

# Session 4: Elaboration of An ASEAN Instrument on Migrant Workers

7<sup>th</sup> Workshop on ASEAN Regional Mechanism for Human Rights

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# Outline

- Mobility of Labour within ASEAN
- Nexus: Human Rights and Migrant Workers
- MOU
- ASEAN Declaration on Migrant Workers
- Singapore
- Recommendations

# Mobility of Labour in ASEAN

- More than 25 million Asian migrant workers – low-end jobs, contract work
- 12 million ASEAN; Philippines(7 million); Indonesia ( 2 million); Singapore( 700,000); Malaysia(1.2 million)
- Feminisation of migration
- Remittances – South Asia, Southeast Asia, and the Pacific workers accounted for 34% of the global total of \$80 billion.(formal channels); second largest source of external funding for developing countries, next only to foreign direct investments
- National focus of sender countries
- Definition issues – Migrant worker, irregular, undocumented, illegal, trafficked.

# Human Rights, Migrant Workers and CSR

- VAP – in July 2005, ASEAN Ministers sought help of The Working Group for the AHRM to look into establishing a commission on Women and Children; elaboration of an instrument for the promotion and protection of Migrant Workers; HRE; Networking across ASEAN on HR
- Under ASEAN's three pillars – economic, social and cultural, security - migration. Securisation of the migration issue.
- Migrant Worker Issues – human rights, women's Rights, Child's rights, Labour rights
- Therefore by the UDHR - the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – shd be in play.

# (Cont'd)



**Labour Issues - 8 Conventions as core to the protection of the rights of all workers:** No.100: Equal Remuneration; No.111: Discrimination (Employment and Occupation); No.138: Minimum Age Convention; No.182: Worst Forms of Child Labour Convention; No.87: Freedom of Association and Protection of the Right to Organise Convention; No.98: Right to Organise and Collective Bargaining Convention; No. 29: Forced Labour Convention, and No.105: Abolition of Forced Labour Convention.) In addition, ILO Conventions No. 97 Migration for Employment Convention (Revised) and No. 143 on Migrant Workers (Supplementary Provisions) Convention provide specific protection to migrant workers. Convention No. 181: Private Employment Agencies Convention



**ASEAN member States should ratify and effectively implement all instruments that provide protection of the labour rights of migrants.**



**Corporate Social Responsibility Practices – business practices of recruiting agencies**



**Across ASEAN countries all at different levels on ratification of international norms except for CEDAW and CRC**



- Root causes for migration – right to food/shelter/decent living are violated**

- CEDAW and CRC too there are reservations**

- Conditions of workers – forced confinement, wages, large debt repayments, rest days, hours of work, unequal wages, living accommodations, religious practices**

# Memorandum of Understanding/ Bilateral Agreement

- MOU more informal than Bilateral Agreements
- Good example is the Mekong sub-region, Commit
- But model contracts need to be premised from a HR approach for MOUs or BAs to make sense eg. MOU between Indonesia/Malaysia in 2006 still does not guarantee on adequate rests, prohibits marriage, bringing spouses into the country and does not disallow retaining of worker's passports.
- MOU/BA and ASEAN Charter - alignment

# ASEAN Declaration



## COMMITMENTS BY ASEAN

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:

- Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
- Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
- Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;
- Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
- Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare

# ASEAN Declaration(Cont'd)

- Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;
- Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
- Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

- Softly, softly approach with little monitoring or evaluation; no provision for the family; violations need to be addressed.

- Implementations and enforcement on violations as the charter provides for such protection

# Singapore

- Improved Penal Code
- Improved Safety regulations
- Training; Minimum Age requirements
- Restructuring: foreign worker well-being department with more staff; NTUC Migrants' Forum
- Improved governance over bad recruiters and employers – blacklisting, prosecution
- But Labour Laws do lack – minimum wages; rest day is not mandated; written contract not governed under the law
- NTUC's Unit for Casual and Contract Workers also looks into foreign workers' issues
- Strapped for funds, NGOs
  - Unions tend to work through mediation
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# Recommendations

- a Commission is a good way to tidy up this industry – implementation and enforcement issues
- Protocol on protection of migrant workers
- Conventions and ILO among ASEAN
- ASEAN Summit – needs to be on the agenda
- Definition on migrant workers
- At least agree not to cane undocumented workers!
- Economic pillar – CSR and models for the businesses
- Alignment with local laws
- Unions
- ASEAN, governments – need to be more consultative of CSOs eg regional CSOs such as Migrant Forum Asia
- Task Force on ASEAN migrant workers a multi-lateral platform can play a bigger role.