

# **Recommendations from the Asia-Pacific Regional Civil Society Consultation in Preparation for the Second UNHLD on Migration & Development, October 2013**

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From 27-28 May 2013, *Migrant Forum in Asia* and *Building Woodworkers International* hosted the Asia-Pacific Regional Consultation in preparation for the second UN High Level Dialogue on Migration and Development (UNHLD), which will take place in October 2013. This consultation—one of seven regional consultations spearheaded by the *Global Coalition on Migration* taking place globally over the next two months—brought together 60 trade unionists, civil society organizations, and independent activists representing 43 organizations and 17 countries in the Asia Pacific region. Participants deliberated on the following series of concrete policy recommendations that will be put to governments during the Civil Society Interactive Hearings in New York on July 15, 2013, and advanced during the Civil Society Days of the UNHLD.

The following policy recommendations fall under five major themes: Regulating the Recruitment Industry, Stranded Migrants, Labour Rights, Rights for Women / Best Interests of Children, and Redefining International Mechanisms of Migrants' Rights Protection. These themes are derived from the **7-point, 5-year Agenda** of the Civil Society Steering Committee for the UNHLD—endorsed by more than 100 organizations worldwide.

The 7-Point, 5-year Agenda is a result of a number of discussions among civil society groups, including trade unions, that are actively engaged on the issue of migration and development. These processes included the following: GFMD Mauritius (November 2010); the 5<sup>th</sup> World Social Forum on Migration, Manila (November 2012); the GCM meetings in Mauritius, Ghana, and Manila; and the recent meeting of the GCM in New York last January, where the group decided to use this document as a reference for discussions. The 7-point, 5-year Agenda has been submitted to the UN Secretariat, the members of the UN General Assembly's Second Committee, other New York-based UN missions, and, most recently, to the Population Dynamics and Post 2015 Agenda consultation in Geneva.

## Regulating the Recruitment Industry

Recruitment agency regulation has been at the top of the agenda for migrant workers and migrants' rights advocacy organizations for many years. While governments have acknowledged the need for enhanced regulatory mechanisms for this industry, efforts to implement effective measures have, thus far, been unable to bring about much-needed reforms to alleviate the gross exploitation of migrant workers. Serious gaps persist in recruitment procedures as proscribed by national laws/policies and the actual experience of migrants as they navigate recruitment processes. Examples of these gaps include contract substitution; multiple contracts; loans tied to employment contracts; false promises; collusion between corrupt government officials, recruitment agencies, and lending agencies; and payments without receipts.

Trade unions and civil society have developed recommendations to governments on how to approach the many challenges of regulating the recruitment industry in a number of national, regional, and international forums. The following policy options are open to states to better regulate this industry.

### **Cooperation between origin and destination countries to decrease financial costs of migration**

The financial cost of migration is relatively high, and disproportionately higher for low- and semi-skilled migrant workers. While regulated in many country contexts, recruitment fees are often much higher than officially recorded, as sub-agents charge illegal fees and extort money from prospective migrants. Many families borrow money from unscrupulous lenders at high interest rates or acquire debt directly from their recruiters to fund their migrations. Moreover, some governments have policies whereby migrant workers must borrow money from banks at high interest rates to pay their placement fees upfront. These loans are paid back through salary deductions. Effectively living and working under conditions of debt bondage, migrant workers often agree to long hours and unacceptable working conditions for fear of losing their jobs, or with the objective of earning money quickly to alleviate this added financial burden. In addition, in sending money home migrants are charged high fees by banks or wire services for every transaction, adding further to the financial cost of their migrations. Thus,

- To alleviate these unnecessary financial burdens, origin and destination country governments should cooperate and work together on solutions to alleviate the high financial costs that amplify migrant workers' risk of human rights violations. This includes strengthening enforcement of regulations on the charging of illegal recruitment fees.
- All governments should ratify ILO C181, Private Employment Agencies Convention (1997).
- Governments should exercise their regulatory functions to guard against exploitative practices of financial institutions engaged in remittance transfers.
- Governments should increase transparency in remittance procedures by listing the charges for remittances through official channels from country of destination to country of origin.
- Governments should facilitate access of migrant workers and their families to safe channels for remittances

### **Establish codes for ethical recruitment by agencies**

- As a means of working towards the eradication of industry corruption, codes of ethical recruitment, such as the WHO Code of Action on the International Recruitment of Health Personnel and the Commonwealth Code of Practice for the International Recruitment of Health Workers, should be implemented at the national, regional, and international levels. Such codes should be developed in collaboration with recruiters, employers, government agencies, trade unions, civil society, and migrant workers, and should be signed onto by recruiters and/or professional associations of recruiters, and can draw on recommendations from various forums.
- Governments should explore and implement government-to-government recruiting programs to alleviate reliance on private recruitment agencies.
- Recruitment agencies should not charge fees from migrant workers.
- While awaiting deployment, migrants are sometimes made to work without pay by their recruiters, and are subject to migration-related detention prior to departure. Governments should monitor these trainings and ensure that these practices are stopped.
- The ILO should develop a convention on ethical recruitment to establish international standards for recruitment.
- The UN Migrant Workers Committee should adopt a General Comment on recruitment.

### **Create transparent licensing systems for recruiters**

Attempts to register and license recruitment agencies in origin and destination countries have largely been ineffective. In many cases, once blacklisted, recruiters are able to reestablish their operations under different names or in different cities. Thus, more effective and transparent licensing systems are required. Such systems should include:

- Stringent standards for the accreditation of recruitment agencies set by governments
- Comprehensive laws and effective complaints mechanisms to regulate and monitor recruitment agencies
- A government body that focuses on licensing and regulation of recruitment agencies and validates authenticity of documents
- Clear and immediate sanctions against recruiters in violation of licensing requirements
- License cancellations for errant recruitment agencies
- Compulsory periodical assessments of the practices of recruitment agencies

### **Simplify recruitment procedures**

Among the many, multifaceted reasons that migrant workers are rendered vulnerable is that recruitment systems are complex and can be difficult to navigate, particularly for migrant workers with low levels of literacy or knowledge about how the system works. Some prospective migrants choose irregular migration paths or trust illegal recruiters on the advice of family, friends, or acquaintances to avoid engaging with complex, bureaucratic systems.

To avoid such pitfalls,

- States should re-examine existing recruitment procedures and implement simplified systems and establish a one-stop processing centre to progressively eliminate brokers and intermediaries involved in the process, with a view to reducing instances of illegal recruitment.
- States should establish accessible workers' assistance centres to assist migrants and prospective migrants in the recruitment process

### **Effectively disseminate pre-decision and pre-departure information**

- Governments must ensure that migrant workers are adequately informed of their rights, realities of migration, ethical recruitment practices, social costs of migration, redress mechanisms and access to justice, how to access assistance in the case of emergencies, culture in destination countries during both the pre-decision and pre-departure phases.
- Governments should provide adequate country-specific, sector-specific, rights-based, and gender responsive pre-departure orientations to migrant workers

### **Implement mechanisms to promote good recruitment practices and expose bad practices**

Governments should work on specific initiatives to identify, in a comprehensive way, the good and bad practices, and to put systems in place to promote the good practices and expose/eradicate the bad practices. Trade unions and civil society have made some recommendations to achieve that end:

- Establish Agency-Employer Watch or a Multi-stakeholder Monitoring Committee that includes trade unions and civil society
- Governments should exercise due diligence in the conduct of their work to improve the implementation of existing mechanisms to deter agencies from circumventing the law, taking actions including:
  - Imposing penalties for offenses including but not limited to sending minors abroad, operating without a license, disobeying employment contracts, and sending workers to countries not approved by the government.
  - Prosecuting errant recruitment agencies
  - Forbidding agencies from withholding workers' travel and employment documents
  - Maintaining publicly available and widely shared blacklists of errant recruiters and disclosing the names of unscrupulous recruitment agencies and persons involved (e.g., Governments should post and continually update agency blacklists (employers and recruitment agencies) on official government websites, and share these lists among countries through foreign missions.)
  - Give recognition to recruitment agencies with good practices
- Address corruption related to recruitment and penalize government officials engaging in malpractices

- Governments should create multi-sectoral networks including trade unions and civil society that would ensure ethical recruitment practices are implemented (e.g., knowledge-sharing, material development and dissemination, lobbying)

### **Develop mechanisms to match education/training programs with labour market needs (at home and abroad)**

- To address problems of mismatches between labour supply and demand, and the resultant deskilling and/or unemployment of migrant workers in their countries of origin and destination, governments should work towards policies of skills and credential recognition, and provide opportunities for skills and credential upgrading.
- Providing opportunities for skills and credential upgrading should be accompanied by the creation of public employment agencies to assist in the placement of migrant workers (in particular, for migrant domestic workers).
- Governments should undertake labour market analyses on the short- and long-term needs for foreign employees and the skills required, in both origin and destination countries.

Governments must allocate adequate resources in order to regulate the recruitment industry.

## **Stranded Migrants**

Migrants stranded in emergency situations have garnered considerable attention at the international level in light of the 2011 crisis in Libya, in which migrant workers fled to border areas to await evacuation due to the outbreak of hostilities. These migrants were, effectively, stranded, as they were unable to leave their country of destination without assistance. Much of the thinking on this concept has, thus far, been undertaken through a humanitarian lens; strandings are seen as infrequent, anomalous phenomena to be dealt with through international aid and assistance. However, migrant worker communities understand this as a human rights issue, arguing that migrants can become stranded in many ways (due to undocumented status or statelessness, lack of financial resources, inability/unwillingness to move, strict border controls—in addition to emergency situations).

Governments must not see the label of stranded migrants as outside the existing human rights legal frameworks, but as complementary to existing human rights frameworks including:

- The Refugee Convention (1951)
- The International Convention on the Rights of All Migrant Workers and Members of their Families (1990)
- The Convention on the Reduction of Statelessness (1961)

### **Governments should account for the various ways in which migrants can be considered “stranded”**

Migrants become stranded in many different ways—with emergency situations being one among many scenarios that can render migrants stranded. These scenarios have a range of implications for their legal status and personal safety, security, and well-being. These situations include:

- Migrants stranded due to civil unrest

- Migrants stranded due to natural disasters
- Migrants stranded due to climate change
- Migrants stranded due to epidemics
- Migrants stranded due to gender-based violence
- Migrants stranded due to immigration controls
- Migrants stranded due to lack of documentation and statelessness
- Migrants stranded due to a lack of financial resources
- Migrants stranded due to an unwillingness to return
- Migrants stranded due to imprisonment
- Migrants stranded in safe houses/shelters
- Migrants stranded due to conduct of employers
- Migrants stranded due to dependency status
- Migrants abandoned by smugglers en-route

In relation to migrant workers stranded due to states of emergency (conflict, environmental catastrophe, etc.), states should consider the following policy options:

### **Collaborate on the development of comprehensive contingency plans that are gender-responsive and rights-based**

Rather than coordinating emergency responses on an ad hoc basis, a coordinated, migrant-centred, gender-responsive, and rights-based approach would facilitate the efficient evacuation of stranded migrants, regardless of nationality, legal status, or gender-identity, from centres of crisis. To that end,

- Governments should never criminalize or detain migrants in emergency situations. Governments should collaborate with civil society organizations to provide appropriate quality services including access to safe shelters, psychosocial support, and assistance to stranded migrants and assuring that such services are provided in languages understandable to migrants.
- Governments (origin, transit, and destination) should develop partnerships with local and international agencies (OHCHR, OCHA, UNHCR, ICRC and local affiliates, ILO, IOM, Office of the UN Secretary General, UN Women, International Coordinating Committee of National Human Rights Institutions), humanitarian organizations, host communities, and migrant communities to develop emergency response plans well in advance for ‘at-risk’ areas, to be enacted immediately in times of crisis.
- Countries of origin should develop multi-stakeholder taskforces to coordinate with host country officials, neighbouring governments, and migrant communities to ensure swift and appropriate responses to prevent migrants from becoming stranded in the first place.
- Countries of origin should include information about emergency contingency plans during pre-departure orientation sessions. Sessions should include discussions of particular types of emergencies and plans in place to support them.
- Governments should ensure provision of adequate emergency medical services, including for sexual and reproductive health, as well other basic essential services to such as food, water, sanitation, and safe shelter.

- Plans for stranded migrants should be included in MOUs between countries of origin and destination, and include guarantees of protection for countries of origin and destination
- Governments should put in place mechanisms for migrants and members of their families to safely seek assistance in the event of being stranded without fear of forced-removal or criminalization in respect of their human rights.
- Governments should call on (and assist) the UN Special Rapporteur on the Human Rights of Migrants to conceptualize a coordinated protection framework for migrants in dire humanitarian situations, including guiding principles.
- States should make migrants in crisis a priority on the agendas of Regional Consultative Processes, and ensure that all stakeholders are involved in these processes.

### **Provide essential identification/travel documents to allow migrants to freely move to safe areas that are consistent with human rights**

In countries where exit permits are required in addition to entry/work visas, standard and immediately-available emergency exit permits that do not require the consent of the employer should be issued in cases of natural disaster, armed conflict, wars, insurgencies, etc. to allow for the evacuation of migrant workers who wish to leave, or the usual exit requirements should be waived. Emergency exit permits should include provisions such that the migrant is able to return to the country of destination when the situation has been resolved. Origin country embassies should collaborate with host country governments in ensuring that such permits are issued. This will alleviate cases in which migrants have become stranded simply because they lack access to the necessary documents to depart.

### **Consider and provide alternatives to repatriation**

In emergency situations, some stranded migrants may choose to stay in unsafe areas. This response can be for a variety of reasons—the migrant may fear that s/he will be unable to return once the emergency has subsided, if the migrant is undocumented s/he may fear detention or other repercussions, or there should be other personal reasons that s/he does not want to return home. In the interests of creating migrant-sensitive response mechanisms, states should offer options other than repatriation. Possible migrant-responsive alternatives include:

- Implementing safe zones in countries of destination or in third countries, which include support from the community to ensure that these zones are responsive to migrant needs
- Facilitating temporary evacuations to third countries
- Providing information on and support for re-migration following repatriation through safe migration channels
- Reviewing migrant-responsive options and consulting migrants on their evacuation and/or repatriation options when proactive contingency plans are formulated, with a view to implementing migrant-responsive mechanisms.
- Governments and embassies should utilize available technologies to map the current locations of migrant workers.

- Governments should enable migrants to make informed choices (whether to evacuate or remain) in cases of emergency without fear of criminalization and/or forced repatriation.

### **Create comprehensive plans to assist all migrant evacuees with reintegration**

- Migrant sending states should create plans for those forced to return home due to emergency situations. To do so, they should make plans to assist returnees in accessing good employment or up-skilling opportunities. Such plans should be designed with large influxes of returnee migrants in mind, and appropriate resources should be allocated for such contingencies.
- Governments should allocate sufficient resources to provide relief and rehabilitation for migrant evacuees, and provide necessary psychosocial support.
- Governments should ensure that mandatory insurance schemes cover emergency situations. Any insurance schemes should be provided at no cost to the workers
- Origin country governments should work with recruitment agencies to prioritize migrant evacuees in redeployment

## **Labour Rights**

In many destination countries migrant workers, particularly migrant domestic workers and migrant workers of irregular status, fall outside labour laws. In some countries, both local and migrant workers such as seafarers, seasonal workers, and agricultural workers fall outside the protections of national labour laws, particularly the right to association and collective bargaining. Where labour laws cover migrant workers, enforcement and access to redress mechanisms are often found to be problematic—migrant workers may feel intimidated by their employers and fear reprisals for complaints, language barriers may hinder access, migrants may prefer to remain silent to avoid losing their jobs, migrants may lack access to support groups, etc. To ensure that migrant workers are recognized as workers, that labour laws cover migrant workers and that governments enforce labour standards, and that migrants have access to redress mechanisms, governments should consider the following policy options:

### **Ensure that national labour laws are in line with international standards including the protection of migrant workers**

As members of the international community, governments are obligated to bring their labour laws and enforcement mechanisms in line with international labour standards set by the ILO and international law. They must ensure that the design and implementation of state migration and labour policies do not violate human rights, criminalize irregular migrants, deny migrant workers access to decent work, and generally fail to prevent the exploitation of migrant workers. To that end,

- Governments should ratify and implement the following international conventions:
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
  - International Convention on the Elimination of all forms of Discrimination Against Women (1979)

- The 1951 Refugee Convention and 1967 Protocol
  - ILO Convention No. 181: Private Employment Agencies
  - ILO Convention No. 189: Domestic Workers
  - ILO Convention No. 143: Migrant Workers (Supplementary Provisions)
  - ILO Convention No. 97: Migration for Employment
  - ILO Convention No. 19: Right to Compensation
  - ILO Convention No. 118: Equality of Treatment (Social Security) Convention (1962)
  - The International Convention on the Elimination of All Forms of Discrimination
  - The ILO's Eight Core Conventions:
    - C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
    - C98 Right to Organise and Collective Bargaining Convention (1949)
    - C29 Forced Labour Convention (1930)
    - C105 Abolition of Forced Labour Convention (1957)
    - C111 Discrimination (Employment and Occupation) Convention (1958)
    - C138 Minimum Age Convention (1973)
    - C182 Worst Forms of Child Labour Convention (1999)
- Additional guidance on rights-based approaches to migration should be considered from the following:
    - ILO's Multilateral Framework on the Protection of Migrant Workers
    - UN Declaration on the Right to Development
    - World Conference Against Racism Program of Action
    - Cairo Conference on Population & Development Program of Action
    - 4<sup>th</sup> World Conference on Women, Beijing Platform of Action
    - Recommendations from the Universal Periodic Review
    - Recommendations from relevant treaty bodies and special procedures
  - Governments should review their existing labour and migration policies to ensure that they abide by the core UN and ILO conventions that protect the rights of migrant workers. Where discrepancies exist, governments must put processes in place to harmonize existing laws and policies with labour and human rights standards. Governments should refer to the ILO Multilateral Framework on Labour Migration for guidance in bringing laws and policies in line with international law.
  - Governments should promote a rights-based approach, ensuring the right to association, equal pay, access to social security, compensation for work-related accidents and injuries, employment opportunities, and promoting equal treatment and non-discrimination.
  - Governments should recognize domestic workers as workers and incorporate domestic workers rights in national labour law and relevant policies in line with ILO Convention 189.
  - Governments should work to eliminate discriminatory laws and practices against migrant sex workers.
  - Governments, in consultation with migrants, trade unions, and diverse civil society organizations, should draft and implement mechanisms utilizing available technology to ensure timely, regular, and full payment of wages as well as overtime, bonuses, social security, and all other benefits stipulated in the employment contract
  - Governments should sign and implement transparent and accessible bilateral agreements that build on international standards for the protection of the rights of all migrant workers, with strict monitoring and

implementation mechanisms of the same. Such bilateral agreements should include provisions for the portability of pensions and the full range of social protection mechanisms.

- Governments should cooperate with employers, labour unions, migrant worker communities and other civil society organizations to promote rights-based approaches to migration and development policies that will ensure family (re)unification and protection and promote the right to information and freedom of association for all migrant workers, irrespective of legal status.
- Migration policies should be designed / modified to include mechanisms through which temporary migrants can access permanent residency and citizenship.
- Governments should ensure that migration schemes mutually recognize the skills and qualifications of migrants, towards decent work, equal treatment, and non-discrimination.
- Governments of countries of destination should end tied-visa systems and work permits that bind workers to a single employer, as this increases workers' vulnerability considerably and is contrary to international labour and human rights conventions. Work permit and/or visa systems must be created such that workers have flexibility in choice of work and are not bound to their employer.
- Governments should extend multiple entry visas to migrant workers that enable them to return home to visit their families or to leave the country of destination in emergency situations, without losing their legal status.
- Governments should implement policies that in the event a migrant worker loses their job or chooses to leave, they have the right to stay and find new employment. Where unemployment benefits are available for local workers, these benefits must also be available for migrant workers.
- Governments should reform work visa and permit systems to ensure that "low- skilled" workers have the same rights to with respect to the portability of work permits, family reunification, and possibilities of permanent settlement as "high-skilled" workers.
- Governments should engage in evidence-based discussions on migration, and should undertake a mapping of promising practices on the protection of migrants and progress towards the adoption and implementation of these practices.

### **Ensure the right to social protection, including the right to health and to safe and healthy workplaces**

- Governments should ensure that migrants have access to the highest attainable standards of physical and mental health services, including for sexual and reproductive health. Governments should recognize, respect and affirm migrants' rights to health. This should include the implementation of safe working conditions and regular inspections of work places, including the elimination of fire hazards. Governments must lift any discriminatory policies based on health status, including HIV status and contagious diseases such as TB that may affect the rights of migrants.

### **Ensure that migrants, irrespective of legal status, have access to redress mechanisms when their rights have been violated**

- Legal proceedings for cases involving migrant workers are often administered in the language of the host country without the aid of an official, qualified interpreter. Thus, qualified and independent interpreters must be provided by the state in all legal cases involving migrants
- Governments should ensure that effective and expedient complaint and redress mechanisms, specifically for migrants' rights violations, are in place, and that they are open to migrants with the right to keep their identity and legal status confidential. Governments should also ensure protection of migrant workers against legal reprisals of employers.
- Governments should provide free legal support through retainers and access to redress mechanisms for migrant workers and should facilitate access to safe shelter and appropriate services.
- Governments should have funds to support (or in-house staff to provide) pro bono services to migrants in need of legal support. Lists of organizations providing legal services to migrants should be provided by/shared among embassies.
- Countries of destination should allow migrant workers and survivors of human trafficking the option to stay and seek optional gainful employment in situations where legal proceedings are underway.

### **Engage in awareness-raising on the labour and human rights of migrants**

- Governments should commit resources to the enforcement of migrants' rights protection regimes, including providing awareness-raising and capacity-building, to government officials to develop their sensitivity on migrants' rights issues and understanding of how to effectively implement corresponding laws and policies.
- Governments should actively cooperate with trade unions, civil society, and media organizations to employ and share promising practices for public information and awareness-raising campaigns.
- Governments, in cooperation with migrants, trade unions, and diverse civil society groups, should ensure that migrants, including those in an irregular status, know and are able to exercise their rights and responsibilities.

### **Extend support to irregular migrants in accessing their rights**

- Migrant workers regardless of status should have the right to seek medical and legal services without fear of arrest, detention, or deportation; service providers should be exempt from prosecution for providing these services.
- Governments should decriminalize undocumented/irregular status, and only ever treat this as an administrative offence. There should be a presumption against detention for migrants in deportation proceedings, and detention should only be applied in exceptional cases and only ever as a last resort.
- Governments should make available multiple, accessible avenues for regularization. Migrants should never have to rely solely on their employers to ensure that their documents are properly filed and validated.

## Rights for Women in Migration Rights & Best Interests of Children in Migration

Women experience migration in different ways, as migrant workers, as dependents of migrant workers, as marriage migrants, and as individuals affected by migration. Women in migration, particularly migrant workers, experience increased and specific risks on account of their consistent inability to access labour, legal, and social protection. In some sectors (including domestic work and other sectors dominated by female labour), working and living conditions exacerbate such risks, leaving women migrant workers at risk of sexual and physical violence, immigration detention, poor health, denial of sexual and reproductive health and rights, late payment or non-payment of wages, illegal withholding of travel documents, wrongful termination of contracts, lack of access to justice, etc.

Given the intersectionality of the challenges facing women in migration, states should proactively formulate and enact laws and policies on migration, adhering to international human rights instruments centering the rights of women, such as the ICPD PoA, BPfA, and CEDAW, including its General Recommendation 26. Migration policies of origin, transit and destination countries should make women visible in their migration policies and recognize women as rights holders contributing to the economy and development. To that end, governments should consider the following policy options:

### **Ensure that migrant women's rights are protected as per the guidelines set out in the CEDAW, other international instruments, the work of the human rights treaty bodies and special procedures, and outcomes from the UN Commissions on the Status of Women and on Population and Development**

Governments must take into account the long history of gender discrimination and historically unequal power relations between women and men and uphold women's right to decent work, health, education, security, justice, and to be free of discrimination when entering and leaving a country. To that end,

- Governments should develop rights-based, gender-responsive monitoring indicators and disaggregated data on migration and development policies and trends, including indicators to measure progress on the items indicated in International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and other human rights instruments, including the Program of Action of the International Convention on Population and Development, the Beijing Platform for Action, CEDAW General Recommendation 26.
- Governments should refer to CEDAW General Recommendation 26 and the Guideline 9.8 of the ILO Multilateral Framework on Labour Migration, which gives particular attention to domestic workers, trainees, temporary migrant workers, and migrant women, in advancing policies that protect the rights of migrant women to family and mobility.
- Governments should ratify and implement ILO Convention 189, recognising domestic workers as workers, and providing protections for them under national labour laws;
- Governments should also work to ensure that the employment of migrant women is not primarily limited to the informal sector and that rights protections are extended to women in the informal sector including the right to association.
- Governments should ratify and implement relevant ILO Conventions:

- C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
  - C98 Right to Organise and Collective Bargaining Convention (1949)
  - C29 Forced Labour Convention (1930)
  - C105 Abolition of Forced Labour Convention (1957)
  - C111 Discrimination (Employment and Occupation) Convention (1958)
  - C138 Minimum Age Convention (1973)
  - C182 Worst Forms of Child Labour Convention (1999)
- Governments must recognize that women are rights bearers and active agents in claiming their rights and contributing to just and fair development, and should actively prioritize ending all forms of discrimination against women, regardless of legal status or factors including nationality, age, sexual orientation or gender identity, health and pregnancy status, developing an intersectional perspective on gender that establishes protections that recognize and take into account the numerous, specific risks that migrant women face and provide redress, including compensation.
  - Governments should ensure that women migrants have access to information and education, including vocational training as well as human rights education, and orientation programs that include language training.
  - Governments should ensure that women migrants have access to the highest attainable standard of physical and mental health services. Governments should recognize, respect and affirm women's right to health and their sexual and reproductive health and rights. This should include provision of equitable access to rights-based, comprehensive and integrated sexual and reproductive health information and services, including prevention and treatment of STIs and HIV, choice of full range of contraceptives, maternal and safe abortion services where permitted by law, prevention and early detection and referral for diseases of the reproductive systems, such as breast and cervical cancers, at all stages of the migration cycle. Governments must lift any discriminatory policies based on health status, including HIV status and pregnancy that may affect the rights of women in migration.
  - Governments should ensure that policies and regulations reflecting the reality and diversity of women's experiences of migration, recognising and affirming women's autonomy and protecting and fulfilling their rights throughout the migration process, ensuring independent migration status (including marriage migration) that provides the right to work, ensuring access to redress in the destination country (in cases of divorce, sexual violence, widowhood), and for women family members who remain in origin communities, with particular attention given to preventing gender-based violence against women.
  - Governments should address policy challenges and discuss initiatives by countries of origin and destination, particularly law enforcement, awareness-raising, and effective legal redress mechanisms, to mitigate pervasive abuses against migrant women.
  - Governments should foster comprehensive, gender-responsive, and rights-based socioeconomic integration and reintegration of women migrants and returning migrants centred on women's rights.
  - Governments of origin and destination countries should implement human rights-based multilateral agreements and treaties that progressively reduce barriers to women's movement.
  - Governments should never detain women survivors of trafficking or sexual violence or witnesses to these crimes, women with children, nursing mothers, pregnant women, or women with mental health issues for migration-related purposes.

- Where women are detained, governments should proactively seek to implement gender-sensitive alternatives to detention, as long as it is not an alternative form of detention.

## **Mechanisms to protect the rights and interests of children in migration**

‘Children in the context of migration’ includes those children who migrate (unaccompanied or as part of a family unit), children left behind by migrating parents, and undocumented children. Children in migration make up a significant part of the large-scale and complex population movements currently taking place in many parts of the world and the number of children who are on the move is growing dramatically. According to one study, children represent around a quarter of all migrants.

Children are resilient and endowed with fundamental human rights. However, the experience for many children in migration is characterized by the denial of their fundamental human rights. Many children in host countries inherit the undocumented status of their parents. Children also bear the brunt of the social costs of migration, notably the separation of families. Children who migrate using falsified documents are extremely vulnerable to criminalization, abuse at the state level, trafficking, and forced labour. To provide specific and robust protections to children on the move, governments should:

- Acknowledge the application of the Convention on the Rights of the Child in full to children in the context of migration, including the obligation not to discriminate against children regardless of their nationality and migration status. In particular, immigration control mechanisms should never displace the requirement to make the best interests of the child a primary consideration in all actions in their regard. It is never in the best interests of the child to criminalise child migrants on the basis of their migration status.
- Should acknowledge children as rights holders and involve them in the decision making process of migration policies that affect them.
- Develop explicit policies for children in the context of migration. These should involve: investing in communities in ‘sending’ areas, lowering the economic and social costs of migration and ensuring that migrant children enjoy the legal protection and the rights recognized to all children by the CRC and other international standards, irrespective of their migration status.
- End the criminalization of children in migration and other violations of children’s rights based on migration status. Children should never be detained, deported unaccompanied, or separated from their families, irrespective the migration status of their parents
- Strengthen access to all children’s rights in adherence with the CRC, guiding principles and other international human rights instruments, including compulsory education for elementary and secondary school-aged children, access to healthcare, and other fundamental rights
- Establish rights-based protection networks for children whose parents or guardians migrate, paying particular attention to schools, communities and other protection networks
- Ensure that children have access to redress, including compensation, for human rights violations in the course of migration

- Recognizing that children in the context of migration are first and foremost children, governments should develop policies that ensure that children in the context of migration are free to reside in the community while their status is being resolved
- Ratify and implement ILO C138 Minimum Age Convention (1973) and ILO C182 Worst Forms of Child Labour Convention (1999), and establish programs to remove children in the context of migration from the worst forms of child labour, prevent those at risk of getting into child labour, and reintegrate them into mainstream society, while ensuring children in the context of migration of employable age enjoy their rights in full, including their entitlement to safe and healthy workplace

## Redefinition of the Interaction of International Mechanisms of Migrant's Rights Protection

Currently, the global discourse on labour migration (and the place of migrants' rights within that discourse) is dominated by the GFMD, leaving little space for the distinct mandate of the ILO and other specialized agencies in protecting and upholding the rights of migrant workers and their families. Substantial contributions to this discourse can be made by other international agencies, particularly the ILO, as 90% of the world's approximately 214 million migrants are migrant workers.

**Reaffirming that a rights-based framework should be the primary framework for intergovernmental discourse on migration, the GFMD should incorporate this framework, acknowledging and working within the many, detailed agreements governments have already made with respect to migration, development, human rights, and labour standards**

- Governments should ensure that the GFMD and HLD processes use a rights-based framework rather than discuss labour migration from a purely economic perspective. This includes ratifying and/or implementing the following instruments:
  - The International Bill of Rights: Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966), International Convention on the Elimination of Racial Discrimination (1965)
  - International Convention on the Rights of All Migrant Workers and Members of their Families (1990)
  - The ILO's core conventions:
    - C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
    - C98 Right to Organise and Collective Bargaining Convention (1949)
    - C29 Forced Labour Convention (1930)
    - C105 Abolition of Forced Labour Convention (1957)
    - C111 Discrimination (Employment and Occupation) Convention (1958)
    - C138 Minimum Age Convention (1973)
    - C182 Worst Forms of Child Labour Convention (1999)
  - Convention on the Elimination of All Forms of Discrimination Against Women (1979)

- Convention on the Rights of the Child (1989)
- Additional guidance on rights-based approaches to migration should be considered from the following:
  - ILO’s Multilateral Framework on the Protection of Migrant Workers
  - UN Declaration on the Right to Development
  - World Conference Against Racism Program of Action
  - Cairo Conference on Population & Development Program of Action
  - 4<sup>th</sup> World Conference on Women, Beijing Platform of Action
  - Recommendations from the Universal Periodic Review
  - Recommendations from relevant treaty bodies and special procedures
- The GFMD should affirm that the primary concern is the urgent need for international governance to protect the rights of migrant workers and their families when specific governments fail to do so
- Governments should deepen engagement with the relevant treaty bodies, the Supervisory and Special Mechanisms and Procedures of the UN Human Rights Council, and the ILO

**Ensure that the GFMD and UNHLD processes are open, transparent, and inclusive**

- The HLD must give UN organisations, especially the ILO and OHCHR, key roles in the governance architecture and place migration debates, policies and programs within the UN framework
- The GFMD should be put under the ambit of the UN so it is more accountable and transparent, and adheres to and builds on the existing human rights frameworks and obligations
- The Friends of the Forum of the GFMD should commission a continuing independent evaluation of the GFMD process to ensure accountability, transparency, and inclusivity of process and outcomes. This evaluation should include the participation of migrants, trade unions, and diverse civil society groups
- The HLD and GFMD should be participatory fora of governments, migrants, trade unions, and diverse civil society groups to promote a rights-based approach, including decent work. This forum should address the underlying challenges of migration and development and how these issues can be addressed collectively.
- Credentials for participation in the GFMD and HLD processes for migrants, trade unions, and diverse civil society groups should be open, irrespective of UN accreditation or previous engagement with the UN, freely and without reprisals for participation
- Governments should set aside funding for migrants, trade unions and diverse civil society groups to participate in the GFMD and HLD processes
- The GFMD and HLD should prioritize engagement with migrants, trade unions and diverse civil society groups—the primary stakeholders for ensuring migrants’ rights protections—over banks, remittance companies, and corporations
- The GFMD should implement a transparent monitoring process to assess the impact of the Civil Society Days on the GFMD

## **Engage in other regional and international processes, putting rights at the centre of all migration and development discussions**

- ASEAN governments should prioritize the completion and implementation of the ASEAN Instrument of Protection for migrant workers. Other regional and sub-regional bodies within the Asia-Pacific region should develop a migrant rights instrument to protect and promote the rights of migrants in their regions
- Governments should develop more inclusive models for participation of migrants, trade unions, and diverse civil society groups and UN agencies in Regional Consultative Processes to leverage the wealth of knowledge and existing promising practices
- Governments should move away from circular and temporary migration models, because they prevent and restrict the movement of migrant workers and increases their vulnerability to abusive and irregular situations where they can be exploited by recruiters and employers
- Countries of destination and origin should establish and/or review existing bilateral and multilateral agreements on labour migration, and make such documents public, including provisions that host countries contribute to the integration and reintegration process and ethical recruitment in recognition of the services rendered by the migrant during his/her employment in the host country.
- Origin and destination countries should ensure that bilateral migration agreements, complete with implementing protocols, monitoring mechanisms, and dispute/complaint/redress mechanisms, are developed transparently and on the basis of a participatory approach - including migrants, trade unions, diverse civil society groups, employers, governments, and other social actors

The following organizations participated in this two-day Asia Pacific Civil Society Consultation and writeshop and contributed to this outcome document:

Alliance of Progressive Labor-Hong Kong	MAP Foundation/Mekong Migration Network – Thailand
Arab Network – UAE	Migrant Forum in Asia – Philippines
Asia Pacific Forum on Women, Law and Development – Thailand	Migrant Forum India
Asian-Pacific Resource and Research Centre for Women – Malaysia	Migrant Worker Rights Network – Myanmar
Building and Wood Workers International – Malaysia	National Domestic Workers Movement – India
Center for Human Rights and Development – Sri Lanka	Organization for Migration and Family Development – Philippines
Center for Indian Migrant Studies – India	Pakistan Rural Social Welfare Office – Pakistan
Center for Migrant Advocacy – Philippines	PMLU Migrants Rights Council – India
DanChurch Aid – India	Pourakhi-Nepal
Federation of Free Workers – Philippines	Pravasi Nepali Coordination Committee – Nepal
GEFONT Malaysia	Public Services International
Global Alliance Against Traffic in Women – Thailand	Public Services International Asia Pacific Regional Organisation – Philippines
Global Coalition on Migration	Public Services Labor Independent Confederation
Hsinchu Catholic Diocese – Taiwan	Serikat Buruh Migran Indonesia – Indonesia
Human Rights and Development Foundation – Thailand	Solidarity Center – Sri Lanka
International Detention Coalition – Australia	Solidarity Network with Migrants Japan
Kanlungan Centre Foundation – Philippines	TCWF- India
KavLaOved – Israel	Terre des Hommes Netherlands – Philippines
Law & Trust Society	UNI APRO – Malaysia
Legal Support for Children and Women – Cambodia	UNI-MLC
	Union Migrant Indonesia (UNIMIG)
	Women’s Rehabilitation Centre – Nepal
	Youth Action Nepal – Nepal