



ENHANCING THE PROTECTION AND PROMOTION OF MIGRANT WORKERS' RIGHTS IN ASEAN

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Introduction

As in many regions of the world, there is an urgent need in Association of South East Asian Nations (ASEAN) to address critical gaps in management of migration, especially protection and promotion of migrant workers' rights. Intra-ASEAN migration has been phenomenal, yet it has happened without a regional regulatory or institutional framework. Consequently, the growth of migration has been accompanied by challenges including irregular migration, recruitment abuses and the exploitation of migrants, who are often without access to legal protection. This policy brief provides reasons that ASEAN states need stronger cooperation in protecting migrant workers' rights and suggests the role of ASEAN in this.

What Is the State of Labour Migration in ASEAN?

Labour migration from and within ASEAN has increased rapidly to an estimated 5.3 million workers, equivalent to 9 percent² of global migration. This flow, which generates USD39.55 billion in remittances for the whole region, is largely driven by significant demographic and economic disparities, and complementary labour market structures among member countries. Malaysia, Thailand and Singapore³ are the major host countries; the Philippines, Indonesia and Cambodia, Laos, Myanmar and Vietnam (CLMV) are the substantial sources of supply. The movement is dominated by relatively low-waged and unskilled labour for domestic service, construction, agriculture, fishing and forestry. The usual migration pattern is from the CLMV countries into Thailand, and from Indonesia and the Philippines into Singapore, Malaysia and Brunei.

We see two types of international migration streams in ASEAN. One is through legal recruitment, usually in accordance with bilateral agreements between sending and receiving countries. Private recruitment agencies serve as an important intermediary in the recruitment process. Often this is complicated, lengthy and expensive, making it barely affordable and less attractive to intending migrant workers. The other type is via informal and irregular recruitment. Facilitated by brokers and unofficial networks, this process is quick and affordable and, more importantly, demands no legal

documents, making it the most popular route of migration.

Although international migration is an increasingly important social and economic issue in most ASEAN countries, there has been little discussion of it at ASEAN high-level meetings, resulting in limited regional cooperation. Prior to 2007, there were some initiatives, but they mainly addressed human trafficking. Only in 2007 did ASEAN leaders sign a Declaration on the Protection and Promotion of the Rights of Migrant Workers. The declaration was adopted in response to the Vientiane Action Program, which called for the "elaboration of an ASEAN instrument for the protection and promotion of the rights of migrant workers". The declaration mandates member states to promote fair and appropriate employment protection, payment of wages and adequate access to decent working and living conditions for migrant workers.

ASEAN made the first concrete steps to follow up the declaration by establishing the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). The ACMW is responsible for ensuring implementation of the commitments made under the declaration and working towards the development of an ASEAN framework instrument on migration. Some achievements of the ACMW include adoption of a work plan, drafting an ASEAN instrument on the protection and promotion of migrant workers and coordinating the ASEAN Forum on Migrant Labour as a mechanism for regular dialogue and consultation on migrant labour issues. The drafting of a framework instrument has been stalled since 2009, reportedly due to the reluctance of the four states with a large influx of migrant workers: Malaysia, Singapore, Thailand and Brunei.

Why Do ASEAN Members Need to Enhance the Protection of Migrant Workers' Rights?

There are several rationales for deeper cooperation on labour migration in ASEAN. One is that migration is inherently a regional issue and addressing it requires concerted efforts based on equality, mutual understanding and respect. For ASEAN, intra-regional migration is increasingly a salient feature

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2 Summary report of the third ASEAN forum on migrant labour held on 19-20 July 2010 in Hanoi, Vietnam.

3 The 3 countries host 91 percent of intra-ASEAN migrant workers. Malaysia receives 35 percent, Thailand 35 percent and Singapore 21 percent.

of economic integration through its benefits to migrants and their households, and to the wider economies in both receiving and sending countries. The trend will continue, given existing demographic and economic conditions, and at some point it requires a regional policy framework that treats migration as part of the regional labour market.

Another argument is basically economic. Cooperation on labour migration could bring substantial benefits to every participating country. For labour-scarce countries like Thailand, Malaysia, Singapore and Brunei, access to a steady and reliable regional supply of workers is critical to sustaining competitiveness in many labour-intensive sectors. For labour-abundant countries like Indonesia, the Philippines and the CLMV countries, easier and freer movement of workers can ease unemployment pressures. Last but not least, the movement of workers with effective protection of their labour and human rights will be an important step in achieving ASEAN's vision to transform the region into "single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, service and investment; facilitated movement of business persons, professionals, talents and labour; and free flow of capital."

What Is the Role of ASEAN in Enhancing the Protection of Migrant Workers' Rights?

The declaration is an important first step towards greater protection and respect for migrant workers' rights, but the delay in drafting the framework instrument suggests that ASEAN needs to step up its ensuring of commitments made under the declaration. The framework instrument is critical to regulating and installing the institutional settings to ensure enforcement of commitments. Given the current progress, ASEAN needs to pressure ACMW to finalise the instrument and submit it to the senior labour officials' meeting for endorsement. The civil society Task Force on ASEAN Migrant Workers (TF-AMW) has convened a series of national and regional consultations that have issued 192 recommendations on the framework instrument for ACMW to consider. Some of the most important that are in line with the thinking of this policy brief include:

- The instrument should be legally binding on all ASEAN nations and cover all workers regardless of their status or origin.
- The instrument should mandate ASEAN members to ensure that they formulate and implement a comprehensive and coherent national migration policy in accordance with international principles and standards on the protection of migrant workers and members of their families.
- The instrument should mandate ASEAN members to adopt adequate legislation and administrative measures to protect migrant workers. One way is to expand embassies' and consulates' handling of migration cases.
- The essence of the instrument should be based on non-discrimination (national treatment) and guided by gender-

sensitive policies, processes and practices.⁴

Once the instrument is completed and endorsed by the senior labour officials, ASEAN should consider the establishment of a regional reporting and monitoring mechanism. This could incorporate reporting to an independent monitoring office responsible for evaluating the implementation of laws and policies relating to the rights of migrant workers. The mechanism could review compliance reports, conduct fact finding if necessary and then issue comments and recommendations on the implementation of the instrument. A mechanism also needs to be created under the ASEAN Socio-Cultural Community Council to resolve any disputes between member states regarding the implementation of the framework instrument.

It is also important to appreciate the contribution of the ASEAN Forum on Migrant Labour to knowledge sharing and policy making. Its progress and achievements are impressive, and ASEAN needs to continue to support and institutionalise it as a platform not only for broad-based discussion and consultation on migration but also for evaluating, discussing and updating the framework instrument.

Conclusion

In conclusion, there are serious policy and practice gaps in protecting the rights of migrant workers and their family members in ASEAN that requires stronger regional cooperation to address the issue. In addition to responsibilities that each member country should take to promote protection of migrant workers rights, ASEAN has an important role to play in adopting necessary guidelines and regulations and setting institutional mechanism to ensure smooth implementation and effective monitoring. These tools shall be incorporated in the legally binding ASEAN Framework Instrument.

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4 According to TF-AMW (2009), women constitute a large and increasing proportion of the region's migrant workforce.