

RATIONAL

Drafting ASEAN Agreement on the Promotion and Protection of the Rights of Workers

Due to the greater tendency of free capital mobility in the Region, serious impacts on labour rights have been put on every worker including migrant workers in each ASEAN member states coupled with the inequity of general labor protection mechanism for migrant workers and lack of compatibility with international labor standards, there exist a need for a new mutual standards to protect all workers irrespective of their nationality or their immigration legality. The Agreement for new mutual standards is purposed to have ASEAN member states provided equal treatment for all migrant workers and ensure that the standards will not be lower than international standards, by mean of this, benefit will be for all member states.

The Law Reform Commission of Thailand (LRCT) has mandate and important authority to revise and develop national laws and to submit opinions to the Cabinet concerning plans to enact laws necessarily to pursue State Policies and Administration of State Affairs Plans of the National Government. This led to the formation of LRCT's subcommittee on Law Reform for ASEAN Community which has conducted studies, researches and gathers preliminary opinions from all concerned sectors in producing a (draft) ASEAN Agreement on the Promotion and Protection of the Rights of Workers. The subcommittee intends to gauge more opinions and adjusts the draft agreement to make it more completed and be of benefit to all ASEAN community as reflected in the spirit of ASEAN community's foundation in upholding better living of ASEAN people as the center, which incorporates in three pillars that is politics and security pillar; economic pillar; culture and social pillar. The draft will be eventually recommended to the Cabinet.

UPLIFTING LABOR RIGHTS UNDER ONE ASEAN STANDARD

1. What is the (draft) ASEAN Agreement on the Promotion and Protection of the Rights of Workers?

The (draft) ASEAN Agreement on the Promotion and Protection of the Rights of Workers is a minimum standard that ASEAN members shall recognize to comply with the principles and articles stated in the agreement in order to protect labor rights of every workers in the country irrespective of the person's nationality or immigration legality.

2. Who does the (draft) Agreement protect?

The rights of worker stipulated in the (draft) Agreement protect everyone who earns an income from work, irrespective of whether the person is working under a contract of hire or not. The self-employed, agricultural workers, temporary contract workers are also protected. The Agreement also protects those who are engaged through labor agencies. It covers those posted to work in the territory of another ASEAN Member State, those defined as frontier workers, as well as migrant and third-country workers altogether with their families.

3. What rights does the (draft) Agreement protect?

The (draft) Agreement protects workers in the following areas: right to work and to be employed, the right to freedom of association and collective bargaining, right to social security, child labor protection, the right to access to health services and health security, health and safety protection, and right to training and education, women workers' rights protection. Rights before the law with non-discriminatory treatment irrespective of race or their immigration legality are also covered. The (draft) Agreement also guarantees right to compensation for laid off workers, workers who are ill or suffered from occupational injuries. Finally it recognizes worker's right to have a family.

4. What does these workers' rights protection in the (draft) Agreement originate from?

- a. It originates from ASEAN Charter which has purposed to the respect for and promotion and protection of human rights and fundamental freedoms, as well as the respect for justice, rule of law, good governance, and democracy. The charter also recognizes the value of worker and is people-centered.
- b. It originates from Charter of the United Nations whereby the Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction of any kind, irrespective of race, religion, gender, language and political opinion. This also includes the person's class, economic status, nationality and other status.
- c. It originates from Universal human rights principle that is indivisible and interrelated.

5. All ASEAN member states have labor law and ASEAN itself also has labor rights protection mechanism so will this ASEAN Agreement lead to repetition with existing laws and mechanisms?

Each ASEAN member state has its own labor law but there exist disparity in labor protection standards amongst ASEAN member states, depending on the different level of social and economic development. At the same time, ASEAN is creating regional mechanisms such as: migrant labour protection, protections of children and women rights, ASEAN Human Rights Declaration (AHRD), and ASEAN Intergovernmental Commission on Human Rights (AICHR) but all these mechanisms may not yet cover and protect the rights of various groups of workers such as migrant workers' families, agricultural workers, hawkers or those posted to work in the territory of another ASEAN Member State. This (draft) Agreement offers greater scope for workers protection and enacts that there shall be a Committee on the Promotion and Protection of the Rights of Workers to protect workers' rights composing of labor rights experts from all ASEAN member states that can act independently and budgeting support by ASEAN member states. More importantly, the commission will have the mandate to accept and investigate the complaints, in order to ensure that there will truly be a guarantee of workers' rights protection. The (draft) Agreement is thus not repetitive to ASEAN mechanism.

6. What obligation does each government of ASEAN member states has under the (draft) Agreement?

Member state which signed to the (draft) Agreement has the obligation to:

- a) Ensure effective labor protection and redress policy or law enforcement even if the labor rights offender is a government official acting on duty.
- b) Create assurance that all workers have access to the judicial process and simple and equitable access to complaint to related government agencies.
- c) The state shall introduce legal standards and other standards necessary to make it compatible to the (draft) Agreement.
- d) The state shall submit report detailing measures taken to ensure labor rights protection to the Committee on the Promotion and Protection of the Rights of Workers and disseminate it widely to the public.

7. What will ASEAN gain from its signature on this (draft) Agreement?

By year of 2015, ASEAN will become an economic community, which will lead to socio-economic transformation and movements of capital, goods, services, investment, skill as well as un-skilled labour. These will have impacts on the labor standards of member states. If ASEAN member states commit on the agreement, it would lead to the promotion and protection of workers' rights and will lead to the development of labor protection

standards as well as reduce the disparity in labor rights in ASEAN member states. This is beneficial to both the receiving and sending countries and will provide effective development of regional labor complaint and protection mechanisms. As this reflects in ASEAN's motto of **"One Vision, One Identity, One Community"**.

8. What will Thailand gain from its signature on this (draft) Agreement?

- a. Thailand will be recognized in the international arena on the protection of human rights of workers and it would lead to Thai products being more accepted in the world market.
- b. Recognized the (draft) Agreement would lead to the development of labor law and social security for the country, benefiting both the level of income and quality of life of workers who are vital members of their respective families.
