



## Advocating for the Rights of Migrant Workers in Malaysia, 2017

### Module 3

18-21 August 2017, Kuala Lumpur

### [Draft] PROGRAM REPORT SUMMARY



The third module of the capacity building program for civil society “*Advocating for the Rights of Migrant Workers in Malaysia*” was held from 18-21 August 2017 in Kuala Lumpur.

The program is designed to build knowledge, skills and networks to enhance and support civil society advocacy for the promotion and protection of migrant workers’ rights in Malaysia. The program brings together Malaysian advocates with advocates from countries of origin, including Nepal, Bangladesh, Philippines, Cambodia and Indonesia to build links and networks and to develop shared advocacy strategies for greater impact in Malaysia and countries of origin. It is organised and facilitated as a partnership between the Bar Council Migrants, Refugees and Immigration Affairs Committee (MRIAC), North South Initiative (NSI), Migration Working Group (MWG) Migrant Forum in Asia (MFA) Diplomacy Training Program (DTP).

Over 30 participants representing NGOs, faith based groups, trade unions, migrant community and lawyer’s networks in Malaysia came together for this module. Representatives from Cambodia and Indonesia civil society organizations working for migrant workers also participated.

The main focus of the module was on the human rights responsibilities of business, including to migrant workers – and on how businesses could be engaged with/and or held accountable. Participants were able to convey their concerns in relation to business and migrant workers directly to the Chairperson of the UN Working Group on Business and Human Rights (UNWG), Professor Surya Deva and learnt how to submit formal complaints to the UNWG. There were also able to engage with representatives from businesses employing migrant workers.

Participants learnt about the UN Guiding Principles on Business and Human Rights (UNGPs), industry codes of conduct and approaches to ensuring labour and human rights, and environmental standards including the Roundtable on Sustainable Palm Oil (RSPO), Electronic Industry Citizenship Coalition (EICC), and Fair Labour Association (FLA). The module also had a focus on the role of National Human Rights Commission of Malaysia (SUHAKAM), including the role of SUHAKAM in the development of National Human Rights Action Plans and National Action Plans on Business and Human Rights.

The resource persons and speakers at the program were:

**Professor Surya Deva**, Chairperson, UNWG - the UN Guiding Principles on Business and Human Rights.

**Jerald Joseph**, Commissioner SUHAKAM - the role of SUHAKAM in protecting the rights of MWs and National Human Rights Action Plan.

**Marie Apostol**, CEO of Fair Hiring Initiative - different industry standards and codes of conduct, and their grievance mechanisms, different ways to approach and engage with the business sector on cases and to promote change.

**Yong Yoke Toong**, Senior HR Manager of NXP Semiconductor –member of EICC, shared with the participants about the efforts of the company to comply with the EICC code of conduct and to protect the rights of migrant workers.

**Wathshlah G. Nadu**, Grievance Manager at RSPO Malaysia - shared the newly launched RSPO code of conduct of its grievance procedure.

This module built on previous modules – shifting focus from the responsibility of the state to the responsibilities of the private sector, and continuing to explore how to apply international standards to prevent and stop the abuses that the participants have identified, and to provide avenues for redress.

The opportunity to discuss cases and issues faced by migrant workers directly with the Chair of UNWG was a valuable opportunity for the participants as well as for the UNWG. Professor Deva encouraged further engagement with the UNWG, including through the submission of specific complaints, joining CSOs' consultation during UNWG sessions, and participating in the Annual Forum on Business and Human Rights. The participants undertook to work on some specific cases for submission and make better use of other engagement opportunities.

Newly developed and emerging frameworks on business and human rights, supplement the state duty to protect human rights. They can provide different advocacy opportunities and pathways for advocates. Knowledge of these standards is important when seeking to hold companies accountable. Understanding how business works, and what drives and guides their policy and practice can help to shape approaches to engaging effectively with business.

The engagement with SUHAKAM built a shared understanding of its role in promoting standards, hearing cases, conducting research, engaging with business to promote change and the development of national action plans. The door to further engagement and collaboration was opened.

The engagement with the representatives from the RSPO was also timely – as their code of conduct and new grievance process has a greater focus than previously on labour rights and the rights of migrant workers – and the grievance procedure is still being developed. Participants were encouraged to continue their engagement with the RSPO representatives.

The following report gives some more detail about the content of Module 3. Reports of previous modules are available at [www.dtp.unsw.edu.au](http://www.dtp.unsw.edu.au) or on request from [dtp@unsw.edu.au](mailto:dtp@unsw.edu.au).

## **PROGRAM CONTENT**

### **Module 1 & 2 Recap, and Introduction and Overview of Module-3**

The program started off with opening remarks from Patrick Earle, Executive Director of DTP, and Sumitha Shaanthinni Kishna, Assistant Director from Bar Council Malaysia. There was a recap quiz on

modules 1 & 2 to refresh learnings of the previous modules. The content and objectives of module 3 were introduced.

### **Issues for Migrant Workers in Indonesia and Cambodia – Presentations from International Participants**

**Cambodia:** *Sovichet Leng, Research Assistant, Legal Support for Women and Children (LSWC), Cambodia* provided a brief background on LSWC. The organization promotes access to justice and protects human rights, including the rights of Cambodian migrant workers. The organization provides free legal aid to migrant workers, and victims of human trafficking.

As of December 2016, there are around 1.15 million Cambodian migrant workers in Thailand, South Korea, Malaysia, and Singapore. The Cambodian government has signed a Memorandum of Understanding (MoU) with the Malaysian government on Cambodian migrant workers in Malaysia.

As a part of pre-departure orientation, the Cambodian government conducts basic job and English training for migrant workers. High registration fees and illegal recruitment agencies are major concerns for Cambodian migrant workers.

**Indonesia:** *Anny Hidayati, Serikat Buruh Migran Indonesia (SBMI), Indonesia* noted that migrant workers crossed international borders in search of better opportunities because lack of access to economic opportunities back home. Anny highlighted that unskilled workers are more prone to human rights violations. Upon arrival, the workers are vulnerable to contract substitution, debt bondage, and forced labor. Migrant workers are subject to physical, mental, and sexual abuse. SBMI is advocating for policy change, and provides assistance to migrant workers. It is a network of Indonesian migrant groups with over 500 members. The head office is in Jakarta with satellite offices in Saudi Arabia and Hong Kong.

### **Updates on Global and Regional Processes**

Myleen Iniohaban from MFA provided updates on regional and global inter-governmental processes on migration.

*Abu Dhabi Dialogue (ADD)* organised a special workshop in July 2017 Chaired by Sri Lanka. The workshop operationalized the alternative model of labour recruitment, certification and mutual recognition of skills, comprehensive information and orientation program (CIOP), and technology in the governance of labour mobility. Under the CIOP, three partnerships have been established between country of origin and country of destination to create modules to tackle thematic issues. The partnerships are between Kingdom of Saudi Arabia and Bangladesh on drivers of migration, United Arab Emirates and the Philippines on issues of domestic workers, and United Arab Emirates and Sri Lanka on migrant workers in health sector.

*Association of South-East Asian Nations (ASEAN)* – The Philippines is the current chair of ASEAN. ASEAN member states are discussing the ASEAN Framework Instrument for the promotion and protection of migrant workers which will likely be adopted at the ASEAN Summit in November 2017.

*The Global Forum on Migration and Development (GFMD)* was held in June 2017 in Berlin, with the theme, “Safe, Orderly, Regular Migration Now: Mechanics of a Compact Worth Agreeing to”. The thematic roundtable discussions tackled the safe, orderly, and regular mechanisms for children on the move; migrants in vulnerable situations; addressing xenophobia; ethical recruitment of migrant workers;

labour migration and regularization. *Civil Society Days* of the GFMD CSOs discussed recommendations of input for Global Compact Migration (GCM). It was identified that there is need to have stronger engagement with national governments, and stronger lobbying at the national level to push forward the rights based global impact.

*People's Global Action on Migration, Development and Human Rights (PGA)* held in July in Berlin primarily focused on the Global Compact for Migration (GCM), 2030 Agenda for Sustainable Development, migrant workers' right to organize, and campaign against racism, and xenophobia.

*Global Compact for Migration (GCM)* - The fifth thematic consultation will be held in September and the sixth in October 2017. The recently organised fourth thematic consultation focused on the contributions of migrants, and diaspora to all dimensions of sustainable development, including remittances and portability of earned benefits.

*Asia Regional Civil Society Consultation (RCSC)* on GCM was held in Bangkok on 4-5 August 2017. The consultation aimed to empower Asian CSOs to substantively engage in the process of Global Compact and ensure inclusive participation of all actors and stakeholders in all regions.

### **Overview of Business and Human Rights**

This session introduced participants to the emerging international standards on business and human rights including the responsibilities of businesses to respect the rights of migrant workers and to provide them access to effective remedy.

Patrick Earle provided a brief overview of key standards related to business and human rights:

- The UNGPs – see below.
- The Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises (OECD Guidelines) includes content on labour rights and human rights and apply to the conduct of companies operating in or from OECD member countries and other countries adhering to the OECD Guidelines. Promotion of the guidelines is a government responsibility – and OECD governments must also establish a mechanism (National Contact Point) to receive and mediate complaints.
- The UN Global Compact is an initiative engaging global business to adopt sustainable and socially responsible policies – consistent with human rights. Businesses become members of national level UN Global Compact networks if they agree to a set of key principles and commitments.
- The Dhaka Principles for Migration with Dignity interpret and apply the UNGPs to the migration process - respect for migrant's rights during the recruitment process, overseas employment, further employment, until their return back to home.

These frameworks and standards have been adopted because of the growing awareness of the impacts of business on human rights - and the need to find ways to hold businesses, including large multinational enterprises accountable for their impacts – wherever they occur. The UNGPs were adopted in 2011 in consultation with all stakeholders. There is continuing advocacy for a binding international human rights instrument on business and human rights.

Participants discussed and identified some of the key harms experienced by migrant workers, which are caused or contributed to by the private sector:

Forced labor	Restricted mobility
Human trafficking	Irregular working hours
Dangerous working condition	Charging illegal fees
Debt bondage	Physical, Sexual and Psychological abuse
Health and safety	Illegal dismissal
Low wages	Restricted choice or change of employment
Confiscation of documents (e.g. passports, identification documents, etc.)	Confiscation of documents (e.g. passports, identification documents, etc.)
Denial to form associations	Withholding of salary
Denial of proper food and accommodation	Denial of rest day

### **UN Guiding Principles on Business and Human Rights**

Professor Surya Deva, Chairperson the UNWG introduced the participants to the UNGPs adopted by the UN Human Rights Council in June 2011.

While the UNGPs may be widely criticized for not being legally binding, they are based on binding norms, and could be made binding by local legislation, judicial decisions, or contractual agreements. They have received wide acceptance by all stakeholder groups.

The UNGPs are organized around three pillars:

#### **Pillar 1: State duty to PROTECT human rights**

The state duty to protect against human rights abuses by third parties (including business enterprises) is applicable within one’s territory and/or jurisdiction. The concept of jurisdiction is wider than that of territory, for the state may have jurisdiction beyond its territory over its citizens or companies incorporated therein.

Pillar 1 principles would entail the duty of states to protect human rights of migrant workers against abuses by companies. States should, for example, make sure that no bilateral/multilateral trade, labour or investment agreement would constrain them from meeting their meet human rights obligations.

#### **Pillar 2: Business responsibility to RESPECT human rights**

All business enterprises have a responsibility to respect all internationally recognized human rights. This responsibility applies to all enterprises irrespective of their size, sector, operational context, ownership and structure. Unlike the government, companies under the UNGPs do not have a responsibility to protect or fulfill human rights.

Businesses should make a policy commitment to respect human rights, put in place human rights due diligence processes, and ensure remediation of any adverse impacts

The responsibility to respect human rights entails “doing no harm” and addressing adverse human rights impacts. Human rights due diligence (HRDD) is the key process to “know and show” that companies are discharging their human rights responsibilities. The four steps in HRDD are:

*Step one:* Identifying and Assessing Risks – companies, in meaningful consultation with the affected individuals/groups and human rights experts, should identify and assess risks that they may be involved either through their own activities or as a result of their business relationships.

*Step two:* Integrating Findings – integrating information gathered during impact assessments in relevant internal processes and taking appropriate actions.

*Step three:* Tracking Response – tracking the effectiveness of responses, which must be based on qualitative and quantitative indicators, and draw on feedback from both internal and external resources.

*Step four:* Communicating Response – providing sufficient and accessible information to stakeholders on how impacts were addressed.

### Pillar 3: Access to effective REMEDY

Human rights are illusory if there are no means to enforce them and no effective remedies are available to redress their breach. States must ensure that those who have experienced business-related human rights abuses have access to effective remedies, and companies should establish effective operational-level grievance mechanisms.

The UNGPs envisage three types of mechanisms to seek remedies: state based remedies, state based non-judicial remedies, and non-state based grievance mechanisms.

Remedies in order to be effective should be accessible, affordable, timely, and adequate. Both process and outcome should be effective.

### **The UN Working Group on Business and Human Rights (UNWG)**

The UNWG is one of the UN Human Rights Council's Special Procedures. It has a mandate from the Human Rights Council and is comprised of five independent experts appointed by the Council for an initial term of three years (which can be extended for another term of three years). As a UN Special Procedure, the UNWG has considerable flexibility in how it undertakes its work. Like other UN Special Procedures, it issues reports, undertakes country visits, organizes an annual Forum on Business and Human Rights, and receives letters of allegation (complaints) from affected individuals and communities.

Individuals, trade unions or NGOs can use the form available on the OHCHR website to submit complaints. Complaints, which could also be sent by letters or emails, should be concise, objective (not emotive), non-political and provide relevant information about the allegations with supporting evidence if possible. Consent of the victims should also be obtained. If allegations are found to be credible, the UNWG will address communication to the relevant states and other actors (including companies).

### **Presentation of Issues of Migrant Workers with the UNWG Chairperson**

Participants divided themselves into six groups to discuss and then present issues to the UNWG Chairperson, Prof Deva. The practical exercise was designed to enable participants to replicate the kind of engagement that takes place during country visits of the UNWG. Prof Deva provided feedback to participants on their presentation, and outlined key components of dialogue between CSOs and the Special Procedures.

Participants presented to the UNWG Chairperson the issues related to migrant workers in a range of sectors and settings: domestic workers, plantation workers, construction workers, workers in small and medium enterprises, food and beverage industry (including a McDonald case), and workers in manufacturing and electronics industry. Some of the issues faced by migrant workers in all these industries were similar – e.g., confiscation of documents, contract substitution, sexual harassment, prohibition of forming unions, debt bondage, forced labour, lack of proper food and accommodation, and no rest days.

Participants in their presentation focused on providing information about the issues and description of violations, statistics and supporting evidence, the violators, and legal framework and regulation governing the issues. They also presented some recommendations for consideration by the UNWG.

The presentations provided an opportunity for the Prof Deva to learn about the issues faced by migrant workers in different industries in several Asian countries. Prof Deva also provided feedback and some suggestions on engagement with the UN Special Procedures:

- *It may be more impactful to focus on a few specific issues or illustrative cases of alleged human rights violations. Complainants should also share the steps taken to redress the issues as well as the limitations and obstacles faced in seeking redress.*
- *While sharing information, it is important to remember that the UN Special Procedures may not have an adequate understanding of the problem or the local context. Instead of presuming knowledge, CSOs should take the experts through the actual process of abuse - the nature of HR violation must be described succinctly.*
- *It is crucial to have precise information and supporting data/statistics. CSOs should also build links with CSOs from other countries to share information on a reciprocal basis and in turn build pressure for greater corporate accountability. A global network of CSOs could be effective in dealing with transnational businesses.*
- *Providing some recommendations would help Special Procedures identify concrete course of actions appropriate in local conditions.*

### **Role of CSOs in Corporate Accountability & Engagement with the UNWG**

Prof Surya Deva discussed the key role of NGOs in promoting and ensuring corporate accountability, including through engaging with the UNWG.

NGOs raise public awareness of rights and available remedies, build the capacity of rights holders, address power imbalances, advocate pro-human rights reform, assist in documenting rights violations and gathering evidence, highlight corporate human rights abuses, and assist victims in seeking remedies.

The UNWG has emphasized engagement with NGOs. NGOs are invited to provide input during UNWG sessions held in Geneva (three times in a year) as well as during country visits, through channels of communication between abused individuals/groups and UNWG, and by engaging with consultations related to UNWG reports. The Annual Forum on Business and Human Rights (held annually in Geneva normally in the month of November) also provides an excellent opportunity.

### **Role of Human Rights Commission of Malaysia - SUHAKAM**

SUHAKAM is Malaysia's national human rights institution (NHRI) and received its mandate from a 1999 Act of Parliament. According to the Act, the functions of SUHAKAM are promoting awareness and

providing education on human rights, advising and assisting Malaysian Government in formulating legislation, policies, administrative directives, and procedures, providing recommendations on accession to international human rights treaties and instruments, and inquiring into complaints on alleged human rights violation. Like other NHRIs it is measured by its adherence to the Paris Principles which were adopted to underpin the genuine independence and effectiveness of NHRIs.

Jerald Joseph, Commissioner of SUHAKAM, and DTP alumnus, provided an introduction to SUHAKAM's work – and its potential to do more in relation to the rights of migrant workers. Among other activities, SUHAKAM has contributed to the drafting of Malaysia's National Human Rights Action Plan (NHRAP) - that articulates state priorities and future actions to boost implementation and promotion of human rights.

SUHAKAM has made representations to the Malaysian government supportive of the adoption of a National Action Plan on Business and Human Rights (NAP). NAPs are being promoted by the UNWG as one key way to promote implementation of the UNGPs. The proposed NAP would focus on the state's responsibility to protect human rights, and the responsibility of businesses to respect human rights.

Jerald Joseph emphasised the critical role of NGOs and civil society in human rights promotion and protection and invited participants to continue the dialogue with him and colleagues in SUHAKAM on the work relating to migrant workers' rights.

### **Business and Human Rights - Engaging with Business and Codes of Conduct**

Marie Apostol, Founding CEO at Fair Hiring Initiative (an ethical recruitment agency based in the Philippines) shared with participants the lessons she has learnt from her decades of experience in engaging with business to promote human rights and adherence to codes of conduct.

Marie named various coalitions, associations, unions, and certification groups that had developed and promoted codes of conduct for companies such as the Fair Labor Association, Roundtable on Sustainable Palm Oil (RSPO), Seafood Task Force (STF), Ethical Trading Initiative (ETI), Electronic Industry Citizenship Coalition (EICC), and Business Social Compliance Initiative.

These initiatives are voluntary and their integrity depends on the acceptance by companies through the supply chain of independent auditing. The following components are looked at when auditing compliance with codes of conduct –

**Intent** – has the social responsibility been addressed?

- Risk assessment, legal and customer requirements, social responsibility goals, and stakeholder interest

**Implementation** - how well did the actual practice meet the standard?

- Management of social compliance, communication and training must be for everyone (management, workers, contractors, and suppliers).
- Management of social compliance risk
- Documentation requirements
- Supply chain controls

**Effectiveness** – did the practice deliver the intended results?

- Showcased the worker feedback and participation. Workers are the only people who assure the effectiveness of the audit.



- Involved continuous monitoring
- Verifying performance against standards
- Management review

Marie emphasized the need to understand how business operates and thinks – and the value of reputation to most businesses, wherever they are in the labour and manufacturing supply chain. While a lot of suppliers may be low profile and hard to identify, if they supply to a brand that values its reputation, then they also carry the reputation of the brand.

While businesses may have a negative view of, and disregard, NGOs, they have to care what their customers think – and therefore customers become a key focus for NGO advocacy when there are concerns about the treatment of workers etc. Increasingly brand products across different manufacturing sectors are signing on to codes of conduct, and are being audited against these standards. By targeting brands, advocates can help to drive implementation of standards through the supply chain. Social media has made targeting brands much simpler.

Singling out specific companies and sectors as targets for public advocacy (including naming and shaming) – this has often been accompanied by engagement strategies that involve discussing specific changes with companies directly. Such engagement calls for the building of relationships – and trust.

Marie emphasized that CSOs must have clear objectives and considered strategies and a plan of action, in order to have a productive and progressive engagement with companies.

#### **Sharing of Best Practices – NXP Semiconductors**

NXP Semiconductors is a member of the EICC and Mr Yong Yoke Toong, Senior HR Manager from NXP made a presentation about how they have applied the EICC code of conduct to their operations. The code of conduct sets out the company's values and is implemented deliberately through its worldwide supply chain. Legal requirements, global standards, and human rights instruments all contributed to the company's commitment to implement the code – which it also sees as critical to sustainability. The company required suppliers to comply rigorously with the NXP Supplier Code of Conduct on labor and human rights, environment, health and safety, management system, and ethics.

NXP Semiconductors and its suppliers are audited annually through third party audits. Over 103 certified EICC representatives audited the company. During audits, records of working hours were carefully checked, and employees were interviewed.

The company helped in organizing the recruitment agencies by starting a comprehensive audit program of all recruitment agencies, making sure of compliance with its no recruitment fee policy and mitigating the risk of forced labor. It carries out direct recruitment in communities in Indonesia – reaching out to schools and conducting pre-employment and deployment awareness and orientation programs.

#### **Code of Conduct of Roundtable on Sustainable Palm Oil (RSPO) and its Grievance Mechanism**

The RSPO was established in 2004 to promote minimum environmental standards in the production, and use of sustainable palm oil. It is an industry led and financed initiative – established as a non-profit organization, which is made up of more than 3000 members from palm oil plantations, manufacturers, traders, financial institutions – as well as including environmental & social NGOs, and retailers.

The RSPO has developed a set of environmental and social criteria which members must follow in order to produce Certified Sustainable Palm Oil (CSPO). Certification is essential to supply markets in Europe especially – but also in other countries and specific companies.

Following widespread concerns expressed by NGOs, the RSPO has recently revised its complaint system to ensure that breaches of standards, procedures, and codes in RSPO key documents are handled and resolved in a fair, impartial, effective and transparent manner.

Anyone can lodge a complaint against a member – an affected worker or community member or NGO etc. However, it was noted that RSPO cannot act on cases against a non-member. There are three procedures in the complaint mechanism procedure of RSPO -

#### Initial Diagnosis

- Verification of Documents
- Determine if complaints were against a member

#### First Instance

- Verification/investigation
- Interim measure/urgent action
- Referrals to CB/AB
- Referral to other RSPO entities

#### Appeal

- Verification/investigation
- Referral to other RSPO entities

Warnings are given to violating members, followed by corrective measures. Violators are requested to rectify their violations. Sanctions such as suspensions or termination of memberships are issued to members who refuse to comply.

### **NEXT STEPS**

The final session of the module focused on consolidating the concepts and contents of module-3 and on identifying some clear steps/strategies forward. Program participants agreed to continue working in-between modules on group-work:

- **Case Submission to UN Working Group on Business and Human Rights (UNWG)** - as an engagement activity with the UNWG, some of the cases/issues discussed and presented will be further developed and sent as communications to the UNWG
- **Dialogue with SUHAKAM** – some participants agreed to engage with SUHAKAM further to seek the inclusion of migrant workers rights into the NHRAP, and otherwise taken up by SUHAKAM. The engagement activity will include raising the issue of the recent raids and detention of undocumented MWs, and unexplained sudden deaths of young MWs (particularly Nepalese).
- **Roundtable with RSPO** – to deepen the understanding of RSPO standards and its grievance mechanism, and to discuss how CSOs can provide support and assistance to meet the standards, participants agreed to organize a discussion session with the RSPO representatives.

In plenary, participants suggested content and expectations for the next module. They identified the following issues to be considered for inclusion in module 4: *Recruitment reform initiatives; Negotiations*

*skills; Domestic workers and human trafficking; Embassy/mission engagement exercise; ILO complaints mechanism; Corporate Campaigning and research skills*

**Module-3** concluded with the completion of evaluation forms, and sharing of reflections. The feedback on the module was positive, and participants valued the engagement with UNWG, and practical exercise on negotiation. Participants highlighted that more time should be dedicated for deeper discussion and engagement with the trainers/resource persons.

Representatives of the program partners thanked participants and trainers for their valuable time and for sharing their knowledge.