

Labor Administration and Regional Integration: The Case of ASEAN Governance of International Labor Migration

Giuseppe Casale
International Labour Organization

Emily Christi A. Cabegin
University of the Philippines

Abstract

Globalization and deepening regional integration, such as the establishment of the ASEAN Community, has engendered challenges that member states commonly share, and requires inter-country coordination and cooperation for more effective governance of labor issues, especially those beyond the confines of national labor administrations. This paper describes the best practices of regional collaboration in the ASEAN region for more effective governance of cross-border migration, presents an overview of remaining challenges, and provides a set of suggestions for further strengthening national and regional labor administrations towards the attainment of more productive and decent employment of workers including migrant workers.

Keywords: labor administration, labor market governance, regional integration, ASEAN, international labor migration, migrant worker, labor standards, labor rights

Introduction

The challenges facing labor administration are multiple and frequently stem from a division of the key roles and responsibilities across different ministries within national government. Labor administration is defined as public administration activities in the field of national labor policy (Casale & Sivananthiran, 2010). By labor administration system is meant all public administration bodies responsible for and/or engaged in labor administration—whether they are ministerial departments or public agencies, including parastatal and regional or local agencies, or any other form of decentralized administration—and any institutional framework for the coordination of the activities of such bodies, and for consultation with and participation by employers and workers and their organizations (Casale & Fasani, 2012).

This paper focuses attention on the ASEAN region in terms of one of the main drivers of administrative reforms, namely globalization, in particular regional integration and its attendant cross-border migration pressures on labor administration. The establishment of the ASEAN Community has intensified cross-border labor mobility that affects labor market outcomes that are beyond the scope of national labor administrations, and require increased regional collaboration for better labor market governance towards more productive and decent employment at both the national and the regional levels.

The ASEAN is made up of ten member states, including the net receiving countries of Brunei Darussalam, Malaysia, Singapore and Thailand, and the net sending countries of Cambodia, Indonesia, Laos, Myanmar, and the Philippines. The ASEAN is working towards the establishment of an ASEAN Community, which has three main pillars as follows (ASEAN 2008, 2009a, 2009b): (a) the ASEAN Economic Community, which envisions a highly competitive economic region that is integrated into the global economy and with equitable economic development among its member states; (b) the ASEAN Political Security Community, which envisions a cohesive, peaceful, stable and resilient region characterized by a rules-based Community with shared values and norms; and (c) the ASEAN Socio-Cultural Community, which envisions a socially responsible, people-oriented, caring and sharing society with a common identity. A core strategic focus in the establishment of the ASEAN Community is the promotion of social justice, including the rights and welfare of

the vulnerable and marginalized population groups such as women, children and the migrant workers.

The ASEAN region has an estimated total population of 622 million in 2014, which comprise 8.6 percent of total world population, and a GDP of US\$2,573.6 billion, accounting for 3.3 percent of global GDP. According to the United Nations Migration database, the ASEAN region is destination to an estimated 9.5 million international migrants in 2013, and is origin to about 19 million international migrants, which comprise 8 percent of the global international migrant stock. Close to 69 percent of the international migrants in the ASEAN in 2013, or about 6.5 million, are intra-regional migrants, representing a sizeable increase by 5 million from the 1.5 million intra-regional migrants recorded in 1990. Most (87%) of the intra-regional migrants in the ASEAN are low-skilled or unskilled migrants (Orbeta, 2013). The major intra-regional migration streams in the ASEAN consist of the inbound flows to Malaysia and Singapore from Indonesia and the Philippines, and the migration streams to Thailand from Cambodia and Lao PDR. There is also high mobility of workers between Malaysia and Singapore, while outbound flows from Thailand and Vietnam are primarily to Cambodia and to some extent Malaysia.

ASEAN Regional Integration and Governance of International Migration

This section discusses how increased regional cooperation in the ASEAN has facilitated and strengthened national undertakings of the ten member states towards the attainment of more decent employment, particularly in regard to the promotion and protection of the rights of migrant workers. Labor standards that apply specifically to migrant workers are subsumed in a number of international conventions and recommendations.

The United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (UN Convention) is the most comprehensive multilateral instrument available on the protection of the rights of migrant workers. Under Article 2(1) of the UN Convention, a migrant worker refers to any 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,”¹ and can be documented or undocumented (Article 5). The UN Convention guarantees equality of basic human rights standards, wages and general working conditions for migrants and nationals, and provides for the protection of migrant workers covering the entire period of the migration process. The latter includes the “preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence” (Article 1(2)).

The UN Convention follows from and is an expanded version of two key ILO Conventions on migrant workers: (a) ILO Convention 97 (Migration for Employment Convention), which entered into force in 1952; and (b) ILO Convention 143, which entered into force in 1978 and concerns “Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.” ILO Convention 97 stipulates the availability of and access to information on national policies and regulations relating international migration and the working conditions of migrant workers (Article 1). It also advocates for the equality of treatment between nationals and regular migrants in regard to remuneration, trade union membership, accommodation, employment tax and social security (Article 6). ILO Convention 143 guarantees respect for the basic human rights of migrant workers (Article 1), and promotes equality of opportunity and treatment “of employment and occupation, of social security, of trade union and cultural rights, of individual and collective freedoms” for nationals and regular migrant workers (Article 10). It also stipulates the suppression of illegal migration and penalizes human traffickers and employers of illegal migrants (Articles 3 & 5).

The ratification or signing of the fundamental international conventions on the labor rights and standards for migrant workers has been very limited in the ASEAN and widely lacking among the net receiving member states of Singapore, Malaysia, Thailand and Brunei Darussalam. Ratification of the Convention legally binds the ratifying state into adopting the provisions of the Convention in its national policies and programs while the signing of the Convention indicates the willingness of the signatory state to proceed to ratification, acceptance or approval of the Convention. The UN Convention, which entered into force in 2003, was ratified by 48 states and signed by 18 more countries as of

2015. In the ASEAN region, only the two primary sending countries of the Philippines and Indonesia have ratified the UN Convention, while Cambodia, also a net sending country, has signed the Convention. In addition, the Philippines is the only ASEAN member state that has ratified both ILO Conventions.

While there has been slow progress in the ratification of international conventions dealing with migrant workers, a significant development in the ASEAN is the shift from national frameworks in managing international migration to a more coordinated regional governance of cross-border labor migration, particularly the promotion of the rights of migrant workers, and combatting and preventing human trafficking. Increased cross-border mobility resulting from the deepening ASEAN integration has engendered diverse and differing risks and challenges between net receiving countries and net sending countries in the region. Since the late 1990s, the ASEAN has tackled the issue of cross-border migration since the late 1990s by working towards a regional consensus for basic labor standards and rights of migrant workers through the signing of a number of regional declarations, frameworks, action programs and conventions (Casale & Sivananthiran, 2015).

The ASEAN Declaration on Transnational Crime was signed in 1997 by the 10 member states, all of which agreed to implement stern measures to combat trafficking of women and children and other transnational crimes, formulate the ASEAN Plan of Action on Transnational Crime, and develop the Institutional Framework for ASEAN Cooperation on Transnational Crime. Along with nine other participating countries in Asia and the Pacific (Australia, Bangladesh, China, Japan, Republic of Korea, New Zealand, Papua New Guinea, Sri Lanka), the ASEAN countries signed the ASEAN Plus Bangkok Declaration on Irregular Migration in 1999. The Declaration agreed to address in a comprehensive and consultative manner the management of international labor migration, including irregular migration and human trafficking in the countries of origin, transit and destination. It guarantees the fair and humane treatment of irregular migrants while calling on member states to strengthen efforts to combat and prevent irregular migration and human trafficking, and to exchange information on legislations, procedures and best practices for dealing with and resolving the problem.

To strengthen regional commitment to promote the rights of migrant workers and to combat human trafficking, the ASEAN member states signed in 2004 the ASEAN Declaration against Trafficking in Persons Particularly Women and Children, and adopted the Vientiane Action Programme 2004-2010. The latter recommends the elaboration of the ASEAN instrument for the protection and the promotion of migrant workers. In 2007, the ASEAN member states signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers, which commits member states to (Sections 15-19): (a) promote a “decent, humane, productive, dignified and remunerative employment for migrant workers;” (b) implement human resource and labor reintegration programs for migrant workers in countries of origin; (c) take measures to prevent and sanction human trafficking; and (d) build capacity by sharing of information, best practices and issues on migrant labor. The following year, the ASEAN Committee on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) committed member states to a work plan that aims to: (a) strengthen the protection and promotion of the rights of migrant workers against exploitation, discrimination and violence; (b) enhance labor migration governance in ASEAN member states; (c) establish regional cooperation to fight human trafficking in ASEAN; and (c) develop the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers. A key general principle in the 2007 ASEAN Declaration is also the recognition of sending and receiving member states of the “fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies” (Section 3).

Labor migration is given emphasis in the ASEAN Socio-Cultural Community Blueprint adopted by ASEAN leaders in 2009, which has as one of its strategic objectives to ensure the protection for all migrant workers in accordance with national laws and regulations, including the fair payment of wages, adequate access to decent working and living conditions, and adequate access to the legal and judicial system of the receiving states for migrant workers subjected to discrimination, abuse, exploitation and violence (Section C.2. iii).

The Blueprint also directs the regular conduct of the ASEAN Forum on Migrant Labour (Forum) as a venue for countries to share experiences

and best practices, to engage in discussions of migrant labor issues and concerns, and to recommend legislations and strategies to implement the principles of the ASEAN Declaration for migrant workers. The ACMW convenes the annual ASEAN Forum on Migrant Labour, bringing together the key tripartite partners of government, employers, and employees associations, with strong participation from the civil society and international organizations. In particular, each of the 10 member states is to send to the annual Forum two government officials of ministries or agencies dealing with migrant labor, and one representative each from the national employers' organization, the national workers association or trade union, and the civil society organization. In addition, the Forum is also to be attended by senior officials of regional organizations on migrant labor representing the employers (as nominated by the ILO Bureau for Employers' Activities), the workers (as nominated by the ILO Bureau of Workers' Activities), and those of the civil society (as nominated by the Task Force on ASEAN Migrant Workers), apart from officials of the international labor organizations such as the International Labour Organization, the International Organization for Migration, the United Nations Entity for Gender Equality and the Empowerment of Women, and the ASEAN Secretariat (ILO, 2011).

The active participation of social partners, civil society organizations and international organizations is not limited to the Forum proper; they are also effectively engaged during the preparatory activities (ILO, 2015). The national ministries responsible for migrant labor, along with the representatives from the national employers' and workers' organizations, the civil society organizations and international organizations and other stakeholders, would hold several preparatory meetings (e.g., seven preparatory meetings each in 2013 and 2014) to: (a) assess the country's progress in implementing the recommendations of the previous Forums; (b) conceptualize the ensuing Forum's theme and sub-themes; and (c) identify policy actions for discussion and recommendation in the succeeding Forum.

To foster greater autonomy of social partners and civil society organizations in the decision-making and implementation process, the ASEAN workers' and employers' organizations (e.g., the ASEAN Confederation of Employers, the ASEAN Union Trade Union Council) hold bipartite preparatory and post-Forum consultation meetings to conceptualize the Forum's policy themes and to identify the actions

to prioritize in implementing the Forum's recommendations. The ASEAN civil society organizations also conduct preparatory meetings and consultations at the national level, and convene post-Forum meetings to develop priorities and strategize the implementation of recommended actions.

A good number of regional-level recommendations have been adopted in the eight ASEAN Forums on Migrant Labour conducted from 2008 to 2015, including the following (ILO, 2015):

- (a) Provide information and services for migrant workers in sending and receiving countries;
 - Ensure that information services are more accessible to women and men migrants and reflect their specific and diverse needs;
 - Pursue the use of varied delivery channels for pre-employment, pre-departure and on-site information, including schools and training institutions, migrant community representatives, the media and public information campaigns. Continually assess the quality and reach of information services for migrant workers and the capacity of service providers to meet these needs;

- (b) Promote a positive image, rights and dignity of migrant workers;
 - Deliver comprehensive pre-departure education in sending countries that includes culture and social norms, working and living conditions, laws and procedures, rights of migrant workers;
 - Conduct post-arrival orientation programs that adopt a rights-based approach in receiving countries, performed by the government, employers, trade unions, and civil society;
 - Raise awareness and build capacity of recruitment agencies, local authorities and all stakeholders in sending and receiving countries in the delivery and monitoring of recruitment and placement services, to ensure greater protection of migrant workers' rights;
 - Collect and disseminate factual information on the contributions of migrant workers to the economy and society in host countries;

- Carry out joint efforts in ASEAN member states to present a positive image of migrant workers with various stakeholders.
- (c) Promote strategies for effective return and reintegration for migrant workers;
- Undertake a regional study on the programs of skills trainings, pre-departure and post-arrival orientations, and return and/or reintegration support offered by ASEAN member states;
 - Improve the availability of gender-sensitive economic reintegration services to the returned migrant workers, including voluntary psychosocial counseling (before and upon return); access to resources and legal aid; and other services for both migrant workers and family members such as information, training, loans, placement, health, and interpretation/translation service;
 - Provide incentives to the returned migrant workers, e.g., the absence of penalty for the irregular migrants, and tax exemption of import duties for tools and equipment to be used by migrant workers;
 - Ensure as much as possible that mass/group deportation will not take place. In case of mass returns of migrant workers in emergencies, contingency plans should be prepared at company and embassy levels with the participation of migrant workers and migrant organizations. For this purpose, assistance/contingency funds which cover repatriation costs need to be set up at national level;
 - Set up the ASEAN Guidelines on Effective Return and Reintegration;
 - Develop bilateral and multilateral agreements for portability of the social security benefits;
- (d) Promote transparency, accountability and affordability throughout the entire cycle of the migration process;
- Develop transparent, standardized and simplified recruitment procedures and set ceiling costs with regard to recruitment and emigration costs in ASEAN Member States;

- Consider as part of bilateral agreements between sending and receiving countries the regulation of recruitment procedures and costs and streamlining of emigration procedures;
 - Encourage the alignment of national labor laws and legislations with international instruments by all ASEAN member states;
- (e) Promote information sharing and awareness of the public;
- Ensure that information on recruitment and emigration procedures and costs is regularly updated and widely disseminated and accessible to the public;
 - Develop in sending countries affordable “one-stop-centre” services, such as online portals, that are widely informed and accessible to migrant workers;
 - Abolish intermediaries in recruitment practices other than registered/licensed recruitment agencies in ASEAN member states, which would contribute to the affordability of recruitment costs and elimination of malpractices;
- (f) Promote effective monitoring mechanisms;
- Regulate recruitment agencies and practices by laws, regulations and policies that clearly define the migration cost structures in ASEAN member states;
 - Effectively monitor recruitment agencies and practices in ASEAN member states, with heavy penalties for infringements, and positive ratings for ethical recruitment agencies. In this regard, communities, tripartite partners, civil society and other stakeholders should be involved for effective monitoring;
 - Develop and implement a licensing system of recruitment agencies and, where applicable, an accreditation system of foreign employers of direct recruitment agencies to effectively monitor their practices in ASEAN member states;
 - Enhance the functions of labor attachés and consular officials in ASEAN member states to verify information of job offers and employment contracts, as feasible, in receiving countries;
- (g) Facilitate data collection, analysis and sharing concerning migrant workers in both countries of origin and destination;

- Establish a regional database on labor migration and develop guidelines and a compendium of good practices on data collection, analysis and sharing;
 - Consider the following data sets, among others, for the collection, analysis, and sharing: (a) inflows, outflows and stocks of migrant workers; (b) remittances; (c) recruitment channels, licensed agencies, fees and costs; (d) labor market information, including available and in-demand jobs and skills; (e) occupational safety and health indicators; (f) data on salaries and benefits of migrant workers; (g) data on returning migrants; (h) bilateral labor migration flows in the ASEAN; (i) data on the families of migrant workers in the countries of origin and destination; (j) nature and incidence of labor complaints; and (k) where possible, data on irregular migrants and trafficking of persons.
- (h) Promote effective complaint mechanisms and grievance handling mechanisms;
- Develop complaint mechanisms for migrant workers that are transparent, gender-sensitive, accessible and simplified during recruitment, employment and in cases of termination and deportation;
 - Ensure that information on the availability of migrant service centers and complaint mechanisms is widely disseminated to migrant workers and their families;
 - Ensure and strengthen the roles of labor attachés, embassies, and consular officials to include support services upon availing of complaint mechanisms for migrant workers;
 - Explore fully dispute resolutions, mediation, and other alternative dispute settlement mechanisms before administrative or judicial litigation processes;
 - Ensure timely notification and communication between the countries of destination and origin on judicial cases of migrant workers, and extend cooperation to provide access to migrant workers to file cases for violation of rights in the country that the violation took place;
 - Promote inter-country trade unions collaboration to support migrant workers in case of complaints;

- Ensure, where possible, the joint accountability of employers and the responsible recruitment agencies in case of migrant workers' complaints;
 - Ensure adequate arrangements in case of return and repatriation to be shouldered by the employers;
 - Promote sharing of experiences and information among ASEAN member states in implementing their respective complaint mechanisms;
 - Consider developing regional guidelines and tools on the establishment of key aspects and standards of complaint mechanisms for migrant workers;
- (i) Standardize employment contracts by national labor laws based on core labor standards stipulated under Article 22 of the ILO Recommendation 86: Migration for Employment Recommendation (Revised) 1949;
- Standard employment contracts should stipulate clear terms and conditions of employment, rights and responsibilities of men and women workers and employers, and grievance mechanisms including contact information and legal systems to file complaints;
 - Employment contracts should be written in language understood by migrant workers, and signed by employers and workers prior to departure;
 - Eliminate substitution of employment contracts and issuance of sub-standard employment contracts. Penalize non-compliance by employers and record information in the databases of ASEAN member states in accordance with the national laws and regulations;
 - Closely monitor employment contracts where these are issued by a third party, as permitted by laws, to ensure that they meet the required standards;
- (j) Establish migrants' resource centers and referral systems that are coordinated at the local, national and regional levels to provide support services required by migrant workers;
- (k) Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas, and protection of the migrant workers when abroad,

as well as repatriation and reintegration to the countries of origin;

- Widely disseminate to migrant workers, with the support of labor attachés and embassies, the national legislations, policies, rules and regulations concerning employment and labor migration, particularly immigration information and visa application procedure;
 - Streamline and widely disseminate recruitment policies and procedures to migrant workers and stakeholders;
 - Conduct pre-employment, pre-departure and post-arrival orientation programs that should be mandatory and free of charge for all migrant workers, and include cultural orientation and rights and obligations of men and women migrant workers and employers;
 - Provide briefings for and assistance to the families of migrant workers to enable them to cope with the challenges of overseas employment;
 - Provide support programs, including job counseling, market-oriented skills development and/or entrepreneurship training, for returning migrant workers. Documentation of acquired competencies and experiences provided by employers should be introduced where feasible to support better career opportunities of men and women migrant workers in their countries of origin;
 - Strengthen cooperation between the countries of origin and destination in providing assistance to migrant workers with health concerns in order to ensure access to treatment and relevant social welfare services;
 - Strengthen cooperation among workers' organizations in ASEAN member states so as to provide effective protection mechanisms for migrant workers;
- (l) Promote occupational safety and health (OSH) awareness among employers and migrant workers in sending and receiving states;
- Strengthen OSH training in pre-employment, pre-departure and post-arrival orientation programs;
 - Develop OSH guidelines, including employee access to employment injury benefits, reinforcement of OSH

- information and education campaign, and promotion of hotline number to migrant workers;
- Sanction non-compliance by employers of OSH standards, including on the provision of OSH training and of measures to minimize OSH risks, on statutory working hours, working environment and employment conditions and, where applicable, on accommodation for migrant workers;
- (m) Strengthen the implementation, compliance and labor inspection for OSH and decent work conditions;
- Strengthen national implementation of OSH policy in coordination with key stakeholders, including the embassies/ labor attachés, trade unions, employers organizations, overseas placement agencies, and civil society organizations within and across ASEAN member states;
 - Build capacity and increase the number of labor inspectors and resources for periodic inspections in vulnerable and hard-to-reach sectors such as in fishing, mining, forestry, agriculture, and domestic work;
 - Capacitate labor attachés through OSH trainings, access to information and referral systems with labor inspection and relevant authorities of the receiving states; strengthen and improve accessibility of complaint mechanisms on OSH and employment conditions violations, including speedy settlement processes, confidentiality of the source of information, and protection from employers' reprisal;
 - Provide investigation, support to stay and, where applicable, work during the period of investigation in the receiving states, and the setting up of regular dialogue platforms with migrant workers;
- (n) Reinforce cooperation between sending and receiving states to improve compliance and labor inspection with OSH and employment conditions;
- Ensure the inclusion of OSH, employment conditions and, where possible, the roles of labor inspection and labor attaché in bilateral and multilateral memorandum of understanding concerning migrant workers; improve data collection and sharing on OSH related injuries, diseases and casualties,

and reported cases on non-compliance with employment standards;

- Improve mechanisms of payment of workers' compensation benefits even after returning to their countries of origin).

The ASEAN Forum on Migrant Labour has noted encouraging progress with respect to implementing the recommended actions in terms of enhanced collaboration and cooperation with social partners and the civil society and international organizations in the governance of international migration; the provision of pre-departure education for migrant workers, particularly in the major sending countries of the Philippines and Indonesia; and the establishment of Migrant Worker Resource Centers in many ASEAN member states, such as Malaysia, Thailand, Vietnam, Cambodia, Lao PDR and Myanmar (ILO, 2015). However, there remains limited action in many recommended areas including the conduct of post-arrival orientation programs, particularly in the primary destination areas of Malaysia, Thailand and Brunei Darussalam; the use of social media and other channels to disseminate information on the contribution of migrant workers to the economy, especially in host countries; the development of effective reintegration programs; the development of mechanism for the portability of social security of migrant workers; the quality assessment of methods and providers of migrant information services; the development of mechanisms for migrants to report labor standard violations without fear of retribution; and the development of migrant database and information system.

There are also additional challenges faced by member states in undertaking the recommended actions, as follows:

a) Insufficient budget and unreliable funds;

The less developed member states in the region have limited financial capacity to implement fully the recommended measures. Most governments also rely on external funding for support, which may fail to materialize. Inadequate funds can negatively affect the implementation of labor policies as well the provision of services, as it constrains investment in the needed human and physical resources, and undercuts communication means and transport (vehicles/transport

allowances are critical to labor officers working at the local level).

b) Inadequate human resource support;

Labor administration needs well-trained/motivated staff for the implementation of labor administrative tasks. This issue has both a quantitative aspect (i.e., number of staff) and qualitative aspect, particularly in terms of how staff is managed towards careers in labor administration. Labor administration assessment audits are suggestive of multiple problems with respect to human resources (often a shortage of well-trained/motivated staff), which is complicated by the rise of private agencies, which sometimes maintain an unclear relationship with policymaking bodies.

c) Primary focus of performance evaluation on actions and lack of attention on results;

While the annual conduct of the ASEAN Forum of Migrant Labour has also provided regular assessment of national and regional performance in terms of implementation of the recommended actions, there is a lack of identification and evaluation of expected results, of which there are three types, namely outputs, outcomes and impact.

d) Lack of recommended action towards the improved access of migrant workers to social security benefits;

While the 2007 ASEAN Declaration commits member states to the promotion of decent employment to migrant workers (Section 15), the less skilled majority of migrant workers are largely excluded from participating in social security programs in host countries.

e) Lack of internal and external coordination;

There is often a lack of coordination, both horizontally and vertically, that impacts effective administration and cooperation with other ministries and public authorities. Coordination,

both within the labor ministry and between headquarters and field offices, is crucial for any labor administration system. In terms of coordination, it is important to assess the government power structure and its impact on labor ministry autonomy. Labor departments need to have more freedom to produce objective/independent reports based on data.

f) Compliance to labor laws;

One major challenge for labor administration is the compliance with labor laws as well as the functioning of the labor inspection system. Compliance essentially relates to conformity in fulfilling legal requirements. It is up to the labor inspection system and the threat of sanctions—in sum, to the government—to ensure that the rule of law is observed. In the ASEAN, improving labor compliance rates and lower occupational accident rates are observed in the more developed member states of Singapore and Malaysia, which have imposed stiffer sanctions against regulatory violations on labor standards, including occupational safety and health.

g) Development of an autonomous and complete information and database system on migrant workers;

One major problem faced today by all labor administrations is how to make labor administration policy more realistic and efficient by basing policy on reliable data and research. In order to strengthen evidence-based policymaking, ministries should ensure that all available data are reviewed and used to inform policymaking/appraisal. When labor ministries do not have sufficient data, it is difficult to have evidence-based policymaking. This difficulty is exacerbated by the limited technical capacity in many labor administrations and by the lack of inter-departmental coordination between headquarters and local offices. For example, the introduction of online systems has helped to computerize and standardize labor market information system, drawing support and input from a range of actors contributing to the data bank (e.g., employers, statistical offices, national insurance groups). However, the

poor capacity of many labor administrations to compile data and carry out in-depth analysis is an issue.

Conclusions and Recommendations

While the ratification by ASEAN member states of relevant international conventions on the protection of the rights of migrant workers and on labor administration has been slow, the deepening ASEAN integration has compensated for this lack by facilitating cooperation among its member states—in close collaboration with social partners (employer groups and trade unions), the civil society organization and the international community—in working towards improved labor market governance of international labor migration, and in providing more decent employment to migrant workers.

While increased cooperation and more coordinated regional governance of cross-border labor migration has borne out much progress in promoting and protecting the rights of migrant workers in the region, there remains a number of challenges to be hurdled. From the above discussions, the main recommendations are as follows:

There is Need to Identify Enabling Results.

Linkages between appraisal indicators and objectives of the labor policy are inadequate. In the case of the regional recommended actions for the implementation of the declaration for the protection of migrant workers, there is greater focus on actions, with no identified results—impact, output, and outcomes. The results indicators will complement the process indicators (e.g., increase in the number of information and education campaigns on labor standards, including occupational safety and health, that is focused on sectors with substantial migrant worker concentration; increase in the number of countries conducting migrant orientation programs on worker rights, etc.) for each measurable objective, and form the basis for implementation, monitoring and the development of the information and statistical database. For more effective evaluation, it is also important to indicate a targeted date of completion for each desired outcome, such as increase in the share of men and women migrant workers who received fair remuneration; increase in the percentage of men and women migrant workers in regular

employment; increase in the share of men and women migrant workers who are educated about labor rights, including on occupational safety and health; decrease in the rate of morbidity and mortality, and in the number of work accidents among men and women migrant workers; increase in the percentage of men and women returned migrants who participated in sustainable reintegration programs; increase in the number of men and women labor attachés trained; increase in the percentage of filed cases on labor standard violations by men and women migrant workers that were handled and acted upon by type of case, etc. It is important that the various stakeholders—government, social partners (trade unions and employers organizations), civil society organizations and relevant international organizations—remain key players in the development of clear, measurable, enabling results and accompanying process and outcome indicators.

Develop Sound Performance Evaluation Strategy.

In order to strengthen evidence-based policymaking, labor administrations are encouraged to review sources of evidence together with longer term evaluations of policy initiatives. Evaluation activities should develop beyond a preoccupation with measuring the impact of interventions and goal achievement, by focusing on analysis of the findings in question from which to build solutions. It is important to involve the various stakeholders, including social partners and the civil society, in developing the strategy and indicators for evaluating progress and performance in policy reforms, in completing activities and towards the achievement of targeted outcomes, and in discussing adjustments in delivery strategies and input resources for best results.

Greater Autonomy in the Appraisal of Policies and the Development of Statistical Database.

The appraisal of labor policies may be better served by autonomous bodies, which focus on overall objectives of administrative policy rather than on specific quantitative targets. While labor ministries would benefit from greater research capacity, the use of independent research agencies may ensure more credible data. There can be an independent mechanism for evaluating the implementation of the instrument for

the protection of migrant workers that allows for the conduct of data verification and validation.

In terms of statistical data, it is important to create an independent body/unit in order to ensure the credibility of data on migrant workers that is disaggregated by gender, age, nationality and residence status (e.g., regular or undocumented). All ministries would benefit from a statistical department that is capable of producing reliable data and analysis for sound designing, monitoring and evaluation of labor and employment policies, and strategic decision-making. Ideally, this would also include data from labor inspectors operating in the field to provide feedback on the impact of labor policies.

Strengthen Compliance with Labor Laws and Encourage Ratification of International Conventions on Labor Inspection.

Compliance with labor law does not follow automatically from legislation and the possible threat of sanctions; international labor standards also require coherent and robust systems of legal infrastructure to help in the observation of the relevant labor laws. Many of the ASEAN member states, particularly the less developed, continue to face difficulties in promoting, regulating and protecting workers' rights. In many contexts, it remains ambitious to expect enforcement machinery to cover all aspects of social protection, although systems of protection should prioritize the most important features of the labor relations, specifically those that impact upon workers' health. The education of workers and partnerships with non-governmental partners are encouraged as a "first means" approach to discouraging rights violations.

Labor inspectorates face challenges inspecting informal sectors that are likely dominated by the low-skilled or unskilled workers, including migrant workers. This creates problems in terms of control, reporting and dissemination of overall findings. In this regard, ILO Convention No. 81 should be considered the first step in ensuring observance of the law, and ASEAN member states should be encouraged to adopt comprehensive laws concerning conditions of work, wages, occupational safety and health, employment, labor immigration and social security. In addition, the labor administration should be well equipped to make sure that national policies are designed with a view to encouraging compliance and enforcement, including the application of sanctions.

Sanctions should be used as part of a deterrence-based system that makes extensive use of prosecution and litigation in order to deter violations. In the ASEAN region, applications of sanctions for regulatory violations of labor standards have varied across members, with the more developed countries of Singapore, Malaysia and Thailand imposing stiffer sanctions for labor regulatory violations, including on occupational safety and health standards.

***Independence in Labor Inspection and
Harmonizing Labor Inspection Standards.***

Labor ministries require qualified and well-trained employees who operate independent of external influences. There is the danger of political interference in relation to labor inspection, which in certain instances encourages favoritism towards particular enterprises, a point which clearly undermines the discretionary powers of inspectors. Moreover, the shortage of labor inspectors relative to the task at hand in the ASEAN region, and also the lack of labor inspection tools (e.g., checklists, guides, manuals on inspection), the gender imbalance in work (low rates of employment for female inspectors), and poor work conditions aggravate the situation. There are concerns raised over inconsistencies of inspection practices within large states and the possibility for homogenizing both labor laws and inspection norms across regions.

Independence in labor inspection is recommended. For example, the majority of countries in Southern Africa use the British traditional system of public service recruitment via an independent Public Service Commission, which interviews, scores and assesses processes of staff appointment. In addition, there is a general perception about the failings of governments to adequately support labor inspection, and equally the failure of labor administration officers and inspectors, in particular in the less developed countries, to utilize the tools and resources provided to good effect. ASEAN member states can seek assistance from the ILO and other international organizations that invest in the training of labor administrators and inspectors.

Extension of Labor Administration Services to the Informal Economy.

If labor administration focuses its efforts only on the formal economy, most of the migrant workers who are largely low-skilled or unskilled will be kept out of the national regulatory protection. Therefore, labor administration needs to move beyond its focus and adopt a much wider perspective that addresses the needs of all workers and employers in both formal and informal economy. In particular, one main challenge is how to extend labor administration services, and labor inspection in particular, to the informal economy. Key issues should be examined here.

First, there is a problem of definition, namely the lack of proper definitions for the informal economy, which covers all those activities not included in the law. This creates problems, for example, when establishing the subject of protection to pursue by labor ministries. The use of terminology is also likely to differ between the less developed and the more developed economies—in particular, the use of the term “illegality,” which may be less relevant in developing contexts given the scale of informal work, which impacts social protection. It should also be noted that the poor/selective enforcement of labor standards, the outsourcing of legislative liability, and issues of bribery and corruption are factors hampering transitions away from informal work arrangements. When dealing with the problem of definition, there are also two key issues with regard to the employment relationship: one deals with the scope of labor law to sectors and/or small businesses currently not covered by legal obligations, factory acts and so forth (e.g., agricultural work, which remains unregulated in many contexts); the other deals with the enforcement “machinery” and devise systems of protection for workers operating in unsafe environments.

In many contexts, it remains ambitious to expect enforcement machinery to cover all aspects of social protection, although systems of protection should prioritize the most important features of the labor relations, particularly those that impact upon workers’ health. With this in mind, one should advocate policies of extension as a means of gradually improving rights and entitlements of workers within industry contexts currently not protected by legal mandates.

India provides an example of best practice in dealing with the informal sector through the formalization of the unorganized labor sector. The approval of the Unorganized Sector Workers (Conditions of Work and Livelihood Promotion) Bill of 2005 aimed to improve working conditions of informal economy workers by providing basic minimum standards on working hours, minimum wages, and adherence on child labor and bonded labor. The Bill recognized a minimum of workers' entitlements, including the right to organize, non-discrimination in payment and conditions of work, safety at work, and absence of sexual harassment. However, such a policy of extension may prove difficult to implement depending on the legal landscape of the country in question. In this context, legal progress may arise initially through voluntary social security agreements which may develop into formal compulsory arrangements reaching the lowest level.

In the ASEAN, one could refer to the example of Thailand, which has adopted an inclusive health insurance scheme and successfully extended social security initially to enterprises with 10-20 staff (1st stage) and subsequently to 5-10 staff (2nd stage), before reaching a final stage of legal coverage in organizations with 1-5 staff. In 2001, Thailand amended the Social Security Act to extend social security coverage to the informal sector (Sections 33 and 40, Social Security Act 2533). All employees 16 to 60 years of age are eligible for insurance coverage (Section 30), with counterpart contributions from the employee, the employer and the government, to cover benefits for sickness, invalidity, death and maternity benefits, and child allowance and old age benefits. All persons who are not employees may also apply for social security coverage (Section 40), and are entitled to a benefit package for sickness, infirmity and death based on voluntary-worker contribution and a counterpart government subsidy.

Another best practice is the case of the Philippines in formalizing the employment of domestic workers and providing them with decent work conditions and protection from abuse and exploitation. While both the Philippines and Indonesia are major sources of labor supply for overseas employment in domestic work, the Philippines is the only ASEAN member state that ratified the ILO Convention 189, otherwise known as the Domestic Workers Convention 2011. In 2013, the Philippines enacted Republic Act No. 20361 or the Domestic Workers Act, which entitles domestic workers to basic labor rights

including the right to minimum wages, paid leaves and social security benefits, the right to safe and healthy environment and rest periods, the right against involuntary servitude and abuse, and the right to an employment contract and certificate of employment.

Strengthened Internal and External Coordination and Cooperation.

Coordination remains vital in ensuring the best use of scarce resources and in encouraging effective planning, evaluation and reporting. Effective labor administration depends on tripartite cooperation and sound coordination with various stakeholders and with other ministerial bodies. Coordination with other ministries, social partners, and other advisory bodies yields different perspectives on matters affecting the labor market; moreover, it provides the advantage of learning about and exchanging good practices, and of engaging in cooperation in resolving common labor issues. In particular, the activities and interests of other ministries, such as ministries of industry, health and finance, may play a vital role on labor policies and related agencies responsible for matters of social security. As such, labor ministries should engage with these and other relevant departments to co-formulate national policies and joint action plans on specific labor issues, with the strengthened participation of social partners and civil society organizations. Due to the variability in funding, labor administration systems, especially ministries of labor, are advised to adopt labor policies that will benefit from greater coordination between different stakeholders, including field offices and other relevant units to the labor ministry.

It is important to strengthen partnerships with relevant international organizations such as the International Labor Organization, which provides state-of-the-art assistance to its member states. The ILO, for example, can assist ASEAN member states in instituting reforms of the labor inspection system, in extending social security coverage to the informal sector, and in developing occupational safety and health programs for the vulnerable sectors, including those dominated by migrant workers. In the case of labor administration reforms in Bangladesh, for example, the ILO has provided assistance through the introduction of a statistical department, a human resources and management department, a training centre (with library), and a performance/monitoring system. In the case of Sri Lanka, the labor

ministry adopted a method of consultation by seeking assistance from the ILO in modernizing the labor inspection system and optimizing labor administration and management processes at the headquarters and district offices (e.g., through the use of automated inspection schedules and duty rosters for inspection staff).

Strengthening partnerships with the various stakeholders of the labor market, including social partners, the civil society and the international organizations, and identifying the interests, strength, roles and contributions of the main development partners would be essential in effectively conducting collaborative process interventions and strategies to attain desired results and to monitor and evaluate progress.

Endnotes

¹ The exceptions are the following foreign workers (Article 3): employees of international organizations and agencies; employees by a State; investors residing outside of their State of origin; refugees and stateless persons unless otherwise provided national legislation; students and trainees; and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in a remunerated activity in the States of employment.

References

- ASEAN. (2008). *ASEAN economic community blueprint*. Jakarta: ASEAN. Retrieved from <http://www.asean.org/wp-content/uploads/archive/5187-10pdf>
- ASEAN. (2009a). *ASEAN political security community blueprint*. Jakarta: ASEAN. Retrieved from <http://www.asean.org/wp-content/uploads/archive/5187-18.pdf>
- ASEAN. (2009b). *ASEAN socio-cultural community blueprint*. Jakarta: ASEAN. Retrieved from <http://www.asean.org/wp-content/uploads/archive/5187-19.pdf>
- Casale, G., & Sivananthiran, A. (2010). *Fundamentals of labour administration*. Geneva: ILO.
- Casale, G., & Sivananthiran, A. (2015). *Labour administration and labour*

inspection in Asian countries: Strategic approaches. Geneva: ILO.

Casale, G., & Fasani, M. (2012). *International labour standards and guiding principles on labour administration and labour inspection* (LAB/ADMIN, Working Document No. 22). Geneva: ILO.

ILO. (2011). *Labour administration and labour inspection, report V.* International Labour Conference, 100th session, Geneva.

ILO. (2015). *The ASEAN Forum on Migrant Labour: Tripartite action for the protection and promotion of the rights of migrant workers in the ASEAN region* (2nd ed.). Bangkok: ILO Regional Office for Asia and the Pacific.

Orbeta, A. (2013). *Enhancing labor mobility in ASEAN: Focus on lower-skilled workers.* Discussion Paper Series No. 2013-17. Manila: Philippine Institute for Development Studies. Retrieved from <http://dirp4.pids.gov.ph/ris/dps/pidsdps1317.pdf>.