per cent of the world's workers (ILO-ADB, 2014). Vulnerable employment often entails less formal arrangements, inadequate working conditions and a lack of social protection. These are often characteristics of work in the informal sector. Workers in these situations have limited prospects, with few employable skills and are trapped in cycles of poverty that perpetuate the need to accept low-wage jobs (Mercer, 2008).
20. Women are more likely to be engaged in vulnerable employment than men. The ILO figures for 2013 indicate that women comprised over 60 per cent of this group of workers (ILO-ADB, 2014:10). These characteristics are reflected in the migrant labour flows in ASEAN, where the majority of intra-ASEAN migration involves semi-skilled and unskilled labour, with a substantial number of them found working in vulnerable sectors like construction, agriculture, fisheries and domestic work (UN-Women, 2013). Unofficial figures for ASEAN countries of origin indicate that a majority of migrant workers are women, and are mostly poor and young – aged between 20 and 39 – at the time of migration (UN-Women, 2013). This trend is driven largely by the demand for labour in the sectors of domestic work, hospitality and entertainment.

THE NEED FOR LABOUR INSPECTION COOPERATION IN ASEAN

21. Effective labour inspections are essential for economic and social progress, and for sustainable development. It contributes to the building of a sound business climate, productivity and growth through enhancing worker protection and fostering decent working conditions (ILO 2010).
22. In ASEAN, labour inspections should be seen as a progressive labour practice which is integral to guaranteeing the basic protection of workers. A 2008 report by Mercer, *Progressive Labour Practices to Enhance the Competitiveness of ASEAN*, pointed out that basic worker protections are the basis for the development of an advanced workforce within ASEAN (Mercer, 2008). Additionally, basic worker protections must also be gender mainstreamed, and minimum employment rights must be sensitive to the needs of women, as well as pay close attention to the needs of feminized labour sectors in ASEAN, such as domestic and manufacturing work.
23. The benefits of ensuring basic worker protections flows to all parties — workers, employers and governments. It provides a foundation for sustainable and enduring labour relations between parties, contributes to achieving greater labour productivity, and decreases turnover. This leads to the promotion of a stable labour force and facilitates productive social dialogue and the building of trust (Mercer, 2008:24). In addition, when decent working conditions and basic worker protections are gender mainstreamed, women's potential and contribution to productivity can be more fully realized. While gender inequality does not necessarily lead to economic losses, increased gender equality leads to increased productivity and economic growth.
24. However, due to a lack of resources and changing economic dynamics over the years, almost every country in ASEAN has seen a decrease in the number and frequency of inspections per worksite,³

3 Based on the assumption that the number of companies and worksites is growing with the increase in economic growth and number of workers within ASEAN. For example, inspections in Malaysia's manufacturing sector saw a decline by 45 per cent from 2006 to 2007, and by 75 per cent from 2007 to 2008 (See Devadason & Chan, 2014, page 10, available at www.researchgate.net/publication/228434568_Policies_and_Laws_Regulating_Migrant_Workers_in_Malaysia_A_Critical_Appraisal). Also refer to Recommendations section, paragraph 55 for estimated ratio of workers to inspectors.

while the number of worksites eligible for inspections continues to rise. This poses a challenge for ASEAN Member States (especially for receiving countries) in reducing the number of work accidents – including fatal accidents and those causing permanent incapacity – and other related problems. A 2011 study on occupational safety and health (OSH) for migrant workers was conducted in five Asia-Pacific countries, including Malaysia, Singapore and Thailand. The study indicated that while OSH laws are theoretically applicable to migrant workers, the reality is that they were not properly protected in the workplace, as observed by the higher rate of occupational injuries and fatalities in migrant reliant sectors (Lee, McGuinness and Kawakami, 2011). Furthermore, domestic workers were not equally protected under national OSH laws either.

25. The crucial need for labour inspections is often hampered by factors such as an inadequate number of labour inspectors. This is in part due to the insufficient application of the principles and rights enshrined in Conventions No. 81 and No. 129 (See Table1).

Table 1: ASEAN Member States’ ratification of ILO labour inspection conventions as of 2015

ASEAN Member States	ILO-C81	ILO-C129	ILO- P081	ILO- MLC	Total Ratified
Brunei Darussalam	YR	YR	YR	YR	0
Malaysia	1 Jul 1963	YR	YR	20 Aug 2013	2
Singapore	25 Oct 1965	YR	YR	15 Jun 2011	2
Thailand	YR	YR	YR	YR	0
Cambodia	YR	YR	YR	YR	0
Indonesia	29 Jan 2004	YR	YR	YR	1
Lao People’s Democratic Republic	YR	1962	YR	YR	0
Myanmar	YR	YR	YR	YR	0
Philippines	YR	YR	YR	20 Aug 2012	1
Viet Nam	3 Oct 1994	YR	YR	08 May 2013	2
Total Ratified	4	1	0	4	9

Sources: ILO NORMLEX Database (Accessed August 2015)

Note: YR denotes Yet-to Ratify

ILO-C81: Labour Inspection Convention, 1947

ILO-C129: Labour Inspection (Agriculture) Convention, 1969

ILO-P081: Protocol of 1995 to the 1947 Labour Inspection Convention, 1995

ILO-MLC: Maritime Labour Convention, 2006

26. Furthermore, the tasks faced by labour inspectors are becoming more complicated, and so are the dynamics affecting working conditions of workers at work sites. The challenge for labour inspectors lies in carefully probing into and revealing the places where decent working conditions are absent, and in ensuring that unscrupulous employers do not escape meeting their obligations under national laws protecting workers’ rights. In contemporary conditions, there are few labour inspectors equipped with the capacity to overcome these challenges.
27. Labour inspections are essential for the achievement of the Decent Work Agenda in ASEAN⁴, both in monitoring working conditions and in ensuring occupational health and safety of workplaces. Convention No. 81 is a priority because of its vital role in securing respect for other ILO Conventions, especially the core labour standards. There is a clear link with the core conventions, including the struggle against forced labour, child labour, workplace discrimination in reference to the difference in wages and conditions, abuses of rights to organize (unions and associations), and obstacles to collective bargaining (see Table 2).

4 “Firstly, it is important to bear in mind that all ASEAN Governments recognize that labour is a key asset of our nations. The idea of realizing decent work is essential for our labour to flourish, and I can tell you categorically that ASEAN Member Countries support the objectives of the decent work agenda,” said former ASEAN Secretary-General, H.E. Ong Keng Yong at the 14th ILO Asian Regional Meeting Busan, Republic of Korea, 29 August, 2006.

Table 2: Ratification of 1998 Declaration on Fundamental Principles and Rights at Work

ASEAN Member States	Freedom of Association		Forced Labour		Discrimination		Child Labour		No. of Core Conventions Ratified
	C87	C98	C29	C105	C100	C111	C138	C182	
Brunei Darussalam	-	-	-	-	-	-	2011	2008	2
Malaysia	-	1961	1957	Denounced 1990	1997	-	1997	2000	5
Singapore	-	1965	1965	Denounced 1979	2002	-	2005	2001	5
Thailand	-	-	1969	1969	1999	-	2004	2001	5
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006	8
Indonesia	1998	1957	1950	1999	1958	1999	1999	2000	8
Lao People's Democratic Republic	-	-	1964	-	2008	2008	2005	2005	5
Myanmar	1955	-	1955	-	-	-	-	2013	3
Philippines	1953	1953	2005	1960	1953	1960	1998	2000	8
Viet Nam	-	-	2007	-	1997	1997	2003	2000	5
ASEAN	4	5	9	4	8	5	9	10	54

Source: ILO NORMLEX Database (Accessed August 2015).

Note: C87 – Freedom of Association and Protection of the Right to Organize

C98 – Right to Organize and Collective Bargaining

C29 – Forced Labour

C105 – Abolition of Forced Labour

C100 – Equal Remuneration

C111 – Discrimination (Employment and Occupation)

C138 – Minimum Age

C182 – Worst Forms of Child Labour

28. Labour inspections require effective implementation as a pillar to strengthen decent work in the ASEAN Economic Community (AEC). Both Conventions No. 81 and No. 129 are essential to securing minimum decent living and working conditions to ensure that economic progress improves the existence of all the workers and their families, wherever they live and work. The big gap between the workers' needs and the means available indicates that the challenge is to achieve concrete implementation in practice.
29. The principles of prevention and protection are embodied in international labour standards. For the people to benefit from economic gains, labour legislations and inspection practices need to be put in place alongside adequate social protections to ensure that all workers can attain decent work. But ASEAN Member States' labour protection legislation and inspection practices need to keep pace with international labour standards to remain relevant, especially since all ASEAN economies are plugging into the global economic system.
30. Migrant workers, in particular, women, are often more vulnerable to exploitation than local workers (ILO, 2012a), and thus special efforts are necessary to ensure the protection of their rights. The terms and conditions under which migrant workers are employed need to conform to international labour and human rights standards. Prevention and protection measures must be taken to protect the rights of migrant workers before, during, and after returning to their countries of origin. It should be noted that although many migrant women are domestic workers, amongst the ASEAN countries, only the Philippines has covered domestic work under their labour law (Republic Act No. 10361, Domestic Workers Act enacted in 2013).
31. Effective labour inspections will guarantee compliance with the national law by both national and international companies. Legal compliance ensures a level playing field, with all businesses required to respect the same rules and standards of employment for their workers. Proper labour inspection practices helps companies to benchmark their compliance. The labour inspectorate mandate should include education and advisory assistance to businesses to meet their obligations.

32. Effective labour inspections are necessary to improve the standards of living in AMS. Labour inspectors play a key role in improving standards of living – a healthy, safe, fair, just, and harmonious working environment will not only reduce injuries and deaths, but also reduce costs, and increase the productivity of workers.
33. Effective labour inspections are essential for ensuring decent working conditions and ensuring that all basic entitlements are accorded under the labour law (in harmony with ILO Core Labour Standards) – appropriate conditions of employment including minimum pay rates, timely payment of salary, hours of work, overtime work, rest-days per week, annual leave, medical and maternity leave, social protections and other entitlements. The terms of employment (employment contract) have to be respectful of the labour law provisions and core labour standards.
34. Effective labour inspection also has to be better connected to the inspection of health and safety conditions, along with the inspection of general working conditions and housing facilities of workers, to ensure the outcome of a better working life and better living conditions for everyone in the workplace, including migrant workers.

LABOUR INSPECTION COOPERATION IN ASEAN (2011–2015)

35. The importance of labour inspections is recognized by ASEAN Labour Ministers, and is included in their Work Plan for the period 2010-2015 (ASEAN, 2010). One of the key concerns lies in “building the capacity for the inspection of labour law compliance” (ASEAN, 2010: 7 and 12).
36. Senior Labour Officials were tasked to follow up on the implementation of this strategic goal, which was subsequently adopted as part of the 2011-2015 Work Plan of the Senior Labour Officials Meeting’s Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN (SLOM-WG) (ASEAN, 2012).
37. A series of regional conferences on labour inspection practices have also been organized since 2010. These “specifically focused on labour inspectorates, their structure, professional training standards, labour inspections, employment activities, coverage, and impacts, across ASEAN Member States and in comparison with... other reference countries” (ASEAN, 2010:12).
38. The first ASEAN Labour Inspection Conference held in Ha Long, Viet Nam, was instrumental in developing a roadmap for strengthening labour inspections in ASEAN for the period 2012–2015.

Box 1: The 2010 Ha Long Recommendations for Labour Inspection Cooperation for 2012-2015, adapted version (ASEAN, 2012, Annex 4:18–20)

- a. *Encourage cooperation, development and strengthening of national programmes and priorities for labour inspections*
- b. *Ensure a sufficient number of staff – women and men – with appropriate conditions for hiring, training, service and necessary resources to carry out the work*
- c. *Encourage ratification of relevant ILO Conventions on Labour Inspections (i.e. C. 81 and, where relevant, C.129)*
- d. *Development of human and institutional capacity for labour inspection systems – through the sharing of good practices and training*
- e. *Promote and develop the regional cooperative partnership of ASEAN through strengthening the network of labour inspectorates, particularly with regard to systems and models.*
- f. *Identify and understand challenges for labour inspectors and work towards solutions for topics and emerging issues*
- g. *Share information on good practices: good governance, effective organization of labour inspections, professional standards, data collection and performance measurements, training on modern methods for efficiency and effectiveness*
- h. *Encourage use of IALI’s Global Code of Integrity of Labour Inspection as guidance to enhance the ethical behaviour of labour inspectors*
- i. *To recognize the priority of the ASEAN Labour Ministers Work Plan to promote activities in the area of labour inspections, including holding an annual forum.*

39. The Second Labour Inspection Conference in Dong Nai, Viet Nam further developed a plan of action aligned and aimed at implementing each of the Halong Recommendations (cf. ASEAN 2012). Subsequent conferences have been held annually in 2013 and 2014 to share and report on the progress on the implementation of Ha Long Recommendations and Dong Nai Action Plan to implement Ha Long Recommendations. This series of conferences, similar to the AFML, are important for the sharing of information, experiences and best practices inside ASEAN. Notably, a number of sessions in the Fourth Labour Inspection Conference were focused on sharing experiences related to developing labour inspections in migrant reliant sectors (ASETUC, 2014).
40. For example, it is widely known that among all migrant workers, domestic workers are particularly vulnerable to abuse and exploitation due to their place of work being private households. Labour inspections are not carried out for this sector since domestic work is frequently not covered by national labour standards (IOM, 2010). Yet, there are some exceptions. For example, in Brunei Darussalam, labour inspectors have the authority to inspect households (ASETUC, 2014).
41. Some developments were also noted in this Fourth Conference. While labour inspections are a public function, there were suggestions from the ASEAN Confederation of Employers (ACE) to develop a “self-regulatory” approach. For example, an inspection is to be performed on a voluntary basis, and initiated by the employers (ASETUC, 2014). An example was also shared by Singapore where professionals, who are not government officials but equipped with knowledge of the relevant laws, are appointed to perform the role of auxiliary inspectors. However, only the Ministry of Manpower are empowered to issue sanctions or warning letters (ASETUC, 2014).
42. The impact of the suggestions and developments shared in the Fourth Labour Inspection Conference remains to be assessed. The ILO highlighted the development of a self-regulatory approach which emerged due to the absence of labour inspections, compounded by a lack of resources, and recommended that more studies should be done to assess the efficiency of this approach before taking it further (ASETUC, 2014). Nonetheless, the 2014 labour inspection conference was significant as it recommended the creation of labour inspection guidelines in migrant reliant sectors. The full set of concluding recommendations from this conference is available in the Appendix.⁵

RELEVANCE TO PREVIOUS AFML

43. In parallel with the Labour Inspection Conferences, a number of relevant recommendations relating to labour inspections were also produced through the AFML process (see Table 3). Recommendations from the third and fifth AFML lay out the minimal employment rights needed for migrant workers. Recommendations from the sixth and seventh AFML include standardization of employment contracts and criteria to be included within contracts. Though some of these do not explicitly mention labour inspections, it has to be recognized that effective implementation of these minimum labour rights and monitoring of labour standards is crucially linked to effectively implementing labour inspections.

⁵ Recommendations of the 4th Labour Inspection Conference is available at www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187798.pdf

Table 3: Relevant points on Labour Inspection that were raised at the previous forums

AFML (Year)	Relevant points (R. no.)
Third AFML (2010)	1. Strengthen information and services to better protect migrant workers and ensure decent and productive working conditions with freedom, equity, security and human dignity. Provide opportunities for migrants to realize their labour rights in line with legislation of the ASEAN Member States, the ILO Fundamental Principles and Rights at Work, and their basic human rights protected by the UN and international conventions, particularly CEDAW and CRC, and in the spirit of the ASEAN Declaration on the Protection and Promotion of the Rights of the Migrant Workers. (R. 1)
Fifth AFML (2012)	2. Adhere to the following principles in promoting and protecting the rights of migrant workers: (a) Universal human rights and fundamental principles and rights at work must continue to apply to migrant workers. (R. 1)
Sixth AFML (2013)	3. Develop and strengthen the existing complaint mechanisms for migrant workers in ASEAN Member States so they are transparent, accessible and simplified during recruitment, employment and in the case of termination and deportation. In this regard, it is important to ensure that the integrity of complaints be examined carefully (R. 9)
Seventh AFML (2014)	4. Employment contracts should be standardized by national labour laws, based on core labour standards and in line with Article 22 of the International Labour Conference's Migration for Employment Recommendation No. 86, 1949. (R. 1) 5. Standard employment contracts should stipulate clear terms and conditions of employment, rights and responsibilities of workers and employers, including vulnerable and hard-to-reach sectors such as fishing, domestic work, and construction work. In conjunction with this are grievance mechanisms, including contact information and legal systems to file complaints. Employment contracts should be written in a language understood by migrant workers, and signed by employers and workers prior to departure. Copies of employment contracts should be provided to migrant workers. (R. 2) 6. Governments should take and enhance measures, and allocate resources, to protect and promote the rights of migrant workers. This includes regularly conducting labour inspections, including vulnerable, hard-to-reach sectors and workplaces (e.g. fishing, mining, forestry, agriculture, and domestic work), training for labour inspectors, and the establishment of multi-sectoral joint task forces for labour. (R. 5)

PROPOSAL BY THE TASK FORCE ON ASEAN MIGRANT WORKERS: ASEAN FRAMEWORK INSTRUMENT ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF MIGRANT WORKERS

44. In 2009, the Task Force on ASEAN Migrant Workers (TFAMW) made the recommendations at the CSO meeting for effective systems of labour inspection and implementation of regulations (TFAMW, 2009: 26-27), as it describes in below table.

Table 4: TFAMW Recommendations on Labour Inspection and Migrant Workers

Recommendation from the TFAMW's Proposal: ASEAN Framework Instrument on the Promotion and Protection of the Rights of Migrant Workers (2009)	
<p>Effective systems of labour inspection and implementation of Regulations (See Article 81)</p>	<p>In the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) memorandum of understanding (MOU) signed between 5 Member Governments of ASEAN and the Government of the People's Republic of China, it was agreed that governments shall "apply national labour laws to protect the rights of all workers based on the principles of non-discrimination and equality." All ASEAN Member States shall ensure that their systems of labour inspection are adequately staffed and funded to undertake effective regulation of labour laws related to migrant workers, with a primary focus to be maintained on the monitoring and enforcement of laws related to conditions of work. Special arrangements shall be made by labour inspectorates to provide public information on labour laws and migrant oversight policies in the languages of the migrant workers, and to develop a language/translation capacity so that investigations of non-compliance with the law can include the input and testimony of migrant workers.</p> <p>To implement this provision, the ASEAN Committee for the Implementation on the Declaration of the Promotion and Protection of the Rights of Migrant Workers (ACMW) shall survey the technical needs of the ASEAN governments to achieve better labour inspections and legal compliance, and conduct training needs assessments for labour inspectors and authorities with a mandate to conduct such inspections. This survey report and assessment shall form the basis of a request from ASEAN to the ILO for technical support in this area, put forward under the terms of the Cooperation Agreement between the ASEAN Secretariat and the International Labour Office.)</p>

RELEVANT LAWS, POLICIES AND REGULATIONS ON MIGRANT WORKERS' RECRUITMENT, EMPLOYMENT AND DEPLOYMENT IN ASEAN

45. National labour laws exist within the ASEAN Member States to ensure and protect the minimum employment rights of all workers. Therefore, this paper focuses on highlighting regulations or policies which address the situations when migrant workers are deployed abroad or during their stay in the countries of destination. Table 5 highlights the various laws related to national migrant workers, policies, and regulations where labour inspections could play a role.

Table 5: Existing Migrant Labour Laws and Policies in ASEAN Member States Affecting Minimum Employment Rights of Migrant Workers

Countries	Migrant Workers Related Laws, Policies, and Regulations	Recruitment/Worker Placement Agencies Related Laws, Policies, and Regulations
Cambodia	<ul style="list-style-type: none"> • Sub-Decree on sending Khmer Labour to Work Abroad • Prakas (Ministerial Regulation) on the Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Migrant Workers Abroad • Sub-Decree on the establishment of Manpower Training and Overseas Sending Board (MTOSB) • Policy on Labour Migration for Cambodia • Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers 	<ul style="list-style-type: none"> • Contract on Sending of Cambodian Workers to Thailand and Malaysia • Prakas (Ministerial Regulation) on the Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Migrant Workers Abroad • Memorandum of Understanding on the Sending of Workers to the Republic of Korea under the Employment Permit System

Countries	Migrant Workers Related Laws, Policies, and Regulations	Recruitment/Worker Placement Agencies Related Laws, Policies, and Regulations
Indonesia	<ul style="list-style-type: none"> • Act of the Republic of Indonesia Number 13 Year 2003 Concerning Manpower • Law on Ratification of ILO Convention No. 81 Concerning Manpower Inspections in Industry and Commerce • Joint Decision of Team of Advocacy, Defense and Protection of Indonesian Migrant Worker in Foreign Countries • Law No. 21 of 1999 on the Ratification of Convention No. 111 of the ILO Concerning Discrimination in Respect of Employment and Occupation • Manpower and Transmigration Minister Decision No. KEP-14/MEN/I/2005 on a Prevention Team for Non-Procedural Indonesian Migrant Worker Departure and Services for Indonesian Migrant Worker Return • Memorandum of Understanding between the Department of Manpower and Transmigration of the Republic of Indonesia and the Department of Labour and Employment of the Republic of the Philippines Concerning Migrant Workers • MOUs between Indonesia and the Republic of Korea, Qatar, Jordan, Kuwait, Japan, Taiwan Province of China, and the United Arab Emirates 	<ul style="list-style-type: none"> • Act of the Republic of Indonesia Number 39 Year 2004 Concerning Placement and Protection of Indonesian Overseas Workers • Decree of the President of the Republic of Indonesia No. 36 of 2002 on Ratification of ILO Convention No. 88 concerning the Organization of the Employment Service. (ILO Convention No. 88 on Worker Placement Service Institution) • Presidential Instruction No. 6 of 2006 on Reformation Policies of Indonesian Migrant Worker Placement and Protection (ILO Convention No. 88 on Worker Placement Service Institution) • Decree of the President of the Republic of Indonesia No. 29 of 1999 on the Coordinating Agency of Indonesian Migrant Workers Placement • Decree of the President of the Republic of Indonesia No. 46 of 2000 on the Amendment of Presidential Decree No. 29 of 1999 on the Coordinating Agency of Indonesian Migrant Worker Placement • Presidential Regulation No. 81 of 2006 on the National Agency on Indonesian Migrant Worker Placement and Protection • Manpower Minister Decision No. KEP- 204/MEN/1999 of 1999 on Indonesian Migrant Worker Overseas Placement • Manpower Minister Decision No. KEP— 104A/MEN/2002 of 2002 on Indonesian Migrant Worker Overseas Placement • Manpower and Transmigration Minister Decision No. PER—04/MEN/II/2005 Concerning Stipulation on Indonesian Migrant Workers' Final Briefing • Manpower and Transmigration Minister Regulation No. PER-07/MEN/ IV/2005 on Standards for Indonesian Migrant Worker Candidate Collection/ Recruitment Centre • Stipulation of Facilities for Medical Examinations of Indonesian Migrant Workers Who Will Work in a Foreign Country
Lao People's Democratic Republic	<ul style="list-style-type: none"> • Strategy on Labour Development 2011–2020 • The National Strategy for the Advancement of Women (NSAW) 2011–2015 • Prime Minister Decree 68/2002 related to the Export of Lao Workers Abroad (2002). • Guidelines No. 2417/MOLSW & 3011/MOLSW (2007) on Implementation of Decree on Export of Lao Workers Abroad • Guideline No. 3824/MOLSW details restrictions and limitations for recruiting Lao workers abroad 	<ul style="list-style-type: none"> • Labour Law (Amended) • Labour Law (No. 43/NA, 24 December 2013) Date of Entry into Force: 28 October 2014. This applies to foreign and Lao nationals working in the Lao People's Democratic Republic, and provides different sections on social security protection, labour health and safety, and occupational accidents. • Social Security Law (No. 34/NA, 26 July 2013) Date of Entry into Force: 19 October 2013. This law and its implementing instructions (No. 2434/MLSW, 29 July 2014) provide health coverage for employees

Countries	Migrant Workers Related Laws, Policies, and Regulations	Recruitment/Worker Placement Agencies Related Laws, Policies, and Regulations
	<ul style="list-style-type: none"> • Implementing guidelines for the decree on the sending of Lao workers to work overseas issued by the Ministry of Labour and Social Welfare, No. 2417, dated 29 July 2002; • Decision of Minister on the permission for the importing foreign workers to work in Lao People's Democratic Republic, No. 5419, dated 10 December 2007; • Prime Minister's decree on the management of immigration and the management of foreigners, No. 136, dated 25 May 2009; • Instruction of the Minister of Foreign Affairs on the implementation of the decree on the management of immigration and management of foreigners, No. 4655, dated 8 August 2009; 	<p>registered and contributing to the Social Security Organization. This should include registered migrants</p> <ul style="list-style-type: none"> • Law on Healthcare (No. 09/NA, 9 November 2005) • National Health Insurance Decree (No. 470/GO, 17 October 2012) Date of Entry Into Force: 17 October 2012 • MOU between Lao People's Democratic Republic and the Kingdom of Thailand on Labour Cooperation • Law on Lao Federation of Trade Union
Myanmar	<ul style="list-style-type: none"> • Law Relating to Overseas Employment • Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers 	<ul style="list-style-type: none"> • Laws Relating to Overseas Employment • Procedures for sending workers abroad • Procedures for an application for a recruitment agency license
Viet Nam	<ul style="list-style-type: none"> • Law on Vietnamese Guest Workers • DECISION No. 18/2007/QDBLDTBXH of July 18, 2007, promulgating the Program on providing labourers with necessary knowledge before they go to work abroad • JOINT CIRCULAR No. 08/2007/ TTLT-BLDTBXH-BTP of July 11, 2007, guiding in detail a number of matters regarding the contents of guaranteed contracts for labourers going abroad to work under contracts and the liquidation of guarantee contracts • CIRCULAR No. 22/2013/TT-BLDTBXH, providing the form and contents of labour supply contracts and Vietnamese guest worker contracts 	<ul style="list-style-type: none"> • Law on Vietnamese Guest Workers • Decree No. 126/2007/ND-CP concretizing and providing instructions for the implementation of some articles of the Law on Vietnamese Guest Workers • Government Decree No.141/2005/ND-CP dated 11 November 2005 providing the management of Vietnamese guest workers abroad • Joint Circular of Ministry of Labour-War Invalids and Social Welfare and Ministry of Finance No.16/2007/TTLT-BLDTBXHBTC dated 04 September 2007 providing instructions regarding agency and service fees for sending Vietnamese workers overseas for employment • Decision No 21/2013/TT-BLDTBXH, providing the ceiling level of deposit and labour markets in which service enterprises permit and make an agreement about depositing with labourers
Philippines	<ul style="list-style-type: none"> • Migrant Workers and Overseas Filipinos Act of 1995 • POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers • Governing Board Resolution No. 04 to No. 10, Series of 2006 • Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 	<ul style="list-style-type: none"> • Memorandum Circular No. 14: Placement Fee Ceiling for Land-based Workers • Memorandum Circular No. 16: Placement Fee Policy for Land-based Agencies • POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers • Memorandum Circular No. 3: Placement Fee Policy for Canada

Countries	Migrant Workers Related Laws, Policies, and Regulations	Recruitment/Worker Placement Agencies Related Laws, Policies, and Regulations
	<ul style="list-style-type: none"> • POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers • MOUs between the Philippines and the United Arab Emirates, Korea, Bahrain, Switzerland, Japan, and Canada: Saskatchewan, Manitoba, Alberta • Memorandum Circular No. 82: Guidelines on Accreditation of Pre-Departure Orientation Program of NGOs for Disadvantaged Overseas Contract Workers • Memorandum Circular No. 3: Compulsory Pre-Departure Orientation Seminar for all Filipino Contract Workers including seamen for overseas employment • POEA Advisory 3, Series of 2003, on the Philippine Seafarers One-Stop Processing Centre (PSOC) 	<ul style="list-style-type: none"> • Memorandum Circular No. 13: Guidelines on the Recruitment and Deployment of Filipino Workers to Spain • Memorandum Circular No. 13: Guidelines on the Deployment of Filipino Caregivers to Israel • Memorandum Circular No. 12: Prequalification of Foreign Placement Agencies Hiring Filipino Household Service Workers (HSW) • Recruitment for Overseas Work Laws
Brunei Darussalam	<ul style="list-style-type: none"> • EEmployment (Domestic Workers) Regulations, 2009 • Employment Order 2009 • Employment Information Act 	<ul style="list-style-type: none"> • Employment Agencies Order, 2004
Malaysia	<ul style="list-style-type: none"> • Employment Information Act 1953 • Wages Councils Act 1947 (Act 195) • Occupational Safety and Health Act 1994 (Act 514), Regulations & Orders • Children and Young Persons (Employment) Act 1966 (Act 350) [Western Malaysia only] 	<ul style="list-style-type: none"> • Private Employment Agencies Act 1981 (Act 246)
Singapore	<ul style="list-style-type: none"> • Employment of Foreign Manpower Act (Chapter 91A) • Employment (Register of Employees) Regulations 	<ul style="list-style-type: none"> • Employment Agencies Act
Thailand	<ul style="list-style-type: none"> • Working of Alien Act, B.E.2551 (2008)1 • Ministry of Labour Regulation Vol. 12 (1995) issued under provisions in the Recruitment and Job-Seekers Protection Act 1985 • The Recruitment and Job-Seekers Protection Act. B.E.2528 (1985) 	<ul style="list-style-type: none"> • The Recruitment and Job-Seekers Protection Act. B.E.2528 (1985)

Source: Repository Matrix of Legislations and Policies on Migrant Workers of ASEAN Member States, 2012;⁶ acknowledgement is also due to IOM's national focal points for providing updated translation and information.

6 Repository Matrix of Legislations and Policies on Migrant Workers of ASEAN Member States, 2012 – [www.asean.org/images/2013/resources/publication/2012%20-%20Repository%20Matrix%20for%20an%20ASEAN%20Migrant%20Worker%20\(Dec\).pdf](http://www.asean.org/images/2013/resources/publication/2012%20-%20Repository%20Matrix%20for%20an%20ASEAN%20Migrant%20Worker%20(Dec).pdf)

PROFILE OF EXISTING LABOUR INSPECTORATES WITHIN ASEAN

46. Almost all labour inspection undertaken within the ASEAN Member States covers working conditions, living conditions, and occupational safety and health. The following tables highlight the existing national laws that provide for labour inspections (Table 6); and the profiles of the labour inspection regimes, where available, in all ASEAN Member States as it is described in below table.

Table 6: National Laws Providing for Labour Inspection/Inspector

ASEAN Member States	National Laws Providing for Labour Inspection/Inspector	Year Adopted
Cambodia	Royal Kram CS/RKM/0397/01 promulgating the Labour Law, See Chapter XIV, Section 2	1997
Indonesia	Law No. 13/2003 concerning Manpower, Chapter XIV	2003
	Labour Inspection Decree (Presidential Decree No. 21/2010). (Peraturan Presiden Tentang Pengawasan Ketenagakerjaan)	2010
	Ministry of Manpower and Transmigration Decree No. Kep.09/MEN/V/2005 concerning procedures for the submission of reports on the conduct of labour inspections.	2005
	Law No. 21 of 2003 concerning the Ratification of ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce.	2003
	Law No. 3 of 1951 to bring the Labour Inspection Law No. 23 into Operation for the Whole Territory of Indonesia (State Gazette No. 4 of 1951).	1951
Lao People's Democratic Republic	Labour Law, 2013 (No. 43/NA), See Section XV	2013
Myanmar	Minimum Wages Act, 2013, Chapter IX	2013
Philippines	Rules on Labour Law Compliance System (Department Order No. 13-13)	2013
	Presidential Decree No. 442 of 1972, amended to 2002 (R.A. No. 9177), The Labour Code of The Philippines. See Chapter VI, Administration and Enforcement.	1974
Viet Nam	Labour Code of the Socialist Republic of Viet Nam, Chapter XVI, Section I	1994
Brunei Darussalam	Brunei Employment Order 2009, Chapter XV	2009
Malaysia	Employment Act 1955 (West Malaysia), See Part XIV	1955
	Labour Ordinance (Sarawak Cap 76), Chapter II	1952
Singapore	Employment Act (Ch. 91), Part XIII	1968
Thailand	Labour Protection Act 1998 (B.E. 2541)	1998

Source: ILO NATLEX – Database of national labour, social security and related human rights legislations (Accessed September 2015).

Table 7: Labour Inspection Profiles and Relevant National Authorities

Countries	National Authority	Profile of Labour Inspectors	No. of Inspectors ⁷ (Year)
Cambodia	<p>Ministry of Labour and Vocational Training (MoLVT)</p> <p>General Department of Labour</p> <ul style="list-style-type: none"> Labour Inspection Occupational Health and Safety <p>24 labour offices at the provincial and municipal levels</p> <p>Additional Authorities</p> <ul style="list-style-type: none"> National Social Security Fund 	<ul style="list-style-type: none"> Civil servants Passed an examination before being accepted as labour officers Law requires that agents of the Labour Administration have sufficient qualifications and adequate training and that measures be taken to ensure that permanent training is provided throughout their career The National Occupational Safety and Health Programme foresees the creation of continuous training systems for labour inspectors Training has been ad hoc and delivered through international technical assistance At the provincial level, labour inspectors assume all the labour inspection functions without distinction, both OSH and working conditions. Inspectors also have the function of enforcing the legal provisions regarding the living conditions of workers and their families. 	91 OSH inspectors (19 based in the Ministry and 72 based in municipality and provinces) in charge of inspection visits countrywide. ⁸
Indonesia	<p>1. Ministry of Manpower (MOM):</p> <p>Directorate General of Labour Inspection</p> <ul style="list-style-type: none"> Directorate of Working Conditions Inspections Directorate of Occupational Safety and Health Inspections Directorate of Women and Child Labour Inspections Directorate of Law Enforcement on Labour Inspections <p>2. Additional Authorities providing OSH advisory services:</p> <ul style="list-style-type: none"> Ministry of Energy and Mineral Resources Nuclear Energy Regulatory Agency Ministry of Public Works 	<ul style="list-style-type: none"> Civil servants Recruited and appointed by the Minister Undergo a course and competency test Undergo a special training programme held by the Centre for Training and Education of the MOM The MOM makes this training available to all civil servants who may wish to become labour inspectors to build the pool of potentially qualified candidates PPNS inspectors (civil service investigators), who have the authority to prosecute labour cases, additionally complete a special two-month training course delivered by the police Candidates must hold a Bachelor degree. 	2371 (2009)

7 ILO 2011, Sex-disaggregated data on labour inspectors www.ilo.org/labadmin/info/WCMS_160319/lang-en/index.htm

8 2011 Publication of Department of Occupational Health and Safety, Ministry of Labour and Vocational Training, Cambodia – "The Overview of Occupational Safety and Health in Cambodia" www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187746.pdf

Countries	National Authority	Profile of Labour Inspectors	No. of Inspectors ⁷ (Year)
Lao People's Democratic Republic	<ol style="list-style-type: none"> 1. Ministry of Labour and Social Welfare (MOLSW): <ul style="list-style-type: none"> • Department of Labour Protection • Department of Labour and Social Welfare at provincial level 2. Other Agencies: <ul style="list-style-type: none"> • Lao Federation of Trade Union • Lao Trade Union at provincial level 	<ul style="list-style-type: none"> • Inspectors are civil servants and they are based at the central, provincial and district levels. • In 2015, 2,532 inspections were conducted.⁹ 	<p>188¹⁰ inspectors in 2005</p> <p>341 (2015 Update)¹¹</p>
Myanmar	<ol style="list-style-type: none"> 1. Ministry of Labour (MOLES): <ul style="list-style-type: none"> • Factories and General Labour Laws Inspection Department (FGLLID) 2. Ministry of Industry: Boiler and Electrical Inspection Division <ul style="list-style-type: none"> • Industrial Supervisory and Inspection Department 3. Ministry of Mines: <ul style="list-style-type: none"> • Planning and Inspection Department 4. Ministry of Health : <ul style="list-style-type: none"> • Occupational Health Unit, Health Department 5. Ministry of Construction 6. Ministry of Agriculture and Irrigation: <ul style="list-style-type: none"> • Myanmar Agriculture Service 7. Additional authorities: Yangon City Development Committee 	N.A.	N.A.

9 Personal communication between IOM and Department of Labour and Social Welfare, Lao People's Democratic Republic, 8 September 2015

10 National Profile of Occupational Safety and Health (OSH) of Lao People's Democratic Republic www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187798.pdf

11 Personal communication between IOM and Department of Labour and Social Welfare, Lao People's Democratic Republic, 8 September 2015

Countries	National Authority	Profile of Labour Inspectors	No. of Inspectors ⁷ (Year)
Viet Nam	<p>1. Inspectorate of the Ministry of Labour, Invalids and Social Affairs (MOLISA)</p> <p>MOLISA inspectorate's divisions:</p> <ul style="list-style-type: none"> Labour Policy Inspections OSH Inspections Child and Social Affairs Policy Inspection Inspections of "Policy for Meritorious People" General Services and Administrative Inspections Citizen Reception and Complaint and Denunciation Handling <p>2. Each line department has its own Inspection division, for example, Department of Overseas Labour has an Inspection division</p> <p>3. Provincial Level: Departments of Labour, Invalids and Social Affairs (DOLISAs)</p> <p>4. OSH Division, Health Environment Management Department, Ministry of Health and its provincial level sub-department</p>	<ul style="list-style-type: none"> Civil servants Salaries are approximately 30 per cent higher than other civil servants of the same rank and position Recruitment by the Ministry of Home Affairs following public official guidelines Applicants must pass an entrance exam Confirmed as a civil servant after one year During first three years, must pass a series of specialized training courses and exams before being appointed as a labour inspector May be selected from officers from other government agencies Minimum undergraduate degree in law, economics or a technical area pertinent to OSH (e.g. mining, manufacturing, construction, agriculture etc.) The Government Inspector Training School provides training on legislation, with some coverage of labour inspections and social protection, but provides no training on technical areas (e.g. working conditions or OSH) MOLISA and the DOLISAs carry out their own professional development activities for inspectors Once a year, a week is set aside for inspection managers to become acquainted with new laws, policies and other developments related to their work 	140 ¹² (2010)
Philippines	<p>Department of Labour and Employment (DOLE):</p> <ul style="list-style-type: none"> Bureau of Working Conditions <p>16 regional offices undertake actual inspection visits to workplaces to check on compliance</p> <p>Note: Labour inspectors in the Philippines are known as Labour Laws Compliance Officers.</p>	<ul style="list-style-type: none"> Civil servants Selected and appointed by regional offices Must be a Labour and Employment Officer (at least level 3) and pass the Basic Training Course for labour inspectors General inspectors hold at least a bachelor's degree and have participated in, and if passed, an induction-training course that covers both labour standards and occupational safety and health Technical inspectors are qualified engineers and focus solely on safety issues¹⁴ 	574 ¹³ (2013)
Brunei Darussalam	<p>Ministry Of Home Affairs: Department of Labour Workplace Safety and Health Division</p>	N.A.	54 (2009)

12 Rapid Assessment of Viet Nam's Labour Inspection System www.dol.gov/ilab/reports/pdf/AssessmentVietnamLaborInspectionSystem.pdf

13 Road to Reform: The birth of LLCs and how it propagates the culture of voluntary compliance with labour laws www.dole.gov.ph/news/view/2780

14 Technical Memorandum: Philippines Labour Inspection Audit www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-lab_admin/documents/publication/wcms_240182.pdf

Countries	National Authority	Profile of Labour Inspectors	No. of Inspectors ⁷ (Year)
Malaysia	Ministry of Human Resources (MOHR)	N.A.	719 (2008 figures for Peninsula Malaysia only) ¹⁵
Singapore	Ministry of Manpower (MOM): Labour Relations and Workplace Division (LRWD) ¹⁶ Occupational Safety and Health Division (OSHD) • OSH Inspectorate Foreign Manpower Management Division (FMMD) ¹⁷	<ul style="list-style-type: none"> • Labour inspectors are civil servants • In addition, Safety and Health officers are appointed by the Commissioner of Workplace Safety and Health • Passed an interview and a written assessment along with up to 3 months of initial training, followed by on-going training in the course of work • Minimum diploma holder 	194 (2009)
Thailand ¹⁸	The Ministry of Labour (MoL): Department of Labour Protection and Welfare (DLPW) 77 provinces (including Bangkok) with Provincial Labour Protection and Welfare Offices (PLPWOs) and 10 District Labour Protection and Welfare Offices (DLPWOs). The PLPWOs and DLPWOs are under the administrative supervision of the Provincial/District administrations and not under the supervision of DLPW Headquarters	<ul style="list-style-type: none"> • Civil servants • Only senior labour inspectors (three years on the job) have integrated responsibilities over working conditions and occupational safety and health • New and junior inspectors carry out their work according to the specific mandate of their recruitment • The recruitment process for all inspectors is managed by the Civil Service Commission (CSC) • Required to pass an entrance exam • Minimum qualifications required to apply for any position are set out in the Civil Service Act • A university bachelor's degree is generally needed, although there is no fixed academic requirement • Inspectors do not receive pre-service training in their technical field and there is no dedicated training curriculum on labour inspections • Only on-the-job training is provided and some basic training on labour migration, forced labour, child labour and trafficking • No specific training on the Labour Relations Act or OSH, except for newly recruited Safety Inspectors • Ad hoc training when new laws or regulations are adopted that affect the work of labour inspectors • No overall training strategy to address the capacity-building needs of new or existing inspectors 	710 (2015 Update) ¹⁹

Source: Please refer to the end notes given in the table for each country.

¹⁵ A report by Amnesty International published in 2010 provides a different figure of 240 labour inspectors in Peninsula Malaysia. The figure is provided by officials from the Ministry of Human Resources to the research team. See page 66 at www.amnesty.org.au/images/uploads/ref/trapped-migrant_workers_in_malaysia.pdf

¹⁶ Singapore MOM - Labour Relations and Workplaces Division (LRWD) www.mom.gov.sg/about-us/divisions-and-statutory-boards/labour-relations-and-workplaces-division

¹⁷ Singapore MOM - The Foreign Manpower Management Division (FMMD) www.mom.gov.sg/about-us/divisions-and-statutory-boards/foreign-manpower-management-division

¹⁸ ILO Technical Cooperation on Labour Inspection in Thailand www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_319017.pdf

¹⁹ Data presented at the Thailand National Preparatory Workshop for the 8th AFML, Bangkok, Thailand, 14 September 2015

GOOD PRACTICES

47. Table 8 highlights some commendable existing practices where labour inspection measures were found to complement the labour laws affecting migrant workers in both countries of origin and destination.

Table 8: Good Practices Enhancing Labour Law Compliance

1. Inspection in hard to reach places	
Myanmar ²⁰	<p>Under the terms of a fishing concession from the Government of Myanmar to the Government of Thailand, Thai fishing boats operating in Myanmar territorial waters are required to have all crew members on fishing boats (with the exception of the captain and his top officers) be Myanmar nationals with a Myanmar identification card.</p> <p>The Myanmar Navy inspects Thai fishing boats in Kawthaung before allowing them to fish in Myanmar territorial waters. An inspection of the workers is carried out and a crew list is compiled. Upon leaving Myanmar territorial waters, the boat is required to return to Kawthaung for inspection. If any injuries or disappearances of crew members are identified at this inspection, the captain is liable to significant fines.</p> <p>A missing crew member, for example, is a 70,000 Thai Baht fine, payable to the Myanmar authorities, ostensibly to help the family of the deceased man. Fishing captains based in Ranong say the boat owners force the captains to pay any such fines out of their own pockets. By placing such a premium on each of the crew members, the Government of Myanmar has made the fishermen too expensive to injure or kill, which serves to protect them from abuse.</p>
2. Innovative use of technology to enhance effectiveness of labour inspection	
Philippines ²¹	<p>The Labour Secretary, Rosalinda Baldoz, announced in June 2013 that the Department of Labour and Employment (DOLE) would be implementing the new Labour Inspection System Application (LISA-PH) to implement its new labour law compliance programme.</p> <p>Labour inspectors would use gadgets, such as notebooks and tablets, which allow for a thorough on-line inspection based on real time data collection, processing, and transmission based on an electronic checklist. The checklist also incorporates the POEA's checklist for manning agencies in relation to inspecting ships and shipping establishments. With the new system, the labour law compliance inspectors will be able to report in real time their assessments of business establishments. Inspectors will also be able to effectively focus on areas and industries where incidences of abuses are high.</p> <p>Note: This system was also implemented in 2013 by Sri Lanka.²² The IT application was developed by the ILO, supported by the US Department of Labour. This allows labour inspectors to use tablets to fill in inspection reports electronically. This replaces the paper-based system that takes much longer and is cumbersome to fill in. It also enables the collection of all data and information relating to labour inspections, and related cases, to be kept in a centralized database. There are also plans to allow the public to access the database to follow up on lodged cases.</p>
3. Enhancing data collection through complementary use of information, communication and technology in hard to reach places	
Thailand ²³	<p>The use of the Vessel Monitoring System (VMS) has been piloted in Thailand since the beginning of 2015. Although originally intended to help fight illegal, unreported and unregulated fishing practices, VMS tracking has allowed for easier labour inspections as well. Better registration of vessels and data monitoring will enable authorities to match workers or missing workers with specific boats, leading to targeted inspections instead of random ones.</p>

20 Reproduced from IOM publication, p. 28-29 <http://publications.iom.int/system/files/pdf/traffickingoffishermen-thailand.pdf>

21 Reproduced from www.philstar.com/headlines/2013/06/16/954446/dole-implement-p268-m-online-labor-inspection-system and www.dole.gov.ph/news/view/2322

22 www.ilo.org/asia/info/public/features/WCMS_353256/lang--en/index.htm

23 Reproduced partly from Bangkok Post, "Technology can help end scourge: UN", 25 June 2015. Available from www.bangkokpost.com/news/general/605912/technology-can-help-end-scourge-un

4. Enhancing compliance through stakeholders' engagement

<p>Singapore²⁴</p>	<p>The Ministry of Manpower in Singapore adopts a four pronged approach to enhancing compliance of labour laws- “engage, educate, enable, and enforcement”:</p> <ol style="list-style-type: none"> 1. Regular industry dialogues and forums to educate about employment laws and regulatory requirements 2. Promotion and awareness raising of good employment practices
	<ol style="list-style-type: none"> 3. Partnership with external agencies to enhance the image of targeted sectors, improving workers' skill sets, and working conditions 4. Prosecuting against violations of the Employment Act provisions <p>It takes a targeted/sectoral approach through regular inspections in targeted industries with vulnerable workers – cleaning, security, food and beverage, and landscape. For other industries, it takes complaints from members of the public seriously and referrals from external agencies.</p> <p>To illustrate with an example from the Security sector:</p> <p>Engage and Educate</p> <p>Regular dialogues and forums: Briefings sessions and forums are held to educate trade associations and unions on employment laws and regulatory requirements. Information booklets on employment laws are customized for security officers.</p> <p>Enable</p> <ol style="list-style-type: none"> (a) Workforce Skills Qualifications (WSQ) for Security Sector: Skills standards were introduced in 2006. All security officers are required to undergo training and pass two mandatory modules. (b) Security officer Identification Card introduced in 2009: The aim was an improved image, public confidence and professionalism. (c) Job Redesign: Some security guard agencies came on board the “Advantage – Security Job Redesign” programme to enhance productivity through the adoption of technology. (d) Mandatory Grading of Security Guard Agencies (SGA): This was done to promote security awareness amongst buyers and to motivate SGAs to improve their professional standards. <p>Enforce</p> <p>Targeted Enforcement: Targeted enforcement of employment standards was conducted in this sector.</p>

5. Conducting effective joint inspections

<p>Brunei Darussalam²⁵</p>	<p>Earlier in 2015, the Labour Department's Enforcement Division, together with enforcement officers from the Employees Trust Fund (TAP), conducted a joint inspection code named “Operasi Rempuh Bersepadu 61/2014” on several shops on the suspicion that some errant employers had misused their foreign workers' employment permits.</p> <p>The 16 enforcement officers found that most of the local staff at the inspected shops (including barbers, restaurants, car wash establishments and other kinds of business) were not given proper employment contracts nor registered with TAP or the Supplemental Contributory Pension (SCP) Scheme.</p> <p>The operation saw the interrogation of 55 workers, comprising 34 foreigners and 21 locals, some of whom are given only one day off in a week and not paid overtime.</p>
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24 Reproduced partly from MOM (Singapore) presentation. Available from www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_145982.pdf

25 Reproduced partly from news article reporting on the Joint-Inspection. Available from <http://borneobulletin.com.bn/labour-dept-to-further-investigate-violations-of-employment-order/>

6. Collaboration with social partners

<p>Viet Nam ²⁶</p>	<p>Labour inspections are carried out jointly by trade union representatives and public labour inspectors. This is provided for in the 2007 Prime Minister's Regulation on monitoring activities between trade union representatives and government authorities. Based on this regulation an annual work plan is jointly prepared and signed by the President of the VGCL and the Minister of MOLISA. This plan includes a mixture of priorities from both organizations.</p> <p>A joint national team is responsible for implementing the work plan which includes dispatching monitoring teams throughout the country to carry out compliance visits. These visits are typically conducted by four or five officials representing the MOLISA and local DOLISA (including a labour inspector) in addition to worker representatives. While the worker representatives present during the visits assist in identifying infractions in the workplace concerned, the capacity and decision to sanction remains an exclusive prerogative of the public labour inspector.</p> <p>Since 2008 there has been a decrease in the number of joint visits carried out by the national team, however, officials note that there remains good collaboration and joint visits at the local level between DOLISAs and union representatives.</p>
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Note: To avoid misrepresentation, content in Table 8 are reproduced from original source materials with minimal editing. All rights are acknowledged and belong to the original creators/authors (See endnotes no. 15 to 21).

48. While labour inspections are performed by competent national authorities and mainly concerned with enforcing the compliance of national labour laws, there may be instances where national labour laws do not adequately address the situation of migrant workers. For instance, many migrant workers become victims of contract substitution where the terms and conditions of initial contracts signed before their departure substantially differ from the contracts they are finally employed under in the countries of destination. Women migrant domestic workers are also among the most vulnerable, finding themselves in exploitative and precarious situations arising out of this complex scenario whereby domestic work is not recognized as formal work by the labour laws of destination countries.
49. Nonetheless, existing measures in countries of origin such as pre-departure orientation, and information training provided by government institutions, government appointed third-party providers (such as recruitment agencies associations, NGOs, and so on.) and consular services where available, can play a complementary role in ensuring that migrant workers are employed under employment contracts fulfilling the minimum terms stipulated in the labour laws of destination countries.
50. In this respect, labour attachés and embassies of countries of original also play an essential role in supporting and cooperating with the national labour inspection regimes in destination countries. Below Table 9 highlights some existing good practices of support mechanisms that could supplement and bridge the gaps where labour inspections are currently inadequate or unable to effectively reach areas where migrant workers are commonly deployed in.

²⁶ Reproduced partly from ILO Publication, 2012, Technical Memorandum: Viet Nam Labour Inspection Needs Assessment, p. 72-7 www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_194431.pdf

Table 9: Support Mechanisms: Labour Attachés and Consular Services in Major Countries of Destination and Support Services in Origin Countries

Country Of Destination	Description of Practices
	Labour attachés and consular services
Malaysia ²⁷	<p>The Philippines Embassy in Malaysia has a special unit for police cases. The unit assists Philippine workers' court proceedings with interpretation and funding for lawyers.</p> <p>For ordinary cases, the Embassy cooperates with the Malaysian Bar Association to provide workers with free legal aid. The Embassy also collaborates with Philippine regular missions in Sabah, Sarawak and other provincial areas, and the leaders of 37 Philippine migrant</p>
Singapore ²⁸	<p>(a) The Indonesian Embassy in Singapore is instrumental in protecting complainants in that the Embassy:</p> <ul style="list-style-type: none"> (i) Accepts complaints through 24-hour hotlines; (ii) Helps the individuals filing the complaints to prepare any necessary documents for their complaints on their arrival at the embassy; (iii) Takes the complainants to shelters; and (iv) Contacts and coordinates with the relevant parties in Singapore (e.g. employers, police, hospitals, lawyers and the Ministry of Manpower) and in Indonesia (e.g. recruitment agencies, the Ministry of Manpower, National Board of Placement and Protection of Indonesian Overseas Migrant Workers, and insurance companies).
Thailand ²⁹	<p>The Lao People's Democratic Republic's consular officials and labour attachés in Thailand monitor the condition of Lao workers who have entered Thailand under the MOU process.</p> <p>The consular officials and labour attachés, as the Lao People's Democratic Republic focal points, cooperate with their counterparts in the Thai Government, especially for the national verification process of Lao workers who accessed work through irregular channels in Thailand.</p> <p>The Lao People's Democratic Republic Embassy receives the complaints directly from Lao workers. The Embassy then informs the relevant Thai authorities for the settlement of disputes.</p>
Country Of Origin	Description of Practices
	Support Services in Countries of Origin
Cambodia ³⁰	<p>Prakas 250 on the Inspection on Private Recruitment Agencies mandates the MoLVT to conduct inspections of the Private Recruitment Agency's training facilities.</p> <p>Prakas 252, signed in September 2013, requires Private Recruitment Agencies (PRA) to provide on-site services and organize the repatriation of workers. The Prakas stipulates the following:</p> <ul style="list-style-type: none"> (a) PRAs are required to appoint a permanent Cambodian representative in each receiving country, to be certified and accredited by the MoLVT. (b) On-site services should include: workplace inspections and orientation, assisting access to social security, opening bank accounts, monitoring workers' conditions, enabling communication with the workers' families, and dispute resolution. (c) Regarding return and reintegration, the Prakas stipulates (Article 9 and 10): <ul style="list-style-type: none"> (i) The PRA shall assist the worker in preparing all necessary arrangements (e.g. documents, final payments) one month prior to the worker's departure. (ii) Upon returning to Cambodia, the PRA must assist the worker to obtain a certificate for the recognition of their work abroad, issued by the MoLVT.

27 Summary of Capacity Building Workshop on Strengthening the Role of Labour Attachés in Thailand: Complaints Mechanism 12 February 2015 - www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_363160.pdf

28 Ibid.

29 Ibid.

30 Background Paper to the 7th ASEAN Forum on Migrant Labour: Progress on the Implementation of Recommendations adopted at the 3-6th AFML.

Indonesia ³¹	Indonesia has Crisis Centres managed by the National Board of Placement and Protection of Indonesian Overseas Migrant Workers (BNP2TKI). Migrant workers and their family members can access this facility 24 hours a day, seven days a week, and report the problem they face either in Indonesia or abroad through this free number 08001000 +6221 29244800 or short message service (SMS) 7266, or halotki@bnp2tki.go.id. All reports will be verified, and if found to be valid, will be followed up on by the Ministry of Manpower, the Police Department, and BNP2TKI.
Lao People's Democratic Republic ³²	The Lao Government is developing a Labour Management Manual on Complaints Mechanism covering the mechanisms for complaints, sectors involved, and modalities on how to solve disputes. It has also appointed a labour attaché to Thailand in 2013.
Myanmar ³³	<p>Myanmar has appointed labour attachés in five countries—Kuwait, Singapore, Malaysia, the Republic of Korea, and Thailand, of which only labour attaches in the latter three countries are active. The MOLES conducted training for labour attachés on labour migration management and migrant workers' protection with the support of the IOM in March 2014.</p> <p>Myanmar's labour attachés have cooperated with migrants' associations and CSOs in host countries in providing legal services to migrant workers and pursuing legal claims on their behalf.</p>
Viet Nam ³⁴	<p>A Decree in 2007 operationalizes implementation of the Law on Vietnamese Guest Workers. This is supported by a Decree in 2008 providing for the recruitment and management of foreign workers in Viet Nam. The Law on the Contract-Based Overseas Workers recognizes the right of the migrant workers to complain against those who send migrant workers abroad illegally. In addition, the Law on Complaints and Denunciations (No. 09/1998/QH10) provides overall provisions on grievance redress.</p> <p>Disputes between workers and recruitment agencies are settled with reference to Vietnamese Laws, while those with foreign employers will be settled on the basis of the agreement signed between the employers and the laws of the receiving country.</p>
Philippines ³⁵	<p>The POEA has mechanisms for reporting and acting on complaints against recruiters. It has an office where cases against recruitment agencies may be filed for violations, including: collection of excessive fees and other violations, cases against foreign principals and employers, and against workers. The hearing of cases may result in the cancellation of license to recruit.</p> <p>Additionally, bona fide employers are verified prior to accreditation and recruitment. This practice allows the government, through the labour attachés, to check on working conditions, employment terms, and secure necessary feedback on the employer prior to the approval of hiring.³⁶</p>

Source: Please refer to endnotes given for individual countries in the table.

51. Migrant resource centres are also influential in bridging the gaps where labour inspections are currently inadequate or unable to effectively reach areas where migrant workers are commonly deployed in. An independent evaluation of the ASEAN Triangle Project³⁷ indicated that Migrant Resources Centres (MRCs) play an important role in the “provision of pre-departure information to potential migrant workers (pre-departure training, safety information, emergency contacts, networks, and the promotion of legal migration channels) and the promotion of joint initiatives among already established migrant workers in receiving countries (association building and union memberships)” (Mahy, 2013:37).

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 IOM Publication, 2005, Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits, page 30. Available from http://publications.iom.int/bookstore/free/Labour_Migration_Asia_2.pdf

37 The term stands for the Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region. The TRIANGLE Project is led by the ILO, and the main aim is to significantly reduce the exploitation of labour migrants in ASEAN countries. It is funded by Canadian Department of Foreign Affairs, Trade and Development (CIDA) for the period 2012-2016. More details available at www.ilo.org/asia/whatwedo/projects/WCMS_193023/lang-en/index.htm

52. A desk review of existing practices relating to MRCs and related services was conducted for the purpose of this paper. The following table shows that a number of such MRCs, or One Stop Service Centres (OSSC), have been established in Cambodia, Lao People’s Democratic Republic, Myanmar, Philippines, Singapore, Thailand and Viet Nam. They are operated by a variety of stakeholders, such as governments, local government departments, trade unions and civil societies.

Table 10: Migrant Resources Centres, One Stop Service Centres, Civil Society Organizations and Their Good Practices

Destination Countries	Example: Good practices in the one stop service centre
	Example: Good Practices in migrant resources centres/civil society organizations
Brunei Darussalam	N.A.
Malaysia	<ul style="list-style-type: none"> (a) MRCs have organized workshops/meetings to raise the awareness of migrant workers on their rights and encouraged workers to organize themselves and/or to join trade unions. (b) Selected “Peer leaders” among the migrant workers have been trained and are expected to reach out to their co-workers. (c) Handle direct referral cases from Viet Nam and Cambodia related to labour disputes involving unlawful deductions and the underpayment of wages.
Singapore ³⁸	<p>Migrant Workers’ Centre (MWC) – a Bipartite initiative of the Singapore National Trade Union and Congress (SNTUC)&Singapore National Employers Federation (SNEF) which provides and/or conducts the following services/activities:</p> <ul style="list-style-type: none"> (a) 24-hour helpline; (b) Handles complaints case work and mediations; (c) Food and shelter programmes provided for workers awaiting case settlement; (d) Migrant workers can seek free basic legal advice and information at free Legal Clinics, an initiative that is jointly organized with the Law Society of Singapore’s Pro Bono Services Office. <p>The MWC also launched a Seafarer’s centre which is open for consultation every evening from 5pm-9pm. The Seafarers’ centre is set up past the immigration point so that irregular fishers are able to access services. They are provided with food, water, a case worker to file a complaint, and access to a mobile phone to call their families and friends.</p> <p>CSOs Services–Humanitarian Organization for Migration Economics (HOME):</p> <ul style="list-style-type: none"> (a) 24-hour hotline; (b) Women’s shelter for migrant workers who have ongoing cases with free board, medical aid, legal aid, counselling, transport aid and advice on employment issues; (c) Handles complaints case work; (d) Workshops for foreign domestic workers (FDWs) covering the topics of salaries, deductions, renewal, transfer and repatriation, basic needs, rest days, safety, and criminal law;
	<p>CSOs Services–Transient Workers Count Too (TWC2):</p> <ul style="list-style-type: none"> (a) Hotline (during office hours); (b) Food assistance programme – “The Cuff Road Project”; (c) Handles complaints case work; (d) Day space provided for migrant workers;

³⁸ Ibid.

Thailand ³⁹	<p>(a) In February 2014, Thailand established three one stop service Centres (OSSC), also referred to as “Checkpoints for applications and work permit issuance for Myanmar migrant workers”.</p> <p>(b) The OSSC facilitates two procedures:</p> <ul style="list-style-type: none"> (i) For workers who have been in Thailand for 4 years but still holding a valid visa and work permit, it facilitates application for the renewal of visas, and re-employment; (ii) For Myanmar migrant workers who hold a temporary passport valid for less than 2 years, OSSC can issue ordinary passports from the Myanmar authorities. <p>(c) The centres opened in Chiang Rai, Tak and Ranong Provinces. Through Communique No. 70/2557 issued on May 2014, the Thai Government confirmed that OSSCs would be established in each province, and would be tasked with keeping a personal record, issuing an identity card, and carrying out a health check-ups for migrant workers. The first OSSC to open after the Communique was issued was in Samut Sakhon on 26 June 2014.</p>
	<p>(a) Legal assistance to migrant workers is provided by the Trade Union run by the MRC.</p> <p>(b) Support services are provided through formal MRC type structures operating under different names (MRC, labour law clinic, drop in centres, and so on), as well as other more ad-hoc activities. Outreach to migrant workers has been enhanced by cooperating with a Migrant Workers’ Radio in Chiang Mai and Mae Sot, as well as with MTV Exit.</p> <p>(c) Legal assistance has been provided through all channels and Thai authorities have been lobbied in cooperation with the IOM, IRC and MAP to improve efforts to streamline access to justice for migrants.</p>
Origin Countries	Example: Good practices of one stop service centres
	Example: Good Practices of migrant resources centres/ civil society organizations
Cambodia ⁴⁰	<p>(a) MRCs disseminate information on safe and legal migration, provide counselling support services, coordinate with relevant stakeholders, and strengthen the knowledge base.</p> <p>(b) MRCs will operate on the basis of the MRC Operations Manual (available in Draft version since November 2012) which the MoLVT has been invited to endorse.</p> <p>(c) CSO cooperation. CSO Legal Support for Children and Women (LSCW) has been contracted to provide legal support to migrant workers in cases of exploitation or abuse, referred to LSCW by the MRCs. LSCW previously delivered paralegal training to MRC staff on migrant worker rights, contract of employment, case management, and roles and responsibilities of private recruitment agencies in protecting the rights of migrant workers.</p>
Indonesia ⁴¹	<p>(a) A feasibility study to assess the viability of establishing a MRC was conducted by the IOM in conjunction with BNP2TKI in 2014. The results suggested that a MRC would likely bring about a better coordinated delivery of information, training, data collection, and potential new labour migrant initiatives.</p>
Lao People’s Democratic Republic ⁴²	<p>(a) Three MRCs have been established under the umbrella and management of two different partners. Two are run by the MOLSW, and one by the Lao Federation of Trade Unions (LFTU).</p> <p>(b) The preparation of a pre-departure orientation manual has been initiated for which the existing UNIFEM manual developed in 2009 will be used as reference.</p> <p>(c) A lawyer based in Savannakhet has been contracted to deal with potential cases of exploitation or abuse.</p>

39 Background Paper to the 7th ASEAN Forum on Migrant Labour: Progress on the Implementation of Recommendations adopted at the 3-6th AFML; and Independent evaluation of the ASEAN Triangle Project, 2013 <http://dfat.gov.au/about-us/publications/Documents/triangle-independent-midterm-evaluation.pdf>

40 Independent evaluation of the ASEAN Triangle Project, 2013 - <http://dfat.gov.au/about-us/publications/Documents/triangle-independent-midterm-evaluation.pdf>

41 Background Paper to the 7th ASEAN Forum on Migrant Labour: Progress on the Implementation of Recommendations adopted at the 3-6th AFML

42 Ibid.

Myanmar ⁴³	<p>(a) The MOLES is establishing MRCs in Labour Exchange offices in Mandalay and Dawei with support from the ILO, and will be providing information to potential migrants and their families.</p> <p>(b) In Kyaing Tung, Shan State, the Local Development Organization Mawk Kon, in cooperation with the Labour Exchange office, opened the first MRC in March 2014.</p>
Viet Nam ⁴⁴	<p>(c) In Viet Nam, MRCs have been established through the Department of Overseas Labour (DOLAB) in five provinces. The provincial MRCs are linked with the local employment service centres to promote better integration of safe migration counselling into employment services.</p> <p>(d) Pre-departure training is being promoted in the framework of the Vietnam Association of Manpower Supply (VAMAS) Code of Conduct.</p> <p>(e) The National Bar Association of Vietnam is being supported in developing new mechanisms to provide legal assistance.</p> <p>(f) The promotion of safe and legal migration and counselling services of Employment Service Centres (ESCs) and DOLAB.</p>
Philippines	<p>(a) One Stop Shop for Seafarers⁴⁵ was set up through the Maritime Industry Authority (MARINA) and is currently in the process of coming up with a guideline on implementing its rules and regulations.</p> <p>(b) There are also existing Filipino Workers Resource Centres⁴⁶ established by governments in ASEAN (Brunei Darussalam, Malaysia, and Singapore). The protection services provided by these centres include:</p> <ul style="list-style-type: none"> (i) Maintenance of hotlines and 24-hours-a-day, 7-days-a-week operating hours (ii) Shelters for migrants in distress (iii) Proactive outreach (iv) Use of a range of media for outreach (v) Formation of family circles to help migrant families support one another (vi) through the absence and return of family members

CHALLENGES

53. Even though only four ASEAN Member States have ratified ILO convention 81, almost all ASEAN Member States have labour inspection provisions in their national laws which are overseen by national authorities (see Table 6). All labour inspection systems in receiving ASEAN Member States cover both national and migrant workers, except in some sectors such as domestic work. This has a direct impact on the lives of the migrant women workers who are concentrated in large numbers in the domestic sector. However, for certain sectors like the rural sector, there is a conspicuous absence of data or research relating to labour inspections. This paper also reveals some additional challenges in practice:
- a. A number of the practices identified in Table 8, I and J are relatively new, and therefore more time is needed to monitor their effectiveness towards the protection of employment rights;
 - b. There is no clear link between existing support mechanisms and practices, and the labour law enforcement functions of labour inspection systems;
 - c. Labour inspections in nearly all the ASEAN Member States do not address the situation of migrant workers adequately. Furthermore, statistics and data on reported cases of non-compliance such as contract substitution and non-payment of salaries are rarely available;
 - d. There are few reported instances of labour inspection training that deal with labour law compliance in migrant reliant sectors;

43 Ibid.

44 Ibid.

45 Ibid.

46 IOM Publication, 2010, Migrant Resource Centres: An Initial Assessment, Page 56. Available from http://publications.iom.int/bookstore/free/MRS_40.pdf

- e. Better access to labour inspection support mechanisms, such as the various services provided by the OSSCs, MRCs and CSOs also needs ongoing attention.
 - f. Effective labour inspections have to better connect the inspection of health and safety conditions with the inspection of general working conditions⁴⁷, to ensure the outcome of a better working life for everyone in the workplace, and better living conditions for migrant workers, including housing.
 - g. Greater awareness to help differentiate between the role of labour inspectors, OSH inspectors, and other labour officials is needed as various labour departments in ASEAN Member States may be using different definitions for the term “labour inspector.”⁴⁸
54. Corroborating information from CSOs has also confirmed that it is often unclear if Pre-departure orientation services (PDOS) provide sufficient information on labour rights, rules, and regulations for departing migrant workers. It is pointed out that PDOS are often generic in nature, and are not conducted from a rights-based perspective. Post arrival orientation services are also not delivered on a consistent basis.⁴⁹

RECOMMENDATIONS

55. There are obvious, specific challenges to labour inspection practices in ASEAN, and this compounds the challenges facing labour law enforcement related to migrant workers. For example, the latest available data for ASEAN indicate that there are around 125 million workers in the formal sector⁵⁰. The total number of inspectors (excluding Myanmar, refer to Table 7) in ASEAN stands at 5,194. This means that there are 24,066 workers to every one inspector. If workers in the informal sectors in ASEAN are also included, the ratio will be much higher. Of course, the ratio is at best a rough approximation given the challenges of obtaining updated and accurate figures for the number of labour inspectors from all ASEAN Member States.
56. Nonetheless, ASEAN has taken steps to address some of the existing challenges, such as through the convening of ASEAN Labour Inspectors Conferences. At the Fourth Labour Inspection Conference (in 2014), it was confirmed that the ASEAN Labour Inspection Conference will be convened, in cooperation with the SLOM Working Group on Progressive Labour Practices and the ASEAN Occupational Safety and Health Network. This meant that future meetings on labour inspections should be undertaken jointly with OSH practitioners and policymakers as the two issues—OSH and labour inspection—are topics that should be developed as a whole. But most significantly, and relevant for the AFML, the Fourth Labour Inspection Conference unanimously agreed to develop guidelines for labour inspections in migrant-reliant sectors. Labour inspections are to be led by ASEAN Member States partnering with labour and employers’ organizations, as well as international organizations such as ILO, IOM and the International Association of Labour Inspectors (IALI), adhering to the principles of ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.
57. Taking all of the information thus far under review, the participants of the 8th AFML should consider the following key points during the workshop deliberations:
- a. Labour inspections need to be firmly recognized in ASEAN Member States as a core part of labour administration, with the allocation of sufficient resources and budgeting for training and upgrading of inspectorate staff;
 - b. The integrity of labour inspection systems needs to be ensured through the appointment of independent labour inspectors who are civil servants;

47 Many destination Countries have detailed OSH mechanisms compared to labour inspection. The number of OSH inspectors is also usually larger than the number of labour inspectors. See ILO NORMLEX database, *Direct Request (CEACR)—adopted 2012, published 102nd ILC session (2013)*

48 Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Available from http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0:NO:P13100_COMMENT_ID:3081129

49 TFAMW – Post 7th AFML Regional Consultation Workshop, 15-16 May 2015.

50 An ILO-ADB (2014) publication indicate there are 179 million workers in the vulnerable/informal sector (58.8 per cent). Thus we can reduce the number of workers in the formal sector to be 125 million. See ILO & ADB (2014), *ASEAN Community 2015: Managing integration for better jobs and shared prosperity*.

- c. More women labour inspectors should be encouraged in relevant sectors in order to ensure gender sensitivity, with reference to CEDAW General Recommendation No. 26 on Women Migrant Workers⁵¹;
- d. Investments in conducting specialized capacity-building training programmes, with a focus on “gender and migration” for labour inspectors, should be made;
- e. ILO Convention 189 should be ratified in all ASEAN countries so that domestic workers enjoy the same rights as all other workers, and are covered under current international standards of protection. Alternatively, national legislative frameworks should be brought in line with the Convention;
- f. Development of regional guidelines for inspection in migrant-reliant sectors such as domestic work, construction and fishing;
- g. National labour standards, and laws covering all migrant workers in receiving ASEAN Member States need to be better and more explicitly enforced through appropriate labour inspections, taking into account the special needs and vulnerabilities of migrant workers;
- h. There should be a clear procedure and agreement on what the role of labour inspectors is, especially in situations where cases where the irregular employment of migrant workers are identified. It should be noted that the role of labour inspectors is not limited to simply checking the regular or irregular status of migrant workers.
- i. In situations where joint inspections are conducted with immigration authorities, there should be a clear focus on the priority to prevent exploitation and to facilitate the regularization of migrant workers;
- j. Training and capacity-building for labour inspectors and labour attachés should be organized and implemented;
- k. The use of standard employment contracts for migrant workers should be promoted;
- l. Labour inspection regimes in countries of origin can play a complementary role in the pre-departure processes, such as ensuring that contracts between migrant workers and recruitment/ placement agencies are in line with the relevant employment laws;
- m. Aspects of labour inspection should feature as a part of the pre-departure orientation programme for migrant workers;
- n. The link between existing support mechanisms, such as those implemented by governments, and those of OSSCs, MRCs and services provided by CSOs, and extant labour inspection regimes, need to be reviewed and strengthened further;
- o. The relevant recommendations from previous AFML sessions should be re-examined with the view to enhancing their implementation (see Table3).

51 CEDAW General Recommendation No. 26. Available from http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

APPENDIX: Conclusions and Recommendations of the 4th ASEAN Labour Inspection Conference 3–4 July 2014, Manila, Philippines

This Conference was attended by delegates from ASEAN Member States (AMS): Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam, along with representatives of the International Association of Labour Inspection (IALI), ASEAN Services Employees Trade Union Council (ASETUC), ASEAN Confederation of Employers (ACE), ASEAN Trade Union Council (ATUC), and the International Labour Organization (ILO).

The Conference highlighted, within the context of the Ha Long Recommendations in 2010, the Dong Nai Action Plan in 2012 and the Progress and Updates noted in Bali by AMS in 2013, the presentations of the Philippines, Singapore and Viet Nam on good practices for labour inspections (ASEAN Models on Inspection); of Cambodia, Indonesia, Malaysia and Thailand on capacity-building and training; and of Myanmar, Lao People's Democratic Republic and Brunei Darussalam on challenges and solutions for inspections and emerging issues (Occupational Safety and Health and migrant workers).

The Conference also highlighted the sharing of ideas and experiences of the ILO, IALI, ATUC, ASETUC, and ACE.

The Conference noted:

1. That in pursuit of the Ha Long Recommendations, all or some Member States:
 - Have put in place infrastructure for labour inspections, including data analysis in support of policy making; secured resources from organizations to strengthen capacities of labour inspectorate; made some progress in pushing forward the ratification of international labour inspection standards; and conducted capacity-building activities for labour inspectors.
 - Have affirmed the development of ASEAN guidelines and organizational and operational models for effective and credible labour inspections; and the need to identify labour inspection challenges and solutions at both the national and regional levels.
 - Have recognized the adoption of IALI's Global Code of Integrity for Labour Inspections and the lead role of Singapore in sharing information on their experience with labour inspectors across ASEAN; and have affirmed the need to continue the sharing of experiences and implement good practices in adopting a code of integrity guided by IALI's Global Code of Integrity on Labour Inspection 2 and the ASEAN-OSHNET Code of Integrity for Occupational Safety and Health Inspections.
 - Have affirmed the need for the ASEAN Labour Inspection Conference to be convened in cooperation with the SLOM Working Group on Progressive Labour Practices and the ASEAN OSHNET.
2. The significant cooperation of AMS in addressing the issues of migrant workers in the region as contemplated in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and other relevant international standards.

The Conference acknowledged:

3. The strategic objective in the ASEAN Socio-Economic Blueprint for incorporating decent work principles in ASEAN work culture, safety and health in the workplace, through the building of the capacity of labour inspections for compliance, strengthening occupational safety, and health

capacities and standards, raising the profile of OSH programs and strategies within the region, ensuring fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws, regulations and policies of respective ASEAN Member States and the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

4. The need for AMS to continue cooperation with other stakeholders including employers' and workers' organizations, international organizations, and civil society organizations to protect and promote the rights of workers in ASEAN, taking note of the upcoming ASEAN Economic Community 2015.
5. The guidance provided under the 2010 Ha Long Recommendations on Labour Inspection Cooperation, "to recognize the priority in the ASEAN Labour Ministers' Work Plan 2010–2015 to promote activities in the area of labour inspections, including the organization of an annual labour inspection forum for ASEAN Labour Inspectorates, with a aim of continuing to convene such an ASEAN Labour Inspection Conference on a regular basis".
6. The ALMM statement in the 2012 Dong Nai Action Plan supporting the implementation of the Ha Long Recommendations on Labour Inspection Cooperation to "develop ASEAN guidelines and good structural and operational models for effective and credible labour inspections that AMS could adapt to their respective national circumstances and context".
7. The government has an indispensable role in developing effective labour inspections, along with the support and cooperation of social partners and other relevant stakeholders.

The Conference considered:

8. Sharing good practices among AMS for Labour Inspections, including areas such as codes of conduct, innovative approaches to compliance, use of new technology, incentives, role of social partners, private compliance initiatives among others, are important for mutual learning and building shared knowledge for the strengthening of national labour inspection systems in the context of greater integration within ASEAN;
9. The continued importance and relevance of human and institutional capacity development strategies and tools for labour inspection systems;
10. Cooperation with social partners and collaboration with other relevant national and regional institutions, including ASEAN-OSHNET, constitute a vital contribution towards achieving workplace compliance through labour inspections;
11. Development of ASEAN Guidelines for labour inspections in migrant-reliant sectors, taking into consideration the relevant national laws of the AMS, with special attention given to vulnerable workers, would contribute to an enhanced understanding of the role of labour inspections in the protection of the rights of migrant workers and would support the implementation of the ASEAN Declaration on the Protection and Promotion of the rights of Migrants Workers.
12. Continued support from and cooperation with ILO, IALI and other international organizations to bring additional expertise and comparative knowledge to support the strengthening of national and regional compliance initiatives.

The Conference recommended:

13. To continue regional platforms for the sharing of knowledge and good practices and capacity development.
14. To support the inclusion in the post-2015 ASEAN Labour Ministers' Work Programme priority areas in promoting decent work, setting up of a regional network of labour inspectorates, and upholding and developing the capacity of occupational safety and health.

15. That the annual ASEAN Labour Inspection Conference be continued in 2015 and it's hosting to coincide with the scheduled ASEAN Chairmanship, which will be subject to confirmation. The conference recommended Indonesia to host the 5th ASEAN Labour Inspection Conference in the event that the ASEAN Chair may not be able to host it subject to confirmation.
16. To support the development of guidelines for labour inspection in migrant reliant sectors, led by ASEAN Member States, in partnership with labour and employer organizations, and international organizations such as the ILO and IALI, adhering to the principles of the ASEAN Declaration on the Protection and Promotion of the rights of Migrants Workers.

Unanimously Adopted. 04 July 2014, Manila, Philippines.

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