

<p style="text-align: center;">NETWORK OF EAST ASIA THINK TANKS REGIONAL COOPERATION FRAMEWORK FOR MIGRANT LABOUR</p>

I. INTRODUCTION

Labor migration in East Asia is largely the result of rapid growth of market-led intra-regional migration.¹ The economies of Hong Kong, Japan, South Korea, Malaysia, Singapore and Taiwan require labour, and well over a million migrant workers – mainly from China, Indonesia, the Philippines, Thailand, Myanmar and Vietnam – leave their homes each year to work in these countries. Specific reasons include the large wage differentials, acute labor supply shortages in receiving economies and insufficient employment opportunities, especially for young and mobile workers, in source countries.² Host countries are also keen to take advantage of the flexibility provided by migrant labour to keep their industries low cost and competitive.

As the flow of East Asian migrants grows, increasing attention has to be paid to the problems of hosting migrant workers. For the sending countries, these problems relate mainly to the welfare of their nationals. These include payment of their wages and benefits, deplorable treatment in the workplace, poor living conditions and inadequate protection by the police and courts of law. Migrant workers are often accused of committing crimes in host countries but they are equally vulnerable to being victimised by employers and those in authority. Migrant workers have generally little information and bargaining power and are therefore unable to effectively prevent abuse and mistreatment.

For the receiving countries, the primary problem is the proliferation of irregular and illegal migrant workers. While this reflects the conscious choice of a segment of workers, it is no doubt compounded by difficult compliance requirements in host countries, inefficiency in the issue of travel documents on the part of source countries, and, importantly, the predatory practices of unscrupulous labour recruitment agencies and people traffickers.³ Irregular migrant workers constitute a grave security and social threat to receiving countries, especially where their numbers are large relative to the workforce and population, and it is imperative that ways be found to control them.

Against this background, the Network of East Asian Think Tank's (NEAT) Working Group on an East Asian Cooperation Framework for Migrant Labour met on 6-7 December 2006 in Kuala Lumpur, Malaysia. The Working Group proposed that ASEAN Plus Three countries formulate and adopt a cooperation framework that can act as a guide for bilateral agreements, as well as provide mechanisms for consultation and cooperation. The key components of the framework proposed by the Working Group follow.⁴

II. PRINCIPLES

1. East Asian countries should formally recognise the economic and social contributions of migrant workers to both the sending and receiving countries in the region.
2. Receiving countries have the right to determine and enforce the terms and conditions of stay of migrant workers in accordance with their national priorities and policies.

3. It should be recognised that migrant workers are vulnerable to exploitation due to their temporary status and are therefore in need of protection.
4. A regional cooperation framework must uphold the following rights of migrant workers and family members residing with them:-
 - Right to life;
 - Right to freedom from torture and inhumane treatment;
 - Right to freedom from forced labour, including debt bondage;
 - Right to freedom from indiscriminate incarceration and detention; and
 - Right to freedom of movement.
5. The framework should therefore lead East Asian host countries to formulate policies and enact laws to:-
 - Prevent the exploitation and abuse of migrant workers;
 - Provide for fair conditions of stay; and
 - Ensure a safe, healthy and harmonious working environment.
6. To the maximum extent possible, host countries should confer on workers from other countries the same legal rights as their own nationals.
7. Provisions for protection and fair treatment should be accorded to all workers, irrespective of whether they are foreign or national and regular or irregular.
8. Efforts should be made by receiving countries to promote appreciation and tolerance of, and respect for, migrant workers.

III. PROVISIONS

A. General

1. East Asian countries should promote economic restructuring and upgrading of their work force to minimise the numbers and the negative effects of migrant workers.
2. Source countries should provide migrant workers with information and training before they leave their countries. Host countries should provide them with counselling and advice centres during their service.
3. Social integration of migrant workers in host countries should be undertaken taken through language training, occupational training and civic education.

4. National laws and regulations of receiving countries should be harmonised wherever possible to ensure that there is consistency throughout the region.
5. With respect to domestic policy formulation on migrant labour, national governments should:-
 - Provide labour/human resource ministries with a key role in policy formulation and administration to ensure that economic considerations are taken into account;
 - Establish procedures to ensure that employers are also consulted in the policy formulation process;
 - Co-ordinate among relevant ministries, between central and local governments and with non-governmental organisations; and
 - Enforce the laws involving migrant workers in a safe and humane manner.
6. With respect to the regional cooperation framework, member governments should:-
 - Hold regular meetings of labour/human resource ministers to monitor the implementation of policies, co-ordinate programmes and tackle problems that arise;
 - Convene meetings of immigration ministers and their officials as and when necessary;
 - Arrange visits of officials to promote understanding of one another's requirements, regulatory institutions and measures and labour recruitment practices;
 - Establish a regional inter-governmental network to collect, share and disseminate information on migrant workers; and
 - Promote capacity building by sharing best practices in relation to protection and promotion of migrant workers' rights and welfare.
7. International organisations, dialogue partners and other countries should be encouraged to support and assist the implementation of the measures contained in this proposed regional framework.
8. Human resource development and re-integration programs should be established for returning migrant workers in sending countries.
9. East Asian countries should seek to sign and ratify the following agreements (if they have not already done so):-
 - ILO Migration for Employment Convention No. 97 (revised) of 1949
 - ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975

- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 1990.
10. The implementation of migrant worker policies should also be guided by international labour standards, in particular by ILO's Multilateral Framework on Labour Migration and its fundamental principles.

B. Protection and Fair Treatment of Migrant Workers

1. Migrant workers should be protected by national employment legislation which, among other things, specifies normal hours worked, overtime payment rates, rest days, annual leave, medical entitlement and retrenchment benefits (if any).
2. Specific policies for protection and fair treatment should include the following:-
 - Labour recruitment agencies in both sending and receiving countries should be regulated.
 - The employment contracts of migrant workers should be registered with the relevant government agencies in order to ensure greater uniformity and compliance.
 - Labour inspection should be carried out to monitor working and living conditions and ensure compliance with contractual obligations.
 - Migrant workers should also be covered by national occupational safety and health legislation, which sets out work conditions, entitlement to workers' compensation in the event of on-the-job injury or death.
 - Where the terms of their contract are breached, migrant workers should have access to the same labour arbitration and legal processes that nationals do.
 - Governments should intensify measures aimed at detecting and identifying abusive practices against migrant workers including physical or sexual harassment or violence, restriction of movement, debt bondage, forced labour, withholding, underpayment or delayed payment of wages and benefits, retention of passports or identity and travel documents.
 - Labour trafficking should be criminalised and heavy penalties should be imposed in both source and host countries.
3. Governments should provide effective remedies to violations of migrant workers' rights and create effective and accessible channels for migrants to lodge their complaints and seek remedy without discrimination and intimidation.
4. Migrant worker cases should be resolved in a just and timely manner. Governments should pursue employers for unlawful termination and non-payment of wages even after aggrieved migrant workers have returned to their home countries.

5. Non-governmental organisations that address migrant workers' issues should be enlisted to look after their welfare.

C. Control and Management of Irregular Migration

1. Governments should ensure that there is close coordination among enforcement agencies, particularly immigration and police, and with labour/human resource ministries.
2. Governments of sending countries should reduce the cost and time-consuming processes for their nationals to secure necessary travel documents.
3. Receiving countries should simplify administrative procedures involved in migration processes and reduce processing costs.
4. Governments of sending countries should adopt measures to prevent malpractices of labour recruiting agencies. This would include blacklisting negligent agencies.
5. Tighter preventive measures should be adopted as at the time of visa issuance and on arrival at ports of entry.
6. Efforts by host countries to manage irregular migrant workers should not lead to detection, detention and deportation practices that infringe their basic human rights.
7. In the event of human trafficking, strong legal sanctions should apply to the traffickers and not the migrant workers who are their victims.
8. Irregular migrant workers should have access to legal counsel.
9. Host countries should facilitate the work of consular officials from source countries when an irregular migrant worker is detained, in accordance with the Vienna Convention on Consular Relations.
10. Sending countries should assume greater responsibility for the advising and controlling their nationals who are seeking employment abroad.

Notes:

¹ Manolo Abella, "Labour Migration in East Asian Economies", Annual Bank Conference on Development Economics, World Bank, 2004

² Jones, G. "Cross-Border Labour Flows: Policy Issues, Options and Implications for Australia-Asia Relations", *Melbourne Asia Policy Papers No. 8*, March 2006.

³ *Ibid.*

⁴ Many of these recommendations are drawn from the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, 13 January 2007.