

Evolution of Policy of Illegal Migration in Southeast Asia

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Southeast Asia witnesses high levels of irregular migration mainly due to economic factors like unemployment, poverty and many others. Significant irregular migration flows occur from the Mekong Subregion countries to Thailand and Malaysia, and from Indonesia to Malaysia. These movements are, to a significant extent, facilitated by smugglers. Migrant smuggling out of Southeast Asia is predominantly reported for migrants leaving Vietnam, mainly for Europe and to a lesser extent for North America, and for migrants from Myanmar leaving mainly for destinations in Southwest and South Asia.² The widespread availability of fraudulent passports in Thailand, combined with weak border protections and pervasive corruption in places like Malaysia, tend to attract all types of immigrants, as well as smuggling syndicates offering everything from stolen identification documents to airline tickets.³

Countries like Malaysia and Thailand are some of the biggest receivers of irregular migrants since these countries offer a better lifestyle and economic opportunities, which is also why it is observed that these countries have stricter regulations and policies in place to regulate and handle irregular migration. Countries like Myanmar majorly witness people fleeing the

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² From United Nations Office on Drugs and Crime (UNODC). Migrant Smuggling in Asia and the Pacific Current Trends and Challenges Volume II. Vol. 2, 2018, p.69.

³ From Traywick, Catherine A. 'For Illegal Migrants, Southeast Asia Is the Means, Not the End'. Foreign Policy (blog).

country and settling in nations like Thailand and starting a new life. Even though Association of South-East Asian Nations (ASEAN) exists, there is no collective policy on migration, and the countries have varied interests and perspectives with respect to the issue and, therefore, it is difficult to make one collective policy which is applied in all of Southeast Asia. Another limitation is that Timor Leste, which gained independence in the year 2002, is not yet a member of ASEAN, and, hence, the dynamics would further change and possibly diversify if Timor Leste also becomes a member of the ASEAN.

As for the ASEAN's policy for illegal migration, ASEAN Consensus On the Protection and Promotion of the Rights of Migrant Workers in Article 4 identified the "undocumented migrant worker" as a person who fails to comply with the conditions provided for him or her to legally enter the Receiving State and to stay legally for the duration of employment pursuant to the applicable laws, regulations and policies of the Receiving State. This definition includes a migrant worker who has recently been in employment but is no longer legally employed in a remunerated activity. On top of that, this definition of an "undocumented migrant worker" is applied to Articles 56 and 57 of this consensus. Article 56 of the consensus connotes that for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented; Nothing shall be interpreted as implying the regularisation of the situation of undocumented migrant workers while Article 57 indicates ASEAN member states to take measures to prevent and curb the flow of undocumented migrant workers and explore cooperation and coordination among ASEAN Member States in providing assistance to those who are in need of protection subject to prevailing national laws, regulations and policies of ASEAN Member States.⁴ The member countries of the Association of Southeast Asian Nations (ASEAN) have signed a Declaration on the Protection and Promotion of the Rights of Migrant Workers, and a Declaration against Trafficking in Persons, particularly women and children.

⁴ From Salawati Mat Basir. 'IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY'. In Indonesian Journal of International Law (2020), Vol. 17 No. 2:145-80, 2020.

Representatives of the six governments in the Greater Mekong Subregion have established the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).⁵

Many countries in the Southeast Asian region have signed bilateral Memorandum of Understandings (MoUs) or working-level agreements with other countries in the region to manage labour migration, to combat trafficking in persons and to cooperate in the safe repatriation of victims of trafficking. They also participate in several regional consultative processes on international migration, which are informal meetings of government officials and representatives of international organisations. Their scope is usually subregional with the focus on specific aspects of migration, such as trafficking or irregular migration, and their outcomes are non-binding.⁶

ASEAN leaders in 2007 had established the Cebu Declaration which discussed the protection of migrant workers and in this particular declaration, it is an obligation for the member states to establish a charter ensuring a decent working environment to protect the workers from all sort of abuse, plus the minimum wage for intra-ASEAN migrant was introduced. The Cebu Declaration emphasised for the ASEAN states to cater to the fundamental rights of migrants and their families, to work together in handling the issue of irregular migrants and to encourage the potential and dignity of migrant. Nevertheless, the Cebu Declaration is not binding and does not require the member states to change their national labour laws. In addition to that, Cebu Declaration emphasises on the host country to ensure access to decent work for every citizen, in abiding the migration work force international provision by providing a legit contract of service. In addition to that, Cebu Declaration is a reminder to the receiving countries to provide protection of rights, welfare and dignity of migrant workers, including work protection and access to problem resolving system. Although with

⁵ From Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

⁶ From Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

the existence of such declaration, the implementation status is still low and not binding. Implementation has always been a major challenge for every instrument of ASEAN.

As far as the regional level policy is concerned, the consensus made it clear that there are circumstances that may make a regular migrant irregular without the knowledge and intention of the migrant themselves. In relation to that, the consensus also demands the receiving state to provide protection for them but not necessarily change their status to a regular migrant due to this demand. In fact, the consensus also claims that this protection is subject to the national laws, regulations and policies of the ASEAN Member States. Thus, making this consensus as just a front page of toothless policies in the protection of irregular migrants.⁷

ASEAN has not been able to coordinate and bring all the countries on the same page on the key issue of migration which needs to be handled in order to achieve a stronger South-East Asia as a regional entity under the leadership of ASEAN. Migration is a major political factor in the region, with a sharp division between those countries which largely supply migrants - Cambodia, Indonesia, Myanmar, the Philippines and Vietnam - and those which receive them - Thailand, Malaysia and Singapore. Together these three countries host 6.5 million migrants, 96% of them coming from other ASEAN states. Migration has become a significant issue in official terms with the ASEAN Economic Community Blueprint 2025, agreed in 2015, which envisages reducing paperwork for work visas.⁸ However, the troubling fact remains that the focus of these deliberations falls more on facilitating the migration of high-skilled migrants such as engineers and nurses and much less on the larger numbers of low-skill workers, who end up as labourers and cleaners.⁹

⁷ From Salawati Mat Basir. 'IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY'. In Indonesian Journal of International Law (2020), Vol. 17 No. 2:145-80, 2020.

⁸ From Salawati Mat Basir. 'IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY'. In Indonesian Journal of International Law (2020), Vol. 17 No. 2:145-80, 2020.

⁹ From Reporting ASEAN - Voices and views from within Southeast Asia. 'ASEAN Urged to Set Up Mechanism for Migrants' Rights', 20 September 2012. <https://www.reportingasean.net/asean-urged-to-set-up-mechanism-for-migrants-rights/>.

Undocumented economic migrants in the ASEAN experience myriad mistreatments including high charges paid to people smugglers, fraud by recruitment agencies, non-payment of salaries, low wages, long working hours, and poor workplaces safety standards. Worse, they sometimes suffer physical violence and illegal detention, trafficking, and sexual abuse. Female migrants, for example from Cambodia, Myanmar and the Philippines, are sometimes treated like modern-day slaves. The abundance of human rights violation cases involving domestic workers in ASEAN seem to highlight a lack of legal protection for the thousands of women. There are not enough regulatory officials and police to assess and prevent exploitation.¹⁰

While ASEAN has primarily been an economic organisation, it has already acknowledged the need for action on human rights with the creation of bodies such as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).¹¹

BRUNEI DARUSSALAM

Brunei Darussalam has resisted international pressure to accept asylum seekers or refugees on political or humanitarian grounds. While the necessary regulatory instruments are in place to protect citizens and migrants alike, the authorities are struggling to cope with the new migration patterns (in particular, with irregular migration) driven by globalisation and changing environments during the past decade, but the introduction of harsh penalties has not deterred irregular migrants from entering the country. Immigration has contributed significantly to Brunei Darussalam's population growth, particularly since the mid-1970s.

¹⁰ From Reporting ASEAN - Voices and views from within Southeast Asia. 'ASEAN Urged to Set Up Mechanism for Migrants' Rights', 20 September 2012. <https://www.reportingasean.net/asean-urged-to-set-up-mechanism-for-migrants-rights/>.

¹¹ From Salawati Mat Basir. 'IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY'. In Indonesian Journal of International Law (2020), Vol. 17 No. 2:145–80, 2020.

Apart from the Chinese, Iban, other nationals were drawn to Brunei Darussalam because of employment or business opportunities created by the country's oil wealth.¹²

CAMBODIA

Cambodia is a destination country for both labour and other types of migrants, some of whom have settled permanently, primarily from Vietnam and China. Vietnamese migrants are by far the biggest migrant group in Cambodia. Vietnamese migrants are drawn to Cambodia both for historical reasons and as a result of the demand for skilled labour in the construction sector. The sex industry is an important sector for employment of Vietnamese female migrants. Many women are employed in the sex industry, including massage parlours and dance halls. They are among the most vulnerable migrant workers and are subject to exploitation and extortion, which is amplified by the combination of their profession and irregular status. There is also a Chinese community in Cambodia with Chinese migrants usually arriving in Cambodia through regular channels and tending to secure employment with a Cambodian employer prior to their arrival. Chinese mainly migrate to Cambodia for economic reasons and often hold managerial jobs or highly-skilled positions, receiving higher wages than Cambodian nationals.¹³

INDONESIA

Indonesia has a high proportion of women amongst the country's migrants. A majority of the female migrants are employed as domestic workers or caregivers in homes and the ability of the governments to offer protection for its migrants overseas is often limited. The receiving

¹² Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

¹³ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

countries usually do not have legislations specifically aimed towards the protection of domestic workers. Internal and international trafficking of Indonesian nationals is a problem in Indonesia. The government is making a concerted effort to fight trafficking and to improve assistance to victims of trafficking through legislation and other initiatives. The growing remittance flows represent a significant opportunity for poverty reduction and human development in Indonesia. In the medium-term future, large numbers of workers from Indonesia could continue to migrate overseas, both regularly and irregularly. Thus, the country could emulate the Philippines in depending on foreign employment for a significant proportion of its workers. On the other hand, with an increase in the rate of economic growth and a relatively low population growth rate, the country could evolve into an eventual importer of labour, as observed in the case of Thailand.¹⁴

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Most of the international migration from the Lao People's Democratic Republic can be characterised as labour migration. Limited economic opportunities and low wages in the Lao People's Democratic Republic are the primary push factors. The primary destination country is Thailand due to the very low unemployment rates, higher wages and a demand for low-skilled workers. Migration to Thailand is further facilitated by cultural similarities between the two countries, including language.¹⁵

¹⁴ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

¹⁵ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

MALAYSIA

In the current scenario, Malaysia plays the role of a hub for Southeast Asia's extensive illegal immigration — a steady, mass movement of people seeking jobs and, in some cases, political asylum in foreign countries. Although the growth rate of the population of Malaysia remains relatively high, the country's robust economy and urbanisation have generated a demand for foreign workers that is met by large numbers of both regular and irregular migrants.¹⁶ In the recent years Malaysia has been implementing stricter laws and police action to curb the entry of illegal migrants in Malaysia.

MYANMAR

Accurate information on international migration flows, to and from Myanmar, is very scarce and with the lack of a comprehensive overview of the area. Some of the best sources of information about migration from Myanmar are available from the receiving countries. Estimates suggest that up to 10 per cent of Myanmar's population migrates internationally; however, accurate figures and information about these migration flows are difficult to obtain as the migration is mainly irregular. The two most recent censuses, held in 1973 and 1983, did not include questions concerning migration. Therefore, the extent and magnitude of international and internal migration are unknown. Myanmar is also concerned by other patterns, as some women are trafficked from China through Myanmar into Thailand and Malaysia, and persons from Myanmar are trafficked to China. The Government of Myanmar has made significant progress in managing the return of victims of trafficking, especially from Thailand. However, the cooperation occurs in the absence of formal guidelines and agreements internally and at bilateral and regional levels. Moreover, there is still no

¹⁶ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. *Situation Report on International Migration in East and South-East Asia*. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

initiative to facilitate the return of victims from China, which represents the second main destination country.¹⁷

THE PHILIPPINES

The Philippines has become a quintessential out-migration country. Low rates of domestic economic growth and foreign investment have prompted the Government of the Philippines to rely on overseas employment in order to reduce unemployment in the country and for remittances. The Government of the Philippines has estimates that in December 2004 there were 8.1 million Filipinos living overseas, nearly 10 per cent of the population of 83.6 million at that time. Those overseas Filipinos include 3.2 million permanent migrants (a majority of whom are in the United States), about 3.6 million temporary labour migrants and about 1.3 million migrants in an irregular situation, mostly in the United States and Malaysia. Roughly one in five Filipino workers is employed outside of the country.¹⁸

SINGAPORE

Migration policy makers in Singapore do not only attempt to admit an optimal number of migrants but also balance those numbers by skill level and country of origin in order to sustain the country's remarkable economic and social achievements while also maintaining social harmony. Singapore could not have attained its high rate of economic growth without the large number of foreign workers. With fertility currently far below the replacement level, migration will be necessary to prevent population decline and a rapid shift in the age structure toward older age groups. Migration currently accounts for about 75 per cent of

¹⁷ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. *Situation Report on International Migration in East and South-East Asia*. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

¹⁸ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. *Situation Report on International Migration in East and South-East Asia*. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

Singapore's population growth, but the United Nations (2005a) projects that by 2025-2030 the number of deaths will surpass the number of births and migration will, thus, account for all population growth.¹⁹

THAILAND

Thailand has historically provided sanctuary to groups fleeing from adverse political circumstances in South-East Asia and southern China. Sometimes, such refuge was openly offered and sometimes it was accorded grudgingly. Thailand provided asylum to more than 1 million refugees from Indochina beginning in 1975. Following the end of the United States-Vietnam war in April 1975, about 158,000 Vietnamese made their way to Thailand either over land or by sea. Most were resettled in third countries but a small number were later repatriated.²⁰

VIETNAM

The Government of Vietnam faces the usual trade-offs between promoting overseas employment and protecting the rights of its workers. Most placement agencies are state-owned but a few private sector agencies have been licensed. Dang and others (2003) noted that some recruitment agencies charged higher fees than permitted, provided inadequate information to migrant workers and did little to assist them once they were overseas.²¹ The Government of Vietnam is currently concerned about unemployment in the domestic labour

¹⁹ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

²⁰ Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

²¹ "Migration in Vietnam: a review of information and current trends and patterns, and their policy implications", paper presented at the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, Dhaka, 22-24 June.

market and with deploying migrant workers overseas. The population in the younger workforce age group is still increasing by 1.4 per cent a year. However, this scenario is likely to change relatively quickly. Because of the rapid decline in fertility after 1980, to close to the current replacement level, the workforce growth will soon slow down. From 2015 to 2020, the population aged 15-39 years will increase by only 0.1 per cent a year.²²

CONCLUSION

On a concluding note, South-East Asia as a region needs to work more for ensuring the smoother assimilation of refugees and not labelling them as illegal migrants due to administrative delays. There is also a need for the region to distinguish between the different types of illegal migrants and work on a system which can easily monitor the trends while ensuring their national security and providing humanitarian aid, realising the need to balance both of them. It is imperative for the ASEAN to develop a framework which can integrate the national laws and interests and the regional interests when it comes to migration, especially illegal migration. This is seemingly difficult due to countries having very different experiences and stances when it comes to irregular/illegal migration. Inclusion of Timor-Leste into the folds of ASEAN is needed, however, it will also bring along a new set of challenges for the regional organisation and for the member states.

²² Regional Thematic Working Group on International Migration Including Human Trafficking and International Organization for Migration, eds. Situation Report on International Migration in East and South-East Asia. Bangkok, Thailand: International Organization for Migration, Regional Office for Southeast Asia, 2008.

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