

International Standards & Good Practices concerning Protection of Migrant Workers Applicable in the ASEAN Region

(ASEAN INTER-PARLIAMENTARY ASSEMBLY

Seminar on

The Role of Parliamentarians on the Protection and Promotion of the Rights of Migrant Workers in ASEAN)

Tim De Meyer

Senior Specialist on International Labour Standards and Labour Law

ILO Decent Work Team for East Asia, South-East Asia and the Pacific, (DWT Bangkok)

Overview

- International Labour Organization, International Labour Standards and Decent Work
- International labour standards on migration for employment
- What is the role of Parliamentarians ?

Part I

International Labour Organization, International Labour Standards and Decent Work

International Labour Organization (ILO)

- (UN-associated) Organization of Governments, Employers and Workers from 183 countries
- Mandate to promote **social justice & fair globalization** through **decent work**
 - Declaration on Social Justice for Fair Globalization, 2008
 - Declaration on Fundamental Principles and Rights at Work, 1998
 - ILO Constitution, 1919

Decent Work for Citizens & Migrant Workers (MW) alike

- 4 Decent Work pillars
 - Productive and freely chosen employment
 - Protection against income uncertainty
 - Participation in labour market decisions through social dialogue mechanisms
 - Respect for human freedom and dignity at work

Fair Globalization

- globalization can only be **fair** and **sustainable** if
 - it increases opportunities for decent work in **home** and **host** countries alike
 - income from labour can keep pace with income from other productive assets (capital)
 - income from labour of MW is not allowed to undermine income from labour of citizens
 - because MW work is valued differently from citizens' work
 - because irregular migration for employment is tolerated
 - because trafficking of persons is tolerated

International Labour Standards

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graph TD; A[International Labour Standards] --> B[Conventions]; A --> C[Recommendations];
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■ Conventions

- If ratified, they are binding under *international law*
- If not ratified, they influence national law & policy
- **Protocols** may only be ratified together with their Convention

■ Recommendations

- Same authority as Conventions
- Not open to ratification
- Guidelines or higher standards

International Labour Standards

- Since 1919, 188 Conventions & 200 Recommendations
- 76 C, 76 R and 5 Protocols are **up-to-date**
- 8 **fundamental** C. to be universally ratified by 2015
 - freedom of association and collective bargaining (2)
 - elimination of forced labour (2)
 - abolition of child labour (2)
 - elimination of discrimination at work (2)
- 4 **governance** C. – ILO ratification campaign
 - employment policy
 - labour inspection (2)
 - tripartite consultation

Fundamental Conventions as of 1 April 2011 / ILO:183 Member States

Year	No.	Official Title	Ratifications
1930	29	Forced labour	(174)
1948	87	Freedom of Association and Protection of the Right to Organise	(150)
1949	98	Right to Organise and Collective Bargaining	(160)
1951	100	Equal Remuneration	(168)
1957	105	Abolition of Forced Labour	(171)
1958	111	Discrimination (Employment & Occupation)	(169)
1973	138	Minimum Age	(158)
1999	182	Worst Forms of Child Labour	(173)

<i>(C. in force)</i>	29	87	98	100	111	105	138	182
Brunei (1)								2008
Cambodia (13)	1969	1999	1999	1999	1999	1999	1999	2006
Indonesia (18)	1950	1998	1957	1958	1999	1999	1999	2000
Lao PDR (8)	1964			2008	2008		2005	2005
Malaysia (14)	1957		1961	1997		x	1997	2000
Myanmar (19)	1955	1955						
Philippines (34)	2005	1953	1953	1960	1953	1960	1998	2000
Singapore (20)	1965		1965	2002		x	2005	2001
Thailand (15)	1969			1999		1969	2004	2001
Viet Nam (18)	2007			1997	1997		2003	2000

	29	87	98	100	111	105	138	182
China (1919 / 25)				1990	2006		1999	2002
RoKorea (1991 / 24)				1997	1998		1999	2001
Japan (1919 / 48)	1932	1965	1953	1967			2000	2001
United States (1934 / 14)						1991		1999
India (1919 / 43)	1954			1958	1960	2000		
Brazil (1919 / 95)	1957		1952	1957	1965	1965	2001	2000
Russia ('34&'54 / 65)	1956	1956	1956	1956	1961	1998	1979	2003
Canada (1919 / 30)		1972		1972	1964	1959		2000

Governance Conventions as of 1 April 2011 / ILO:183 Member States

Year	No.	Official Title	Ratifications
1947	81	Labour Inspection	(142)
1964	122	Employment Policy	(104)
1969	129	Labour Inspection (Agriculture)	(51)
1976	144	Tripartite Consultation (International Labour Standards)	(128)

	122	81	129	144
Brunei				
Cambodia	1971			
Indonesia		2004		1990
Lao PDR				2010
Malaysia		1963		2002
Myanmar				
Philippines	1976			1991
Singapore		1965		2010
Thailand	1969			
Viet Nam		1994		2008

	122	81	129	144
<i>China</i>	1997			1990
<i>RoKorea</i>	1992	1992		1999
<i>Japan</i>	1986	1953		2002
<i>U.S.</i>				1988
<i>Canada</i>	1966			

“Technical” Migrant Worker Conventions as of 1 April 2011 / ILO:183 Member States

Year	No.	Official Title	Ratifications
1949	97	Migration for Employment (Revised)	(49)
1975	143	Migrant Workers (Supplementary Provisions)	(23)
1997	181	Private Employment Agencies	(23)
1990		International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 = 44 ratifications + 15 signatures	

Part II

International Labour Standards on Migration for Employment

4 categories

- International labour standards generally
- Fundamental standards
- Governance standards
- Standards specifically on protection of MW
 - protection throughout the migration process
 - social security

1. ALL IL Standards Apply

- All ILO C. and R. adopted to date cover nationals and non-nationals alike ...
- ... but do not impinge on the sovereign right of States to regulate access to the territory, or to the national labour market
 - C. 111 – nationality is not automatically prohibited as a ground to deny equal treatment or opportunity

All IL Standards: Examples

- Once a person gets to work in a country that has ratified **minimum-wage** fixing standards (e.g. C. 131), (s)he is entitled to the same minimum wage as national workers
 - regular and irregular migrant workers
- In a country that has ratified C. 183 (**maternity protection**), to e.g. same protection against pregnancy testing, benefits as citizen workers
 - regular and irregular MW
- In a country that has ratified C. 95, not to be **paid** entirely in kind if citizen workers have to be paid partially in cash
 - regular and irregular migrant workers

Immigration & Work Permission

- IL standards do not compromise the right of sovereign States
 - to admit or refuse a non-citizen entry into the territory
 - to issue / renew residence or work permits
- Yet, there are recommendations

Immigration & Work Permission

- max. 2 years lawful residence : free choice of employment, except State interest (Art. 14 (a) C143, para. 6, R151)
- > 5 years residency: application for citizenship should be permitted (para. 51 R100)
- consider family reunification for regulars (Art. 13 C143)
 - family = spouse & dependent children, wider under UN MWC
- termination of employment for regular MW
 - should be under same conditions as for citizen workers
 - should not imply automatic loss of residence / work permit (Art. 8 C143)
 - if loss implied, then sufficient time should be given to find alternative job
- expulsion order should be subject to appeal

2. FHRW: Regular & Irregular MW

- Fundamental principles & rights at work apply to nationals, regular & irregular migrant workers
 - freedom to collectively defend & further work-related interests (right to organize, bargain collectively, strike)
 - freedom from coercion at work (the right to be protected against forced labour)
 - freedom from child labour
 - freedom from discrimination on the basis of race, colour, sex, religion social origin, national extraction and political opinion (but not nationality)
 - State may deny access to labour market to people from another country but may not tolerate distinctions based on race or sex
- Note importance for ASEAN States negotiating the Trans-Pacific Partnership Agreement (TPPA)

2. FHRW, MW & ASEAN: Issues

- FoA / CB
 - ability to join or set up unions or stand for union office
 - irregular MWs – ability to get assistance from unions
- Forced labour
 - restricted movement aided by seizure of ID documents and tight restrictions on changing employers
 - debt bondage by private recruiters and abuse during pre-migration orientation
 - trafficking
- Discrimination
 - “feminization of migration”
 - “shading” – differential treatment between MWs
- Child labour

3. Governance Standards

- Employment Policy C. 122 & R. 169
 - migration policy is a part of a coordinated employment policy
 - must not lead but follow employment policy
 - requires action against exploitation of MW
- Labour Inspection C. 81 & C. 129
 - labour inspectors' primary duty is to promote compliance with labour law – simultaneously having to enforce immigration laws interferes with this primary duty

4a. Protection IL Standards

- Articulate a number of migrant workers' rights multilaterally, irrespective of reciprocity
- Instruments
 - **No.97** Migration for Employment Convention (Revised), 1949
 - No. 86 Migration for Employment Rec. (Revised), 1949
 - **No.143** Migrant Workers (Supplementary Provisions) Convention, 1975
 - No.151 Migrant Workers Rec., 1975
 - No.100 Protection of Migrant Workers (Underdeveloped Countries) Rec., 1955

4a. Protection IL Standards

- C. 97 – standards to protect regular MW throughout migration cycle
 - equal **treatment** for conditions of work
 - R. 85 contains a model bilateral or plurilateral agreement with details for protection
- C. 143
 - combat irregular migration flows and principle of human rights protection for irregular MW
 - equality of **opportunity** for regular MW

4a. C. 97 – Equality of Treatment

- Equality of treatment between migrant workers & nationals as regards laws & administrative practices on
 - Living and working conditions, e.g.
 - paying foreign domestic helpers less than national domestic helpers or national workers in comparable job categories
 - (indirectly) imposing a levy on employers which results in lower wages because employers deduct the levy
 - Social security, e.g.
 - requiring seven years of residence before a migrant worker can enjoy access to any public health-care services
 - Employment taxes
 - Access to justice, legal proceedings

4a. Protection IL Standards

- Private Employment Agencies C. (No. 181)
 - employers, NOT workers should pay for recruitment, except in well-defined cases
 - law must be clear as to who is employer
- HIV and AIDS R. (No. 200)
 - MW not to be excluded from migration on the basis of real or perceived HIV status
- (ILC 2011) C & R on Domestic Workers

4b. Social Security

- to establish the right to **equality of treatment** between nationals & non-nationals in the field of social security
 - C. 19 – Malaysia, Thailand: lawfully working MW do not receive employment injury benefits similar to nationals
- to institute an international system for the **maintenance of acquired rights and rights in the course of acquisition** for workers who transfer their residence from one country to another

- Ratifying international instruments
 - multilateral
 - bilateral
- Aligning national legislation to international instruments
- Ensuring direction & funding for a coordinated employment policy in which migration policy is embedded
- Making sure that justice is administered to address exploitation of MWs
- Mobilizing public opinion, e.g. on the contribution MWs make to the national economy
- Acting on the international scene

Part III

What is the role of
Parliamentarians ?

ILO Multilateral Framework

- ILO Multilateral Framework on Labour Migration
 - non-binding principles and guidelines for a rights-based approach to labour migration
 - developed by independent migration experts in 2005 and endorsed by the ILO Governing Body in May 2006
 - supported by a good practices database (<http://www.ilo.org/dyn/migpractice/migmaint.home>)