

Issue 3/April 2014

Migrant Workers Rights

The AEC 2015 and Free Movement of Labor: Case Studies of Indonesia and the Philippines



SUMMARY

ASEAN Briefs is a bimonthly publications about current development on ASEAN regionalism, especially in the Political-Security, Economic as well as Socio-Cultural Pillars.

The Habibie Center
ASEAN Studies Program ASEAN Briefs

Project Supervisor:
Rahimah Abdulrahim
(Executive Director)
Hadi Kuntjara
(Deputy Director for Operations)

Program Coordinator/Editor:
A. Ibrahim Almuttaqi

Researcher:
Herjuno Ndaru K.,
Adhe Nuansa Wibisono

Finance and Administration:
Tia Nurhidayati

Design and Publication:
M. I. Qeis

The Habibie Center- ASEAN Studies Program
Jl. Kemang Selatan no.98, Jakarta 12560 Indonesia
(P): +62 21 7817211 (F): +62 21 7817212

This issue of ASEAN Briefs examines the issue of the ASEAN Economic Community 2015, the free movement of labor and migrant workers' rights. In particular, it addresses the concerns that the upcoming ASEAN Economic Community, which is premised on the free movement of labor, will bring about a boom in the number of migrant workers moving in the region. However with the vast majority of ASEAN's migrant workers operating in the informal sector (and very little to indicate that this will change once the ASEAN Economic Community is in place), there are serious worries that incidents of migrant workers' abuse will worsen.

As such this issue of ASEAN Briefs seeks to explore how ASEAN intends to cope with these serious worries, what progress it has made towards addressing those worries, and how has its member-states sought to implement the efforts of ASEAN in managing labor migration. This was done by examining the various policy issues at the regional, national and practical levels which resulted in this issue of ASEAN Briefs' three main recommendations.

INTRODUCTION

On Thursday, December 31, 2015, the ten member-states of ASEAN are expected to usher in the ASEAN Economic Community (AEC) 2015. The AEC 2015 envisages the formation of an integrated single market made up of over 600 million consumers and a combined economy valued at approximately USD 1.5 trillion.¹ According to the ASEAN Economic Community 2015 Blueprint, the AEC 2015 is to be characterized by the free movement of goods, services, investment, skilled labor, and freer flow of capital.²

However, the specific use of the word “skilled labor” rather than labor in general, raises a number of questions over the implications the AEC 2015 will have on the region’s 13.5 million migrant workers, of which 39% are working within the ASEAN region itself.³⁴ Defined as, “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”⁵ it can be assumed that more migrant workers will move around in ASEAN in search of a better life given the economic benefits the AEC 2015 will bring.

As such, questions raised include: How will ASEAN cope with the expected boom of ASEAN labor movement in general and specifically that of migrant workers in light of the upcoming AEC 2015? What progress has been made towards a regional labor migration management system and more importantly what are the challenges and obstacles? How have these challenges and obstacles impacted the efforts being undertaken by ASEAN member-states to ensure the protection of migrant workers in the ASEAN region and prepare them for the AEC 2015?

To answer these questions, this issue of ASEAN Briefs aims to examine the various policy issues at the regional, national and practical levels by: (1) exploring the role of ASEAN in preparing the region for the expected boom in migrant labor movement as a result of the AEC 2015; (2) taking case studies from Indonesia and the Philippines – as the two largest sending countries – to analyze the realities of member-states implementations of a labor migration management system; and (3) to suggest recommendations at improving the rights of migrant workers in ASEAN in light of the AEC 2015.

POLICY ISSUES

1. *The Role of ASEAN regarding Migrant Workers Issues in light of AEC 2015*

Less than two years remain until the AEC 2015 is officially established by the ten member-states of ASEAN. The source of 13.5 million migrant workers of which 5.3 million work within the region itself, ASEAN cannot avoid the issue of migrant workers. Its largest member-state, Indonesia sends 2.3 million migrant workers while fellow founding member-state, the Philippines provides a much larger 3.6 million migrant workers.⁶ At the same time, Malaysia, Singapore and Thailand receive 1.9 million, 1.2 million and 1.9 million migrant workers respectively.⁷

In most instances, the movement of migrant workers within ASEAN has been driven by a combination of push and pulls factors. For example, the regional economic gap whereby the GDP per capita of ASEAN’s richest member state, Singapore stands at USD 60,000 whereas the GDP per capita of one of the region’s poorest, Myanmar is only USD 1,325.⁸ The introduction of the AEC 2015 is only expected to intensify these push/pulls factors by obliging member-states to open up their markets, thus allowing a large number of ASEAN workers to move across the region in search of better wages and opportunities. While the AEC 2015 only envisages the movement of ‘skilled labor’, it is difficult to see how member-states will be able to stem the flow of unskilled or low-skilled migrant workers in the region, given the fact that there are already 5.3 million in the ASEAN region.

To this, the demographic of ASEAN should also be noted. Studies predict that the working-age population of ASEAN will account for 68% of the region’s total population in 2025.⁹ Thus, in a region where some ASEAN member-states have an excess of labor supply but limited job opportunities, while other member-states have a high demand for labor, it can only be expected that the millions of young (and more mobile and connected) people entering the workforce will add to the number of migrant worker movement in the ASEAN region.

From the above, it is clear that ASEAN must prepare itself for the likely significant rise in the number of migrant workers in the region ahead of the AEC 2015. Failure to do so properly, risks leaving the region’s migrant workers in a vulnerable situation. Indeed, at present 60% of ASEAN migrant workers operate in the informal sector and are currently not afforded protection by labor laws, representation by trade unions, or the guarantee of a minimum wage.¹⁰ Exacerbating the problem is the fact that 30-40% of total migration flows in the ASEAN

1 East-West Center (2010). *ASEAN Matters for America*. Retrieved from: http://www.asiamattersforamerica.org/sites/all/themes/eastwestcenter/pdfs/Asean_Matters_for_America_brochure2.pdf p.2

2 ASEAN Secretariat (2008). *ASEAN Economic Community Blueprint*. Retrieved from: <http://www.asean.org/archive/5187-10.pdf> p.5

3 International Labor Organization (2005). *Labor and Social Trends in ASEAN 2005: Integration Challenges and Opportunities*. (Bangkok: International Labor Organization). p.49

4 Tamagno, E. (2008). *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*. (Bangkok: International Labor Organization). p.41

5 UN Office of the High Commissioner for Human Rights (1990). *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. December 18. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

6 Asia Monitor Resource Centre (2009). “Social Security for Migrant Workers in ASEAN.” *Asian Labor Update* Issue 73 (October-December 2009). Retrieved from: <http://www.amrc.org.hk/node/973>

7 *Ibid.*

8 Ng, Jason (2013). “Richer Asean Nations Resist Open Borders”. *Wall Street Journal*, April 4. Retrieved from <http://online.wsj.com/news/articles/SB40001424127887323646604578402283145126480>

9 Greene, S. (2013). “ASEAN’s Demographic Dividend.” *ASEAN Briefing* November 25. Retrieved from: <http://www.aseanbriefing.com/news/2013/11/25/asean-demographic-dividend.html#sthash.lvWkkuZJ.dpuf>

10 Bandial, Quratul-Ain (2013), “60% of ASEAN Workers Uncovered by Labor Laws.” *The Brunei Times*, November 6. Retrieved from <http://www.bt.com.bn/2013/11/06/60-asean-workers-uncovered-labor-laws>



ASEAN Ministerial Meeting and ASEAN Plus Three Labour Minister Meeting (Image: The Cambodia Herald)

region take place via unregulated (or illegal) channels.¹¹ These trends exposed migrant workers to risks such as dangerous working condition, under payment or the withholding of payment, physical, mental and sexual abuse/exploitation, and lack of access to basic health and other social services.¹²

Moreover, issues surrounding migrant workers have at times escalated into high-level diplomatic disputes between ASEAN member-states. An obvious example was the two-year moratorium imposed by Indonesia on the sending of any migrant workers to Malaysia. Lasting from June 2009 to December 2011, the moratorium was a low-point in Indonesia-Malaysia relations – two key member-states of ASEAN – which was only resolved through the signing of a bilateral agreement. However, critics have taken the view that leaving the fate of migrant workers and their rights dependent on bilateral agreements and memorandum of understanding between individual sending and receiving countries simply “do not work.”¹³ Certainly with the issue of migrant workers expected to become a region-wide problem following the introduction of the AEC 2015, a regional-level solution rather than a collection of bilateral agreements will be required.

It is in this sense that ASEAN has undertaken efforts to manage labor migration in the region, of which eight are identified in this ASEAN Briefs. As early as 2004, the regional organization adopted the **Vientiane Action Programme (2004-2010)**, which listed under section 1.1.4.6, the “elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers” as one of its programme areas and measures.¹⁴ This was realized three years later when the ten Heads of State/Government of ASEAN member-states adopted the **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers** in 2007. While the

11 World Justice Project (2012). “Task Force on Asean Migrant Workers: Making Advocacy Work.” Retrieved from <http://worldjusticeproject.org/blog/task-force-asean-migrant-workers-making-advocacy-work>

12 *Ibid.*

13 Bacalla, Tess (2012). “ASEAN Locks Horns on Migrant Workers’ Rights”. *VERA Files* September 12. Retrieved from <http://verafil.es.org/asean-locks-horns-on-migrant-workers-rights/>

14 ASEAN Secretariat (2004). *2004 Vientiane Action Programme 2004-2010*. Retrieved from: <http://cil.nus.edu.sg/rp/pdf/2004%20Vientiane%20Action%20Programme%202004-2010.pdf> pp.25-6.

document was more of an “elaboration” rather than an instrument in itself, the Declaration nonetheless: (1) provided a platform to promote the fundamental rights and dignity of migrant workers and its member of families; and (2) covered the obligations of both sending and receiving countries as well as the commitments of ASEAN itself.¹⁵

With the “elaboration” achieved, ASEAN established an **ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)** in the same year to focus on realising the ASEAN instrument itself. The ACMW reports to the **Senior Labor Officials Meeting (SLOM)** which in turns falls under the supervision of the **ASEAN Labor Ministers Meeting (ALMM)** - together forming the ASEAN Sectoral Meeting mechanisms on migrant workers issues.¹⁶ In addition, the regional organization also has the **ASEAN Forum on Migrant Workers** which is described as,

“an open platform for review, discussion and exchange of best practices and ideas between governments, workers’ and employers’ organizations, and civil society stakeholders on key issues facing migrant workers in South-East Asia, and develop recommendations to advance the implementation of the principles of the ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers.”¹⁷

Following on from the 2007 Declaration is the **ASEAN Socio-Cultural Community (ASCC) Blueprint** which also touched on migrant workers issues. Adopted in 2009, the ASCC Blueprint lists nine “Actions” under the heading, “C.2. Protection and Promotion of the Rights of Migrant Workers.” Interestingly, the strategic objective includes ensuring “fair and comprehensive migration policies and adequate protection for *all* migrant workers” [emphasis added].¹⁸

Most recently, the **ASEAN Human Rights Declaration of 2012** asserts:

“The rights of...migrant workers... are an inalienable, integral and indivisible part of human rights and fundamental freedoms.”¹⁹

However, despite, the eight efforts highlighted above, it is worth noting a few points.

Firstly, that the Vientiane Action Programme (2004-2010) only called for the “elaboration” of an ASEAN instrument, rather than for a regional instrument itself.

15 ASEAN Secretariat (2007). *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*. Retrieved from: <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3>

16 Muhammad Iqbal (2013, December 11). “The AEC 2015’s Free Movement of Labor: Implications for Migrant Workers’ Rights.” *Talking ASEAN on “The AEC 2015’s Free Movement of Labor: Implications for Migrant Workers’ Rights.”* Presentation given at The Habibie Center, Jakarta, Indonesia.

17 International Labor Organization (2013). “6th ASEAN Forum on Migrant Workers.” Retrieved from: http://www.ilo.org/asia/whatwedo/events/WCMS_209146/lang--en/index.htm

18 ASEAN Secretariat (2009). *ASEAN Socio-Cultural Community Blueprint*. Retrieved from: <http://www.asean.org/archive/5187-19.pdf> p.12

19 ASEAN Secretariat (2012). *ASEAN Human Rights Declaration*. Retrieved from <http://www.asean.org/news/asean-statement-communications/item/asean-human-rights-declaration>

Secondly, the most recent ASEAN Forum on Migrant Workers held in Brunei Darussalam, November 2013 still stated its purpose as to "develop recommendations to advance the implementation of the principles of the ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers", thereby revealing the implementation of the principles has not yet been forthcoming.²⁰

Thirdly, the 2007 Declaration's General Principles come with a number of caveats that in many ways dilute the protection and promotion of migrant workers' rights. For example, the first principle calls for both receiving and sending countries to promote the full potential and dignity of migrant workers in a climate of freedom, equality and stability but only in accordance with the laws, regulations, and policies of respective ASEAN member-states.²¹ The second principle which calls for close cooperation, in the interest of humanitarian reason, to resolve cases of migrant workers who have become undocumented comes with the caveat "through no fault of their own."²² As such it is arguably not applicable for those migrant workers where some of the blame can be attributed to them for becoming undocumented. The third principle which calls for the fundamental rights and dignity of not only migrant workers but also their family members "already residing with them" to be taken into account, again comes with the caveat regarding the laws, regulations and policies of individual ASEAN member-states.²³ Most explicitly, the fourth principles asserts, "Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented."²⁴

Fourthly, similar caveats can be found in the ASCC Blueprint where an end note expressly states, "Nothing in this Blueprint shall contradict the general principles in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers."²⁵

Lastly, it has been suggested that the ASEAN Sectoral Meetings mechanism which places the ACMW under the SLOM is slightly inappropriate given that the issues discussed in the ACMW are not synonymous with those discussed in SLOM.²⁶

These five points is indicative of the major gap that remains: actual instruments to operationalize ASEAN efforts, both at the regional level and the national level. Attempts to draft such instruments at the regional level have stumbled with some describing it as "one of the longest negotiation processes in ASEAN."²⁷ In particular, sharp divisions between ASEAN's sending and receiving countries have come to the fore, revealing their different interests on a number of polarizing issues. Among these

are: whether a regional instrument on migrant workers should be legally binding or not? Whether the families of migrant workers should be included or not? And whether it should be extended to undocumented migrant workers or not?²⁸

For sending countries, any ASEAN regional instrument on labor migration management should encompass both documented and undocumented migrant workers. As such they point to the aforementioned strategic objective found in the ASCC Blueprint which calls for, "fair and comprehensive migration policies and adequate protection for *all* migrant workers" [emphasis added].²⁹ At the same time, sending countries also wish to see any regional instrument to be legally binding.

In contrast, receiving countries wish to restrict an ASEAN instrument to only migrant workers who are documented and legal. Moreover, for them an ASEAN instrument should only be a guidance rather than legally-binding with responsibilities left to respective member-states. By insisting on the need to respect member-states' individual laws, regulations and policies, receiving countries are underscoring ASEAN's policy of non-interference in domestic matters. On the part of receiving countries, there are fears that the boom in migrant workers will place a heavy strain on public resources, drag down wages and increase the cost of living for locals.³⁰ Last year, Singapore witnessed rare public demonstrations over the high number of foreign workers, which many blamed for souring housing and living costs.³¹ Meanwhile in Malaysia, a rise in crime was blamed on migrant workers, with the government announcing a crackdown on undocumented migrant workers.³²

Despite attempts to underscore ASEAN's policy of non-interference in domestic affairs, it should be reiterated that the issue of migrant workers is expected to become a region-wide problem following the introduction of the AEC 2015. Furthermore, the realities remain that 60% of ASEAN migrant workers operate in the informal sector and are as such undocumented. It is therefore of the utmost urgency that a regional-level solution be found to labor migration management in ASEAN rather than the current collection of bilateral agreements among ASEAN member-states. To demonstrate the inadequacies of employing bilateral agreements alone, the next section will present case studies of two ASEAN member-states' policies and practices of promoting and protecting migrant workers. By doing so, the next sections will highlight the need for an ASEAN regional instrument, especially with the deadline for the AEC 2015 not far off. At the same time, the case studies will also identify some good practices that should be adopted in an ASEAN regional instrument.

20 International Labor Organization (2013). "6th ASEAN Forum on Migrant Workers." *Op.cit.*

21 ASEAN Secretariat (2007). *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Op.cit.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 ASEAN Secretariat (2009). *ASEAN Socio-Cultural Community Blueprint. Op.cit.* p.27

26 Muhammad Iqbal (2013, December 11). "The AEC 2015's Free Movement of Labor: Implications for Migrant Workers' Rights." *Op.cit.*

27 Drajat, Ben Perkasa (2012). "An ASEAN Way of Protecting Indonesian Migrant Workers." *The Jakarta Post* May 3. Retrieved from <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

28 Bacalla, Tess (2012). "ASEAN Locks Horns on Migrant Workers' Rights". *Op.cit*

29 ASEAN Secretariat (2009). *ASEAN Socio-Cultural Community Blueprint. Op.cit* p.12

30 Ng, Jason (2013). "Richer Asean Nations Resist Open Borders". *Op.cit*

31 Hodal, Kate (2013). "Singapore Protest: 'Unfamiliar Faces Are Crowding Our Land'". *The Guardian* February 15. Retrieved from <http://www.theguardian.com/world/2013/feb/15/singapore-crisis-immigration-financial-crisis>

32 Azhar, Alyaa (2013). "Stop Crackdown on Migrant Workers." *Free Malaysia Today* August 5. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2013/08/05/stop-crackdown-on-migrant-workers/>



Indonesians demanding justice over migrant worker abuse
(Image: Hongwrong.com)

2. Case Study – Indonesia

In the early part of 2014, there were still many cases of human rights violations targeted against Indonesian migrant workers employed in various countries abroad. For example, in the month of January, there were incidences whereby Indonesian migrant workers were arrested and tortured in Malaysia, Hong Kong and Taiwan. In the case of fellow ASEAN member-state, Malaysia, there was also an incident whereby three Indonesian migrant workers from Batam were shot dead by police in Selangor, Malaysia. Meanwhile, in the case of Hong Kong and Taiwan –two female Indonesian migrant workers enlisted as domestic helpers were found to have been tortured and their salaries withheld. Though the latter two countries are not member-states of ASEAN, the incidents are nonetheless useful in demonstrating the sending country's (i.e. Indonesia) policies and practices of the promotion and protection of migrant workers. Certainly the series of incidents add to the long list of Indonesian migrant workers who have been treated poorly and become victims of human rights violations abroad, thereby calling into questions the actions of Indonesia's government.

The poor image of Indonesia's labor migration management is one that has arguably existed since the beginning when Indonesians first migrated abroad for work. Historically, the sending of Indonesian migrant workers abroad first began during the period of Dutch colonization which used to send plantation workers from the Indonesian island of Java to Suriname from 1890-1930. Moreover, internal migration has also long existed in Indonesia with workers from Java moving to islands outside of Java to operate in the plantation sectors elsewhere. During the Old Order period (Sukarno period), there was also the movement of labor from Indonesia to Malaysia. However political tensions between the two countries impacted the fate of Indonesian migrant workers in Malaysia resulting in them

facing problems, especially since many came without official documents.³³

The New Order period (Suharto period) saw Indonesia adopt new policies which made it more integrated with the world economy. During this period, the world economy was witnessing growth due to a boom in oil and gas commodities. The oil boom period of the 1970s in particular caused the economies of the Middle East to rise thereby opening up new job opportunities in that part of the world. As such, this phenomenon suddenly became an incentive for Indonesian government to send their migrant workers to the Middle East. However the majority of migrant workers send by Indonesia operated in the informal sector, usually as domestic helpers for private individuals. The 1980s saw a surge in Indonesia's labor migration movement abroad with the number of people becoming migrant workers increasing from year to year.

Due to the often undocumented and unreported nature of Indonesian labor migration, there are differences in the Indonesian migrant workers placement data, which come from a number of different sources. Official sources from the National Agency for the Placement and Protection of Indonesian Workers (or *Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia* BNP2TKI) mentioned that the number of migrant workers in Indonesia from 2006 to 2012 was in fact declining. In 2006, the number of Indonesian migrant workers reached 680,000 peoples³⁴ whereas by 2012 it has decreased to 188,059 peoples³⁵. However, data from Minister of Manpower and Transmigration show different numbers. The Ministry of Manpower and Transmigration mentioned that in 2010, the number of Indonesian migrant workers reached 575.804 peoples and in 2012 the number reached 494.609 peoples.³⁶

33 Komnas Perempuan, 'Buruh Migran Indonesia : Penyiksaan Sistematis di Dalam dan Luar Negeri', *Laporan Indonesia kepada Pelapor Khusus PBB untuk Hak Asasi Migran*, <http://www.komnasperempuan.or.id/wp-content/uploads/2014/01/BURUH-MIGRAN-INDONESIA.pdf>

34 BNP2TKI Official Site, "100 Persen TKI Bermasalah Berasal dari TKI Rumah Tangga", <http://www.bnptki.go.id/berita-mainmenu-231/2624-100-persen-tki-bermasalah-berasal-dari-tki-rumah-tangga.html>, accessed by 27 March 2014

35 BNP2TKI Official Site, "Penempatan Berdasar Daerah Asal (Kota/Kabupaten) 2011-2012", <http://www.bnptki.go.id/statistik-statistik-penempatan/6779-penempatan-berdasar-daerah-asal-kotakabupaten-2011-2012.html>, accessed by 27 March 2014

36 Portal Nasional Republik Indonesia, "Muhaimin : Penempatan TKI Sektor Formal Meningkatkan Jadi 52 % tahun 2012", <http://www.indonesia.go.id/in/kementerian/kementerian/kementerian-tenaga-kerja-dan-transmigrasi/497-ketenagakerjaan/12244-muhaimin--penempatan-tki-sektor-formal-meningkat-jadi-52--tahun-2012>, accessed by 27 March 2014

The Placement of Indonesian Migrant Workers to Abroad by Countries of Destination

2006-2012

State	Years						
	2006	2007	2008	2009	2010	2011	2012
Saudi Arabia	281,087	257,217	234,644	276,633	228,890	137,643	11,814
Malaysia (ASEAN member-state)	219,658	222,198	187,123	123,886	116,056	134,108	46,296
Taiwan	45,706	50,810	59,522	59,335	62,048	73,498	30,669
Singapore (ASEAN member-state)	28,661	37,496	21,807	33,077	39,623	47,781	20,430
United Arab Emirates	22,685	28,184	38,092	40,391	37,337	39,857	14,274
Hong Kong	20,100	29,973	30,204	32,417	33,262	50,283	18,237
Others	62,103	70,868	73,339	66,433	58,587	97,911	46,339
Total	680,000	696,746	644,731	632,172	575,803	581,081	188,059

Source: BNP2TKI, 2014³⁷

The phenomenon of migrant workers can also be seen as a reflection of: (1) unemployment and poverty in a country; (2) lack of infrastructures; (3) complex regulatory environment; and (4) inequality at the regional level – that together form the driving factors of international migration. Today, Indonesia is recognized as the second country with the highest number of migrant workers among the ASEAN member-states (the higher number coming from the Philippines). Significantly, most of Indonesia's migrant workers are women (79%), with the majority working in Asia (59%) and the remainder in the Middle East (41%). Furthermore 77% of Indonesia's migrant workers are employed in the informal sector as domestic helpers.³⁸

During the period of January 1- December 11, 2013 BNP2TKI received as many as 4,180 cases of complaints/problems from migrant workers and their families.³⁹ From these numbers, only 43 Indonesian migrant workers cases/problems were resolved.⁴⁰ 10 out of these 43 cases with the highest occurrence were migrant workers who want to be repatriated, unpaid salaries, communication breakup, death at the destination countries, the job did not match with the work agreement, illness or hospitalization inpatient, unilateral termination, undocumented workers, the violence of employer, and failure to depart.⁴¹ While

the other 33 cases, the highest number of complaints were 86 claimants and the lowest is 1 claimant.⁴²

Throughout the year 2013, there were 338 cases of migrant workers that died in 18 destination countries. The highest number of Indonesian workers death was in fellow ASEAN member-state, Malaysia with 134 deaths, followed by Saudi Arabia with 101 deaths, and Taiwan with 39 deaths. Other ASEAN member-states where Indonesian migrant workers suffered deaths were Singapore (3 deaths), Brunei Darussalam (2 deaths).⁴³

Crucially, according to the National Commission on Anti-Violence Against Women, approximately 80% of the 80,000 migrant workers that Indonesia sends abroad monthly to various countries are women, with the majority serving as domestic helpers.⁴⁴ Currently, women migrant workers are still vulnerable to violence, sexual harassment, long working hour and even unpaid wages.

The increasing rate of violence against Indonesian migrant workers shows that the quality of Indonesia's promotion and protection policies for their migrant workers does not yet meet the needs of migrant workers. This is especially from a comprehensive perspective beginning at the pre-placement stage all the way up to the post-placement stage.

37 BNP2TKI Official Site, "Penempatan Per Tahun Per Negara (2006-2012)", <http://www.bnptki.go.id/statistik/statistik-penempatan/6756-penempatan-per-tahun-per-negara-2006-2012.html>, accessed by 27 March 2014

38 UN Official Site, "International Migration and Migrant Workers Remittances in Indonesia", http://www.un.or.id/documents_upload/publication//indonesia_remittances.pdf, page 16, accessed by 27 March 2014

39 BNP2TKI Official Site, Dalam 2013 BNP2TKI Terima 4180 Pengaduan Kasus TKI, <http://www.bnptki.go.id/berita-mainmenu-231/9185-dalam-2013-bnptki-terima-4180-pengaduan-kasus-tki.html>

40 *Ibid.*

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 BBC Indonesia Online, "Pengaduan nasib buruh migran ditingkatkan", http://www.bbc.co.uk/indonesia/berita_indonesia/2013/10/131018_perempuan_nasibburuh.shtml, accessed by 27 March 2014

Number of Human Rights Violations Cases and Other Migrant Workers Problems in 2012

No.	Cases / Problems	Number of Complainants	Process	Completed
1.	Migrant Workers Ask to Repatriated	980	676	304
2.	Unpaid Salaries	638	405	233
3.	Communication Breakup	496	355	141
4.	Death at the Destination Countries	338	133	205
5.	Job not match with agreement	298	159	139
6.	Illness or Hospitalization	187	98	89
7.	Unilateral Termination	144	74	70
8.	Undocumented Workers	117	27	90
9.	Violence of Employer	116	53	63
10.	Failed to Depart	93	34	59
Total		3.407	2.014	1.393

Source: Crisis Center BNP2TKI, 2013⁴⁵

Currently there are several promotion and protection policies aimed specifically at Indonesia's migrant workers, including female workers that have been launched since 2004. Among them is Law Number 39 of 2004 on the Placement and Protection of Migrant Workers Abroad. The government also issued President Instruction Number 6 of 2006 on Policy Reform on Placement and Protection System of Indonesian Migrant Workers in Abroad. Other policies regarding migrant workers include: (1) Regulation of the Minister of Manpower and Transmigration Number 18 of 2007 on the Implementation and Protection of Indonesian Migrant Workers in Abroad; (2) Regulation Number 7 of 2010 on Migrant Workers Insurance; and (3) Regulation Number 14 of 2010 which mandates the separation of responsibilities between the Ministry of Manpower and Transmigration and BNP2TKI.

Seen from list of laws, regulations, and instructions above, the Indonesian government has clearly issued many promotion and protection policies for its migrant workers. However, it is clear that the quality of these labor migration management policies are still far from expectations. Various laws and regulations that have been issued remain weak, especially in terms of their implementation. This is all the more worrying given the AEC 2015 is less than two years away and the expected boom in labor migration the ASEAN region will experience once in force.

There are several obstacles that have hindered the implementation of Indonesia's promotion and protection policies on migrant workers, especially those working in the informal sector dominated by women. First is the lack of coordination at the pre-placement stage. Despite the

⁴⁵ BNP2TKI Official Site, "Dalam 2013 BNP2TKI Terima 4180 Pengaduan Kasus TKI", <http://www.bnptki.go.id/berita-mainmenu-231/9185-dalam-2013-bnp2tki-terima-4180-pengaduan-kasus-tki.html>, accessed by 27 March 2014

many different institutions working on labor migration, the coordination between BNP2TKI, the regional office for labor, Ministry of Manpower and Transmigration and the local government is still low. This can be demonstrated from the lack of coordination involved during the issuing of the Deployment License for Private Migrant Workers Placement Companies (*Surat Izin Pengerahan untuk Perusahaan Penempatan TKI Swasta* or PPTKIS) which is issued by two different parties, namely BNP2TKI and the Ministry of Manpower and Transmigration

Second, in addition to problems over coordination is the poor quality of Memorandum of Understandings (MoU) between Indonesia and receiving countries of migrant workers, such as Malaysia. These are seen as far from the ideal form of migrant workers protection, especially for the women workers, thereby underlining the need for a ASEAN regional instrument to make up for these gaps.

3. Case Study – the Philippines

In the last four decades, the Philippines has become a leading sender of migrant workers abroad to many parts of the world. The Filipino diasporas is currently approximated at 10 million migrant workers (in different status of being a migrant) operating abroad, which represents 10% of the country's total population.⁴⁶ Every year, around 300,000 newly-hired Filipino workers leave abroad to work. Moreover, since 2006, the Philippines has deployed more than 1 million overseas migrant workers each year.⁴⁷ In 2010 alone, a total of 1.4 million Filipino

⁴⁶ Commission on Filipinos Overseas, Stock Estimate of Overseas Filipinos as of December 2012, retrieved from : <http://www.cfo.gov.ph/images/stories/pdf/StockEstimate2012.pdf>

⁴⁷ National Statistics Office, Philippine Overseas Employment Statistics 2010, retrieved from : <http://www.census.gov.ph/sites/default/files/MBS-November%202012.pdf>



The Philippines Overseas Employment Administration Building
(Image: Blogspot)

workers were deployed as land-based or sea-based workers, contributing about 8% of the country's GDP or USD18.7 million.⁴⁸

Lack of adequate employment in the Philippines and the institutionalization of labor migration in the country are the main push factors for Filipinos seeking employment abroad.⁴⁹ Originally, the Philippines began sending workers abroad as a temporary option to ease unemployment pressure within the domestic labor market and address balance-of-payments deficits. In ASEAN, the Philippines' migrant workers have mostly found work in Malaysia and Singapore. In Sabah, Malaysia, for example, the number of Filipinos working there is reported at more than 500,000, making up 30% of Sabah's population.⁵⁰ In Singapore meanwhile, the number of Filipino migrant workers operating there has reportedly increased as of 2009 with over 163,000 Filipinos working and residing in the island state.⁵¹ In addition, more Filipino migrant workers can be found outside of the ASEAN region.

Several institutions have been developed in the Philippines to facilitate the flow of labor migration to different parts of the world. The leading agency is the Philippines Overseas Employment Administration (POEA) which not only regulates the country's many manpower agencies but also acts as one in its own right. Aside from the POEA, there are various other national agencies involved in the country's overseas labor migration management, including: the Department of Labor and Employment (DOLE), the Overseas Workers Welfare Administration (OWWA) and the Department of Foreign Affairs (DFA).

From the pre-recruitment phase, the Philippines has equipped migrant workers with free pre-employment seminar conducted by the POEA. Moreover, the POEA has

set up certain requirements for women who want to work as a foreign domestic worker. These include a restriction on minimum age (25) and requirements on qualification and language proficiency. Women intending to seek work as foreign domestic workers also have to undergo a pre-departure educational and preparation program. Later on, a Migrant Resource Center was developed to provide pre-and/or post-deployment support services to prospective migrants, actual migrants, and their families. In the Philippines, different communication media/channels are used as well. For instance, the country employs walk-ins, telephone, email, and website to reach out to migrant workers and crucially carries these out at the provincial and local level. As one of the signatories to the Colombo Process of International Organization on Migration, the Philippines has also developed a pre-departure information, which is one of the Colombo Process' mandatory requirements to ensure all departing migrant workers are informed of: (1) the laws and regulation in a destination country; (2) the rights and obligations of both the employer and the employee; (3) potential risks while abroad; (4) banking/remittances options; and (5) available support services for migrants.⁵²

With regards to private recruitment agencies, the Philippines require all agencies to be licensed under the rules of the Labor Code of the Philippines. In terms of its implementation, private recruitment agencies are licensed, regulated and monitored by the POEA. Moreover, the RA 8042 Act establishes that recruitment agencies and their overseas headquarters (which are accredited by the respective foreign mission of the Philippines) are jointly liable for claims and damages concerning migrant workers. Significantly, this responsibility covers the entire period of an employment contract.⁵³

It is also interesting to note that the POEA has established a separate administrative structure for the deployment of migrant domestic workers, regarding them as a special category of vulnerable workers. As vulnerable workers, all migrant domestic workers departing must be processed by the Central Processing Unit For Service Workers and be: (1) over 25 years old; (2) trained and certified as domestic workers; (3) and be proficient in English or the language of the host country. The unit is also responsible for the accreditation of foreign placement agencies and employers recruiting domestic workers.⁵⁴

When it comes to the promotion and protection of the migrant workers in hosting countries, the Philippines has a wide coverage of migrant worker attaches. Reportedly, the Philippines has migrant labor attaches functioning in 37 countries. As a comparison, fellow ASEAN member-states, Thailand has 13 migrant worker attaches followed by Indonesia with 11, Vietnam with 9 and Myanmar with 2.⁵⁵ However, another source claims Indonesia only

48 *Ibid.*

49 Verna Dinah Q. Viajar, *Filipino migrant domestic workers in the context of Asian migration and development trends: Case study on returned Filipino domestic workers*, Manila : Solider LEARN, 2002, p. 1

50 Statement of the Center for Migrant Advocacy to the NGO meeting of the UN Committee on the Migrant Workers Convention 25 November 2008, retrieved from : <http://www2.ohchr.org/english/bodies/cmw/docs/ngos/CMAPhilippines10.pdf>

51 OFW Global Presence : A Compendium of Overseas Employment Statistics 2006, retrieved from : <http://www.poea.gov.ph/stats/2006Stats.pdf>

52 Kartini Pouchous, *Intra-ASEAN Migration: Challenges and Good Practices for Replication*, Paper presented at the Talking ASEAN, The Habibie Center, 11 December 2013.

53 Patrick Sakdapolrak, *Protection of Women Migrant Workers, Policies of Selected Sending and Receiving Countries*, Jakarta : World Bank, 2002, p. 18

54 *Ibid.*, p. 18-19

55 ILO Background Paper from Kartini Pouchous, *loc.cit.*

possesses migrant labor attaches proper in two countries, Malaysia and Saudi Arabia, with the remaining being only diplomatic missions without social welfare functions. This is different with the Philippines, which have active labor attaches and act as welfare centers. These centers are staffed with a minimum of four personnel composed of a Labor Attaché, Foreign Service Personnel, Welfare Officer, Centre Coordinator and if necessary an interpreter.⁵⁶

Since the “Flor Contemplacion Case”, where a Filipino domestic worker in Singapore was convicted of murder in Singapore, the Philippines introduced an Act on migrant worker protection to protect aspiring overseas workers from illegal recruiters. The Republic Act 8042: The Migrant Workers and Overseas Filipinos Act of 1995, created in response to the above case, states that,

“the State does not promote overseas employment as a means to sustain economic growth and achieve national development.”

Furthermore, it stated that the state would deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The Act also stressed the need to focus on sending skilled workers abroad who can protect themselves more effectively. However, this contradicts another policy of the government, which wishes to fully deregulate the labor emigration industry by 1999.⁵⁷ If that was the case, this would mean that protection issues of Philippines migrant workers would also be left largely to the private sector.

On the other hand, the Philippines government makes efforts to reach their overseas migrant workers through the Philippine Overseas Labor Offices which is attached to the Philippines Embassies all over the world. This is different with other ASEAN sending countries. For instance, in the case of Indonesia most embassies do not have a special social welfare or migrant attaché with a specific function for migrant worker promotion and protection.

It should also be noted that the Philippines has ratified eight of the core human rights treaties produced by the United Nations, namely: (a) the International Covenant on Civil and Political Rights (ICCPR); (b) the International Covenant on Economic, Social, and Cultural Rights (ICESCR); (c) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); (d) the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT); (e) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); (f) the Convention on the Rights of the Child (CRC), (g) the Convention on the Rights of Persons with Disabilities (CRPD); and—most relevant for this edition of ASEAN Briefs—(h) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Philippines has also ratified the two other most important international conventions for the protection of migrant domestic workers: ILO C189 and the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,



Migrant workers verification and registration at the POEA Processing Center (Image: Tutuontherun.com)

Supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol).⁵⁸

When it comes to bilateral cooperation, Philippines entered into bilateral labor agreements with countries such as the United Kingdom, Switzerland, Spain, Norway, Bahrain, South Korea, United Arab Emirates, and Canada. Notably fellow ASEAN member-states are not included in this list. Nevertheless this situation is quite different with that of fellow ASEAN member-states which have limited bilateral agreements with other countries on labor migration management.⁵⁹

For the post-deployment phase, the Philippines’s Labor Centers are responsible for providing migrant workers with orientation seminars and skill developments. These seminars seek to prepare migrant workers for their return to the Philippines and to develop their skills so that they can be used to find out better employment opportunities at home. The 1995 Act also establishes a Re-Placement and Monitoring Centre which seeks to find mechanisms through which migrant workers can be re-integrated into the society. For example, it can be done through the development of livelihood program and projects for returning migrant workers.⁶⁰

From this case, it can be seen that migrant workers from the Philippines are arguably comparatively better-off than their counterparts from other countries in ASEAN. The Philippines has enacted a law that seeks to comprehensively protect rights and welfare of migrant workers throughout the process of migration. They also provide more service to migrant workers abroad. Although the protection also depends on the policies of receiving countries, it can be said that the policies of the Philippines – while not perfect – is probably a useful guideline for policy makers of other countries in ASEAN to enhance the protection of their nationals and something that can be adopted in an ASEAN regional instrument on migrant workers promotion and protection.

56 Patrick Sakdapolrak, *op.cit.*, p. 13, 16, 19.

57 Graciano Battistella, *Philippine Migration Policy: Dilemmas of a Crisis*, SOJOURN, Vol.14, No.1, 1999, p.229-48.

58 International Human Rights Clinic, *The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait*, Washington DC : John Hopkins University SAIS, 2013, p. 46

59 Verna Dinah Q. Viajar, *op.cit.*, p. 2

60 Patrick Sakdapolrak, *op.cit.*, p.21

Conclusion/Recommendations

At the outset, this edition of ASEAN Briefs sought to address a number of questions related to the ASEAN Economic Community 2015, the free movement of labor, and migrant workers rights. Chief among these questions were: How will ASEAN cope with the expected boom of ASEAN labor movement in general and specifically that of migrant workers in light of the upcoming AEC 2015? What progress has been made towards a regional labor migration management system and more importantly what are the challenges and obstacles? How have these challenges and obstacles impacted the efforts being undertaken by ASEAN member-states to ensure the protection of migrant workers in the ASEAN region and prepare them for the AEC 2015?

As such, this edition of ASEAN Briefs firstly explored the role of ASEAN in preparing the region for the expected boom in migrant labor movement as a result of the AEC 2015 before taking case studies from Indonesia and the Philippines – as the two largest sending countries – to analyze the realities of member-states implementations of a labor migration management system. It was noted that ASEAN had introduced a raft of declarations and introduced a number of bodies to deal with migrant workers in the region. Eight efforts were identified in this edition of ASEAN Briefs, however it was also noted that there were a few points worth considering. These points referred to a number of caveats that in many ways diluted the protection and promotion of migrant workers' rights and pointed to the major gap that remains in ASEAN: actual instruments to operationalize ASEAN efforts, both at the regional level and the national level. This edition of ASEAN Briefs further highlighted the sharp divisions that exist between ASEAN's sending and receiving countries and their different interests on a number of polarizing issues.

ASEAN Briefs then went on to examine the case study of Indonesia which revealed that the increasing rate of violence against Indonesian migrant workers abroad showed that the quality of Indonesia's promotion and protection policies for their migrant workers did not yet meet the needs of migrant workers. Significantly lacking was a comprehensive perspective beginning at the pre-placement stage all the way up to the post-placement stage. Thus, while Indonesia has introduced a number of laws, regulations, and instructions, the quality of these labor migration management policies are still far from expectations – further exacerbated by weak implementation. In contrast, the case study of the Philippines highlighted a number of good practices that should be adopted by ASEAN. The Philippines was shown to have enacted laws that seek to comprehensively protect the rights and welfare of its migrant workers throughout the process of migration. In addition the Philippines was also noted for providing more services to migrant workers during their deployment abroad.

Based on these findings there are three recommendations this edition of ASEAN Briefs would like to propose:

Firstly, ASEAN desperately needs a regional instrument on labor migration because the AEC 2015 will certainly see a significant rise in the number of migrant workers moving in the region. The shared region-wide problem of labor migration that ASEAN is expected to face once the AEC 2015 is in place should be made to form the common platform that bridges the sharp divisions between the sending and receiving countries within ASEAN.

Secondly, an ASEAN regional instrument should address the shortcomings of depending largely on a collection of bilateral agreements and/or national policies in the region. As has been shown in the case study of Indonesia, poor quality labor migration policies coupled with weak implementation do exist in the region and it is hoped that an ASEAN regional instrument can set a regional standard that all member-states should match.

Thirdly, any ASEAN regional instrument should make use of the good practices regarding labor migration that can be already be found in the national policies of some member-states and ensure they are adopted by others in the region. In particular, labor migration policies with a comprehensive coverage covering the entire migrant worker process from the pre-placement stage all the way up to the post-placement stage.

To end, it is worth underlining that with the AEC 2015 deadline less than two years away and the sheer numbers involved with regards to labor migration in the ASEAN region, ASEAN must act sooner rather than later in order to ensure the fate of ASEAN's 13.5 million migrant workers, 39% of which are working within the ASEAN region itself.



Talking ASEAN on "U.S. Rebalancing to Asia and Chinese New Leadership: Challenges for ASEAN Centrality and its Implications on Neighbouring Countries"
The Habibie Center Building, 17 September 2013



Talking ASEAN on "ASEAN Connectivity: Opportunities for Business and Shaping ASEAN Identity"
The Habibie Center Building, 29 October 2013



About ASEAN Studies Program

The ASEAN Studies Program was established on February 24, 2010, to become a center of excellence on ASEAN related issues, which can assist in the development of the ASEAN Community by 2015. The Habibie Center through its ASEAN Studies Program, alongside other institutions working towards the same goal, hopes to contribute to the realization of a more people-oriented ASEAN that puts a high value on democracy and human rights.

The objective of the ASEAN Studies Program is not merely only to conduct research and discussion within academic and government circles, but also to strengthen public awareness by forming a strong network of civil society in the region that will be able to help spread the ASEAN message. With the establishment of ASEAN Studies Program, The Habibie Center aims to play its part within our capabilities to the ASEAN regional development.

About Talking ASEAN

Talking ASEAN is a monthly public dialogue held at The Habibie Center in Jakarta. Covering a wide array of issues related to ASEAN, Talking ASEAN addresses topics of: Economic Integration, Socio-cultural, & Democracy, human rights and regional peace, among others. Featuring local and visiting experts, Talking ASEAN is one of a series of twelve dialogues regularly held each month and open to a target audience consisting of ASEAN officials, foreign ambassadors & diplomats, academics, university students, businesses, and the media.

OUR PUBLICATIONS

The Habibie Center
ASEAN Studies Program
ASEAN BRIEFS

Issue 1/September 2013

REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP
Key Issues and Policy Options

SUMMARY

This issue of ASEAN Briefs analyzes the Regional Comprehensive Economic Partnership (RCEP) negotiations. The key recommendations are that: (i) ASEAN Centrality should be the ultimate conduct when Free Trade Agreements (FTA) are being negotiated between ASEAN and its RCEP partners; & (ii) the RCEP should be made to work for ASEAN member states and its RCEP partners by harmonizing existing trade agreements.

ASEAN Briefs is based on The Habibie Center's Talking ASEAN which is held monthly and studies about current development on ASEAN regionalism, especially in Political-Security, Economic as well as Socio-Cultural Pillars.

The Habibie Center
ASEAN Studies Program ASEAN Briefs

Project Supervisor:
Rahmatullah Abdulrahman Executive Director, The Habibie Center
Indri Kartika Deputy Director for Operations, The Habibie Center

Program Coordinator/Editor:
A. Ibrahim Alimatus

Researcher:
Herjono Widada K.,
Adha Nurcahya Widiyanto

Finance and Administration:
Tia Nurhidayah

Design and Publication:
M. C. Gink

The Habibie Center - ASEAN Studies Program
Jl. Kemang Selatan no. 59, Jakarta 12560 Indonesia
(P) +62 21 7817211 (F) +62 21 7817212

asean studies program

ASEAN Studies Program ASEAN Briefs

The Habibie Center
ASEAN Studies Program
ASEAN BRIEFS

Issue 2/January 2014

ASEAN Disaster Relief
Regional Institutions, National Policies and Member-States' Capacities on HADR

SUMMARY

The need for effective humanitarian assistance and disaster relief (HADR) capabilities in the region was underscored by the massive loss of lives and destruction caused by Typhoon Haiyan in November 2013. Despite paying attention as early as 1978 to the importance of regional cooperation to mitigate the damaging effects of natural disasters and recognizing its inadequacies at the time to respond to natural disasters of major magnitude, ASEAN's response to Typhoon Haiyan suggests little has changed.

This issue of ASEAN Briefs examines the region's capacity to respond effectively to large-scale natural disasters by exploring policy issues at the regional, national and practical levels regarding: ASEAN's regional instruments dealing with natural disasters in the region; ASEAN member-states national policies in support of the regional disaster relief; and ASEAN member-states practical means/capacities to carry out HADR efforts.

The key recommendations are that: (1) ASEAN's key documents on disaster relief management should hold an elevated position and that all sides should recognize and empower the region's main operational coordination body responsible for disaster management; (2) more focus should be on giving ASEAN member-states greater practical first-hand experience on HADR efforts; (3) National policies of ASEAN member-states should recognize the importance of utilizing their military assets in a more comprehensive way when it comes to disaster relief efforts; and (4) the military modernization plans of ASEAN member-states should include greater investment on naval assets to give them the capacity to conduct disaster relief operations.

ASEAN Briefs is a bimonthly publications about current development on ASEAN regionalism, especially in the Political-Security, Economic as well as Socio-Cultural Pillars.

The Habibie Center
ASEAN Studies Program ASEAN Briefs

Project Supervisor:
Rahmatullah Abdulrahman Executive Director, The Habibie Center
Indri Kartika Deputy Director for Operations, The Habibie Center

Program Coordinator/Editor:
A. Ibrahim Alimatus

Researcher:
Herjono Widada K.,
Adha Nurcahya Widiyanto

Finance and Administration:
Tia Nurhidayah

Design and Publication:
M. C. Gink

The Habibie Center - ASEAN Studies Program
Jl. Kemang Selatan no. 59, Jakarta 12560 Indonesia
(P) +62 21 7817211 (F) +62 21 7817212

asean studies program

ASEAN Studies Program ASEAN Briefs