



**Informal Workshop on
Labour Migration in ASEAN and beyond
17-18 September 2010 Hotel Sofitel Plaza, Hanoi, Vietnam**

**Organised by
Friedrich-Ebert-Stiftung
Migrant Forum in Asia
Committee on Social Affairs of the National Assembly of Vietnam**

SUMMARY

The Friedrich-Ebert-Stiftung (FES) Philippine Office and Migrant Forum in Asia (MFA), with support from the Committee on Social Affairs of the National Assembly of the Socialist Republic of Vietnam, organized a regional informal workshop entitled “Labor Migration in ASEAN and Beyond” on 17-18 September 2010 held at the Sofitel Hanoi in Ha Noi, Vietnam. The workshop was the fourth in a series of informal dialogues since 2007 when engagement with parliamentarians by various migration stakeholders began. The workshops are non-partisan, informal dialogues designed to encourage learning and reflection on the roles of parliamentarians in this issue, the changing migration environment in ASEAN, and how they can be engaged towards ensuring protection for migrant workers in the region. The workshops were also always held prior to the annual meeting of the ASEAN Inter-Parliamentary Assembly and formulated resolutions for the AIPA General Assembly.

The 2010 workshop sought to build on the initiatives from previous years, especially on the resolution to create an ASEAN Inter-Parliamentary Caucus on Labor Migration during the 2009 workshop. It also explored the role and potentials of bilateral labor agreements in furthering the migration regime in ASEAN.

A unique feature of this year’s workshop was the buildup activities that were also agreed upon during the 2009 workshop. An informal inter-parliamentary visit involving Malaysian and Indonesian members of parliament took place just before the workshop. A regional study on Bilateral Agreements in ASEAN was commissioned by FES, the results of which were presented during the Workshop.

Participants included members of parliament from ASEAN member countries, government officials, representatives from migrant NGOs and associations, trade unions, employers, the academe, as well as representatives from the ASEAN Secretariat and the European Commission.

Trends in Labor Migration and Protection Framework for Migrant Workers within ASEAN

- Labour Migration is an inevitable trend in socio economic development with increasing international migration between and among countries. In the region, the economic inequality is viewed as one of the push factors, resulting in the increasing number of nationals taking up work beyond their borders. Intra-ASEAN labour migration is also on the rise and fast becoming a rationale for regional integration as ASEAN looks toward becoming one community by 2015.
- There is no common understanding of labour migration, however, especially as it pertains to protection of migrant workers. Regional integration is understood more in terms of economic, and less on human rights. Thus, there is a need to shift perspective and see labor not as a commodity but as human resource without which production cannot take place.
- Consistent with the current perspective, a look into the existing vehicles for integration and the process of building a protection framework revealed the following:
 - ASEAN Framework Agreement for Services and Mutual Recognition Arrangements are in place to ensure trade in services. The liberalization, however, has not been extended to borders. Member-states still have the option to maintain restrictions especially with regard to low-skilled workers.
 - Agreements are more particular on services of highly-skilled/professional; ASEAN engages in negotiations with other regions but there is strong resistance to discuss the concerns for low-skilled workers especially among developed countries.
 - Agreements of ASEAN with other countries and regions need to have clear guidelines and backed by the diplomatic power of ASEAN as a regional bloc, e.g., utilize the full power of ASEAN as one community in making a case for migrant workers treated as slave labor in the Middle East.
 - The creation of a framework instrument for the protection and promotion of migrant workers' rights consistent with the Cebu Declaration (2007 ASEAN Summit) continues to be a challenge as a stalemate persists in the drafting committee. Some of the contentious areas include the basic principle (rights-based or cooperative, national sovereignty?), scope (include irregular workers?), legal effect (binding or not?), and the enumeration of rights of migrant workers (exhaustive or not?).
 - The question now is this: what is the priority of ASEAN – economic integration or protection of its workers? The delay in the drafting of an instrument shows the tension between the rights-based approach vis-à-vis cooperation principle of ASEAN.
- The rise of undocumented workers, as in the case of Malaysia where in some areas there are more foreign workers than the local population, has also rendered the government more unwilling to provide protection for migrant workers in the name of national sovereignty.
- High costs of transactions and lack of monitoring or implementing laws governing the conduct of recruitment agencies likewise contribute to irregular migration which is a common concern in the region.
- With regard to the sharing on how the European Union is dealing with labor migration, the challenge is for ASEAN to also have a coherent migration policy and legal framework in place,

such as the long-delayed Framework Instrument, which would not only respect the ASEAN principle of cooperation but would also be rights-based and cognizant of the dynamics within ASEAN toward sustainability and the vision of one community.

Bilateral Agreements on Labor Migration in ASEAN: Engaging Parliamentarians towards Regional Action and Effectiveness

The following are highlights of the presentation of Dr. Graeme Hugo.

- Migration is here to stay as people movement continues to increase. This means long-lasting and robust processes and institutions must be put in place to ensure protection of migrant workers' rights. There is however, not enough wide acceptance of migration as a long-term structural feature of the economics of the region. This failure leads to unrealistic and restrictive policies that encourage irregular migration and marginalise the migrant workers.
- Potential for labour migration, especially of low skilled groups, to deliver the full potential development benefits is further hampered by:
 - Poor governance of labour migration systems.
 - Siphoning off of wages by excessive transaction costs.
 - Lack of cooperation between sending and receiving countries.
- Migration can be beneficial but policy environment is crucial. Migration cannot and should not take the place of development; it can only facilitate it.
- Cooperation and collaboration are crucial to managing labour migration and must be based on mutual trust and takes place in an equal playing field. Bilateral agreements that ensure migration takes place with agreed principles and procedures are the most effective form of collaboration between countries of origin and destination.
 - In ASEAN, the Memorandum of Understanding or MOUs have been dominant. MOUs may also be a good way to start cooperation but needs to be worked on, for example in terms of change of migration conditions, to be more comprehensive over time.
- Areas of Concern for Parliamentarians and Legislations
 - Weak protection, monitoring and enforcement mechanisms and the need for regular evaluation of existing mechanisms
 - Weak provisions and mechanisms for worker welfare and protection, lack of social security provisions, lack of equal treatment of migrant and non-migrant workers in wages, social security, medical care, and the need for minimum standards of employment
 - Incorrect balance between recruitment procedures and regulation of flows; need for mechanisms to addressing recruitment violations
 - Denial of freedoms for migrant workers
 - Lack of gender sensitivity in the language of the legislation, taking into account the considerable number of women migrant workers as domestic workers in many countries of destination
- Recommendations

- Bring together details of all MOUs and BLAs in ASEAN countries as an initial step to developing best practice models
 - Develop a mechanism to evaluate the performance of BLAs in the ASEAN region
 - Capacity building of staff to develop, implement, monitor and evaluate BLAs in origin and destination countries
 - Better data collection and exchange
 - Develop and exchange best practice in BLAs
 - Demonstrate to all stakeholders that a well managed labour migration system has the most optimal outcomes for employers and migrant workers as well as their origin and destination communities
- Well crafted BLAs involving all stakeholders can maximise the development of dividends of migration for the migrant, origin and destination. To achieve maximum benefits from labour migration it is becoming increasingly apparent that cooperation between economies is necessary. However the transition of governments' thinking about migration primarily in terms of sovereignty, self-interest and unilateral policy making to one that values international co-operation and co-ordination is difficult and slow. The existing mechanisms for dialogue are in the early stages of development and for their rich promise to be fulfilled will require careful nurturing and management. Beginning with basic, relatively non-controversial things like exchange of data and information, curbing trafficking and people smuggling, etc. can build up a relationship of trust between economies which can be the basis for eventually moving to more contested subjects.
 - The study on bilateral labour agreements also revealed there is not much emphasis on rights protection, but more on regulation. A managed system should work to protect migrant workers and not only be about efficiency. Parliamentarians have a role in making sure bilateral agreements ensure equity and protection.

Other Instruments for a Labor Migration Regime

- Migrant workers encounter common social security problems such as the following:
 - No equality of treatment between nationals and migrants
 - Payment of benefit only while migrant or beneficiaries reside in the country of employment
 - Difficulty of accumulating enough contributions to qualify for certain benefits when migrant worker is employed in different countries
 - Administrative difficulty in filing a benefit claim in each of the countries where migrant has worked
- Bilateral and multilateral social security agreements can be a solution to the social security problems of migrant workers but only if the social security schemes of the countries involved are compatible/coherent.
- ASEAN is one of the fastest growing regions but it is part of the Asia Pacific which has the lowest level of ratification in the world of relevant UN and ILO conventions and no reforms in national legislation. As conventions set the minimum standards, it is no use talking of rights protection when receiving countries have not signed on to or ratified the most basic such as the UN Migrant Workers' Convention and ILO Conventions 87 (Freedom of Association and Protection of the Right to Organise), 98 (Right to Organize and Collective Bargaining), 97 (Migration for

Employment) and 143 (Migrant Workers – Supplementary Provisions). This, coupled with the non-investment of governments on education and skills training, make migrant workers more vulnerable.

The Way Forward

The two-day workshop produced two recommendations: one for consideration of the AIPA General Assembly and another for the ASEAN Secretariat and the ASEAN Committee on Migrant Workers.

The Parliamentarians, taking note of the gaps and challenges presented during the workshop, adopted the draft RECOMMENDATIONS and agreed to formally organize themselves as Inter-Parliamentary Caucus on Labour Migration towards adopting a legal status in the future. They committed themselves to:

- Capacity-building for:
 - Networking and Coordinating on various national caucuses
 - Common advocacy for protection of migrant workers
- Information sharing (re BLAs, MOUs) towards action
- Push for ratification of various ILO Conventions and the Migrant Worker Convention
- Actively participate in follow up activities such as the visit to the ASEAN Secretariat and inter-parliamentary visits.