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Social Policy in ASEAN

The Prospects for Integrating Migrant Labour Rights and Protection

JENINA JOY CHAVEZ
Focus on the Global South

ABSTRACT The Association of South East Asian Nations (ASEAN) has made strides in regional integration and cooperation, aided by unique modes of governance privileging consensus and non-interference. However, the social dimension is in the early stages of development and is currently detached from economic integration initiatives. The movement of low- and unskilled workers, many of whom are undocumented, has received especially little attention in ASEAN. Their growing numbers underscore the importance of treating migration as integral rather than separate from labour and general social protection issues. The establishment of regional agreements on social protection and integration, with particular focus on migration and labour standards, should signal the recognition of the economic nature of migration, and help strengthen the relevance and profile of ASEAN among the citizens of member countries. While existing mechanisms can be used to push for this – from Track II discussions to regional coalition building – the political challenge lies in making the issue an active concern in official ASEAN agenda.

KEYWORDS *ASEAN*, *labour*, *migration*, *regional social policy*

Introduction

Multilateral agreements on trade, regional integration and inter-regional economic cooperation initiatives have prompted organized labour to push for the mainstreaming of social clauses in these agreements and initiatives. With fears that increased integration of the global economy may result in the competitive devaluation of social standards, it has been argued that social clauses could

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safeguard against the abuse of labour and promote the welfare of the labour force. Proposals have been advanced for a social clause that would integrate core labour standards in trade agreements, as trade sanctions may be used against non-compliance with these standards (Leary, 1996).[1]

On another front, global campaigns that seek to preserve the dignity of migrants, to protect the human rights of refugees, and to stop trafficking in persons, especially in women and children, are also knocking at the doors of regional, inter-regional and international bodies and governments. They are demanding at the minimum that governments sign up to and/or recognize international human rights conventions, or create appropriate mechanisms at national and regional levels to guarantee such rights.

Along with recognized key causes of migration – historical/colonial ties, geographic proximity between some source and destination countries, poverty and conflict situations in source countries – the movement of natural persons or migration flows follow specific patterns of economic restructuring. In line with the 'migration hump' model,[2] many East Asian economies experienced migration pressures before they were stabilized economically. For countries that have yet to grow or failed to restructure, the transition becomes longer (Martin, 1994). East Asia, particularly Japan, South Korea and Taiwan, has often been used to illustrate this model. Although migration is often portrayed as a temporary phenomenon confined to early stages of economic development, there is evidence to show that migration aids the development of countries that have long passed over the 'hump'. Thus, evidence from Japan and Taiwan shows a strong positive interrelation between foreign direct investment (FDI) and international labour migration. Both investment and migration are integral parts of the global or regional development process. This is particularly true for East and Southeast Asia, which followed the unique 'flying geese'[3] model of development (Tsay and Tsai, 2003). As richer East Asian economies continued their impressive growth, they became net importers of labour both as a result of labour shortages at home and of the closer economic links spawned by their investment in neighbouring Southeast Asian countries.

Since the early 1990s the proportion of intra-regional migration in the context of overall East and Southeast Asian migration has increased significantly, a consequence of the wide-ranging restructuring in the region since the 1970s (Tsay and Tsai, 2003). An overwhelming majority of migrants leave their home countries in search of economic security, though most intra-Asian migrants are on temporary employment (Waddington, 2003) and a disproportionately high number of them end up with irregular or undocumented status (Battistella, 2002). Given the various social and labour issues that migration poses, cross-border migration should be treated as integral to broader labour and social protection issues rather than separately from them.

This article argues that the integration of migration issues and labour and social protection issues is integral to progressing the social dimension of

ASEAN and accordingly examines how an integrated approach to these issues could take place within ASEAN social policy. The discussion is organized around five main sections. The first two sections outline the ASEAN context – section one reviews ASEAN modes of governance, while section two briefly discusses regional integration initiatives in ASEAN and how this makes a social agenda urgent. Section three develops this argument through a discussion of the pattern of economic development in the region and its impact on employment and migration. Section four then returns to the missing migration focus, and discusses the prospects for integrating labour and migrant advocacies together with the various civil society initiatives and engagement that facilitate this inclusion. Finally, section five outlines a set of policy recommendations to advance migration and labour issues in the active official ASEAN policy agenda.

ASEAN Mode of Governance

ASEAN is often characterized by its unique 'ASEAN Way' of doing things, that is, via strict consensus (unanimity in decision-making), reflecting the high premium on sovereignty and non-interference (Katsumata, 2003). This mode of governance has posed a range of difficulties in dealing with socio-political issues – whether internal or external – except those that are considered as external security threats. Internal political-security issues arising from member countries' actions or policies are never meddled with. To skirt this difficulty, ASEAN has devised and adopted various mechanisms to come to agreement without having to violate these principles of governance.

The ASEAN-X formula is a mechanism by which members who are ready to cooperate on certain issues can do so without having to compel other members not yet ready to participate in regional cooperation. This mode is an improvement upon bilateralism as it extends to more than two countries, and the resulting cooperation is formally recognized by the regional grouping. A sub-regional variation of this mode consists of a cooperation formula for members who choose to explore common concerns not limited to the country-level, and allows for participation by national or sub-national authorities. This mode of cooperation has been employed in initiatives like the Greater Mekong Sub-region (GMS) Programme and the Brunei–Indonesia–Malaysia–Philippines East Asian Growth Area (BIMP-EAGA). These initiatives facilitate cooperation between similarly situated states and/or countries without having to reform national legislation or policy. Sub-regional cooperation is an important component of ASEAN's programme to narrow the development gap between the bigger and older members and the newer and less prosperous members. Finally, there is the ASEAN+X mode of expansion, through which the Association cooperates with external (non-ASEAN) partners. This mode of cooperation is also sometimes deployed in conjunction with the

ASEAN-X formula, signalling that ASEAN Members need not necessarily agree to, or join, the initiative as a bloc. The cooperation between ASEAN and Japan, South Korea and China (ASEAN+3) is the most prominent example of this mode of interaction.

These different cooperation formulae institutionalize a great degree of flexibility and function to maintain confidence and political comfort among ASEAN Leaders, but tend to slow down the development of regional integration agendas and inhibit deeper regionalism. Moreover, the formulae work best in the areas of economic cooperation and are of limited use in other policy domains. The celebration of seeming informal, flexible modes of governance in ASEAN can be attributed to the heavy emphasis placed on sovereignty by its political leadership. Such flexibility is able to protect ASEAN Members who may not yet be ready for more formal regional arrangements because individually the Members are still institutionally weak (Narine, 2002).

ASEAN governance is state-centric, where the assent of the highest political leadership is necessary before policy agendas can be developed and initiatives adopted. One of the consequences of this is that many initiatives lack clear legal mandates and are notable for the lack of enforcement mechanisms and sanctions. One clear exception to this is certain economic schemes like the ASEAN Free Trade Agreement (AFTA) where a notification and dispute settlement mechanism is defined.

Over the years, new forms of diplomacy have been recognized in ASEAN. Complementing and engaging the official meetings (Track 1) are gatherings of public intellectuals, academics and other non-state actors (Track 2). Track 2 diplomacy recalls the 'epistemic communities' (Haas, 1992) that provide expert advice and inputs to official processes before concrete projects or policy recommendations are adopted. In ASEAN, the recognized Track 2 actors include the ASEAN Inter-Parliamentary Organization (AIPO), the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS), and the ASEAN University Network. Track 2 diplomacy is an opening in the otherwise highly centralized ASEAN governance structure, but is employed in the discussion of predominantly political and security issues. More recently, ASEAN recognized a different type of Track 2 process, one led by the business sector entailing the establishment of the ASEAN Business Advisory Council (ABAC) (ASEAN Secretariat, 2003). Still weak is a people's track (Track 3). While ASEAN has an official non-governmental organization (NGO) accreditation process, difficulty in accessing this system resulted in less than 60 NGOs enlisting; this is despite the region being known for its vibrant NGO communities (Loh and Ojendal, 2005). The ASEAN People's Assembly (APA), a Track 2–Track 3 interface organized by ASEAN-ISIS, is designed in such a way that Track 2 also serves as a bridge between the official track and the people's track; however, its NGO reach is limited. The Asian Civil Society Conference (ACSC) started in Malaysia during the 11th ASEAN Summit (2005) is a new Track 3 mechanism through which direct

civil society input can be brought to ASEAN. Together with the efforts of ASEAN civil society groups to push the ACSC forward, the readiness of the ASEAN leadership to engage directly with its citizens determines how far Track 3 diplomacy will progress. In December 2006, ACSC-2 was held with token participation of the ASEAN Secretariat and no Government participation at all.

Providing technical and policy support to the decision-making in ASEAN are various ministerial meetings, senior officials meetings, committees, experts groups, and task forces. Track 2 mechanisms are parallel and complementary processes that provide input right up to the Ministerial Meeting level. Other technical inputs are received at the committee, task force and expert group level by official appointment or by inclusion in national delegations. These various mechanisms, together with political campaigns at the national level, provide openings for the discussion and adoption of a regional social policy integrating migrant and labour concerns.

The Social Dimensions of ASEAN Integration

Various analysts have elaborated the advantages of regionalism in the development of a coherent social policy in a globalization context (Yeates and Deacon, 2006). Forty years old in August 2007, ASEAN is only in the initial stages of concretizing and operationalizing a coherent social dimension – indeed, it has what is at best a rudimentary social policy. One reason for this can be attributed to the mode of governance in ASEAN; other reasons include weak institutional and financial support in Member Countries. Following the framework set out by Yeates and Deacon (2006), an overview of ASEAN social policy is provided.

To begin with, it should be noted that ASEAN Members' heavy emphasis on sovereignty has precluded the development of contemporary European Union-style supra-nationalism, which would otherwise tie together the different components of social policy at the regional level. Instead of binding agreements and enforceable policies, ASEAN issues declarations that elaborate principles and aspirations, leaving it up to individual Member Countries to make the Declarations operational. The social dimension in ASEAN has been characterized by functional cooperation dominated by time-bound and sector-specific research, training and public information.[4] This functional cooperation in the social sectors provided the foundation for the ASEAN Socio-Cultural Community (ASCC), which to date is the most important expression of the social dimension in ASEAN. Additionally, the move towards medium-term planning, initially with the Hanoi Plan of Action (1999–2004), and the current Vientiane Action Programme (VAP, 2004–10), signals firmer commitments from ASEAN Members in recent years.

SOCIAL REDISTRIBUTION

ASEAN's main vehicle for social redistribution is the Initiative for ASEAN Integration (IAI). This seeks to address the development gap between Members,

and provides funds to Cambodia, Laos, Myanmar and Vietnam (CLMV) to support infrastructure, human resource development, information and communication technology and economic integration. ASEAN-6 contributed more than US$28m for the implementation of IAI projects between July 2002 and September 2006 (ASEAN Secretariat, 2006a). The IAI resembles the EU's structural and cohesion funds in its aim to aid the weaker EU economies, though the IAI is not a fund but a broad framework that covers both funding support for capacity building projects and a system of preferences for the new members. The funding mechanism to support the implementation of the VAP and its successor plans (where social redistributive aspects are under programmes to narrow the development gap), the ASEAN Development Fund (ADF), was established in July 2006 to succeed the more project-based ASEAN Fund established by the ASEAN Foreign Ministers in 1994 (ASEAN Leaders, 2005; ASEAN Secretariat, 1994). The IAI has a work plan of six years while the ADF has a two-year programme, and both get but do not only rely on the contribution of Members.

Financing remains the biggest obstacle to more ambitious catch-up mechanisms in ASEAN. The ADF and funds for the IAI could only support capacity building projects, provide seed funding or leverage cooperation projects and programmes with external funding donors. More structural projects, like infrastructure building, are supported by other ASEAN funding mechanisms (e.g. the ASEAN–Japan Cooperation Fund [AJCF]) or by external donors and multilateral banks. The region has to rely on its dialogue partners (Australia, Canada, China, the European Union, India, Japan, the Republic of Korea, New Zealand, Russia, the USA, and the United Nations Development Programme) and international institutions (the World Bank, Asian Development Bank) to support its many initiatives. External contributions far outpace the contributions of ASEAN Members themselves. Japan alone contributed 7.5bn yen (around US$70m) to the ADF and AJCF, whereas the ASEAN Members each contributed only US$1m (ASEAN Secretariat, 2005b, c). While ASEAN actively solicits the support of its dialogue partners and other donors (e.g. it convenes the IAI Development Cooperation Forum to develop new partnerships and generate funds for the IAI work plan), it has to contend with the priorities of partners (e.g. contributions are earmarked for projects the partners have direct participation in). It also has to face the 'prescriptive' nature of contributions from international organizations (Pushpanathan, 2007). Not having enough resources for its programmes allows the international donor community to influence the regional social development agenda and limits the development of more indigenous ASEAN social policy.

SOCIAL REGULATION

Social Regulation is heavily determined by regional economic initiatives. The ASEAN Framework Agreement on Services (AFAS) signed in 1995 aims to progressively liberalize services in the region, and extend the commitments

beyond those enshrined in the General Agreement on Trade in Services (GATS). With initial focus on seven priority sectors (air transport, business services, construction, financial services, maritime services, telecommunication services and tourism), the aim is to achieve full liberalization by 2020 with flexibilities for the Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Vietnam (BCLMV) countries. With negotiations ongoing, it is still early to make an assessment of how AFAS will affect commercially available social services (health, education, etc.). Various studies (see for instance Khor, 2006; Yeates, 2005) identify issues based on analysis and experiences with GATS and free trade agreements (FTAs) that could create concerns for ASEAN and affect the supply and access to and use of social services. Liberalization in services requires the reorientation of policy and regulation that could affect the conditions by which these services are made available. Given that ASEAN has more developing (and some least developed) than developed Country Members, the adjustment for the region could be great, making the clear definition of social regulation beyond just liberalizing the services sector important.

The region has yet to agree on regional standards in sectors like the environment,[5] public health, education and social protection. There is commitment in the VAP to work on these areas, but programmes are again currently limited to joint studies and monitoring. AFAS nevertheless has facilitated the discussion of Mutual Recognition Arrangements (MRAs), with MRAs for engineering and nursing services already completed. Still, MRA discussions in AFAS are limited to the skilled occupations and professions and are silent on low- and unskilled labour issues.

SOCIAL RIGHTS

Social Rights trail even farther behind regional measures of redistribution and social regulation. ASEAN Vision 2020 envisions 'the evolution in Southeast Asia of agreed rules of behaviour and cooperative measures to deal with problems that can be met only on a regional scale' (ASEAN Leaders, 1997). This commitment has been reaffirmed in the Declaration of Bali Concord II (ASEAN Leaders, 2003) and laid out in the two action programmes. As discussed earlier, ASEAN places a high premium on sovereignty and non-interference, and this is the principal reason why more defined regional social policies beyond declarations and aspirations are slow to materialize. This also constrains the adoption of policies or instruments that impose specific obligations to Member States.

In the area of human rights, for example, the inclusion of 'human rights' in the VAP Annex was a major advance. A regional human rights working group, composed of academics, parliamentarians and national human rights advocates has also been recognized by the ASEAN, and has taken on several tasks outlined in the VAP on networking of national human rights institutes and human rights education. Only 4 of the 10 ASEAN countries (Indonesia, Malaysia, Philippines and Thailand) have national human rights mechanisms,

making a regional mechanism a desirable option for the citizens of the other six that still do not have them. However, unless the principle of non-interference is recast, the advocacy for the establishment of a regional human rights mechanism is unlikely to be given credence by the ASEAN Leaders.

The broader aspect of equal treatment as it applies to citizens of the Member countries is also not yet recognized in ASEAN (the principle applies only to States).

The need to address the gap in social policy becomes ever more urgent as ASEAN embarks on a grander vision of regional integration. ASEAN Vision 2020 establishes an economic region with aspirations for a 'single market and production base' with free flow of goods, services, investments and skilled labour by 2020 (recently fast-tracked to 2015) with flexibilities for the newer Members (ASEAN Leaders, 2003). Experience with economic integration in other regions and within ASEAN itself shows the intensification of internal and cross-border social policy issues, among them the increase in migration and resultant tensions (brought about by changes in skills availability and wages in both sending and receiving countries) in labour markets.

On a positive note, ASEAN Vision 2020 includes reference to developing 'a community of caring societies'. This can be interpreted as a commitment, in principle at least, to greater cohesion and economic integration among members. This commitment was further elaborated with the establishment of the sociocultural pillar through the ASCC (ASEAN Leaders, 1997), which covers the social development and participation aspects of regional cooperation. Moreover, in December 2005, ASEAN Leaders appointed an Eminent Persons' Group (EPG) on the ASEAN Charter to draw up a blueprint for a formal and rules-based ASEAN. In its report, the EPG recommended several promising provisions like the recognition of human rights (which if carried will be the first direct reference to human rights in a major declaration, save for mention in the Annex of the VAP); a special fund to narrow the development gap; the establishment of dispute settlement and mechanisms for redress in all fields of ASEAN cooperation accessible to Member States; and regular consultations at various levels with various stakeholders (EPG, 2007). To the extent that Charter provisions become legal rights and obligation, they facilitate regional policy generally, and help advance regional social policy in the process.

Finally, the ASEAN Charter building process is now superseded by a High Level Task Force (HLTF) on the Drafting of the ASEAN Charter, whose mandate is to produce an ASEAN Charter for signing by the Leaders during their 13th Summit in Singapore in November 2007. Aside from holding a regional consultation in Manila in March 2007, the HLTF has been quiet about the Charter process on its end and would not make available any written update until it is ready to submit a draft for consideration of the Foreign Ministers in late July 2007. Aside from the content of the Charter itself, the process for its adoption is closely being followed by civil society in the region, which is arguing that the Charter should be subjected to national referenda before it is finally adopted.

Economic Development and Labour Migration in Southeast Asia

The ASEAN region is one of the fastest growing globally. It boasts a regional gross domestic product growth of 6% (transition economies even higher at 6.5%), a regional GDP of US$800bn and a per capita income of US$1455. Notwithstanding impressive economic performance, wide disparities among member countries persist. Per capita income ranges from US$191 for Myanmar to US$25,209 for Singapore. Official unemployment is as low as 1.5% for Thailand and as high as 10.9% for the Philippines. Three quarters of investment flows are concentrated in three member countries – Singapore (48.9%), and Thailand and Malaysia, which together account for almost a third of FDI stock (ASEAN Secretariat, 2005a; Asian Development Bank [ADB], 2005) (see tables 1 and 2).

These disparities are relevant to labour migration within the region, in the sense that migrants respond to differences in development, demography and

TABLE 1 *FDI flows into ASEAN, cumulative share, 1995–2003 by host country and by source*

Host country	*FDI (in US$m)*	*Share to total (%)*
Brunei	8493	3.9
Cambodia	1618	0.7
Indonesia	3838	1.7
Lao PDR	502	0.2
Malaysia	36,062	16.4
Myanmar	3484	1.6
Philippines	11,656	5.3
Singapore	107,416	48.9
Thailand	31,924	14.5
Vietnam	14,594	6.6
ASEAN	**219,587**	**100.0***
ASEAN5	*190,896*	*86.9*
BCLMV	*28,691*	*13.1*
By source[a]		
ASEAN	27,894	12.9
Rest of the World	189,015	87.1
of which:		
Asian NIEs[b]	15,163	8.0
China	631	0.3
Japan	27,971	14.8
India	667	0.4

Source of Basic Data: ASEAN Secretariat (2005a).
Notes: * Details may not add up due to rounding; [a] Not including Cambodia's aggregate share estimate (US$1618M), not available by source country; [b] Hong Kong, South Korean, Taiwan (ROC).

TABLE 2 *ASEAN output: amounts, structure and growth, 1987 and 2004 or nearest year*

	Unemployment and GDP growth rates (%)				*Structure of output (%)*					
	Unemployment		*Growth rate*		*Agriculture*		*Industry*		*Services*	
	1987	*2004*	*1987*	*2004*	*1987*	*2004*	*1987*	*2004*	*1987*	*2004*
Brunei	4.7[a]	4.6[b]	1.0[c]	2.9		2.1[b]		58.4[b]		39.5[b]
Cambodia	2.5[a]	1.8[d]	1.2[e]	7.7	44.7	36.8	20.3	27.9	35.0	35.4
Indonesia	2.5	9.9	4.9	5.1	23.3	15.4	36.3	43.7	40.4	40.9
Lao PDR	1.7[c]	7.0[d]	–1.1	6.5	57.3	48.6[f]	13.9	25.9[f]	28.9	25.5[f]
Malaysia	7.3	3.5	5.4	7.1	19.7	9.1	38.1	48.5	42.2	42.4
Myanmar	1.3	4[d]	–4.0	3.6	55.3	42.9[b]	10.3	17.3[b]	34.4	39.7[b]
Philippines	9.1	10.9	4.3	6.2	24.0	15.3	34.4	31.8	41.6	52.8
Singapore	3.9	4.0	9.7	8.4	0.6	0.1	33.9	33.7	65.5	66.2
Thailand	5.8	1.5	9.5	6.0	15.7	9.9	33.3	44.1	50.9	46.0
Vietnam	2.3[g]	2.1	3.6	7.7	40.6	21.8	28.4	40.1	31.1	38.2
ASEAN				6.0						
ASEAN5				6.0						
BCLMV				6.5						

Sources: Asian Development Bank (2005) and ASEAN Secretariat (2005a).
Notes: [a] Figure for 1995; [b] Figure for 2002; [c] Figure for 1996; [d] Figure for 2001; [e] Figure for 1990; [f] Figure for 2003; [g] Figure for 2000.

democracy (GCIM, 2005). Demographics do not exhibit wide variations within Southeast Asia, but a relatively young population (32% are 15 years old and below in 2003) indicates relative mobility. Youth has been a factor in facilitating Southeast Asians' access to the labour markets of wealthier East Asian neighbours (Japan and South Korea) (GCIM, 2005; Young, 2004). Democracy, on the other hand, is a matter of major concern for some countries in the region. Discrimination and abuse, internal conflicts and insecurity are factors that lead to internal displacement, and when those internally displaced live in countries sharing borders with other countries the pull of international migration is strong. The International Organization for Migration reported a high number of internally displaced people in the region: at least 7500 for the Philippines; 600,000 to 1m for Burma; and 535,000 for Indonesia (International Organization for Migration [IOM], 2005). In Thailand alone, there are an estimated 1m Burmese migrants, a quarter of whom are refugees and asylum seekers while most of the rest entered the country irregularly (Battistella, 2002; Worldwide Refugee Information, 2002). In earlier periods (1975–92), Thailand assisted some 1.2m refugees from Cambodia, Laos and Vietnam (Battistella, 2002).

Disparities in the levels of development between sending and receiving countries provide both the push and pull factors in migration. Severe unemployment compels governments to have an organized labour emigration policy to ease labour market pressures at home. This was the case for the Philippines, and to some extent Thailand, in the late 1970s and the 1980s; this policy persists and in a strengthened form to the present day in the Philippines (Waddington, 2003). On the other hand, demand for overseas labour grows in times of labour shortages at home, like in the case of Thailand and Malaysia in the late 1980s and the pre-crisis boom of the first half of the 1990s. The relative prosperity achieved by the bigger economies of the region makes the hiring of migrant labour politically acceptable especially for jobs that local workers graduate from or shun. For Malaysia, Thailand and Singapore, this has been the case in construction, domestic work, plantation work, and fisheries. Newer ASEAN members who have yet to attract substantial investment flows, such as Cambodia and Laos, are expected to register increasing levels of emigration to the bigger countries in the region, especially Thailand.

Labour migration has played an important role in the restructuring in East and Southeast Asia. The developed economies of East Asia increased the importation of labour as they became net exporters of capital and investment (Tsay and Tsai, 2003). Japan was a net labour exporter during the post-Second World War period, as the government encouraged this as a means of reducing domestic labour market pressures. This ended in the mid-1960s when Japan experienced exceptional growth. As pressures arising from the shortage of labour mounted, Japan was able to defer a policy reversal by encouraging internal labour migration, recruiting farmers and agricultural workers to industrial jobs in the cities. The 'flying geese' model of Asian development offered yet another channel for Japan to address labour shortages by investing and relocating production abroad, notably in the new industrializing economies (NIEs) of Taiwan, South Korea, Hong Kong and Singapore. When these countries also experienced high levels of growth and began feeling the crunch in the labour market they became the 'secondary geese' that relocated production abroad and became net labour importers (Chavez, 2007; Tsay and Tsai, 2003). Thailand and Malaysia developed as second generation NIEs, benefiting from massive investment flows from Japan and the first generation NIEs. Quite differently from them, however, both countries became net importers of labour even as they were still net receivers of FDI.

By the mid-1970s and the 1980s, Japan started to import mostly female Asian labour into the entertainment industry. In the mid-1980s, growing prosperity meant that migrant workers were left with the dirty, dangerous and difficult or demanding jobs. More significantly, migrant labour serviced the needs of Japan's small and medium industries, those not big enough to move abroad or to upgrade their technology (Tsay and Tsai, 2003; Waddington,

2003). Many migrant workers who entered Japan were unskilled or low skilled, and were undocumented as the importation of unskilled labour into Japan was illegal. Similarly, in Taiwan by 2000 undocumented migrants were recorded at 43,000, most of them originating from Southeast Asia (Battistella, 2002; Manning and Bhatnagar, 2004a; Tsay and Tsai, 2003). In Southeast Asia, the phenomenon of undocumented entry of migrant workers peaked just before the Asian financial crisis and they were among the first to be expelled as part of governments' response to the crisis. Various estimates place the number of undocumented Southeast Asian workers in ASEAN at 2.6m, 82% of whom are Indonesians and Filipinos. Malaysia and Thailand received almost 83% of these undocumented migrant workers (Manning and Bhatnagar, 2004b).

The economic significance of migration is also evident due to the impact of remittances on country finances and poverty levels (GCIM, 2005). In Asia remittances are significant, with three countries (India, China and the Philippines) alone accounting for US$55bn – one-third of the value of formal remittances worldwide (GCIM, 2005). The importance of remittances is particularly high for the Philippines. Total remittances from overseas Filipinos reached US$12bn via formal channels in 2004, and an equal amount is estimated to have reached the country via informal channels. So significant is this transfer that it accounted for 13.5% of the country's GDP in 2004, and is credited for reducing headcount poverty by between 3–10% (World Bank, 2006). Migration contributes to economic, social and political stability – not only by reducing social conflict arising from labour market pressures but also because of the economic value of remitted income, factors that are crucial in the maintenance of economic activity. The relative significance of remittances also points to the bigger issue of workers' overall contribution to the regional and global economy, and the importance of valuing these contributions by ensuring workers' rights, migrant or not.

The Missing Focus on Migration and Prospects for Integrating Labour and Migrants Advocacy

A major absence in the social dimension of ASEAN is the non-recognition of low and unskilled labour in official discussions and as a target for regional action. The migration currently recognized in ASEAN is that of skilled and professional talents, and by implication only that with legal and regular status. ASEAN is silent on the issue of the mass of low and unskilled or otherwise undocumented migration that persists in the region. The recognition of undocumented migration is limited to the recognition of trafficking in persons. Without full acknowledgment of the migration issue as an economic development issue, any attempts at regional protection will be incomplete, not only because it will leave out a significant number of people who through

their mobility have acquired some limited form of ASEAN identity; but also because it denies ASEAN Leaders and citizens an opportunity to finally confront a long-standing issue that has been a subject of historical tension.

Problems and conflicts arising from migration and eventual repatriation of undocumented migrants have traditionally been dealt with on a bilateral basis and as such have generated limited and temporary solutions that prove ineffective in the long run. For instance, Thailand and Malaysia have implemented 10 amnesty programmes covering more than 5m undocumented migrants since 1992 (IOM, 2005), yet the problem of undocumented migration persists, pointing to the need for new approaches. Not being able to discuss migration issues regionally also weakens ASEAN members' capacity to negotiate these issues with the +3 partners, particularly Japan and Korea where a sizeable number of Southeast Asian migrants have undocumented status.

The limited focus also endangers the health initiatives of ASEAN, especially as regards the prevention and control of communicable diseases like HIV/AIDS, SARS and avian flu. The invisibility of undocumented migrants from official policy excludes them from these programmes. Undocumented migrants are disproportionately more exposed to health risks due to inadequate working conditions and irregular movement, but are unlikely to seek medical attention because of their status, and are also often left out of assistance programmes in times of disasters and emergencies (Cheng, 2005; IOM, 2005). Also, unless migration is recognized as a phenomenon with wide-ranging impacts not only on bio-security but on the economy and culture as well, the limited catch-up mechanism to narrow the development gap ASEAN has put in place will leave a major development concern out of the policy agenda.

The ambivalent attitude towards migrant labour on the part of national labour forces arises from concerns that migration exerts downward pressures on wages (World Bank, 2006). The recruitment of migrant labour is seen as employers' way of evading minimum standards on wages and benefits, because many migrants are willing to take lower pay than their national counterparts. If, on the other hand, migrants come from higher wage-sectors or countries, they are seen as a cost-cutting measure for skills usually provided by yet more expensive migrants, and also the employers' way of avoiding having to invest in the training of national workers (Thai Labour Campaign, 2005).

Despite tensions between and competing concerns of migrant and national labour forces, they are natural allies in the promotion of social protection at the regional level. As economic integration proceeds, factors of production move freely within the region, prompting adjustments at many levels. Downward pressures on national labour standards are said to occur when migrant workers enter the market, but often the more immediate problem has to do with the poor implementation of and compliance with these standards (International Labour Organisation [ILO], 1998). These standards continue to deteriorate for migrant and national workers alike. Rights and benefits accruing to migrant labour are crucial for their reintegration into their home

countries, and have a long-term impact on both migration behaviour and in-country industrial relations. That is, if migrant workers are assured of reasonable social benefits and protection, it would be faster for them to pay off debts and save up for eventual return to their home countries. In addition, if such benefits include social security and pensions, there will be less pressure for migrant workers with temporary and especially undocumented status to overstay their work visa, sell their labour at lower wages, and generally contribute to reserve labour that can depress workers' benefits. Aside from unemployment, working conditions and standards can affect migration decisions. If working conditions at home are good and at par with those in neighbouring countries, assuming there are no employment problems, the pressure to migrate will be less.

Recently there has been a growing interest in the portability of social security rights,[6] including those for migrant workers. To the extent that the process of economic regionalization will continue to fuel intra-regional labour migration, the institution of mechanisms to make these rights portable across the region would mean a strengthened position for migrants and workers in general, and facilitate increases in labour mobility. This will also make certain AFAS initiatives, e.g. on pension systems and financial services, readily accessible and relevant to ordinary citizens. By integrating social rights to regional regulation, labour and migration issues gain new currency and importance. The differential levels of national social security systems in the region, however, present problems, as the service is not equally available in all Member Countries. While the portability notion might help upgrade national social security systems, it can also stall decisions to adopt it. Portability is an advanced notion of rights, and to get there ASEAN needs to first accord full recognition to migrants' and workers' rights.

This coincidence of national and migrant workers' interests makes it imperative that ASEAN develops a concerted policy around labour and social rights. Both migrant rights groups and trade unions have organized and federated transnationally, giving them exposure to different industrial relations regimes and social protection systems, and placing them in a strategic position to develop advocacies at different levels. Joint advocacy will need to be directed at all levels: national, to confront the push and pull factors of migration, to safeguard standards, and to press for national ratification of international conventions; regional, to lock-in standards in regional equal treatment clauses; and global, to keep advancing workers and migrants rights and foster wider social solidarity.

In ASEAN, regional advocacy takes an important role as social standards and political space for civil society activism vary across the region. Securing a regional instrument will pull up the standards in countries that lack them or otherwise provide limited space for civil society advocacy. The inclusion of a migration perspective in a regional social agenda goes beyond the human dignity and decency aspects of migration, and is strongly linked to the broader

aspect of workers' rights and welfare. Broader solidarity linkages among migrant groups and labour groups are necessary to advance advocacy for social protection as well as the possibility of wider advocacy beyond social protection. Social movement unionism is being experimented with in several places, including in Asia. The aim is to nurture the idea of unions as instruments not just for collective bargaining, but as an expression of collective power with a transformative agenda (Center for Migrant Advocacy Philippines [CMA], 2005). The inclusion of migrants, especially migrant labour, in the development of social movement unionism is already an acknowledgment of their inherent worker status and shared experiences with the traditional working class.

A draft Social Charter based on core ILO conventions is advocated in ASEAN and supported by the trade unions through the ASEAN Trade Union Council (ATUC), a network with pending request for observer status in ASEAN. Trade unions are still largely outside the ambit of migrant rights advocacy, so the proposed Social Charter does not have a migration perspective – yet. But as the alliance between national and migrant workers develops with increased interaction and dialogue, there is greater likelihood of integration of labour and migration concerns in the advocacy for regional social rights and standards.

There are already initiatives moving towards this direction. In April 2006, a Task Force on ASEAN Migrant Workers was formed, comprising trade unions, human rights and migrant rights NGOs, and migrant worker associations, to work towards a 'rights-based framework for the protection and promotion of the rights of migrant workers' in ASEAN (Task Force on ASEAN Migrant Workers, 2007). In September 2006, a Regional Conference on Trade Union Migrant and NGO Collaboration was held resulting in, among other things, the agreement of the ATUC leadership for a specific mention of 'migrant workers irrespective of status' to be included in the proposed ASEAN Social Charter (Migrant Forum in Asia [MFA], 2006).

Conclusion and Recommendations

Efforts to address regional labour issues are limited to mutual recognition arrangements for skilled labour and professionals, and ASEAN has not yet addressed either low and unskilled labour migration or undocumented migration issues. Still, there are enough openings within the current structure of ASEAN that can accommodate discussions and action on migration issues and inform a regional social agenda on this matter. Relevant Ministerial and Senior Official Meetings (for Labour and Social Welfare and Development), Committees (e.g. on Women), Expert Groups (on Immigration Matters, on Communicable Diseases), and Task Forces (on AIDS) are a starting point. The provisions of the VAP can serve as a basis for broadening discussion and action on social protection to include migration as an economic and socio-political

reality. In their 12th Summit in Cebu, ASEAN Leaders signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Like many other Declarations, this one is non-binding and lacks a legal mandate, leaving the implementation of policies and mechanisms to individual Member Countries. Its scope is also limited (it is silent on health services and the right to join unions, for instance) and covers only documented migrants and their families already living with them. Nonetheless, the Declaration is a significant step towards increasing the profile of migrants and migration in ASEAN discussions. The rights and contributions of migrants recognized in the Declaration serve as a good foundation for a regional instrument on migrants and migration. Finally, engagement with the ASEAN Charter process also provides opportunities to further institutionalize the recognition of migrants' rights.

To conclude, we outline four main recommendations for policy, research and action.

First, the issue of migration should be put on the active agenda of ASEAN as a regional concern. For this it is necessary to: study the impact of migrants, especially those with undocumented status, on local and regional markets, together with the dynamics of continuous rehiring of undocumented migrant labour especially by small and medium-sized enterprises (SMEs) and subcontractors of export-oriented enterprises; assess the labour impacts of economic integration, including an assessment of ongoing labour migration and existing labour migrants; assess the multiple contributions of migrants and migration to local and regional markets; discuss ways of integrating provisions on migrant labour in local and national laws, integrating this into a set of minimum regional standards; explore and develop more efficient and lower-cost means of sending/receiving remittances from migrant workers; and incorporate the social dimension in the ongoing deliberations for an ASEAN Charter.

Second, there is need for a widespread education and information campaign, in host countries and at the regional level, on the economic and social value of migrant workers to remove antagonism towards them. This would also encompass their concerns being accepted as trade union concerns generally.

Third, trade unions, migrant advocacy groups and civil society must be involved in the discussion of ASEAN social standards and policy. To this end, ASEAN should modify the NGO accreditation process, especially for those organizations representing migrant workers and their families, to facilitate a freer engagement between civil society and ASEAN; ASEAN should open up to public access relevant ministerial and senior officials meetings, and relevant working groups and committees; ASEAN should institute venues for civil society engagement, e.g. ASEAN People's Assembly was recognized in VAP but such recognition needs to be operationalized; the ASEAN Civil Society Conference (where civil society has a short interface with the ASEAN Leaders as a group) started in the 11th Summit in December 2005 should be placed on a firm official footing; and civil society organizations should jointly establish

a Working Group on social protection, similar to the Working Group on the ASEAN Human Rights Mechanism, which shall work with national and regional civil society groups, governments and the various ASEAN processes.

Finally, given that bigger regional economies like China, South Korea and Japan receive a substantial proportion of ASEAN migrant labour, it is imperative that ASEAN looks at possible social protection arrangements that include these countries. The importance of ASEAN's recognition of a social dimension, particularly one that places at its centre labour (including migrant labour) protection, is crucial if populations in ASEAN countries are to benefit from the establishment of a wider East Asian Community. East Asian countries are in an advantageous position to realize this, having advanced social service regimes and commanding strong international reserves (and surpluses) that can be used to finance regional development mechanisms. However, for all this to happen, ASEAN must first recognize and institutionalize a regional social protection regime, and include it as well in negotiations with the bigger East Asian economies.

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NOTES

1. Trade unions are, however, divided over the issue of social clauses. See, for instance, Bacon (2000) and Roozendaal (2002), for an elaboration of this division.
2. The 'migration hump' is a temporary increase in migration in initial phases of economic growth; the migration rate falls during later stages of economic growth. For further information on the model, see Martin (1994) and Martin and Taylor (1996).
3. According to the 'flying geese' model a lead economy in search of lower costs relocates production abroad, with the lead economy providing the investment and the host economy exporting much of the local production back to the lead economy. In East Asia, Japan was the original goose that relocated production to South Korea, Taiwan, Singapore and Hong Kong. Eventually these economies graduated into secondary geese and started exporting capital and relocating production abroad, particularly in Southeast Asia, as well (Chavez, 2007).
4. For a comprehensive discussion of ASEAN's functionalism, see Solidum (2003).
5. Various agreements have been signed by ASEAN towards some form of regional standards in the social sectors, but they remain ineffective or unfunded. For example, the Agreement on Transboundary Haze Pollution has been in place since 2002, yet the haze problem remains unabated to this day. The Regional Framework for Control and Eradication of Highly Pathogenic Avian Influenza (HPAI) was endorsed in 2005 – but given lack of funds ASEAN has presented the framework to international donors, and seeks collaboration with ADB, Japan and AusAid (ASEAN Secretariat, 2006b).

6. Portability means the ability to enjoy social security entitlements across jobs (i.e. workers do not lose contributions and benefits when they change jobs) or pension systems (i.e. workers retain the contributions made and benefits acquired from a public pension system when they transfer to a private pension system, or vice versa). For migrant workers, it is 'the capacity to move with such entitlements between host countries and back to the source country' (Holzmann et al., 2005).

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RÉSUMÉ

La Politique Sociale dans l'ASEAN: Les Perspectives d'intégrer les Droits Ouvriers des Migrants avec la Protection Sociale

L'Association des Nations de l'Asie du Sud-Est (ANASE) a fait de grands pas vers l'intégration et la coopération régionale, aidée par des façons uniques de gouverner qui favoriseraient le consensus et la non-intervention. Cependant, la dimension sociale se trouve aux premières étapes du déroulement et actuellement ne fait pas partie des initiatives d'intégration économique. Le mouvement d'ouvriers sans qualifications, ou peu qualifiés, dont la plupart sont sans papiers, a reçu très peu d'attention dans L'ANASE. Le nombre augmentant de ceux-ci souligne l'importance de traiter la migration dans son en tant qu'intégrale plutôt que séparement des thèmes ouvriers et générauxde la protection sociale. L'établissement des accords régionaux sur la

protectionet l'intégration sociale, mettant au point de migration et de travail, devrait indiquer la reconnaissance de la nature économique de la migration, et devrait aider à consolider la pertinence et le profil de L'ANASE parmi les citoyens des pays membres. Pendant que les mécanismes actuels peuvent être utilisés pour pousser cela, – 'de la diplomatie nommée – Voie II' à la construction de coalitions régionales –, le défi politique consiste à convertir le thème en un intérêt actif dans le programme officiel de l'ASEAN.

RESUMEN

La Política Social en la ASEAN: Las Perspectivas para Integrar los Derechos Laborales Migratorios con la Protección Social

La Asociación de Naciones del Sudeste de Asia ha dado un buen paso hacia la integración y la cooperación regional, facilitado por maneras singulares de gobernanza que favorecen el consenso y la no intervención. La dimensión social se encuentra, sin embargo, en las primeras etapas de desarrollo y está actualmente desarticulada de las iniciativas de integración económica. El movimiento de trabajadores sin formación o poco calificados – muchos de los cuales se quedan sin documentos – ha recibido muy poca atención en la ASEAN. El número creciente de estos desraya la importancia de tratar la migración como integral y no como aparte de los asuntos laborales y generales de protección social. La construcción de acuerdos regionales sobre la protección y la integración social, enfocándose especialmente en las normas de migración y de trabajo, debe indicar el reconocimiento de la naturaleza económica de la migración, y ayudar a fortalecer la pertinencia y el perfil de la ASEAN entre los ciudadanos de los países miembros. Mientras que los mecanismos actuales pueden ser utilizados para promover esto, desde la diplomacia llamada 'Vía II' hasta la construcción de coaliciones regionales, el desafío se encuentra en convertir el asunto en una preocupación activa en el temario oficial de la ASEAN.

BIOGRAPHICAL NOTE

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