

SAFEGUARDING OF CAMBODIAN MIGRANT WORKERS IN THAILAND: FROM THE REGIONAL COOPERATION PERSPECTIVE

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ABSTRACT

Unbalanced economic development in Southeast Asia region has resulted in labor migration of people within and out of the region from the poorer states to the better-off states in recent decades. Cambodia has also experienced a large movement of its people to migrate and work in Thailand over the past twenty years. Majority of these labor migrants did not have legal documents to lawfully live and get employed in Thailand; hence, these unlawful migrant workers are characterized with irregular status and are not entitled to receive protection from the Thai governments. To address this issue, the “Association of Southeast Asian Nations” (ASEAN) adopted subsequent regional non-legal binding instruments, such as, “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers” in 2007 and “ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers” in 2017. However, these regional instruments have not achieved much progress to cater protection to migrant workers in the region, particular to Cambodian workers in Thailand due to its non-legal nature to make the “ASEAN Member States” (AMS) to redesign their policies on labor migration management in line with the regional instruments to effectively protect intra-ASEAN migrant workers. The paper argued that to effectively protect Cambodian migrant workers in Thailand, the sending states, particularly Cambodia, needs to firmly implement the regional instruments with close cooperation with and friendly coordination from the receiving state, Thailand. The study concluded that the active implementation of ASEAN instruments equipped the migrant workers with the knowledge to seek and receive protection in the receiving state, Thailand.

KEYWORDS: ASEAN, Migrant Workers, Cambodia & Thailand

1. INTRODUCTION

Migration is considered as common activities for people in the world. People often conduct migration throughout their life cycle with the pursuit of different purposes. Migration consists of movement of people both within and out of their country of origin, regardless of migration length and causes. Internal migration takes place within the place of origin while the international migration refers to people movement crossing the border from their home country to settle in another country (IOM, 2004). There were around 258 million international migrants which accounts for 3.4 per cent of the total population around the world in 2017 (IOM, 2018). In the Southeast Asian region, the number of international migrants moving from this region reached around 20.2 million in 2017, 6.9 million of whom were intra-regional migrants (Harkins, Lindgren, & Suravoranon, 2017). The most challenging issue of migration is concerned with irregular migration. The irregular migration is when people conduct migration without obeying the regulation of countries of receiving, destination, and transit. In other words, irregular migration is undertaken by people who do not have a necessary document to legally cross the border and enter another country (IOM, 2004). The number of total irregular migrants around the world was around 57 million. However, the exact official figure of these irregular migrants is rather difficult to capture owing to

hardship in assessing administrative data on immigration status, and the fact that migrants' status can shift (IOM, 2017). According to IOM, the majority of intra-regional migrants in Southeast Asia are in irregular category (Harkins et al., 2017).

Irregular migration has been expanding in size in some areas around the globe and is sometimes viewed by politician and publics as a threat to the state's sovereignty and the public security (Koser, 2007). In June 2014, some 250,000 Cambodian migrants returned from Thailand crossing the border to Cambodia after the Thai Government sought to arrest those migrants whose status was irregular while the majority of these Cambodia returnees held irregular status (Dickson & Koenig, 2016). The newly Thai military government, after taking power on May 22, 2014, announced to deport illegal migrants, having viewed these illegal migrant workers as a threat to the Thai's public security due to a large amount of illegal foreign workers reported working in Thailand (Campbell, 2014).

By 2011, Thailand accommodated 2.5 million migrants from its neighboring countries, 1.5 million of whom were irregular migrants. A large volume of these migrants was working in Thailand (Huguet, 2014). These migrant workers have contributed to economic development in Thailand through its relatively low labor cost which enables Thailand to partake in a competitive global market. These migrant workers have filled the labor force in Thailand's labor-intensive industries while the higher skill industries are filled by the Thai nationals (Bal & Gerard, 2017). Majority of these migrant workers were employed in low-skilled jobs and held irregular status (Testaverde, Moroz, Hollweg, & Schmillen, 2017). Migrant workers function as a significant driver for economic growth in Southeast Asia. However, their irregular status attributed by high costs, time-consuming, complicated legal migration channel exposed them to insecure working condition in Thailand (Harkins et al., 2017).

In 2013, there were around 1,116,000 Cambodian migrants overseas, some 750,000 of whom migrated to Thailand (ILO, 2015a). The main purpose to migrate abroad is to seek employment with a relatively higher wage. Thailand is a major labor-recipient country for Cambodian migrant workers who work in different sectors, namely, fishing, agriculture, livestock, construction, manufacturing, and services. However, the majority of Cambodian migrant workers in Thailand held irregular status because the process for regular labor migration was costly, lengthy, and complicated (ILO, 2018a; Harkins, 2019). Irregular migrant workers faced a number of challenges such as, abuse and denial of basic rights which are freedom of traveling and driving vehicle (Huguet, 2014). The other problems for irregular migrant workers were deception, threatening, physical exploitation, poor living condition, and arrest (Dickson & Koenig, 2016). Eventually, these irregular migrants were deported to Cambodia. Since 2009, thousands of irregular migrant workers were put on deportation back to Cambodia and the number reached 102,002 workers in 2012 (Baker, 2015). The figure hit its peak in June 2014 when approximately 250,000 Cambodian migrants returned from Thailand, with fear of being arrested during the political instability in Thailand (Dickson & Koenig, 2016). The number of irregular migrants residing and working in Thailand did not decline. By 2017, over 300,000 irregular migrant worker from Cambodian were reported working in Thailand (Sen, 2017). These irregular migrant workers faced their final destination of being deported back to Cambodia.

Considering elimination of the increasing number of irregular migrants from Cambodia and regarding labor migration management, the governments of Thailand and Cambodia jointly established bilateral mechanisms, primarily the "Memorandum of Understanding (MOU) on Employment of Workers" in 2003, "Nationality Verification" (NV), and "Regularization Process" in 2013 (Huguet, 2014). These bilateral arrangements did not manage to diminish the number of irregular migrants of Cambodian into Thailand due to the complicated, lengthy, and costly process of the MOU (ILO,

2018a; Harkins, 2019). In 2013, around 750,000 Cambodian workers migrated to Thailand (ILO, 2015a). In comparison to the total of approximately 7500,000 Cambodian migrant workers in Thailand, only 13,468 of those migrated through MOU channel to work in Thailand (MOLVT, 2014a). This indicated that the MOU channel was not preferred as the primary option for labor migration of Cambodian people. In addition, the other two additional bilateral mechanisms, the NV and Regularization Process, were assessed by the Thai Government as ineffective to tackle irregular migration (Harkins, 2019). In late 2014, the Cambodian Government created a working group consisting of officials from the concerned ministry, known as, “The Committee for Legalizing Cambodian Workers Residing and Working in Thailand” (CLCW) (MOLVT, 2014b). By mid-2018, the CLCW successfully provided legal documents, namely, “Travel Document” (TD) and “Overseas Cambodian Workers Cards” (OCWC) to 1.07 million Cambodian workers in Thailand (CLCW, 2018). These legal documents enable Cambodian workers to have regular status and have access to labor protection in Thailand.

The contribution of migrant workers to economic development in both receiving and sending country is undeniably significant. Therefore, these migrant workers deserve protection and access to fundamental rights in order to ensure decent work condition. As highlighted by a researcher of Thailand Development Research Institute (TDRI), there is a need for regional commitment to ensure the protection of migrant workers within the ASEAN region. TDRI illustrated that migrant workers faced difficulty to receive adequate social protection during their overseas employment; therefore, the need of inclusive social security for ASEAN migrant workers is vital (Mongkolsiri, 2019). The ASEAN Government have been committed to promoting the protection of migrant workers through a series of actions (Bal, 2017). ASEAN reached a regional instrument in 2007 with the adoption of “ASEAN Declaration of the Protection and Promotion of the Rights of Migrant Workers” or Cebu Declaration (ASEAN, 2007). The ASEAN set up “ASEAN Committee on Migrant Workers” (ACMW) in the same year to implement the Cebu Declaration (Thuzar, 2017). The ACMW created “ASEAN Forum on Migrant Labor” (AFML) in 2008 as an annual forum for deeper migrant labor discussion among stakeholders in the region (ILO, 2018b). The study examines the regional cooperation drawing from the case of Cambodia’s implementation of Cebu Declaration through active participation in the AFML with collaboration with other stakeholders with a purpose to protecting ASEAN migrant workers, particularly Cambodian migrant workers.

2. LABOR MIGRATION GOVERNANCE OF ASEAN

As noted above, ASEAN leaders have dedicated to promoting the protection of Cambodian migrant workers through various actions (Bal, 2017). The “ASEAN community” has realized the significance of labor migration in the region and the necessity of protection and promotion of the rights of this vulnerable labor force (ILO, 2018b). On January 13, 2007, the ASEAN Member States (AMS)’s heads of states jointly adopted the “ASEAN Declaration of the Protection and Promotion of the Rights of Migrant Workers” (Cebu Declaration), in Cebu, Philippines. The Declaration was made in the context of “Universal Declaration on Human Rights.” The general principle of the Declaration outlines the commitment of both sending and receiving states to uphold the social, economic and political pillars of the ASEAN Community by enhancing full potential and dignity of migrant labor in the environment of freedom, stability, and equity in according to the regulations, laws, and policies of respective AMS. In addition, both receiving and sending states shall firmly cooperate to resolve the cases of migrant workers who have eventually become undocumented by not their own mistake. Furthermore, the sending and receiving states shall uphold the fundamental rights and dignity of migrant labor and their households without weakening the application by the laws, regulation, and policies of the receiving states (ASEAN, 2007). However, the Cebu Declaration had no legal power to proves its effectiveness; therefore, the safeguarding of migrant

workers need additional instruments (ESCAP, 2018). Having drafted more effective regional instrument since 2009, ASEAN finally adopted “ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers” in 2017; however, the new instrument still contains its non-legal nature (ASEAN, 2017).

Based on the Consensus, migrant workers are entitled to keep their personal passport and original documents issued by the government and personal documents which are subject to regulation, laws, and policies of the receiving states. Migrant workers have rights to file their complaints and freedom of traveling in the receiving states, in accordance with the receiving state’ policies. In addition, migrant workers hold specific rights to receive information relevant to their employment, obtain employment contract and other related documents, enjoy fair treatment at workplace, have sufficient or suitable living places, receive suitable remunerations and benefits, have rights to use the available modes to transfer their earning and saving, and possess rights to participate in trade union and association, which are subject to receiving state’ national laws, regulation, and policies (ASEAN, 2017). Lack of legislative enforcement to bring the state’s national laws to be in conjunction with regional instrument acts as a barrier to the effective protection of migrant workers in the region. Several studies highlighted the hindrances to regional labor migration management were related to ASEAN’s embrace of the firm principle of state sovereignty respect, non-meddling in the of member countries’ internal affairs, consensus and consultation (Petcharamesree, 2016; see also Bal, 2017). Therefore, the ASEAN states design their labor migration management policies based on their domestic interests. Both Cebu Declaration and the Consensus rely on the ACMW as implementing organ on promoting and protection of the rights of migrant workers as indicated in Chapter 7 of the ASEAN Consensus (ASEAN, 2017).

The ACMW functions to form instruments of ASEAN concerning migrant labor’ rights, information of pre-departure for AMS migrant labor, jointly work with international organizations to endorse “safe migration” and pre-departure training for migrant workers. However, the ACMW has achieved relatively slow development to implement its mandate owing to issue sensitivity and deficiency of consensus among the members (Petcharamesree, 2016). ACMW set up the annual “ASEAN Forum on Migrant Labor” (AFML), assembling concerning stakeholders form governments, civil society, and international organizations to discuss problems relevant to migrant workers in Southeast Asia, and offer recommendations to the draft of the instrument (Thuzar, 2017). The AFML is the only recognized forum on migration in Asia which is implemented in a tripartite mode with additional participation from “civil society organizations” (CSO), with the purpose of discussion, experience sharing, and reaches an adoption of recommendation that upholds the provision of the Cebu Declaration (ILO, 2018b).

The recommendations of the AFML have been classified in eight groups such as (1) dissemination of information aimed at migrant workers and employers on regulation and requirements, costs of migration, rights and standards, condition of work and living, “occupational safety and health”, inspection of labor, and realities of migration, (2) effective regulation of migrant workers’ recruitment, (3) offering condition of decent work, (4) facilitation of access to legal and judicial system, and mechanism of redress, (5) effective strategies of reintegration and return, (6) campaigns of public education to enhance migrant workers’ perception, (7) data collection, sharing, and analysis of labor migration, and (8) multilateral and multi-stakeholder-based cooperation, collaboration, and exchange, including interventions in levels of region, sub-region, nation, and cross-sector (ILO, 2018b). Majority of these recommendations have been put into implementation by the ASEAN countries, particularly Cambodian to protect its nationals who currently work in other countries in the ASEAN region, Thailand in particular.

3. THE IMPLEMENTATION OF THE AFML'S RECOMMENDATION TO SAFEGUARD CAMBODIAN MIGRANT WORKERS IN THAILAND

The Cambodian Government has taken rigid actions to implement the recommendation of AFML which is the main organ of implementation of ASEAN Declaration and Consensus concerning safeguarding migrant labor of ASEAN. The AFML gain support from the International Labor Organization (ILO) through a project known as, "The Triangle in ASEAN." Triangle in ASEAN distributes services directly to migrant workers and their communities via a network of "Migrant Workers Resource Centre" (MRCs). Services of MRC are provided through connection with government institutions, "trade unions" and CSOs, and offer various services in sending and receiving countries (ILO, n.d.). Cambodian Government has integrated services of the MRCs through the National Employment Agency (NEA), which was created in 2009 (RGC, 2009). The MRCs offer space for workers to seek information concerning migration for employment, make inquiries, and file complaints. Counseling service is offered at the MRCs via outreach activities, meetings, online, and by the phone. Information is also distributed via local radio, television, job fair, and seminars on safe migration in schools, vocational training institutions, and in the community. Prior to migration, migrants are better aware of the risks and the potential benefit they will receive, which allowing potential migrant workers to make an informed decision of their upcoming migration. In the receiving countries, MRCs provide legal assistance to migrant workers who face abuse on their rights at work, function an accessible connection to the local authorities, and deliver training. A number of partner institutions, encompassing provincial job centers and labor departments, trade unions and civil society organizations, were engaged in the establishment and operation of the centers (ILO, n.d.).

To ensure safe and legal recruitment of migrant workers, according to the AFML's Recommendation, the Cambodia Government has established a number of legislative instruments to fortify governance of labor migration. These instruments have formed a framework for recruitment practice regulation, migrant workers' protection, and regular migration facilitation. Cambodian Government's Sub-Decree No. 190 and ministerial regulation No. 47 stipulate that recruitment firms shall not be sub-contract of their license, and they hold responsibility for pre-departure, during placement overseas, and repatriation of migrant workers. The recruitment firm must provide pre-departure training, and have a standing representative in the receiving country for ensuring the well-being of migrant labor. Recruitment firms must make a signed agreement with MOLVT, pay a guarantee deposit on the amount of US\$ 100,000, and prepare monthly semester, and annual report. (MOLVT, 2014a). On September 6, 2018, the Government issued an announcement of 72 private licensed recruitment firms with an operation to recruit, train, sending, and managing Cambodia worker in Thailand (MOLVT, 2018).

Regarding access to legal assistance for Cambodian migrant workers as highlighted in the AFML' recommendations, The Cambodian government adopted ministerial regulation no.249 concerning grievance process for a migrant worker in 2013, to offer a legal framework for establishing a grievance mechanism for Cambodian migrant workers. It illustrates the process of complaints and responsibilities and rights of the Labor Ministry, the provincial labor department, the complainants, and the respondents. By 2017, 501 grievance cases were resolved, involving 1,524 migrant workers, and a sum of US\$ 218,638 in compensation was awarded (Laws, Lautenschlager, & Baruah, 2017).

The AFML also emphasizes the critical role of labor attachés in the protection of migrant workers and has encouraged the AMS to persistently endorse their effective functions (ILO, 2015b). During the midst of exodus of Cambodian migrant workers from Thailand in June 2014, the Embassy of Cambodia set up three hotlines for Cambodian

workers, and also offered both irregular and regular Cambodian migrant workers with support and information. All call-in complaints and issues were accepted and taken care of by the Embassy. Moreover, the press in Thailand and Cambodia actively produced a report of the working and living situation of Cambodian workers in Thailand, contributing to promoting awareness of the situation of Cambodian workers in Thailand (ILO, 2015c).

Reintegration mechanism is significant for returning migrant labor for their incorporation into the labor market since they need assistance to get job placement or running a business (Testaverde et al., 2017). The AFML recommendations relevant to effective strategies and return and reintegration calls for return and reintegration policies and programs which are efficient, supportable, and informed by evidence and demand of the market, rights-based, sensitive to gender, and incentive-driven. The recommendations also emphasize the need for provision of legal assistance, psychological counseling, and repatriation help to distressed migrant workers (Laws et al., 2017). In Cambodia, returned migrant workers can receive service of gender-sensitive counseling, matching of skill, and placement of job form National Employment Agency. NEA-Battambang job center has been working to facilitate migrant worker to receive job information, job placement, counseling provision for safe migration, and financial education. The job center of Kampong Province and Kampong Thom Province works on intervention, provide basic financial literacy, provide job information, and promote understanding of safe migration. The private sector, Open Institute, introduce a platform for migrant workers when they want to seek for long-term job (ILO, 2017).

The AFML's recommendation also stresses the significance of promotion of sharing, collecting, and analyzing data of labor migration on a regular basis in the facilitation of the effective management of labor mobility in ASEAN. The AMS and ASEAN Secretariat in collaboration with the ILO, has formed the "International Labor Migration Statistic" (ILMS) database in ASEAN. The ILMS was inaugurated by the Malaysian Government at the 8th AFML. The ACMW made a commitment to provide constant support to upcoming rounds of data collection of the ILMS (Laws et al., 2017). The Cambodian Government has assigned a focal person for labor migration statistics (ILO, 2017).

Last but not least, the Recommendation of the AFML vitally called for local, national, and international multi-stakeholder involvement, cooperation, and collaboration in labor governance, policy development, provision of service, and exchange of information throughout the cycle of migration. Regarding multi-stakeholder engagement, the labor migration of policy for Cambodia was created through a number of tripartite plus consultation and the implementation of the policy also rest with multi-stakeholders (Laws et al., 2017). In addition, with respect to cooperation, Cambodian and Thai Government deepened the cooperative effort to protect Cambodian migrant workers through the revision of the MOU in 2015 (Olivier, 2018). In addition, the two Governments also cooperatively facilitate the provision of legal documents to over 1 million Cambodian irregular migrant workers in Thailand by mid-2018 through the direct operation of the Cambodian working group, known as "The Committee for Legalizing Cambodian Workers Residing and Working in Thailand" (CLCW), in Thailand (CLCW, 2018). These legal documents open the gate for Cambodian migrant worker to obtain labor protection from the Thai Government

4. CONCLUSIONS

Despite non-legal force of the ASEAN instruments to promote and protect the rights of migrant workers in the region, the active participation and implementation of the ASEAN Declaration and Consensus through its annual forum known as the ASEAN Forum on Migrant Labor (AFML) can, to some extent, enforce the protection of migrant workers in the region. The labor-sending states, particular Cambodia, in the case above. The active implementation of the AFML's

recommendation by Cambodia, as the labor-sending state, pave the way for access to labor protection for its workers in Thailand. In addition, the facilitation of operating the Migrant Workers' Resource Centers (MRCS) through the existing job centers equip the potential Cambodian migrant workers, migrant workers, and their family with knowledge of how to conduct safe and legal migration and the means to access legal aid during their migration experience.

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