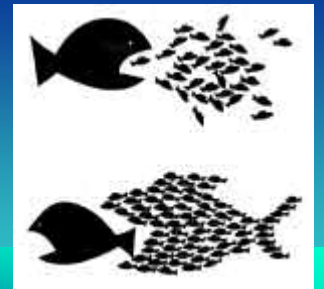
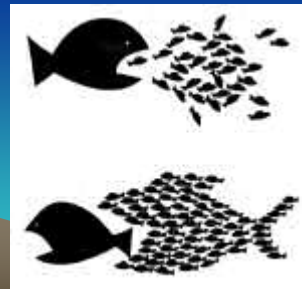
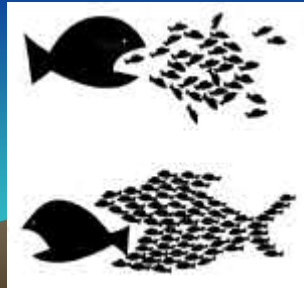
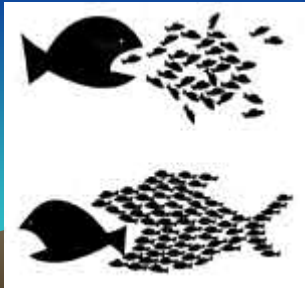


Task Force on ASEAN Migrant Workers

Civil Society – Trade Union Consultation Process
Towards an

**ASEAN FRAMEWORK INSTRUMENT FOR
THE PROTECTION AND PROMOTION OF
THE RIGHTS OF THE MIGRANT WORKERS**



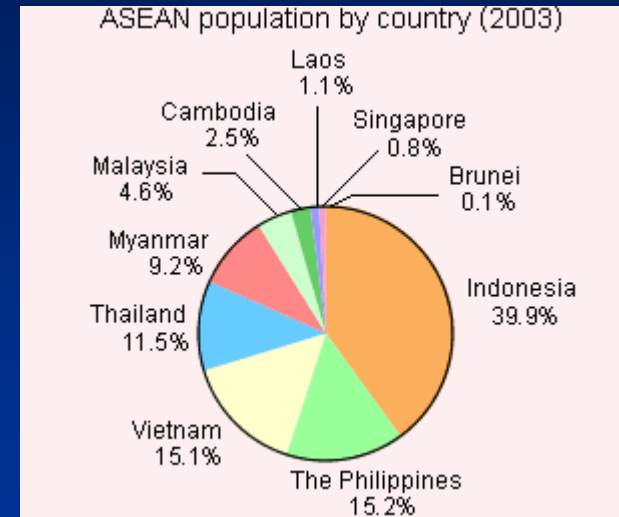
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Regional Cooperation
in Human Development (SEARCH)**



Facts on ASEAN Migration

- Total Population: 567 million, working pop: 263 million
- Asia migrant workers: 13.5 million
- 5.3 million within ASEAN
- Over 28.8 million live on less than US \$1 per day;
- 148 million on less than US \$2 per day
- High growth has failed to respond to the needs of the poor, esp. rural
- Push factor for migrant workers to seek decent work overseas



Intra-ASEAN labour migration

- **3 countries host 90% intra-ASEAN migrants**
 - Malaysia (35%)
 - Thailand (35%)
 - Singapore (21%)
- **Remittances inflow in 2005: US\$26 billion with Philippines accounting for 62%**
- **Lack of rural employment -- new countries (CLMV) now also exporting workers in competition with Thailand, Indonesia, Philippines – world financial crisis downturn**



Towards an ASEAN Economic Community

- From ASEAN Free Trade Area to an ASEAN single market and production base characterized by free flow of goods, services, investment, labor, and capital by 2015...
- Deadline for full economic integration forward to 2015 – seven years away!
- AFTA – “Agree First, Talk After?”
What about labour?

What About Labour?


- **Vientiane Action Program (2004-2010) sets out “elaboration of ASEAN instrument for the protection and promotion of the rights of migrant workers” – action point 1.1.4.6 of VAP**
- **Sec.-Gen. Ong Kee Yong asks Working Group ASEAN Human Rights Mechanism -- take this forward**

Unanswered Questions: Labour


- ASEAN harmonize legislation in line with requirements of regional integration – but what about labour laws & labour rights?
- Skilled labour and unskilled labour?
- Documented workers vs. undocumented workers?
- Migrant workers' families?
- What is an “instrument” – how does it work, will it be binding? What relationship will “instrument” have to ASEAN Charter?



ASEAN Declaration on Migrant Workers

- ASEAN response -- passed by ASEAN Leaders – Jan. 2007 – Cebu, Philippines
 - Sets out responsibilities of ASEAN, and labour receiving and sending countries
 - Failure to cover undocumented and families of migrant workers
 - No timeframe for implementation
 - Article 22 – “Instrument” to be developed
 - An important step forward – but still much advocacy needed!
- 

ASEAN Committee on Migrant Workers (ACMW): Implementation of Declaration

- **Foreign Ministers agree on July 28, 2007, to set up ACMW – ASEAN work party, members are 10 Gov't focal points**
 - **ACMW is “implementation track” for Declaration – going beyond usual ASEAN Declaration**
 - **Develop an ASEAN instrument on the protection and promotion of the rights of migrant workers (Art. 22)**
 - **Report to the annual ASEAN Senior Labor Officials Meeting (SLOM)**
- 

ASEAN Committee on Migrant Workers

- **First meeting – Sept. 15-16, 2008 – Singapore – seven focal points clear so far – devising work plan for ACMW**
- **Four areas of cooperation agreed:**
 - **Protection & promotion of rights of MW**
 - **Strengthen good governance in recruiting**
 - **Countering human trafficking**
 - **Drafting of “Instrument” per Article 22**



ASEAN Forum on Migration

- Initiative of the ILO with ASEAN – first meeting held in Philippines, 2007
- Recommendation to make ASEAN Forum an annual event – exchange of views, discuss issues – continuing ILO support
- Gov't meeting -- role of civil society in future Forum meetings still unclear but possible Forum for civil society input



Key Sections of ASEAN Declaration

- **Preamble – Statement of Intent and General Principles Guiding Declaration**
- **Obligations of Receiving States**
- **Obligations of Sending States**
- **Commitments by ASEAN**



Preamble of Declaration: International Instruments

- Preamble specifically mentions three international instruments acceded to by all ASEAN states:
 - Universal Declaration of Human Rights
 - UN Child Rights Convention (CRC)
 - UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW)



Preamble of Declaration: International Instruments (2)

- Do the provisions of the ASEAN Declaration conform with the UDHR, CRC and CEDAW?
- Since all UN states are understood to be bound by UDHR, and all ASEAN states have ratified CRC and CEDAW – what is their responsibility in the area?



The Big Question: ASEAN Norms vs. National Laws

- On one hand – the acknowledgement of rights and duty to protect migrants
- On the other hand – national laws, esp. in receiving states, still prevail.
- Are aspirations of the Declaration and existing laws at odds?
- How then will the ACMW resolve differences between Instrument and national law? Question for ASEAN...



Preamble: National Sovereignty “Safety Clause” Migration Policy

- **Declaration clearly recognizes
“sovereignty of states in
determining...own migration policy”**
- **Explicit statement that Government
determines terms of entry and
conditions under which migrant
workers can remain on territory...**



Guiding Principles: Dignity of Migrant Workers, But...

- “Promoting full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with laws, regulations & policies...of members”
- The Declaration: “the need to address cases of abuse and violence against migrant workers whenever...cases occur.”
- *But...“Take into account the fundamental rights and dignity” of migrant workers “without undermining the application by the receiving states of their laws, regulations and policies”*



Closing the door on regularization of status

- “Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.”
- Word choice – “implying” (not “requiring”) displays sensitivity matter
- Use of “shall” – not optional or promotional

Preamble of Declaration: Migration Policies

- Adoption of “appropriate and comprehensive migration policies on migrant workers”
- Preamble confirms “shared responsibility” of ASEAN states and their “common vision” to “improve the quality of life” of migrant workers
- Saying the right things – but often there is a lack of details, lack of specificity...



Preamble: Contributions of Migrant Workers

- The Declaration recognizes the “contributions” of migrant workers to the “society and economy” of receiving and sending states
- Yet there is no discussion about what those contributions are, and how they might be improved or expanded.



Guiding Principles: Application to Whom?

- Declaration applies to “migrant workers who, through no fault of their own...become undocumented”
- Declaration applies to “migrant workers and family members already residing with them” – but since when...?
- What about undocumented workers?
- What about family members coming to join later, born later?



Receiving Countries: Access to Services

- Access to services is made contingent on migrants fulfilling “requirements under applicable laws, regulations and policies”
- But what services should be required to be provided? What services are so important to be unconditional? Health and education must be provided according to CRC and CEDAW...



Receiving States: Rights to be Provided

- “Intensify efforts” to “protect fundamental human rights, promote welfare, and uphold human dignity”
- “Fair and appropriate” employment protection, wages, access to decent work and accommodation
- Access to legal and judicial system
- Consular functions for Embassy of MW



Receiving States: Rights and National Laws

- From rights perspective, how can these promises be realized?
- Above-mentioned is pursuant to “prevailing laws, regulations and policies”
- Is this possible?
- Are there contradictions?



Obligations of Sending States

- “Measures related to protection and promotion of rights” – but what measures?
- Policies and procedures to facilitate migration – recruitment, preparation to deploy, protection – and repatriation and reintegration – but what policies?
- Legal practices to regulate recruitment and eliminate recruitment malpractices



Commitments by ASEAN

- Promote decent treatment of workers
- HRD and reintegration
- Stop smuggling and human trafficking
- Capacity building between ASEAN states through data-sharing
- Mutual assistance for migrants in trouble outside ASEAN
- External groups to respect ASEAN and support efforts on this



Commitments by ASEAN (2)

- **Commitment by ASEAN are quite general and need greater definition**
- **BUT reaffirms need to develop ASEAN Instrument on Protection and Promotion of Rights of Migrant Workers**
- **Annual report required from ASEAN S-G to the ASEAN Minister Meeting**



Observations on ASEAN Declaration

- ASEAN Declaration is primarily focused on aspirations but with plans to develop an implementation instrument
- Aspirations for protection of rights are limited by continued primacy of national laws & regulations
- Coverage omits undocumented workers, migrant families
- Gender, children are largely omitted
- Migrant workers – temporary labourers – reveals ASEAN view of status

ASEAN Declaration – Only Game in Town

- **Within Asia – this is the sole process with possibility of clear policy outcome**
- **ASEAN Human Rights Body – will there be a migrants sub-committee? Unclear...**
- **Global Forum on Migration and Development (GFMD) – talk, not binding**
- **UN processes – aspirational, incremental, country by country approach**



Creation of the Task Force on ASEAN Migrant Workers

- **Civil society meeting called by Singapore focal point of Working Group on ASEAN HRM -- April 2006**
- **Meeting sets up Task Force, sets out work to be done:**
 - **Consultations & participation**
 - **Engagement with ASEAN**
 - **Drafting a Framework “Instrument” from civil society to submit to ASEAN**



Task Force on ASEAN Migrant Workers

- “Process” – not organization -- regional mechanism for civil society dialogue & consultations;
- In line with vision of H.E. Surin Pitsuwan, ASEAN Secretary-General to encourage increased people’s participation in ASEAN – vision of “sharing, caring ASEAN”
- Reports to the ASEAN Secretariat, relevant national ministries, and WG on AHRM
- Accountable to civil society members

Networks in the Task Force

- **Union Network International (APRO)**
- **Migrant Forum Asia (MFA)**
- **Asia Migrant Centre/Mekong Migration Network (MMN)**
- **CARAM-Asia**
- **Asia-Pacific Forum on Women, Law & Development (APWLD)**
- **Forum Asia**
- **Public Services International (APRO)**
- **Building, Woodworkers International (APRO)**



Task Force “National Consultation Process”

- **Provide forum for discussion on migrant worker issues and ASEAN Declaration**
- **Bring together unions, NGOs, CBOs, migrant worker representatives**
- **Develop recommendations for national Government and for ASEAN/region**
- **Issue National Statement/Recommendations**



National and Regional Consultations Task Force on AMW

- April 2007 Regional – KL, Malaysia
- May 2007 Indonesia -- Jakarta
- July 2007 Thailand – Bangkok
- Aug 2007 M-TAG Expert Group
- Sept 2007 Philippines – Manila
- Nov 2007 Regional – Singapore (ACSC)
- March 2008 Vietnam -- Hanoi
- April 2008 Regional – Framework Drafting



National and Regional Consultations (continued)

- **Malaysia – August 2008**
- **Cambodia – September 2008**
- **Lao PDR – September 2008**
- **Regional consultation – Bangkok – Nov 23-24, 2008**
- **ASEAN SAPA meetings and ACSC – Thailand, December**
- **Singapore and Brunei – January 2009**



Task Force Actions with ASEAN

- Engagement with ASEAN Secretariat – National Consultation Statements
- Engagement with ASEAN Secretary-General, H.E. Surin Pitsuwan
- Regional Drafting Workshop – 1st DRAFT of Framework Instrument – Statement to ALMM – second workshop Nov 24-25 2008
- SLOM receipt of Statement – 2006, 2007
- Planned national and regional engagement with ACMW

Task Force Core Mission

- **Conducts consultation with stakeholders “to elaborate an Instrument for the protection and Promotion of the rights of migrant workers” – in line with Article 22 of ASEAN Declaration**
- **3rd draft -- 150 paragraphs, 32 pages**
- **Framework follows structure of ASEAN Declaration – principles, obligations of sending, receiving states, ASEAN**

Framework Instrument 1 – General Principles

- **Cover all migrant workers in ASEAN, regardless of legal status**
- **Recognition that migration benefits both sending and receiving countries**
- **Principle of non-discrimination and “national treatment” in receiving countries**
- **Gender-sensitive policies – recognizing increased numbers of women migrants**



Framework Instrument 2 – Obligations of Receiving States

- **Freedom of association/collective bargaining rights for migrant workers**
- **National treatment – conditions of work**
- **Standard contracts for hiring**
- **Right to hold passports/ID**
- **Health, living conditions, accommodation**
- **Problems of domestic workers**
- **Migrant children/families – access to services (education, birth registration, etc.)**



Framework Instrument 3 – Obligations of Receiving States

- **Systems to protect rights of undocumented workers**
- **Access to legal systems and justice**
- **Improved labor law enforcement**
- **Screening, arrest, detention, deportation**
- **Protection of cultural beliefs/rights of migrants**



Framework Instrument 4 – Obligations of Sending States

- **Effective pre-departure training/systems**
- **Closer monitoring of labor recruitment agencies and brokers**
- **Role of sending country Embassies to protect migrant workers**
- **Reintegration of migrant workers back to sending countries**




Framework Instrument 5 – Joint Obligations of Receiving, Sending States

- **Effective regulation of private recruitment industry, punishment of abusive agents**
- **Government to government recruitment**
- **Grievance mechanisms for migrants**
- **Skilled labour – ASEAN Framework Agreement on Services**
- **Suppression of human trafficking**
- **Remittances reform – ease of transfer**



Framework Instrument 6 – Commitments by ASEAN

- **Possible ASEAN regional systems – portability of health insurance, hotlines, migrant IDs, etc.**
 - **Mutual recognition skills/qualifications**
 - **ASEAN monitoring & reporting systems on situation of migrant workers**
 - **Civil society role/engagement with ACMW**
- 

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Task Force Website

[www.workersconnection.](http://www.workersconnection.org)
org





Thank you very much!

**Solidarity with All Workers
Human Rights for All**

