

## Human Rights and Transnational Migrants in Southeast Asia

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The economic, social and political dynamism of Southeast Asia has generated a heightened sense of awareness among the peoples and governments of the region of the critical linkage between human rights and transnational migrants. This increased sensitivity to the question of migrant rights, however, leaves much to be desired in terms of their concrete realization and actual enforcement by ASEAN states. Fundamental tension areas include the question of state sovereignty and the universality and consistency of human rights standards to be applied to migrants. Another difficulty is the non-adoption, non-ratification and outright non-enforcement of existing standards and provisions. To resolve these problem-areas and advance the migrant rights agenda, ASEAN states and the international community at large, including civil society actors, must harmonize standards and engage in confidence- and consensus-building through dialogues and other forums.

### Introduction

The study of the phenomenon of transnational migration today, particularly within the Asia-Pacific region, is certainly an undertaking that can neither be overstated nor underestimated. Within the past two decades or so, the migration question has been variously linked with a number of other major national as well as global (both current and traditional) concerns including economic and labor market development, environmental and socio-cultural crises, health, crime and national security issues.

This is not at all a unique and incredible proposition because international migration effectively puts the concerns of two or more countries in close and critical conjunction with one another.<sup>1</sup> It is within this context that this paper explores the rather peculiar interconnections that exist between international migration flows and migrants as well as the notion, application and pursuit of human rights and human dignity within the Southeast Asian region. Its main emphasis is on a particular category of migrants, that is, those that leave their place of birth mainly for employment purposes.

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On the one hand, it is the main argument of the paper that the economic, social and political dynamism that characterizes much of Asia today, in particular Southeast Asian countries, greatly contributes to the current heightened sense of awareness among the peoples and governments of the region of the critical linkage between security, human rights and migrants' rights. On the other hand, the paper also argues that, as will be made obvious below, the question of pursuing the dignity of migrants as human beings has failed to capture the extensive attention of many states in the ASEAN region. This failure is essentially the consequence of the greater sensitivity policy-makers and bureaucrats now give towards the linkage between security and foreign migrants. Moreover, the paper asserts that, to begin with, much of the infringement on migrants' human dignity stem from the region's economic and social dynamism. Ultimately, if migration can be considered both as the cause and effect of the region's anxiety, then it is in deepening our study of such a phenomenon that a likely solution or set of solutions can be generated.

The paper aims to: (a) discuss the critically relevant areas, issues and concerns pertaining to the discourse, doctrine and practice of migrants' rights within the ASEAN region, with reference to other countries and regions beyond Southeast Asia; and (b) cite current strategies being adopted and, in turn, suggest certain scenarios and alternatives for further clarifying, mitigating and eventually resolving these issues and concerns. More specifically, the paper attempts to probe the extent to which state authorities have been able to assert, maintain and pursue the human dignity of their foreign population as well as the remedies available to foreign nationals whose human rights have been violated. Much of the conclusions and observations made in this paper, however, are tentative inasmuch as they have been basically generated from already existing literature and data sources.

### **The Relevant Contexts**

To have a complete picture of the current status of migrants' human rights in Southeast Asia, there is a need to appreciate the relevant circumstances that constitute the backdrop for the issues and concerns to be discussed below. One such context is the disparate levels of development among economies within the region that act as the impetus for populations to change residence and employment. The disparate levels of economic and social development among Asia-Pacific countries

contribute to the propensity of larger and larger populations to move. Indeed, migration can be said to have played a critical role in the dynamism of the region by "allowing some states to grow at a much faster rate than would have been possible with their limited labor supply since it enabled them to meet shortages quickly not only in labor but also in critical technical and managerial know-how."<sup>2</sup>

Likewise, rapid and substantive advancements in communications and transportation technologies have also perpetuated and intensified the migration flux. Technological changes in global communications have also changed our image of different countries throughout the world "so that information or misinformation about new opportunities (real or imagined) has become much more accessible to a significant proportion of the world's population," particularly in developing countries.<sup>3</sup> Transportation technology has also made it easier, cheaper and faster for more people to span the globe. With the end of the Cold War, ethnic tensions and aspirations have become a focal point of attention among academics and bureaucrats such that they are now considered as critical variables in relating political issues with migration phenomena. These developments, together with collapse of the socialist bloc and the subsequent demise of the Cold War, stress the growing importance of transnational migration issues and concerns.<sup>4</sup>

Migration is made apparent by the profoundly changing demographic structure of both advanced capitalist and developing societies. In the developed country context, international migration situations are fueled by lower birth-rates and consequently, the ageing of the overall population leading to a progressive contraction of the active work force. Such a trend is compounded by a number of socio-psychological changes such as greater inducements among members of the young population not to seek employment in more labor-intensive occupations and the "concomitant proliferation of highly technical and white-collar occupations which require a continuous evolution in the skills and education of personnel, itself a product of advanced development." The economies of these countries undergo a form of restructuring where the labor market becomes disaggregated into secondary and primary sectors with their own distinct labor, skill and training requirements. This leads to a proliferation of jobs "which indigenous workers are increasingly reluctant to do because of low wages, poor working conditions and undesirable social status" which, in turn, generates the need to import foreign labor.<sup>5</sup>

Among developing economies, however, structural adjustment strategies and approaches convey the sense that indigenous labor skills and training do not immediately find a match in existing domestic labor markets. Overcrowding (especially in urban areas) and overpopulation become apparent in situations where labor markets are in serious transitions. The pressure to move becomes stronger when taken in the context of the relative wage differentials apparent in developing countries where skills of a particular variety are in short supply. While for some economies there may be an abundance of opportunities for workers with particular skills and training backgrounds, there continues to be shortages in other labor market sectors compounded by structural shifts and transitions in the economies of many countries throughout the Asia-Pacific region.

The above situation leads to the perpetuation and intensification of migratory flows. This can be significantly manifested in terms of the underutilization of labor in both developed and developing economies in the sense that both markets are undergoing rapid transitions and are unable to immediately find a match between labor skills training strategies and labor market demands, resulting in contrasting approximations of necessary skills and available job opportunities. While Japan is experiencing its worst recession in post-World War II history, many younger Japanese still refuse to accept jobs that are labor-intensive, dangerous, dirty and difficult (3D occupations) especially in the construction sector. Malaysian workers are found in Singapore, Taiwan and Japan even as Malaysia itself has registered strong demands for professional and technically-skilled workers. Filipino nurses, doctors and seafarers leave for jobs in Australia, Canada, the United States and elsewhere, despite the strong need for such occupations in the Philippines.

While much can be observed from the current misappropriations of skills and training, such a situation is compounded further by the entry of new labor sources such as China and Vietnam as well as the other former socialist economies of Eastern Europe. The current labor-skills market configuration is indeed more complex and convoluted than it was half a century ago. The pace of development among countries within Southeast Asia appears to be intensifying this confusing situation.

Known remedies such as the relocation of major industries and the integration of markets appear to be weak in arresting existing migration

pressures. Despite these relocation strategies, other key sectors of the economy continue to be absolutely and relatively fixed in geographical terms. For instance, the construction and agricultural sectors as well as jobs that necessitate labor employment within households continue to require a domestically available labor force.

### **The Politics of Migration and the Myth of Nationhood**

In political terms, the intensification of intra- as well as extra-ASEAN migration flows has led to a heightened sensitivity and response to the prospect and situation of migrants in these countries. On the one hand, sending countries have now become more aware of the situations of their compatriots abroad and have taken steps within the bounds provided for by international practice (and sometimes beyond) to remedy their current plight. The governments of such countries now insist that migrants become entitled as well to the dignity recognized by international statutes. On the other hand, receiving countries in the region tend to hesitate extending such rights to expatriates especially of the kind that performs menial and labor-intensive jobs. The worst responses are in the form of xenophobia and the outright injury and violence inflicted upon foreigners. A milder and more common (and institutionalized) form of response for these countries is to impose stricter gatekeeping measures. The logic behind such a response is that violations can be prevented or minimized if migratory flows themselves can be minimized or prevented altogether.

The reality of the situation, however, is that states merely attempt to insist on a sense of nationhood based upon an ethnocentric context. Yet history tells us that "all existing states [have] been marked by the presence on their territory of a variety of ethnic groups, which over time may or may not coalesce into a single nation."<sup>6</sup>

The rise in mobility in Southeast Asia and the corresponding resurgence in the phenomenon of rising expectations and anxieties towards a transnational work force has led to the prevalence of illicit activities and practices that undermine both the capacities of state authorities as well as the bargaining abilities of labor. Undocumented migration is one key issue that deserves serious mention and attention whenever one talks about the human dignity of migrants. Along with undocumented migration one needs to cite the important role that illicit traffickers and labor brokers play in such arrangements. The seriousness of these illicit flows cannot be

underestimated as they may create (and have actually created) grave tensions between the governments of both sending and receiving countries.

### **The Human Rights Discourse: Some Fundamental Tensions**

The field of human rights discourse is strewn with numerous fundamental tensions. Some of them have to do with the extent to which such rights and dignities are to be interpreted. On the one hand, there is the view that human rights standards must necessarily possess universal appeal and applicability inasmuch as all human beings possess the same rational design (not to mention the same carbon-based configuration). On the other hand, there is also the perception that rights ought to be interpreted in relative historical and societal contexts. Associated with the former perspective are the positions of the United States and many other Western European countries while the latter perception is asserted by China, Singapore and, to some extent, Malaysia. The focal point of the issue lies in the debate between cultural relativism versus universalism.

Still another contentious point is the specific rights that are to be emphasized. The issue is between putting greater stress on civil, political and individual rights or on social, economic and collective rights. Again, the protagonists in this case are the United States, Europe and Canada, on one side and China, Singapore and Malaysia, on the other. Another key tension that has manifested itself in the area of migration and migrants' rights has to do with the enforcement of such standards. The issue is whether to apply human rights standards in a national or an international context. In the former case, emphasis is made on the role of the state; in the latter, it is on the global community itself through international agencies and organizations. In all these instances, one necessarily deals with the question of the sacrosanctity or sovereignty of the state — a fundamental international principle of the modern era.

### **Issues in Human Rights Implementation and Advocacy**

Numerous issues, problems and concerns plague the international human rights agenda. Foremost among these is the difficulty of creating and maintaining consistent standards and principles that can be applied at the global level. This difficulty has two strands: the problem of achieving consistency through consultations and the question of enforcement.

Another difficulty that requires a serious and careful response is the non-adoption, non-ratification and outright non-enforcement of relevant standards and provisions by states. The relevant parties and states customarily argue against adoption or ratification of internationally-mandated human rights standards and conventions because the pertinent provisions under discussion are already granted under existing by-laws. Moreover, there is also a sense of double standard application of human rights norms and ideals when one rule or statute is applied in one country and a different set of rules, in another. The element of state sacrosanctity becomes a major concern since the enforcement of international standards becomes difficult and left to the delicate mercies of relatively limited international agencies such as the United Nations (UN) and the International Labor Organization (ILO).

The consolation that one gets given this rather bleak situation is the growing involvement of particularly concerned elements of civil society, specifically the non-governmental and people's organizations. This expansion of the discourse to include formerly marginalized sectors of global society has created significant pressures for states to reconsider their positions on the relevant human rights provisions. The question remains, however, of the extent to which these efforts can be sustained and succeed over the long-term. As a consequence of this expanded agenda, a new level of tension has emerged in the form of the strains between state sovereignty and the community interests, especially as regards universally valid rights.

### **Human Rights and Migrants**

A growing number of atrocities against expatriate communities and individual migrants are taking place and no country appears to be immune. From the ethnic cleansing campaigns in Bosnia and many parts of the Caucasus region to neo-Nazi statements and acts inflicted upon foreigners in Western Europe and the United States, to the social and racial discrimination experienced by Filipina, Bangladeshi and Thai women in Japan, Singapore, Hongkong and elsewhere in Southeast Asia, the picture is clear that the migrants' basic right to human dignity is being violated. Basically, the really critical areas of concern over migrants' rights deal with (a) construction workers; (b) workers in the entertainment sector; (c) domestic workers; and (d) undocumented workers in general.

*Construction workers.* A significant proportion of foreigners currently employed in Taiwan, coming mostly from Thailand, the Philippines, Malaysia and Indonesia, including some undocumented entrants from the mainland, are in construction work. The growth of the construction sector in the Asia-Pacific region has been no less than outstanding for the past decade or so. Fueled by rising incomes and the rapidly growing need to set up the infrastructure essentials expected to propel the region into the 21st century, the construction industry is one of the fastest growing sectors

of the region today. Malaysia's annual construction sector growth has not gone below 10 percent since 1991.<sup>7</sup> Malaysia now has some 475,000 foreigners (mostly Bangladeshis and Indonesians) working on various construction projects throughout the peninsula who comprise some 80 percent of all the workers in the sector.<sup>8</sup> The demand for foreign construction workers appears to be evident for both developed and developing economies. Unofficially, Japan is said to have around 270,000 foreigners doing various types of construction work, while Thailand contractors employ a number of Shans from Burma.<sup>9</sup>

The living and working conditions in these construction projects can hardly be said to be humane. As with most other migrants, foreign construction workers are also involved in dirty, difficult and dangerous work. Burmese migrants working on Thai construction projects reportedly get from one-half to one-third of the minimum Thai wage. The situation for foreigners in Taiwan are just as dismal except that their living conditions are slightly better than their Burmese counterparts, with their monthly wages ranging from NT\$ 20-40,000.<sup>10</sup>

*Entertainment workers.* Described as employed in an industry that thrives on economic disparity,<sup>11</sup> entertainment workers are increasingly becoming the mainstay of progress for any economy. Rapid increases in purchasing capacities have created a huge demand for sex workers. Migrants are increasingly being brought in to do the job that locals might not be inclined to take. Organized criminal groups are increasingly realizing

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the profitability of the entertainment business and are now said to have cornered a substantial portion of the trafficking that takes place within the region. Taiwanese (the Bamboo Gang), Hongkong Chinese (the Triads), Japanese (Yakuza) and even the Russian mafia are now involved in the largely illicit recruitment and deployment of entertainment workers within the Asia-Pacific region and beyond. Their tactics range from performing marriages of convenience, obtaining false documents and permits for their "cargo," and even forceful kidnapping and outright prostitution. In many cases, even the authorities themselves are deeply involved.<sup>12</sup>

*Domestic workers.* As a more modern form of slavery, it is not uncommon for domestic workers to experience one form of abuse or another from their household employers. Due to rising incomes and the growing involvement of women in the labor force, more developed countries now realize a growing demand for surrogate parents and housekeepers. Primarily because existing work standards are vague and hardly rendered applicable in reality, foreigners in this sector work very odd hours and do not receive overtime compensation. Many are forced to live under sub-human conditions and are made to work in more than one household.<sup>13</sup>

*Undocumented migrants.* The problem for these type of expatriates is oftentimes aggravated by their status of not being officially recognized by receiving state authorities (thus, such authorities are not to be held accountable). Whatever recourse is available is taken mainly through the litigation of individual complaints with appropriate international agencies. However, as circumscribed in accepted international practice, states cannot consider individual complaints by foreign nationals if they are not a party to the appropriate convention or without a standard being cited.

### **Existing Human Rights Instruments That Apply to Migrants and Their Families: Image Versus Reality**

Existing instruments for the protection and promotion of the rights of migrants vary a great deal, though at the outset we are led to believe that substantive and sufficient protective mechanisms are in place as far as upholding the human dignity of migrants is concerned. A number of international instruments deal with foreigners and their families as refugees, immigrants or settlers and finally, as workers. In the area of migrants as workers and their families, current statutes are guided by the

ILO's principle which asserts that migrant workers should have the same rights as nationals and that workers' rights (regardless of ethnic, religious, or national origins) should be adequately protected and upheld. Numerous migrant-relevant conventions and recommendations now exist which include Convention Nos. 87, 97, 98, 111, 118, 143 and 157 as well as Recommendation No. 169.

The problem is not their existence but the instruments' enforcement first by way of ratification. Historically, the ratification rate for ILO-member

states is only 8.3 percent (or only 469 conventions ratified out of 5,642).<sup>14</sup> To date, no Asian country has ratified conventions 97 and 143 which directly pertain to the well-being of migrant workers; only Malaysia has ratified Convention 97 while Singapore, Malaysia and Indonesia have ratified Convention 98. The Philippines, Pakistan and Bangladesh have likewise ratified Conventions 87 and 98. The success of the ILO's ratification campaign is certainly mixed.

### **Issues and Concerns in Migrants' Rights**

Quite a number of issues and concerns become apparent in the context of such a human rights situation. Nevertheless, much of the problems concerning the rights and dignity of migrants and migrant workers stem from the notion that labor constitutes more than just an objective factor of production. Workers are human beings with their own social, cultural and political needs and potentials.

In this regard, the question of state sovereignty against the enforcement of internationally-recognized migrants' rights standards is one such major concern. The state under current norms of international practice possesses certain unique and sovereign prerogatives, such as the appropriation of the rights and standards to be accorded to both the nationals and foreigners under its jurisdiction. To deny landing or entry to its territory is one such prerogative the state usually makes.

■ A recent development in the area of human rights enforcement among migrants and their families is in the problem of blurred distinctions between migration typologies. Most state parties today refuse to admit responsibility for economic migrants or migrant workers as distinct from their obligation to assist political migrants or refugees.

States have the option to discriminate against foreigners, especially in the absence of prohibitions contained in international treaties (e.g., with respect to access to social resources and goods, property ownership, self-organization and collective bargaining for workers). Minimal rights are usually addressed by relevant state authorities such as the right to trial and the right against the arbitrary seizure of property. However, these basic rights concerning equality of treatment are usually accorded to recognized foreign nationals. Undocumented migrants and workers make up an entirely new undertaking where their presence is not even acknowledged by competent authorities.

The low ratification rate among countries that both send and receive foreign labor is indeed a serious cause for concern. This situation is compounded by a number of peculiar circumstances. One is the non-membership of some economies where foreign labor has become a significant factor. Brunei is not a member of the ILO while Hongkong and Taiwan are not separate members by themselves.

Acknowledgment is not the only issue. The simple act of signing a convention or acknowledging a particular standard does not in itself guarantee the enjoyment of any right. Ratification must be subsequently followed by active enforcement by allowing national laws to conform to the acknowledged standards and conventions.

What recourse do foreign nationals have? Aggrieved individuals may approach international committees tasked to dispense the relevant rulings. However, international norms dictate that the states concerned first acknowledge the competency of the arbitrating committee. Second, the individual affected must be subject to that state's jurisdiction, meaning he or she must be a migrant whose legal status has been acknowledged by the relevant state authorities. And third, the participating state must be a party to the international convention or standard being applied.

A recent development in the area of human rights enforcement among migrants and their families is in the problem of blurred distinctions between migration typologies. Most state parties today refuse to admit responsibility for economic migrants or migrant workers as distinct from their obligation to assist political migrants or refugees. Under accepted international norms, refugees are persons who have a well-founded fear

of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, and who are incapable of accessing the protective mechanisms and institutions of that country. Subsequently, economic migrants by their very nature are not entitled to aid and protection by international organizations devoted to political refugees. The end of the Cold War has apparently minimized the movement of people for political reasons and the only reason that is now acknowledged is economic gain. The difficulty of validating claims to refugee status, combined with the negative perceptions of authorities against newcomers, have made it possible for receiving countries to customarily turn away prospective migrants. So while enough safeguards may exist with respect to refugees, other types of migrants are subjected to institutional repression.

### **Summary and Conclusions: Strategies, Scenarios and Alternatives**

At the present time, a few strategies become apparent with respect to the strategies and approaches adopted not only by the appropriate state authorities but by non-governmental and inter-governmental agencies as well. One approach that is evident has to do with fashioning numerous codes, conventions and compacts to be signed, ratified and enforced by the relevant state parties. This has been the principal strategy of international organizations such as the ILO and the UN. The problem with this project lies in its limited and weak enforceability when seen in terms of the principle of state sovereignty. At the same time, ratification is not an end in itself; international organizations need to monitor the enforcement of such human rights conventions. The problem, then, is the enforcement of the compact on the enforcers themselves.

Another way is by encouraging state parties directly concerned with the issue to adopt bilateral or multilateral treaties and arrangements. The problem with this scheme is also its limited acceptability with state authorities. A third approach that is not so emphasized in the literature involves a certain level of sensitivity-, confidence- and consensus-building dialogues and other fora. The prospects of success in such fora can be measured in terms of advances in the first two positions. These dialogues, however, are not exposed to the same limitations as the first two and can be undertaken even by non-state parties and authorities including NGOs.

In the final analysis, the issues raised above can only be fully resolved if the state and the international community at large are able to harmonize standards, collective-bargaining practices and mediation strategies. ●

### Notes

- 1 Yasuo Kuwahara, "Untied Knots: Labor Migration and Development in Asia," in United Nations University, *International Labor Migration in East Asia* (Tokyo: UNU, 1993), p. 65.
- 2 Manolo Abella, "Manpower Movements in Asia and the Pacific," in United Nations University, *International Labor Migration in East Asia* (Tokyo: UNU, 1993), p. 11.
- 3 Nicholas Van Hear, "Migration, Displacement and Social Integration," Occasional Paper Number 9, World Summit for Social Development (Geneva: United Nations Research Institute for Social Development, 1994), p. 2.
- 4 *Ibid.*
- 5 Demetrios Papademetriou, "International Migration in a Changing World," in Charles Stahl (ed.) *International Migration Today, Volume 2: Emerging Issues* (Belgium: UNESCO, 1988), pp. 237-238.
- 6 Stephen Castles and Mark Miller, *The Age of Migration: International Population Movements in the Modern World* (London: Macmillan, 1993), p. 37.
- 7 Murray Hiebert, "Give and Take," *Far Eastern Economic Review*, 25 May 1995, pp. 54-56.
- 8 *Ibid.*
- 9 *Ibid.*
- 10 *Ibid.*, p. 55.
- 11 Andrew Sherry, Mathew Lee and Michael Vitiklotis, "For Lust or Money," *Far Eastern Economic Review*, 14 December 1995, pp. 22-23.
- 12 Gordon Fairclough, "Seeking Fortune: Overseas Workers Reap Wealth, Family Strain," *Far Eastern Economic Review*, 25 May 1995, pp. 27-28.
- 13 Vittoria D'Alessio, "Maid to be a Commodity," *Eastern Express*, 14-15 October 1995, p. 37.
- 14 Carmelo Noriel, "Labor Rights in Selected Asian Countries," *Asian and Pacific Migration Journal* 2, pp. 147-160.

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