



**Regional Informal Workshop on
“Labor Migration in Southeast Asia: What Role for Parliaments?”**
22-23 September 2007
Manila, Philippines

SUMMARY

The Friedrich-Ebert-Stiftung Philippine Office and the Migrant Forum in Asia jointly organized a regional informal workshop entitled “Labor Migration in Southeast Asia: What Role for Parliaments?” on 22-23 September 2007 in Manila, Philippines. Participants were former and sitting Members of Parliament and parliamentary staff from Cambodia, Indonesia, Malaysia, Philippines, Thailand, Vietnam and Singapore, as well as government officials, representatives from international organizations, migrant non-governmental organizations (NGOs) and associations, trade unions and the academe based in the region.

The objectives of the workshop was to exchange views on the issues of labor migration in Southeast Asia and to look at how parliamentarians and parliaments can increase their role in addressing labor migration at various levels – national, bilateral and regional. The workshop was designed as a non-partisan, informal activity to encourage learning and reflection among parliaments as well as with civil society organizations (CSOs) and government officials. The organizers of the workshop hope to find a balance in the interest of stakeholders in the region and to look at the individual rights of migrant workers.

At the end of the workshop, a list of action points and possible interventions was identified. Key results were, among others:

- To conduct a briefing at the parliaments’ committee level on the discussions and results of the conference with a view to involve more parliamentarians and to identify the issues closest to their interest;
- To look into ways in which a more regular exchange among parliamentarians and joint policy work could be organized, either as part of the structure of the ASEAN Inter-Parliamentary Assembly (AIPA), or as an informal caucus of ASEAN-Parliamentarians on Labor Migration.

Labor Migration in Southeast Asia: Issues and Policy Challenges

Southeast Asia is a dynamic region in terms of labor migration, consisting of a number of sending, receiving and sending-receiving countries. In 2005, there were 13.5 million people who moved through the member countries of the Association of Southeast Asian Nations (ASEAN)¹. It is estimated that 5.4 million intra-ASEAN migrants contribute to 2-10% of GDPs in the ASEAN through being employed in receiving countries as well as remitting salaries and transferring know-how to the sending countries. Labor migration has become an integral part of globalization and the integration processes of ASEAN.

The following are issues raised by growing mobility of labor in Asia:

¹ Abella, Dr. Manolo (2007). Issues in Labor Migration in Southeast Asia. Paper Presented at the FES/MFA Regional Informal Workshop on Labor Migration in Southeast Asia: What Role for Parliaments? 22-23 September 2007, Manila.

1. *Many migrant workers in an irregular situation.* For the region as a whole, there may be as many as one out of every four migrant workers in an irregular status. This is problematic for administrative and security concerns of receiving countries but for the migrant workers themselves through greater vulnerability to exploitation and human rights abuse. Whereas the causes of irregularity are many and complex, it is normally associated with the growth of the informal economy which absorbs cheap foreign labor.

2. *Commercialization of migration processes.* Private intermediaries may be credited for the rapid rise of worker mobility. However, there have been serious problems with fraud and abuse, making migration a high cost and risky undertaking for many migrant workers. The matter is complicated by the fact that the organization of migration is largely in the hands of the private sector, in particular private recruitment agencies that have mushroomed all over the region and who do not always act in a responsible manner.

3. *Guest workers, not immigrants.* The regional migration system is largely built on temporary foreign worker policies. Attitudes to immigration, especially of the unskilled, remain fairly closed. No country in the region considers itself open to permanent immigration except to the highly qualified or to family members of citizens.

4. *Employer-driven admissions.* Levels of admission of foreign workers are rarely pre-determined by law or policy (e.g. through quotas), but almost always at the instance of employers. Labor immigration policy is thus effectively a means for increasing short-term labor market flexibility, aimed at reducing labor costs for domestic enterprises. The consequence has been to foster dependence on cheap foreign labor.

5. *Denial of some basic labor rights.* In almost all Asian countries the basic labor rights (to organize, to bargain collectively, to be protected against forced labor, and against discrimination) are supposed to apply to all migrant workers. However, this right is not always enjoyed in practice where labor institutions are weak, or where private contracts of employment provide otherwise. There are also instances where certain rights are explicitly denied under bilateral agreements entered into by governments. In the case of migrants in an irregular status, their precarious immigration situation effectively excludes them from enjoying these rights. Most migrant workers are denied the possibility of better employment because there are restrictions on changing employers, even after many years of continuous legal employment. Migrant workers in some countries find themselves in a situation of virtual slavery because the practice of confiscating passports and travel documents by employers upon the worker's arrival is widely tolerated, despite policies to the contrary. Worse still are regulations which make continued stay and employment of a woman migrant worker contingent on not becoming pregnant.

6. *Unequal treatment.* Legal or regular status is not always a guarantee of better protection against discrimination, exploitation, and hazards to health and safety. Studies in different countries have repeatedly revealed that migrant workers are paid much less than native workers (often only half of the latter's) for doing the same job, not to mention their exclusion from social security protection and other worker benefits and entitlements. Being often concentrated in the less regulated sectors of the economy women migrant workers tend to suffer especially from excessive hours of work without overtime pay, from denial of weekly rest days and, not infrequently, even from physical abuse.

7. *Need for cooperation in managing migration.* There are signs that some countries already see value in cooperative management of migration. For example, Thailand has recently signed 'Memoranda of Understanding' with Lao People's Democratic Republic (October 2002), Cambodia (May 2003), and Myanmar (June 2003) which require the active participation by governments of both sides to put more order in the movements of workers. Under the terms of these agreements, the employment of workers requires prior permission of the authorized agencies of the respective countries, the submission by one country of a list of available jobs and by the other of a list of selected applicants for these jobs, and supervision by both sides to ensure that appropriate visas and work permits are issued, that workers comply with requirements for health insurance, that contributions are paid to a savings' funds, that taxes are paid, and that workers have employment contracts.

What for Parliamentarians?

What aspect of labor migration is compelling for members of parliament? Why should they be concerned about the human rights of migrant workers? It was acknowledged that there may be a greater interest in the sending countries as opposed to receiving countries, where taking up the issues of migrant workers may not result in immediate political gains. Therefore, it was proposed to look at labor migration from a perspective of regional integration and the gains that can be achieved for both sending and receiving countries through a more active “regional governance of labor migration”. Speakers suggested to aim for the establishment of an ASEAN Parliament (a debate which should be held under the continued elaboration of the ASEAN Charter) that could then also address labor migration.

The primary role of parliaments is in the oversight of the executive, in policy-making and in ensuring relevance of international instruments and declarations through ratification, national legislation and monitoring.

Addressing Labor Migration on a Regional Level – Responses from ASEAN and the EU

Labor migration is largely a function of supply and demand in the labor market. Apart from issues of sovereignty, trafficking and irregular migration, the social and human dimension of migrant workers (human rights, exploitation, violence against women and the rights of children) is among the main source of concern at the regional level. From an economic integration perspective, a number of questions need to be dealt with: If there is a common labor market by 2015, what will be the consequences for migration? Will it include migrant workers? Only the high-skilled? What about “low”, “medium” skilled or undocumented migrant workers?

So far, ASEAN has addressed labor migration on two fronts. First, the ASEAN Framework Agreement on Services deals with the integration of the service sector. There are several Mutual Recognition Agreements that provide a framework for mobility of high-skilled workers in specified sectors (nursing, engineering, accountancy). Second, an ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers has been adopted at the ASEAN Cebu Summit in early 2007. The Declaration puts forward commonly agreed principles and values, i.e.:

1. Recognition that migration benefits both sending and receiving countries.
2. Recognition of the sovereign right of states to determine who enters the territory, while being subject to international agreement/ customary law that provides a basic obligation to protect the fundamental right of any person.
3. Recognition that migrant workers also have a duty to abide laws, regulations and traditions of destination countries.
4. Recognition that trafficking is a crime, and that perpetrators should be prosecuted while victims protected.

Currently, a committee has been established at the ASEAN level to implement the declaration and thus to transform it into a more legally-binding instrument. Here is a specific role for parliamentarians: they may influence the shaping of the instrument, give life to the declaration/ instrument by passing enabling laws and work toward policy and institutional coherence across the countries. It was suggested that representative from civil society organization contribute to the working of this committee.

Speakers mentioned that the objective of a regional measure like the Declaration is to balance other agendas of the ASEAN (such as de-regulation) while providing multi-stakeholder dialogue (ASEAN Forum on Migrant Workers), working on progressive labor practices for growth, productivity while ensuring basic terms of employment. Some speakers highlighted the need to promote a broader skills recognition system, to include migrant workers being allowed to work in sectors and not only for the one employer who hired them (intra-industry mobility), the right to hold their own personal and travel documents and not being labeled illegal when undocumented. Others called for a meaningful regional tripartite dialogue.

It was stressed that the ASEAN Inter-Parliamentary Assembly (AIPA) may prove to become a venue for creating peer pressure and thus to enhance policy-action in the various countries. The recently concluded 28th AIPA in 18-24 August 2007, Kuala Lumpur, Malaysia, asked members to take comprehensive legislative and administrative measures to enhance protection and promotion of migrant workers' rights.

Within the parliament, legislators could look at the experience of the European Union and envision new legislations applicable to Southeast Asia, for example on portable social security schemes.

Another suggestion proposed to appoint a special rapporteur on migrant workers within the ASEAN who would receive complaints, handle cases, set up mechanisms for enforcement, implementation and monitoring of compliance.

It was deemed important to look at the parties involved and their interests. ASEAN is a reflection of the political system and the pressure to change policies and laws must come from the regional and domestic constituency. In addition to this, the issue of compliance and enforceability was repeatedly mentioned, both within the broad scope of the ASEAN Charter as well as the Declaration on Migrant Workers.

Understanding Bilateral Agreements on Labor Migration

A number of countries in Southeast Asia have entered into bilateral agreements that formalize a commitment for procedures and guidelines involved in migration as well as offering political, social and economic benefits. They may take the form of labor (terms and conditions for recruitment and employment), maritime (transport, shipping, certification recognition), social security or anti-trafficking agreements.

Receiving countries tend to be more cautious in signing such agreements, which may be formal and legally-binding treaties or informal Memoranda of Understanding. However, they do so to address manpower shortages in their economy and to establish cooperation in the management of both regular and irregular migration. Sending countries are interested in bilateral agreements to ensure continued access to foreign labor markets while promoting protection and welfare of workers. There is also the case of a bilateral agreement between sending countries (Philippines, Indonesia) that establishes cooperation mechanism to jointly promote the welfare and rights, to train and certify as well as to provide legal aid to migrant workers. The formation of bilateral agreements may be guided by international instruments (ILO Model Agreements).

The prime areas of concern that could be addressed by parliamentarians while reviewing agreements and its implementing rules and regulations are:

- usually weak monitoring and enforcing mechanisms;
- relatively weak provisions and mechanisms for migrant workers welfare (holding of passports, denied freedom of association, mandatory withholding of wages);
- lack of Gender sensitivity (exclusion of domestic workers from agreements);
- unequal treatment of nationals and migrant workers with regard to wages, social security and medical care;
- Lack of involvement of stakeholders in formulation, implementation and monitoring of agreements.

Due to the limits of such agreements in terms of enforcement and monitoring, alternative mechanisms were presented: Local employment agencies as well as foreign employers may be held jointly liable in cases of violation of contracts and rights; standard model employment contracts may be formulated.

It was mentioned that in some countries parliamentarians do not have access to documents such as MoUs, standardized contracts etc., and that they are not yet involved in the process of formulating, reviewing or monitoring such agreements. In one country, the prevailing attitude of the executive was successfully challenged by parliament with the result that parliament raised issues pertaining to rights on provisions of the Magna Carta for Migrant Workers and encouraged the executive to address the weak implementation of

the law. The good working relationship of CSOs and the parliament for corrective and proper implementation contributed to the success of several endeavors such as the campaign and passage into law of the Overseas Absentee Workers Act.

Sending and Receiving Countries – Policy Issues at the National Level

Differing priorities among parliamentarians in addressing MW concerns were acknowledged. In receiving countries, existing problems of migrant workers tend to be a minority issue and not a prime concern for MPs, especially since they do not belong to the voting constituency. However, a common purpose was shared among parliamentarians in that their role extends beyond local concerns. In this understanding, it should be their task to protect migrant workers, for example by shaping discourses and sensitize citizens (viewing migrant workers not as commodities but human beings) or by establishing closer relationship and dialogues between countries.

Experiences from various sending countries were shared. In one country, the state plays an active role in directly managing labor export (precluding agencies) and investing in training of highly-skilled workers to be sent abroad. Here parliament's role is to regulate the state's intervention, for example through the Law on Migrant Laborers. Elsewhere, outgoing migrant workers are given detailed information about their destination country before they go abroad. Here, parliament exercises control over their government's policy and action in managing migration.

It was suggested that Parliaments in countries of origin should work toward strengthening the role and accountability of embassies as a mechanism of assistance for migrant workers, e.g. by increasing the number of staff attending to the needs of migrant workers (e.g. social workers) or by improving documentation mechanisms.

For receiving countries, it was highlighted that non-discriminatory laws (civil, criminal, labor) can play an effective role in protecting migrant workers while also prescribing proper conditions for deployment, repatriation, work permits and working conditions. Laws making medical insurance compulsory for migrant workers, mandating prompt salary payment and holding employment agencies accountable show that, through cooperation between parliaments, government and trade unions, the rights and welfare of migrant workers can be promoted without jeopardizing the interest of local workers.

The problem of undocumented workers was repeatedly raised and hopes were expressed that regularization schemes would both receive more attention and also result in carefully drafted and implemented policies that do not place an extra burden on migrant workers.

In the discussion, a debate was raised on the practice of looking at migration in dualistic terms of sending and receiving countries, which is seen as detrimental to the migration discourse. One speaker urged that the discussion in ASEAN has to come out of the nation-state concept. Parliaments have to foster exchanges with governments, and it would be beneficial for parliaments to address one another. All the members of ASEAN should be a unified voice and promote taking better care of workers within their borders since they are all sending and receiving states. Members of ASEAN are parties to the conventions on the rights of women and the rights of children. These commonalities should serve as rallying points and galvanizing the ASEAN-members to move forward. A region that provides protection to its workers can better protect its migrants outside of the region.

What is happening and what needs to be done – Bringing MPs in

The primary action as agreed upon by the participating members was to first **conduct briefings in parliament about the discussion highlights and results of this workshop**. These briefings should involve Members of Parliament, technical and legislative officers as well as civil society organizations. They should **aim at identifying specific issues that could be dealt with at a future regional meeting of**

parliamentarians and parliamentary staff. Also, a number of concerned members of parliament should be identified who are willing to address the issue of labor migration on a regional level. A discussion should follow on what the appropriate form/ forum for such a future engagement would be, taking into consideration the **proposal of several participants to establish an informal ASEAN Inter-Parliamentary Caucus/ Working Group on Labor Migration.**

Furthermore, here is a summary of the points raised among the participants:

National Level
<ul style="list-style-type: none"> • Roles of Parliaments on <ul style="list-style-type: none"> ▪ Information sharing, sensitizing and shaping the migration discourse ▪ Policymaking <ul style="list-style-type: none"> • Institutional structure to manage migration • Review and improve of the Labor Code to include migrant workers, Regularization and immigration policies, Documentation procedures and Regulations on Fees • Amend and improve the Migrant Workers Acts existing in some ASEAN countries • Strengthen legal redress for migrants • Include minimum salary in the contract before the migrant workers leave for the host countries ▪ Allocation of Budget (e.g. to embassies providing support for migrant workers) ▪ Harmonize international/ regional agreements at national level for implementation (ratify/ implement international conventions/ declarations, e.g. ASEAN Declaration on Migrant Workers, ILO Conventions, CEDAW) ▪ Oversight over the Executive (MOUs, Bilateral Agreements, Immigration, Police) ▪ Involve respective political parties in debate on labor migration

Regional Level
<ul style="list-style-type: none"> • Roles of Parliaments on <ul style="list-style-type: none"> ▪ Follow up the resolution of the 28th ASEAN Inter-Parliamentary Assembly (AIPA) in 18-24 August, Kuala Lumpur, Malaysia, addressing the protection and promotion of migrant workers' rights in the agenda and the setting up of a committee to oversee related responsibilities ▪ Establish an ASEAN Inter-Parliamentary Caucus on Migrant Workers (similar to that of ASEAN Inter-Parliamentary Caucus on Myanmar (AIPMC)) ▪ Influence the discussion on the implementation instrument of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers ▪ Develop an ASEAN Social Security Scheme (including a Mobile Health Care insurance applicable regionally) and an ASEAN Passport ▪ Organize parliamentarians meeting before ASEAN Summits, involve civil society ▪ Engage in debate on further elaboration of ASEAN Charter ▪ Advocate for ASEAN Social Charter/ASEAN Peoples Charter – how to intervene? ▪ Expand cooperation among parliaments and governments to pursue greater standards in Mutual Recognition Agreements (MRA) on specific sectors and professions ▪ Cooperation of Parliament committees and labor ministers in the ASEAN ▪ Information sharing among MPs, CSOs, Executive Departments: Vientiane Action Plan, ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Resolution of 28th ASEAN Inter-Parliamentary Assembly (AIPA) on migrant workers