

INPUTS FOR THE QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS ON GOOD PRACTICES AND INITIATIVES OF GENDER-RESPONSIVE MIGRATION LEGISLATION, POLICIES AND PRACTICES

1.0 Information on good practices

- 1.1 Malaysia realizes the challenges faced by the domestic work sector, which predominantly consist of women migrant worker. Therefore, in 2016, the Ministry of Human Resources (MOHR) of Malaysia published a “Guideline and Tips for Employers of Foreign Domestic Helpers” to create awareness to the employers and ensure adequate protection of foreign domestic helpers. The guideline covers useful information regarding laws and practices related to the recruitment and employment of foreign domestic helpers and address key questions on resolving conflicts and provide adequate resources to support households employing foreign domestic helpers. The guideline was launched on 25 May 2017 and made public via MOHR website.
- 1.2 In addition to the above, MOHR through the bilateral agreement with the sending country for domestic worker, such as the Philippines, Cambodia and Indonesia has agreed for the inclusion of pre-departure training to be held at the Country of Origin. The training is to ensure that the domestic workers are aware of their rights as stipulated under the Malaysian labour laws, basic language and communication, and the cultural differences they may face in Malaysia.
- 1.3 In an effort to promote equality of treatment to domestic workers in the country, MOHR is in the midst of amending the Employment Act 1955 to acknowledge the term “domestic employee”. Although certain provisions in the act is not applicable to domestic workers, the Government is continuously engaging and consulting the tripartite partners (employers and workers) to find a common ground for compromise in terms of rights accorded to domestic workers.
- 1.4 In addition, the Private Employment Agencies Act 1981 has specific provision for the category of license for employment agencies wishing to provide job placement for foreign domestic workers. The private employment agencies must obtain License B which requires them to have a paid up capital of RM100,000 and money guarantee of the same value. This is to ensure that companies handling the job placement for

foreign domestic workers are those of reputable establishment, and to avoid debt bondage situation to the foreign domestic workers.

- 1.5 MOHR is also a party to the International Labour Organization (ILO) “Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development in ASEAN” (TRIANGLE II) project along with five other ASEAN countries aimed to strengthen protection of the rights of migrant workers, harness the contribution of migration for development and establishing labour mobility systems that are gender-responsive and increase the efficiency of labour markets.

2.0 Issues and challenges

- 2.1 One of the biggest challenges faced by the Malaysian Government in the implementation of gender-responsive migration policies is the cross-cutting nature of the responsibilities and purview of different government agencies.
- 2.2 The main challenges faced is in terms of irregular forms of migration, which would hinder protection of rights for these workers, as the Government does not recognize foreign workers without possession of valid employment documents.

3.0 Maximising impact of gender-responsive interventions

- 3.1 The Malaysian Government had taken various initiatives to ensure that the human rights of migrant workers are respected and protected. Among the most recent interventions in the labour migration governance system in the country is the establishment of an independent committee to analyse the existing policies and management of foreign worker, and subsequently recommend on way forward, along with a ministerial joint committee between MOHR and Ministry of Home Affairs.
- 3.2 One of the initiatives that may have resulted in a better outcome of this intervention is to empower the mandate given to the ministerial joint committee to filter the application of foreign workers based on the actual need by the industry.

4.0 Support from other stakeholders

- 4.1 Stakeholders in terms of labour migration refers to the tripartite partners (employers and workers) as well as civil society organizations involved

in foreign workers' rights. The support required from these parties can be categorized into three broad areas as follows:-

- 4.1.1 Advocacy – legislation and policies developed by the Government must be advocated by all the relevant stakeholders to ensure the successful and sustained implementation.
- 4.1.2 Awareness – various initiative on awareness raising intervention should be echoed at each constituents' jurisdiction.
- 4.1.3 Empowerment – capacity building programmes to allow for proper understanding on the legislation, policies or guidelines have to be carried out in a more strategic manner involving active participation from the stakeholders.
