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The “ASEAN Way” in Migration Governance

Rey P. Asis and Carlos L. Maningat

Introduction: Migration in the ASEAN Region

Southeast Asia is no stranger to large movements of people, as it was home to transnational labour migration mainly due to empire-wide sourcing of labour during the late nineteenth century and then the emigration of Chinese and Indian migrants up until the mid-twentieth century (Kaur, 2007, 2008). International migrant stock for Association of Southeast Asian Nation (ASEAN)¹ was recorded at 23.6 million in 2020, 13.44% higher than in 2015, and accounts for 8.4% of the 281 million total migrant stock (UN DESA, 2020). During the first year of the COVID-19 pandemic, overseas deployment sharply dropped in several ASEAN member-states, notably for the Philippines (−78%), Thailand (−64%) and Indonesia (−59%) (ABDI, 2022).

Various studies have pointed out that the uneven economic development and wage differentials across the region, aside from generally porous borders,

R. P. Asis

Asia Pacific Mission for Migrants, G/F, No. 2 Jordan Road, Kowloon, Hong Kong SAR

e-mail: reyasis@gmail.com

C. L. Maningat (✉)

Ecumenical Institute for Labor Education and Research, Inc, Quezon City, Philippines

e-mail: jo.maningat@gmail.com

contribute to increasing levels of migrant mobility among ASEAN countries (see Kaur, 2007; Kikkawa & Suan, 2019; Basir, 2019). Two principal migration corridors have been documented: the archipelagic ASEAN corridor and the Mekong sub-regional corridor. In the first, Malaysia, Singapore and Brunei are the major destination countries, importing workers largely from Indonesia and the Philippines. In the second, Thailand is the main destination for migrant workers from countries through which the Mekong River flows, specifically, Burma, Cambodia, Lao PDR and Vietnam (Kaur, 2007).

It is acknowledged that the vast majority of migrants, roughly nine out of every ten, searching for work within ASEAN are low-skilled or semi-skilled (Orbeta, 2013). Despite this, regional frameworks such as the ASEAN Economic Community (AEC) Blueprint only cover the flow of professionals and skilled manpower, and do not cover the much larger flow of unskilled and semi-skilled workers. As noted by Geiger (2015, 190), the governments in the region tend to be less welcoming towards low-skilled migrant workers, “who are subject to various restrictive policies pertaining to such activities as switching jobs, bringing families with them, or pursuing permanent settlement in the host country.” Skeldon (2009, 13) wrote that Asian economies “operate essentially exclusive immigration policies” which are different from those in Australia, Canada or the United States of America, while Lavenex and Piper (2022) use the ASEAN case as an example of a model wherein cooperation from “above” is least formalised, contrary to the top-down regional migration governance of the European Union and, to a certain extent, the African Union.

Migration patterns, particularly irregular migration, have led to most governments in the region endeavouring to exert tighter control over cross-border movements through national policies and bilateral agreements and by linking their security interests to the wider Asia Pacific region in the ASEAN Regional Forum (Kaur, 2007). Part of the irregular migration flows in the region is the movement of refugees: in Northern ASEAN countries where refugees from Vietnam, Cambodia, Burma and Laos settled in Thailand, and in Sabah, Malaysia where Filipinos fleeing the conflict in Mindanao in the 1970s sought refuge (see Battistela, 2002). Human trafficking remains a pressing concern, with more than 85% of victims trafficked within the Southeast Asia region with Malaysia and Thailand as leading destination countries (Luong, 2020).

The share of female migrants originating from Southeast Asia is close to 50%, which is higher than the global average (see also Bastia and Piper, this volume). Yamanaka and Piper (2005, 1) note that the traditional unequal gender ideology and hierarchy in the region “mediates between state

migration policy and global labour demands, thus producing employment opportunities and constraints that are segregated by sex.” Elias (2020) points out the lack of state support for social reproductive labour as among the reasons for the dependence of well-off households in the ASEAN region on live-in domestic workers who are mostly women. Female migrants in the region are highly vulnerable to widespread abusive practices, and generally work in the informal service economies of their destination countries often under unprotected and undocumented status. But there were some inroads for female migrant workers into the formal economy, mainly in the manufacturing where they could be paid lower wages compared to male workers, for instance in Singapore, Malaysia and Thailand (Kaur, 2007).

The “ASEAN Way” in Migration Governance: Disengagement, Decentralisation

Based on available literature seeking to decode the ASEAN approach in migration governance, two fundamental features can be identified. Firstly, there is disengagement from international commitments on migration and human rights, and secondly, decentralisation of recruitment in the migrant labour market. Such an approach places migrant workers, most especially those who are undocumented and in a very vulnerable and precarious situation, while at the same time creating a space for contestations from “below,” i.e. from civil society groups which seek to fill in the gaps or challenge the policy framework on migration.

Disengagement, Non-interference

While regional frameworks and numerous bilateral agreements on migration are already in place, Southeast Asian countries have, for a long time, exhibited a disengaged stance as far as entering into and enforcing legal instruments on migration and human rights are concerned. This attitude is reflected in the very limited ratification or concurrence with international instruments. For instance, Indonesia and the Philippines are the only two ASEAN countries which ratified the 1990 United Nations Migrant Workers Convention. As for the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, there are a limited number of countries that are signatories: Indonesia, Vietnam, Singapore and Thailand who signed most recently.

Notably, the 1967 ASEAN founding document did not touch on labour mobility, and it was only in 1995 that limited provisions on labour mobility were tackled under the 1995 Framework Agreement on Services (AFAS) (Lavenex & Piper, 2022). In 1966, the Principles of Bangkok on the Status and Treatment of Refugees were adopted, with a final version only affirmed in 2011 which are merely declaratory and non-binding and are merely aimed at inspiring member-states to enact national legislation (Moretti, 2016). In 2012, ASEAN ministers signed the Agreement on Movement of Natural Persons which is largely linked to investment and business flows to facilitate the temporary movement of highly skilled professionals. These provisions affect only a very small fraction of the total migrant flows as informal migration movements constitute more than half of the migrants flows in the region. Moreover, implementation has been poor (Jurje & Lavenex, 2018).

This reluctance on the part of Southeast Asian countries to enter into or enforce international, regional and multilateral instruments, frameworks and commitments on migration and human rights is rooted in the general ASEAN principle of non-interference. Corthay (2015) explains that one reason for this approach is the racial and cultural diversity among ASEAN countries, combined with the weak state structures and a lack of stable regime legitimacy: hence the policy of non-interference is intended to prevent the aggravation of conflicts. Acharya (2017) describes this preference for an explicitly non-legalistic, voluntarist mode of governance as the “ASEAN Way.”

Representing a departure from the absence of monitoring mechanisms in ASEAN (Nikomborirak et al., 2013), Member States adopted in 2007 the Declaration on Protection and Promotion of the Rights of Migrant Workers, which, ten years later, was revamped into the 2017 ASEAN Consensus on The Protection and Promotion of The Rights of Migrant Workers. But Piper and Iredale (2003) have noted that the Consensus only applies to legally resident migrant workers, and that it is much more limited than the 1990 UN Migrant Workers Convention. Again, the large irregular migration flows that exist in the region are left out in the discussion. Bal and Gerard (2017) provide a context on the negotiations for the document which resulted in an impasse, as Indonesia became the lone voice in asserting a binding declaration for migrant workers’ rights. Labour-recipient countries such as Thailand, Singapore and Malaysia registered their opposition to a legally binding instrument as migration is generally seen as a livelihood and a development strategy, a position which was later supported by the Philippines, albeit surprisingly.

In 2012, all Member States signed the ASEAN Human Rights Declaration, another non-binding agreement, which contains more protective

language than other major multilateral rights treaties as it notes that migrant workers’ rights “are an inalienable, integral and indivisible part of human rights and fundamental freedoms.”² In 2015, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) was adopted, although it only came into force in March 2017 after the Philippines became the sixth ASEAN Member State to ratify. The Convention exemplifies a criminalisation approach to trafficking, including mandating higher penalties for aggravating circumstances as well as specific penalties for participation in an “organized criminal group,” laundering “proceeds of crime” and corruption (Ramji-Nogales, 2017).

ASEAN Member States have also crafted Mutual Recognition Agreements (MRAs) as another instrument for skilled labour mobility in line with the liberalisation of trade in services. While framework agreements have been completed in specific areas such as engineering services, nursing services and architecture, permission to work is still subject to domestic laws and regulations which remain to be highly restrictive in many ASEAN countries (Huelser & Heal, 2014). Thus, MRAs constitute an additional but weak and non-binding layer of institutional migration governance which only affirms the generally disengaged stance of ASEAN countries. In place of formal arrangements, countries in the region also engage in regional consultative processes (RCPs) for working out regional-level responses to issues related to migration. Examples of these include the Colombo Process, the Abu Dhabi Dialogue, the Bali Process and the Global Forum on Migration and Development (Geiger, 2015).

Since regional migration flows are not governed by binding regional mechanisms and frameworks, host and origin governments ensure the signing of bilateral agreements and memoranda of understanding (MOU) on the movement of migrant labour. Kikkawa and Suan (2019) note that Thailand has a separate MOU with the governments of Cambodia, the Lao PDR and Myanmar, while Malaysia has MOUs with countries such as Indonesia. While numerous bilateral arrangements exist in the ASEAN region, these agreements generally leave out the core issue of migrant rights protection and are primarily focused on the procedures for regulating the flow of workers (Skeldon, 2009).

Decentralised Recruitment

Alongside the generally weak and voluntary modes of regional migration governance in the ASEAN region, relations between and among private

recruitment agencies, brokers, traffickers and employers have drastically flourished over the years. Goh et al. (2017) call this the “middle space” of migration that transcends statism, while Lindquist et al. (2012) refers to the “black box” of institutions, networks and people that move migrants from one point to another. Shrestha and Yeoh (2018) offered a nuanced take on the practices of brokerage and the making of migration infrastructures in Asia, moving away from the purely negative conceptions of migration brokerage under the mainstream crisis-centric narrative by taking into account shifting relations, complex historical temporalities and international labour and global migratory regimes.

It is important to note that there exists a paradox in the making of the middle space in migration or migration infrastructures particularly in South-east Asian countries. Peck and Tickell (2002) note that such deregulation of markets has been matched by renewed state intervention while Xiang (2008, 175) frames the contradiction as the “upward concentration of capital and downward outsourcing of labour and the tension between the dispersion/fragmentation of labour management and the centralization of migration control.”

On one hand, several states in the ASEAN region have taken steps to institutionalise mechanisms for the licensing of the growing number of private recruitment agencies, although the requirements involved vary per country. In Indonesia, the number of licensed recruitment companies grew from less than 50 in 1995 to around 500 recruitment companies in 2007, sending nearly 700,000 workers abroad annually (Xiang & Lindquist, 2014). On the other hand, informal brokers fill in the gaps and facilitate irregular migration flows as exemplified by *tekongs* (former migrants) in Malaysia and *calo* (labour brokers) in Indonesia who have established a network of contacts in destination countries (Battistela, 2022; Testaverde et al., 2017) (Table 31.1).

Table 31.1 Licensing requirements for recruitment agencies in ASEAN’s main sending countries

Licensing requirement	PHL	IDN	VNM	KHM	LAO	MMR
Minimum capital	X	X	X	O	X	O
Security deposit	X	X	X	X	X	O
Orientation	X	O	O	O	O	O
Employer accreditation/job order review	X	X	X	O	O	O
Representative abroad	O	O	X	X	O	O

Note X = the licensing requirement is present; O = the licensing requirement is not present; ASEAN = Association of Southeast Asian Nations; IDN = Indonesia; KHM = Cambodia; LAO = Lao PDR; MMR = Myanmar; PHL = Phillipines; VNM = Vietnam
Source Testaverda et al. (2017)

As pointed out by Lindquist et al. (2012), the relationship between licensed recruitment agencies and informal brokers constitutes a continuum rather than a dichotomy, with one functioning alongside the other. Profit-making recruiters for instance are accused of manufacturing irregularity by bypassing state regulations, imposing onerous debts on migrants that lead to debt bondage, deceiving migrants about the terms of employment and inflicting emotional or physical violence on migrants (Goh et al., 2017). Interestingly, Molland (2022) demonstrates that increased efforts to legalise migration channels did not lead to a decline or alteration of brokering services and dubious transactions, using the case of the commercial sex industry along the Thai-Lao border. In fact, it is suggested that transparent and deceptive recruitment co-exist and are characterised by asymmetrical relationships and patronage, and that “trafficking is taking place in the very same contexts that are deemed ‘safe’ by anti-trafficking programs” (Molland, 2022, 117). Young Lao sex workers are playing the role of “dilettante-brokers” as they recruit from their informal social networks upon their return. Others have also shown that increased regulation of migration flows can lead to increased vulnerability, as migration brokers, migrants and employers seek ways to circumvent what are perceived as onerous or unfair restrictions (see Yamanaka & Piper, 2006).

Testaverde et al. (2017) note that several ASEAN countries have used self-enforcement and public ranking of recruitment agencies as a tactic to improve the recruitment process—which is itself a form of labour market deregulation. This approach is underscored in no less than the 2018 UN Global Compact for Safe, Orderly and Regular Migration, which seeks to “enhance the “availability and flexibility of pathways for regular migration,” and to “facilitate fair and ethical recruitment and safeguard conditions that ensure decent work” as among its key objectives.³ Under the devolved setting, employment agents and recruiters on whom the placement of migrant domestic workers produce paperwork, bear risks and responsibilities and administer a “debt-financed migration regime” as particularly illustrated in Singapore (Goh et al., 2017). Recruiters and employment agents exercise functions in regulating worker mobilities—from control of entry, recruitment, health checks, placement, labour market segmentation, financing, training and repatriation, among others. As businesses, they also respond to forces of supply and demand, matching the needs of families for domestic services such as upkeep of the household, preparation of meals and care for children and elderly dependents (see Chee, 2020).

Aside from bearing the risks and regulatory functions, recruitment agencies and brokers consciously shape the image of the ideal migrant. Labour

export-oriented educational institutions in the Philippines, for instance, are complicit in reinforcing existing hierarchies, steering away students from academic pursuits and redirecting them to acquire technical skills and service work to fit the global labour demand in the service sector (Shrestha & Yeoh, 2018, citing Ortiga, 2018). In the realm of recruitment of domestic workers, recruitment agencies play a key part in creating the “ideal maid” and, in the process, construct women as submissive, docile non-citizen workers (Elias & Louth, 2016). In Elias’ (2020) discussion of the “labour brokerage” model, the labour-sending state accommodates the demands of the host state, ensuring outsourced regulatory functions of workers to guarantee a “quality product” in return for more favourable terms and conditions of work for its citizens.

Migration Policies in Labour-Sending and Labour-Receiving ASEAN Countries

Labour-Sending Countries

From the viewpoint of labour-sending ASEAN countries such as the Philippines and Indonesia, migrant labour has become an important means of addressing poverty and generating foreign exchange through remittances while providing an escape valve for unemployment pressures (Bal & Gerard, 2017). The state’s regulatory mechanisms are geared towards the facilitation of employment abroad, licensing of private recruitment agencies and pre-departure trainings. As succinctly put by Elias (2020), this labour brokerage model is about “states being able to continue to send low-cost workers abroad but without significantly challenging the exploitative terms on which this takes place” (p. 32).

The following section discusses the salient features of migration governance in Indonesia, the Philippines and Vietnam as key ASEAN labour-sending countries.

Indonesia

In Indonesia, the national government has moved from a lax approach to a more state-managed system through regulation of recruitment agencies and streamlining of recruitment processes. In 2004, it passed Law No. 39/2004 or the National Law on the Placement and Protection of Indonesian

Overseas Workers, which primarily centralised the placement and protection of migrant workers to the national government. At the same time, it devolved pre-departure activities such as training, completion of documentation requirements and enrolment in insurance programmes to private recruitment agencies. In 2006, the National Authority for the Placement and Protection of Indonesian Overseas Workers (commonly known as BNP2TKI) was established for the licensing of private recruitment agencies upon the issuance of Presidential Regulation No. 81/2006. Bal and Palmer (2020, 4) note that Indonesia’s labour ministry officials are in a “symbiotic relationship” with labour recruiters in order to promote the export of Indonesian labour overseas, using “overseas labour migration, and remittances earned, to offset their inability to generate meaningful employment and social protection for vast proportions of their citizens at home.”

In the years that followed, Indonesia’s move towards the decentralisation of migration governance to local government units contributed to the lack of coordination and clarity regarding jurisdiction and responsibility at the local level. This confusion and regulatory maze made more migrants resort to unlicensed agents to exploit loopholes and commit illegal practices (Ford & Lyons, 2013).

Philippines

Ahead of its ASEAN neighbours, the Philippines has passed major laws on migrants workers’ rights and has been often cited in existing literature as model for migration governance infrastructure, although gaps in implementation remain. As early as 1974, the country had already embedded provisions on overseas contract workers in the Labour Code. Provisions on overseas contract workers in the 1974 Labour Code was “seen at that time as a stop-gap measure to help arrest challenges in the economy, like the dollar shortfall and unemployment” (Dalupang, 2017).

In 1995, the country passed the Republic Act 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act, which has detailed provisions and penalties for illegal recruitment. This legislation was amended in 2009 through Republic Act 10022 to introduce the following key provisions: (1) recruitment and manning agencies are required to shoulder the insurance coverage of each migrant worker deployed; (2) forging of Bilateral Labour Agreements (BLAs) with receiving country is encouraged; the BLA will specify the rights and obligations of the countries regarding grievances and settling of claims and (3) state officials who facilitate the deployment of overseas Filipino workers (OFWs) to countries that do not guarantee

or follow international labour standards face dismissal from public service or disqualification from government appointments for five years (Orbeta & Abrigo, 2013). In December 2021, the country signed into law the Republic Act 116411 which created the Department of Migrant Workers. The Filipino migrants' alliance *Migrante International* (2022) has pointed out that the creation of the new department only further institutionalised the existing labour export thrust of the national government.

Private deployment agencies sit at the centre of the deployment management system in the Philippines, as they facilitate the biggest proportion of migrant workers. Except for government-to-government arrangements and a few name-hires (or those workers who have found employment without assistance from the government or from private recruitment agencies), deployment can only be undertaken through private recruitment agencies (Orbeta, 2013). Deployment is regulated through agency fees and employment standards, and through monitoring and redress.

The Philippine Overseas Employment Administration (POEA), which was established in 1982 and is currently under the newly created Department of Migrant Workers, reserves the privilege of recruiting and placing workers for overseas employment positions primarily through the licensing of private recruitment agencies and manning agencies. However, it does not prescribe a strict minimum wage for OFWs except for household service workers/domestic workers (Orbeta & Abrigo, 2013).

Vietnam

Labour export in Vietnam was originally encouraged under the *Doi Moi* policy (open door policy) through the principles of market socialism and multilateralism. It was carried out through centrally managed labour exchange and technical support programmes with European socialist countries and a number of African countries in the 1970s and 1980s. In the aftermath of the USSR's collapse, the country expanded its foreign relations in 1991 and began to commercialise labour export services by empowering the Ministry of Labour, War Invalids and Social Affairs (MOLISA) to manage the flow of the international labour population (Nguyen, 2014). During the same period, the government issued Decree 370 which established the mechanism for the licensing of recruitment agencies for deployment of workers abroad. Initially, labour export services were monopolised by state-owned enterprises or certain mass organisations, until it was expanded to include domestic private firms (Ishizuka, 2013).

In 2006, Vietnam’s national assembly passed the Law on Vietnamese Guest Workers under Contract which stipulates the rights and obligations of enterprises sending workers abroad under contracts. The law sets requirements and conditions for the licensing of recruitment enterprises, and outlines the responsibility of enterprises in case the worker dies or suffers from occupational accidents or abuse, among others (Nguyen, 2021). However, the legal framework only refers to protection of migrant workers under contract, and does not stipulate interventions for undocumented migrant workers.

Labour-Receiving Countries

Among ASEAN countries, Singapore and Malaysia stand out as net labour-receiving countries and have varied approaches in their governance frameworks for migrant labour. As described by Malaysia is “somewhat more generous” as it provides some forms of social security to migrant workers compared to Singapore which has no social security coverage at all to temporary migrant workers. Various authors have also pointed out that Singapore’s immigration strategy is aligned with its national development strategy unlike in Malaysia (see Kaur, 2007; Orbeta et al., 2013). In terms of similarity in approach to migrant workers, both countries employ low-skilled migrant workers in specific sectors such as construction, manufacturing, service sectors and as household workers, on a transient basis (Bal & Gerard, 2017).

Singapore

Singapore’s foreign labour policy is two-pronged, consisting of unrestricted inflow of foreign talents and professionals and managed inflow of foreign low-skilled labour through the use of work permits, worker levies and other criteria (Orbeta et al., 2013). Augmentation of the national labour force with migrant labour is explicitly stated as a key element in the country’s economic plans and policies (Kaur, 2007).

The Employment Agencies Act, which was passed in 1958, governs the rules on the recruitment and placement of migrant domestic workers by employment agencies. The law was amended in 2011 to introduce stricter regulations on employment agencies, including the need to put up a security deposit for large employment agencies and publication of an employment agency’s performance indicators on the Ministry of Manpower’s website (Goh et al., 2017). Meanwhile, employment entry requirements are contained in

the Employment of Foreign Workers Act signed in 1990 and which features a two-tier framework for admission of migrants. The first component is the Employment Pass for professionals and skilled migrants, and the other one is the Work Permit for less-skilled foreign workers. While skilled workers are entitled to subsidised healthcare, education and housing, migrant workers in the work permit category are excluded from social protection coverage and their employers are required to post a security bond (Kaur, 2007).

Malaysia

While Malaysia is both a sending and receiving country, it is considered a net receiver due to its dependence on contract migrant workers (Orbeta et al., 2013). It is also confronted with the challenge of large numbers of irregular migrant workers within its borders, owing to the fact that it had no mechanism for the legal recruitment and employment of low-skilled workers up until 1992 (Orbeta, 2013). As noted by Hickey et al. (2013), Malaysia's framing of migration and the influx of irregular migrant workers in particular as a national security problem has led to many cases of abuse and maltreatment, and has been the subject of growing criticisms domestically and by the international community.

Regulatory legislation and governance of foreign workforce distinguishes migrants as “pegawai dagang” or expatriates, and *pekerja asing* or foreign contract workers. There are correspondingly two types of employment-related work permits or work visas, namely an employment or work pass (Pas Penggajian) for expatriates, and a work permit or contract worker pass (Pas Lawatan Kerja Sementara) or visit pass for the temporary (contract) employment of less-skilled workers, including domestic workers (Kaur, 2008).

The Role of Civil Society in Migration Governance

Country-level frameworks in migration governance, which for the most part focus on regulating the licensing of recruitment agencies for labour-sending countries and that which regulate the inflow of low-skilled migrant labour for labour-receiving countries, have left wide gaps for civil society organisations (CSOs) to intervene. Interventions and engagements by civil society groups and migrants' organisations take the form of advocacy work for improved migration governance frameworks at the international, regional and national levels, stronger regulation of recruitment agencies, provision of

support services to migrants suffering from poor treatment and other rights violations and organising of migrant workers and support groups.

As a whole, Asia has been home to vibrant civil society space engaged in migrant rights activism (Lavenex & Piper, 2022), with Southeast Asian migrant CSOs and transnational social movements playing a notable part in calling out abuses of migrant workers. As noted by, ASEAN non-state actors, CSOs and transnational social movements in the region can invoke international law and use it “to name and shame actors who mistreat migrants.” At the regional level, the Solidarity for Asian People’s Advocacy (SAPA) Task Force on ASEAN and Migrant Workers, which was formed in April 2006, united various civil society groups in lobbying the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). Bal and Gerard (2017) noted that the task force was linked to focal points with domestic CSOs, which include TWC2 (Transient Workers Count Too, Singapore), Tenaganita (Malaysia), Federations of Trade Unions, Burma (Thailand), and with regional networks as well such as CARAM-Asia (Co-ordination of Action Research on AIDS and Mobility). There are also sub-regional trade union councils which work with migrant networks to call for the suspension of trade benefits contained in regional trade policies which are detrimental to workers’ rights, while “network of networks” work to concretise protection of migrant workers and their families (Lavenex & Piper, 2022). Gerard (2014) notes however that civil society engagements in ASEAN-established channels have limitations, as CSOs are required to go through affiliation and with the continued lack of institutionalised political participation.

Outside formal and established channels for CSO advocacy, migrant workers are organising themselves to seek changes in the migration policies both in the host country and their country of origin. Exercising their agency, Southeast Asian migrants have been very active in a broad range of advocacy work for rights protection and in challenging unjust policies. For advocacy organisations, the Philippines has served as a model given the depth and breadth of migrant rights advocacy efforts (Chavez & Piper, 2015). This stems from the long history of vibrant social movements and migrant worker activism in the country (Piper & Rother, 2021). Transnational Filipino migrants’ alliance Migrante International has actively opposed and criticised the Philippines’ systematic brokering of migrant workers while assisting distressed overseas Filipino workers and their families.

Piper (2010) lists the expressions of migrants’ rights claims in various campaigns and contexts, from the “right to be paid” campaign by Tenaganita

in Malaysia, to one-day off and opposition to impending wage cuts by South-east Asian migrants in Hong Kong, the regulation of recruitment agencies in the origin countries and campaigning for the rights of migrants' families in the Philippines. In the case of Indonesia, the preoccupation of immigration officials with enforcement issues in regulating borders has left gaps on providing legal services and other assistance to migrants, which are being filled by churches, trade unions and NGOs, functioning as components of the state migration management model (Ford & Lyons, 2013).

Regional advocacy networks have taken on the crusade for fair and ethical recruitment of migrants by private enterprises which is reflective of the emphasis in the agenda of international organisations such as the International Labour Organisation (ILO) and the International Organisation for Migration (IOM). More recently, these international organisations have advocated licensing, regulating and incentivising ethical recruitment in the industry (Gordon, 2015; Jones, 2015; Tayah, 2016). For instance, the IOM is promoting the International Recruitment Integrity System (IRIS), which focuses on developing an accreditation framework for recruitment, while the ILO has a multi-stakeholder Fair Recruitment Initiative. More concretely, the UN Global Compact for Safe, Orderly and Regular Migration lists among its objectives the facilitation of fair and ethical recruitment to ensure decent work.

Elias (2020) sees a dilemma in advocating both for migrant workers' rights and for more ethical standards in the recruitment of migrant workers, noting that the "search for practical solutions to migration governance that uphold the labour brokerage model perpetuates a dehumanising model of migration in which the migrant worker is seen largely as product" (p. 24). The Open Working Group on Labour Migration and Recruitment has also acknowledged the limits of such model, as solutions to recruitment enable the private enterprises' profit motive and the state's desperation to deploy workers abroad.⁴

Conclusion

Unlike the European Union (EU) which has been characterised as a regional migration regime, ASEAN demonstrates a disengaged and decentralised framework for migration governance wherein a host of actors—from country-level policymakers and regulators to private sector recruitment agencies and civil society groups fill in the gaps. While the ASEAN adopts the human rights framework in its declarations and multilateral engagements related to

migration, it does little in following up on the commitments of its member-states in line with its time-honoured principle of non-interference. Such stance has left a huge space for contestations and engagements from below, although formal channels for CSO engagement remain limited and selective. Civil society groups and transnational networks have for the longest time engaged ASEAN member-states in established platforms, although the results have only manifested in the language of declarations while decisive ASEAN action on the refugee crisis, sex trafficking and issues related to labour conditions of migrant workers in the region have yet to materialise.

At the national level, the labour brokerage model stands out as the common feature across the Southeast Asian region, with regulatory mechanisms treating migrants as labour for export-import. Labour-sending countries merely facilitate the deployment of overseas workers mainly through licensing of recruitment agencies and bilateral agreements while labour-receiving countries tap migrant workers for both professional and low-skilled jobs, albeit with different sets of discriminatory migration policies. Quite interestingly, informal brokers (“tekong,” “calo” and fixers) exist alongside formal labour brokerage channels as workers try to circumvent migration policies and regulations all in the name of seeking better opportunities abroad. Intrinsic in the labour brokerage model is the outsourcing of risks and responsibilities by state instrumentalities to private recruitment agencies, informal brokers and loose social networks, and here lies the problem as far as accountability over abuses is concerned.

Southeast Asian migrant workers, who are the primary stakeholders in the complex migration governance ecosystem, are asserting their voice in various spaces to influence policymaking and to pressure governments to act on their demands. However, their meaningful participation in established ASEAN platforms and channels have yet to be institutionalised. There is a need to reflect on the current migrant rights advocacy in the region, with the aim of leveraging engagements to truly empower migrant workers and raise their capacities to organise and lobby for significant reforms.

Notes

1. The Association of Southeast Asian Nations, or ASEAN, is the regional organisation of 10 member-states in Southeast Asia, namely Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. It was established on 8 August 1967 in Bangkok, Thailand with the signing of the ASEAN Declaration.

2. ASEAN Human Rights Declaration, <https://asean.org/asean-human-rights-declaration/>.
3. UN Global Compact for Safe, Orderly and Regular Migration, https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf.
4. Policy brief on ethical recruitment, written based on contributions of the Open Working Group on Labour Migration and Recruitment, <http://mfasia.org/migrantforumasia/wp-content/uploads/2017/01/5-Policy-Brief-Support-for-Ethical-Recruitment.pdf>.

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