

# Labour inspection: Women migrant workers in ASEAN

This Policy Brief looks at labour inspection in ASEAN in relation to women migrant workers, making recommendations to policy makers, development partners, employers, workers' organisations, and civil society on the initiatives needed to ensure the implementation of labour standards for women migrant workers. In seeking to promote and protect the rights of women migrant workers in ASEAN, a strong and effective labour inspectorate is required to ensure that working conditions are in accordance with minimum national standards and are equally applied for men and women, migrant and national workers. Labour inspections are a vital tool for preventing and combatting violations of human rights committed against migrants in the workplace.<sup>1</sup>

Specific attention should be paid when inspecting workplaces with considerable numbers of migrant workers. Issues migrants face include: limited access to any, or reliable, information on their labour rights; language barriers; reliance on their employers for safe travel and living arrangements; as well as poor conditions in the workplace. Ensuring the safety of women migrant workers requires additional consideration of reproductive health and discriminatory practices. A significant number of women migrants in the region work in informal sectors that are inadequately covered by labour legislation and are therefore rarely or never subject to labour inspections, leaving women migrant workers particularly vulnerable to workplace abuse and exploitation.

## The role of the labour inspectorate

Proper application of labour legislation to protect workers' rights and ensure decent work depends on an effective labour inspectorate. Labour inspectors secure the enforcement of national labour laws in the workplace and advise employers and workers on how to improve conditions in line with legal

obligations, including on working hours, wages, occupational safety and health, non-discrimination, child labour and forced labour, among others. They also ensure that defects or abuses not addressed by labour law are brought to the attention of the appropriate authorities. Labour inspectors play an important role in ensuring that labour law is applied equally to all employers and all workers (women and men) – including migrant workers, young workers, and workers in hard to reach sectors. Labour inspectors are also regularly responsible for ensuring compliance in respect to the establishment of trade unions and the application of collective agreements as provided by law.

In carrying out inspections, labour inspectors will consider the conditions of the workplace as well as interview the management staff and workers and examine documents relating to conditions of work. Inspectors may take immediate measures for labour law violations, including issuing improvement notices, imposing administrative fines where allowed by law, issuing injunctions or reporting cases of non-compliance for further sanctions or prosecution. Employers are usually provided with the information and opportunity necessary to remedy any violations before any penalties are imposed. Where a violation presents a serious or imminent danger to the health or safety of the worker, the inspector generally has the power to impose immediate sanctions.

<sup>1</sup> Underscored by the Special Rapporteur on the human rights of migrants. See, United Nations General Assembly (UNGA): *Violence against women migrant workers*, Report of the Secretary-General, A/70/205 (UN, forthcoming) p. 8.

## Good practices

- 1 In **Thailand**, special labour inspections are organized at businesses to protect migrant workers in Bangkok and nearby provinces.
- 2 **Indonesia** and **Cambodia** have introduced obligations to inspect migrant recruitment agencies and pre-departure training facilities.
- 3 The **Philippines** have posted labour attachés in embassies in countries with a significant number of Filipino migrant workers to provide oversight to working conditions.
- 4 **Thailand** has developed training modules for increasing labour inspection capacities with the goal of improving the protection provided to vulnerable workers including migrant workers.
- 5 The **Philippines** inspect the contract of employment (pre-departure) to ensure that it contains the necessary terms and conditions.
- 6 ILO's Manual on Decent Work Indicators includes an indicator (by way of a formula) for establishing the required number of inspectors per 10,000 employees.<sup>2</sup>

## Key policy recommendations

- 1 Incorporate the requirement for inspections and the availability of inspection reports, into formal bi- and multi-lateral agreements on labour migration.
- 2 Develop and adopt separate regulations on the inspection of private recruitment agencies, including pre-departure training facilities.
- 3 Incorporate the inspection reports of migrant recruitment agencies and pre-departure training facilities in the assessment and ranking of recruitment agencies.
- 4 Develop labour inspection practices and checklists that respond to the situation of women migrant workers, including sectorally specific standards.
- 5 Incorporate questions on women migrant workers in self-assessment systems.
- 6 Support ministries of labour to increase the proportion of female labour inspectors in their inspectorates.
- 7 Incorporate a module on gender discrimination, gender equality and the specific issues of women migrant workers in the training for labour inspectors.<sup>3</sup>
- 8 Establish clear institutional and reciprocal links between labour inspection and criminal justice systems.
- 9 Provide training to law enforcement officers, and ensure that occupations dominated by migrant workers, especially women migrant workers, such as domestic work and entertainment, are protected by labour laws and subject to inspections.<sup>4</sup>

Article 11 of the UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) addresses the obligation to eliminate discrimination in the field of employment. As CEDAW has been ratified by all ASEAN Member States, they are all bound by it. In addition, the Resolution affirming gender equality's centrality to

decent work was adopted by the 98<sup>th</sup> Session of the International Labour Conference in 2009. This resolution reiterated the importance of promoting women workers' rights by eliminating bias and discrimination. This means that legal frameworks must be implemented through gender-balanced and gender-sensitive labour administrations, labour

<sup>2</sup> International Labour Office: Decent Work Indicators: Concepts and Definitions, ILO Manual: First Version, (Geneva, 2012).

<sup>3</sup> The ILO has developed such a module which has been recently adapted into the Indonesian context.

<sup>4</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families. General comment No.1 on migrant domestic workers. CMW/C/GC/1 (UN, 2011), para.41.

inspectors and courts.<sup>5</sup> Labour inspectors thus have a crucial role to play in identifying gender gaps (for example, in relation to discrimination, opportunity and treatment or pay), collecting and analysing information on gender disparities, taking remedial action when necessary, coordinating and providing information to government departments, employers, workers organizations on inspections

and in the promotion of gender equality in employment. Ultimately, the role of the labour inspectorate should influence the creation of more working opportunities for women.<sup>6</sup> Despite this, in many countries gender equality legislation is separate to the labour law, leaving some inspectors to conclude that they do not have legal mandate to enforce these provisions.

Labour inspections and international labour and rights standards		
	Ratifications in ASEAN	Provisions related to labour inspection
UN Convention on the Elimination of All Forms of Discrimination against Women, 1979.	Ratified by all ASEAN Member States.	General Recommendation 26, Para 26 (b) provides that States parties should... <b>provide to women migrant workers the same rights and protection that are extended to all workers</b> in the country...In particular, they should ensure that <b>occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws...</b> the laws should include <b>mechanisms for monitoring workplace conditions of migrant women</b> , especially in the kinds of jobs where they dominate (Articles 2 (a), (f) and 11).
UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990.	Ratified by Indonesia and the Philippines, with Cambodia as a signatory.	Article 11 indicates that States parties are required to take <b>effective measures against all forms of forced or compulsory labour by migrant workers</b> . This includes debt bondage, passport retention, and illegal confinement. Article 21 obliges States parties to ensure that <b>employers and recruiters do not confiscate or destroy travel or identity documents</b> belonging to migrant workers.
ILO Convention on Labour Inspection, 1947 (No. 81).	Ratified by Indonesia, Malaysia, Singapore and Viet Nam.	States that migrant domestic workers are to receive an enforceable contract prior to departure, which outlines the terms and conditions of their employment, including wages.
Protocol of 1995 to the ILO Labour Inspection Convention, 1947 (No. 81).	Ratified by Indonesia, Malaysia, Singapore and Viet Nam.	Requires ratifying states to <b>extend the application of the provisions of Convention No. 81 to workplaces considered as non-commercial</b> , which means neither industrial nor commercial in the sense of the Convention.
ILO Convention on Labour Inspection (Agriculture), 1969 (No. 129).	No ASEAN states have ratified.	In addition to the obligations laid out in Convention No. 81, Convention No. 129 requires ratifying states to specifically establish and maintain a system of labour inspection in agriculture.
ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189).	Ratified by the Philippines.	Article 17 indicates that: (1) Each Member shall establish effective and accessible <b>complaint mechanisms</b> and means of ensuring compliance with national laws and regulations for the protection of domestic workers. (2) Each Member shall <b>develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work</b> , in accordance with national laws and regulations. (3) In so far as compatible with national laws and regulations, such measures shall <b>specify the conditions under which access to household premises may be granted</b> , having due respect for privacy.

<sup>5</sup> ADB and ILO: *Women and Labour Markets in Asia* (Bangkok, 2011), p.39.

<sup>6</sup> ILO: *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States, Guide Book* (Beirut, 2014).

## Resourcing the inspectorate

An effective labour inspectorate is reliant on sufficient material and human resources. Thailand has an active labour force of 38.3 million, but in 2013 there were only 678 labour inspectors.<sup>7</sup> This was recognized by the Department of Labour, Protection and Welfare as insufficient and the inspectorate was supplemented by authorising 160 police and navy officials to conduct inspections (in particular in the fishing industry).<sup>8</sup> While states struggle to adequately resource inspectorates, failing to do so must be considered against the social and financial costs incurred by workplaces that fail to uphold basic labour rights and risk workers' lives through poorly managed occupational safety and health standards. The ILO has reported that around 2.2 million work-related deaths are reported each year, and the economic consequence of these accidents in the workplace amounts to around 4 per cent of the global Gross Domestic Product GDP.<sup>9</sup>

The full inclusion of women in the labour inspectorate has been an important principle since the founding of the ILO in 1919.<sup>10</sup> Article 8 of the Labour Inspection Convention, 1947 (No. 81) and Article 10 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129) require that both men and women are eligible to be inspectors. Labour inspectors can also use their position to raise awareness about women workers' rights under labour law. The policy to assign suitably trained women inspectors to deal with the issues associated with women workers is even more vital in the context of increasingly feminized labour migration. Inspectorates should also include labour inspectors who specialize in inspecting certain sectors, for example, the garment sector or domestic work. Moreover, women within the labour inspectorate are crucial to encouraging further

recruitment, training and promotion of women inspectors and greater awareness of, and responsiveness to, gender in inspection.<sup>11</sup> In 2009 women represented 18.4 per cent of the total inspectorate in Indonesia, 54.4 in Malaysia and 30.4 in Singapore.<sup>12</sup>

## Ensuring the labour inspectorate responds to women migrants in ASEAN

It is anticipated that planned ASEAN economic integration will increase intra-ASEAN migration of low skilled workers whilst increasing external attention on labour conditions in the region through the establishment of free trade agreements with the United States and European Union.<sup>13</sup> In this regard, ASEAN is working towards developing guidelines for labour inspection in migrant reliant sectors, with special attention to vulnerable workers, adhering to the principles of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.<sup>14</sup> As the Declaration was established recalling the international instruments to which all ASEAN Member States have acceded, the guidelines should adhere to the obligations to protect and promote the rights of migrant women as established in CEDAW and its General Recommendation 26.<sup>15</sup>

One way to increase the gender responsiveness of inspections is through enterprise analysis. This is where the inspector gathers sex-disaggregated data and makes observations that take into account the gender differences. Data collected can include the occupation of the employees (including job levels, part time or full time, temporary, permanent or contracted) and salary levels (including frequency of pay and deductions).<sup>16</sup> In addition to analysing this information against the law to assess compliance, such data could also inform policy makers addressing gender discrimination in the workplace.

Even with limited resources, the impact of the labour inspectorate on the promotion of compliance with the labour laws as they relate to gender and migration can be maximized through planning and programming. This can include undertaking complementary preventive and awareness raising measures in partnership with relevant government and non-government actors and community organizations. In addition, targeted labour inspectorate actions, including campaigns in certain sectors or focusing on women migrant workers.

Special training of labour inspectors is necessary to ensure that they are aware of the specific

<sup>7</sup> United States Department of Labour: *Thailand: 2012 Findings on the Worst Forms of Child Labour* (Washington, 2012), p.3.

<sup>8</sup> Ibid

<sup>9</sup> ILO: *A guide to selected labour inspection systems* (with special reference to OSH), Working Document Number 10 (Geneva, 2011), p.3.

<sup>10</sup> Part XIII of the Treaty of Peace of Versailles which states in part: "Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed." See, ILO: *Official Bulletin*, Volume I (Geneva, 1923), p.332.

<sup>11</sup> ILO: *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States*, Guide Book (Beirut, 2014), p. 26.

<sup>12</sup> *Sex-disaggregated data on labour inspectors, selected countries*, ILO, Labour Administration and Labour Inspection, 2011, [http://www.ilo.org/labadmin/info/WCMS\\_160319/lang-en/index.htm](http://www.ilo.org/labadmin/info/WCMS_160319/lang-en/index.htm) [accessed 18 October 2015].

<sup>13</sup> The recent Trans-Pacific Partnership agreement is a case in point where labour provisions, including for the strengthening of labour inspection, are being negotiated between the United States and Viet Nam.

<sup>14</sup> ASEAN: *Conclusions and recommendations of the 4th ASEAN Labour Inspection Conference*, Manila, 3-4 July 2014.

<sup>15</sup> UN Convention on the Elimination of all forms of Discrimination Against Women, 1979, General Recommendation 26.

<sup>16</sup> ILO: *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States*, Guide Book (Beirut, 2014), p. 78.

vulnerabilities of migrant workers. Migrant responsive inspections should consider assessing accommodation conditions, access to identity documents, the regularity and appropriateness of pay and wage deductions, and freedom of movement and association. In Thailand, labour inspectors have been provided with training specifically to address the needs of vulnerable workers, including migrants. In addition, information on occupational safety and health as well as information about labour standards are distributed to migrants in their own language to ensure that workers are better informed of their rights.

## Identifying discrimination against migrant women

The intersection of discrimination on the grounds of gender and migration mean that women migrants are particularly vulnerable to labour abuses due to reliance on employers for their visa, accommodation and pay. Limited access to information and language barriers can reduce women migrant workers' ability or opportunity to identify or report poor treatment or conditions. In reference to discrimination in its extreme form, the UN Secretary General has highlighted labour inspection as central to tackling violence against women migrant workers.<sup>17</sup>

Labour inspections are needed to enforce rules on minimum wage and combat wage inequality, especially as wages are regularly one of the main pull factors for women migrant workers. There are a number of studies that show women migrants earn less than a living wage in several sectors, including manufacturing which is a major employer of women workers across ASEAN.<sup>18</sup> Ensuring that employers are paying equal wages for work of equal value is also particularly relevant to work in migrant reliant sectors. For example, in factories men will often do the cutting and women the sewing, as the cutting is considered to be more hazardous, and therefore attracts a higher wage: even though women will not be hired in cutting jobs.<sup>19</sup>

Challenges in relation to pay also include wage deductions. Workers who live in dormitories on factory grounds or in accommodation provided by employers are often subject to a range of unexplained wage deductions related to accommodation.<sup>20</sup> Wage deductions can also include government levies, charges for medical expenses and transportation costs, and excessive costs for provisions including food.<sup>21</sup> Depending on the situation, the inspector may need specific language skills, or interpretation support services, to be able to properly assess the conditions of the workers. It may also be necessary and appropriate for the inspection team to include a woman, to be able properly to assess the conditions of women migrants.

Inspections should also consider evidence that indicates any other forms of discrimination, either in terms of the opportunities provided to women migrant workers, their work conditions or any disciplinary decisions against them. Some specific examples of discriminatory practices in the workplace can include: the failure to promote women, especially in circumstances where the woman's status in terms of marriage and children is taken into consideration; restrictions on the movement of migrant women, for example, curfews that are applied in women's accommodation, but not in men's;<sup>22</sup> and harassment.<sup>23</sup>

## Reproductive health and maternity

Gender responsive labour inspection needs to consider women's reproductive health needs. Facilities on site and accommodation must have private areas equipped for women. Inspectors must also be aware of the abuses that can result from not having separate facilities, including harassment and sexual assault. Pregnant and breastfeeding women also require specific facilities. Inspectors should also consider whether there is evidence that women are prevented from becoming pregnant or lose their jobs if they are pregnant. The principle established in the ILO Convention on Maternity Protection, 2000 (No. 183) provides that employers adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work prejudicial to the health of the mother or the child. As no ASEAN states have ratified this Convention, inspection of this principle is limited to the extent to which it is included in the national labour laws.

<sup>17</sup> UNGA: *Violence against women migrant workers, Report of the Secretary-General, A/70/205* (UN, forthcoming) p. 13.

<sup>18</sup> A study of women working in garment factories in Mae Sot (on the Thai-Myanmar border) found that they received around 69 baht a day for a 10 or 11 hour working day rather than the minimum wage of 153 baht. See, War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.7.

<sup>19</sup> ILO: *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States*, Guide Book (Beirut, 2014), p. 78.

<sup>20</sup> War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.9.

<sup>21</sup> War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.20.

<sup>22</sup> ILO: *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States*, Guide Book (Beirut, 2014), p. 74.

<sup>23</sup> War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.2 and 3.

## Inspection of sectors reliant on migrant women

### Manufacturing/Export Processing Zones

There are commonly more women than men in manufacturing, especially in ASEAN's Export Processing Zones (where women account for 70 to 90 per cent of the workforce) and particularly in the garment sector. Employers who consider women as "more tractable and subservient to managerial authority, less prone to organize into unions, more willing to accept lower wages... and easier to dismiss" have driven this gendered division of labour.<sup>24</sup> These zones are often in border areas and attract migrant workers who are paid poorly, subject to strict regulations on movement, served by limited social infrastructure and often lack appropriate identity or permit documentation.<sup>25</sup> Non-government organizations (NGOs) have reported that garment and textile industries in Cambodia, Malaysia and Thailand and the electronics industry in Malaysia have a poor record of complying with legal standards on wages and working conditions for women migrant workers, leading to exploitative conditions.<sup>26</sup> Rigorous labour inspection and sanctions on underpaying employers are key to enforcing minimum wage legislation.<sup>27</sup>

### Inspecting the informal economy (in particular domestic work)

The scope of labour inspection typically covers workplaces in which the labour law applies. As a consequence, informal economy work (by definition beyond the ambit of the law) is generally excluded from a labour inspector's scope. There is no formal inspection in informal workplaces. This is particularly disadvantageous for women migrants in

ASEAN who disproportionately work in informal sectors. In the case of women migrants working informally in agricultural and construction sectors, the nature of their physical and unskilled work increases their risk of work in hazardous conditions without training or proper equipment. As the highly feminized sectors of domestic work and sex work are commonly not subject to labour laws and protections, they are thus not under the mandate of the labour inspectorates. Where countries do recognize domestic work, the scope is limited (Thailand, Viet Nam and Singapore have all recently increased protections for domestic workers). Regardless, domestic workers are especially unprotected as most countries do not allow labour inspectors to enter private households.<sup>28</sup> Where laws do allow inspectors to enter private households, the large number of domestic workplaces and their geographical spread complicates effective inspections and monitoring by labour inspectorates.<sup>29</sup>

### Pre-departure inspections

Because migrants are often recruited and trained in one country to be employed in another, they present an extra dimension to labour inspections: workplace conditions are governed by the country of destination, and recruitment takes place in the country of origin. Exploitative recruitment practices can result in migrant workers paying excessive migration fees, signing unfair contracts (if any contract at all), receiving insufficient training or being trafficked. In addition to the vulnerabilities during recruitment, women are particularly vulnerable to abusive conditions in pre-departure training, with migrant domestic workers reported to undergo up to three months training in closed facilities, with poor accommodation and restricted movement.<sup>30</sup>

ASEAN states are responding to this by incorporating labour migration pre-departure systems and facilities within the remits of labour inspectorates. The Indonesian Government has, for example, identified that the inspection of labour sending agencies should be a priority to ensure the quality of pre-departure training. In Cambodia, the Government has adopted a separate regulation on the inspection of private recruitment agencies, including pre-departure training facilities. Through its Overseas Employment Administration, the Philippines has a particularly experienced and rigorous approach to pre-departure standards and control, inspecting recruitment agencies as well as establishments suspected of being engaged in illegal recruitment and human trafficking.<sup>31</sup>

<sup>24</sup> United Nations Economic and Social Commission for Asia and the Pacific: *Sustainable social development in a period of rapid globalization: Challenges, opportunities and policy options* (Bangkok, 2012), p. 94; A. Petrozziello, A. Gender on the Move: Working on the Migration-Development Nexus from a Gender Perspective (Santo Domingo, UN Women, 2012), p.25.

<sup>25</sup> War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.5.

<sup>26</sup> A normal working day in the textile and garment industry regularly breaches the countries' labour laws, which all prescribe an eight hour day. In all three countries, migrant women reported regularly working 10-hour days. Employers only consider working beyond 10 or even 11 hours as overtime, and overtime payment is often calculated at rates below those prescribed in labour laws. See, War on Want: *Restricted Rights: Migrant women workers in Thailand, Cambodia and Malaysia* (London, 2012), p.26.

<sup>27</sup> UN Women: *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (New York, 2015), p. 102.

<sup>28</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families: *General comment No. 1 on migrant domestic workers*. CMW/C/GC/1 (UN, 2011), para.20.

<sup>29</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families: *General comment No. 1 on migrant domestic workers*. CMW/C/GC/1 (UN, 2011), para.26d.

<sup>30</sup> The Asia Foundation: *Borderline: Labour migration, policy, practice and protection in Cambodia*, (Phnom Penh, 2011).

<sup>31</sup> Baldoz commends POEA for salvo inspection; directs Cacdac to intensify cooperation with the PNP on more inspections, Republic of the Philippines, Department of Labour and Employment, 2015 [http://www.dole.gov.ph/ro\\_polo\\_updates/view/1093](http://www.dole.gov.ph/ro_polo_updates/view/1093) [accessed 18 October 2015].

## The inspectorate as enforcers of immigration and anti-trafficking law

Businesses employing migrant workers are obliged to comply with national labour laws and are subject to labour inspections to ensure compliance. The presence of migrant labour does not change this, but adds a new dimension to inspections. In particular in relation to an increasing emphasis being placed on inspectors to better identify and address cases of forced labour and human trafficking. The complexities present in determining situations of informal or irregular migrant labour, exploitative labour conditions, forced labour and trafficking, make this a significant challenge for inspectors and policy makers.

Notwithstanding pressure to extend the duties of labour inspectors, their primary duty is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, and not to enforce immigration or trafficking law. The ILO Convention on Labour Inspection, 1947 (No. 81) provides that further duties may be assigned to inspectors as long as any new duties do not interfere with their primary duties. The ILO's Committee of Experts on the Application of Conventions and Recommendations noted that specifically enforcing legislation on immigration may not be conducive to building trust needed for effective cooperation with employers and workers. This point was made with reference to additional enforcement powers provided to labour officers under the Malaysian Anti-Trafficking in Persons (Amendment) Act 2010, including powers of arrest.<sup>32</sup>

<sup>32</sup> Committee of Experts on the Application of Conventions and Recommendations: *Labour Inspection Convention, 1947 (No. 81) – Malaysia (Ratification: 1963)*, Observation (CEACR) – adopted 2014, published 104th ILC session (Geneva, 2015).

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