

# IT IS TIME FOR BINDING AGREEMENTS ON MIGRANTS' RIGHTS IN ASIA



Migration flows within Asia are of considerable size. According to the ILO (2006), between 1995 and 2000, 40% of the 2.6 million to 2.9 million Asian migrant workers (registered and undocumented) went to other countries in Asia, including the countries of the Gulf Cooperation Council (GCC) where Asian migrant workers made up 40% to 70% of the labor force in 2000. Unfortunately more recent data are not available, but the significance of intra-Asian migration constitutes a continuing trend. This post follows the definition of “Asia” used by the United Nations, which includes countries in the Middle East.

The migration system in Asia is primarily based on temporary migration largely of low-skilled and semi-skilled workers, facilitated by private recruitment agencies (Wickramasekara 2006).

This means that legal migration takes place on the basis of strictly fixed-term, employer-tied contracts for duration of 1 to 3 years. Breaking the contract to seek employment elsewhere—for instance in the case of abuse or contract violation on the part of the employer—automatically turns a migrant into an ‘illegal’ worker and resident. Hence, the labor market for most migrant workers is highly restricted.

Furthermore, temporary migration schemes prevent migrants, especially those in the lower skilled categories who constitute the majority of foreign workers in Asia, from settling and reuniting with their families in the host country. In the absence of family reunification policies in Asia, most migrant households constitute transnationally split families, either with one parent working abroad or both parents often working in different countries.

With the feminization of migration, it is now more often mothers who leave their children and husbands behind than in previous phases. It is often the women who are blamed for the familial or marital problems that occur in the context of their outmigration. What is ignored is that marital problems and pressures on family life often existed well before the women’s decision to take up employment overseas – and often even are the crucial factor making women opt for international migration in the first place.

In addition to the separation of families, there are rampant malpractices by recruitment agencies (excessive charging of fees) and also employers (such as under- or non-payment of wages). The losses from migration for the individuals involved often outplay the gains.

In this context, it is the responsibility of host and source country governments to provide a legal framework, to alleviate the pressure to out-migrate, and to ensure safe migration. The full range of duties is established by international human rights standards but specific instruments for migrant workers are highly under-ratified and general human rights norms are rarely applied to non-citizens.

Individual states' actual practice of managing migration is typically tied to controlling the movement of workers rather than to labor relations and standards. For host countries, this involves controlling access to their labor markets; for source countries it means ensuring a regular flow of remittances. Lacking any attempt to de-link the integration of the goods and capital market with the labor market, states will inevitably have to contend with the problematic and increasing human costs of migration. Under the current policy framework, delivery on human and labor rights standards is slow.

As a result, a private recruitment industry of enormous size has emerged in both host and source countries operating largely without regulation, charging excessive fees, and employing other practices akin to labor trafficking.

Given the size of intra-regional migration flows and the obstacles in setting-up a binding global governing system of migration, regional cooperation between host and source countries, as well as regional mechanisms, could be the way forward. In comparison to the EU, the much less-integrated Asian region has no binding multilateral agreements on migration. Instead, there are Regional Consultative Processes like the (discontinued) Manila Process, the Bali Process, the Colombo Process and the Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants. These consultations often focus on undocumented migration and trafficking from a ‘migration management’ perspective—meaning, the concern is with control of cross-border movements rather than with migrants’ human and labour rights—since these are issues where host countries consider regulation to be in their interest as well. These processes are informal and outcomes non-binding.

The first Ministerial Consultations for Asian Labour Sending Countries (the Colombo Process) were held in 2003, bringing together the first ten participating states (Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines, PRC, Sri Lanka, Thailand and Vietnam).

Supported by the International Organization for Migration (IOM), the process is informal and has since met in Manila, Bali and Dhaka in 2004, 2005 and 2011. Last but not least, the Abu Dhabi Dialogue, another ministerial consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia, brought together for the first time the Colombo Process countries with the GCC countries

The major document on migration in the region so far is the 2007 “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.” It lists a number of obligations for both source countries (promote and protect rights of migrant workers, ensure sustainable alternatives to migration) and host countries (protect the fundamental human rights, promote fair and appropriate employment protection). However, the declaration remains a non-binding instrument and some host countries continue to blatantly violate the principles and provisions formulated therein.

Given the weak protection systems in place, civil society—trade unions and migrant rights organisations—has a crucial role to play. It is therefore vital that regional mechanisms and forums establish channels of communication with, if not direct participation for, civil society.

Labor and migration policies have to be the product of social dialogue and tripartite consultations (that is, between government, employer and worker organizations) in order to address the current rights deficit in migration policy and the sidelining of social costs to families. Capacity building of civil society organizations involved in labour and migrant rights advocacy and organising is vital, and more attention by donors should be given to strengthening labor governance through collective activism. The 5th World Social Forum on Migration (WSFM) on the theme of “Rights, Mobility, Global Models: Looking for Alternatives” that is to take place in Manila, Philippines in November 2012 might provide more impetus for moves in this direction.

Source: <http://www.asiathways-adbi.org/2012/06/it-is-time-for-binding-agreements-on-migrants-rights-in-asia/>