

Small group discussion: Mapping the impact of key changes in migration policies and issues

Group 1: What are the key changes for migrants in terms of exercising their rights?

Facilitator: Pranom Somwong (Network of Action for Migrants in Malaysia)

The group discussed the following changes in terms of migrant rights:

- Increased access to education, health care, birth certificates
- Recognition of irregular migration by GMS governments, including legalization processes, implementation of MOUs, e.g. Nationality Verification process
- Cambodian labour migration policy (2010)
- MOUs between Thailand and neighboring countries
- Prakas 108: right of migrants to information at pre-departure, Cambodia
- More migrant associations in Thailand actively working with their communities, e.g. WSA in Chiang Mai, Women's Exchange along Thai-Burma border, Yaung Chi Oo in Mae Sot, Women's Empowerment Association in Phang Nga, Arakan Labour Union, Burma Labour Solidarity Association, Joint Action Committee for Burmese Affairs
- More workers taking cases to court, more access to justice in Thailand and Cambodia
- Small changes in mobility and movement, access to bank accounts
- Key non-change: working and living conditions, including workers not earning living wages

Group 3 raised a question to conference participants, as to whether these changes to migrant rights are a result of policy change, or against policy changes.

Discussion: Below is a summary of the open discussion following Group 3's presentation on changes in migrant rights.

Access to justice for migrant workers: A participant from Cambodia asked for examples of successful or unsuccessful legal cases. In response, a participant from Thailand responded with a description of legal cases in Thailand. He reported that over 100 cases brought to court, some completed, and others in progress. He gave an example of a case in which the plaintiff was awarded 100,000 baht, but actually received only 50%. According to the participant, migrant workers in Thailand have more access to the justice system, e.g. through hotlines, but sometimes they are stuck in negotiation or facilitation by the labour protection department. Another participant from Thailand said that access to justice is similar between Migrant workers and Thai workers, with employers becoming increasingly savvy. She recalled that, in the first cases taken up by the MAP

Foundation, there was more compensation, but as employers become more knowledgeable, they often declare bankruptcy as a way to avoid paying compensation. Another participant, also from Thailand responded by saying that access to justice in Thailand cannot be considered better than before, since exploitation of workers has multiplied. While noting that courts have decided that employers have to make payments, many employers use legal loopholes to avoid doing so.

Changes as a result of private and non-profit sectors: Another participant from Thailand wanted to move the discussion beyond policy changes to include broader economic changes, such as Border Economic Zones. He further commented that though the impact of changes in the past ten years, particularly in regard to Border Economic Zones, is difficult to see, we can expect that such intensive investments will assert a downward pressure on workers rights. Another participant commented that much of the increased access to services has been through the private and NGO sectors, not through policy changes.

Group 2: Gains and setbacks in terms of access to services

Facilitators: Tuyet and Noriko

Group 2 presented the following notes from their discussion:

	Gain	Setbacks
Education	<p>Policy change in Thailand: children of migrants are allowed to attend government schools</p> <p>China: in the past, children of mobile workers could not use their ID card to go to school in new location; now they can attend school in new location; migrant worker (MW) children from Burma, Laos, Vietnam, etc, can also attend public school</p>	<p>Thailand: Policy level change, but there is not always a school to go to (lack of implementation/capacity)</p> <p>Age of MW children might be older, sometimes rejected</p> <p>School fees are over financial capacity of MW</p> <p>Lack of sufficient documents is still a challenge</p>
	Vocational training (i.e. Vietnam, for internal MW)	People are taught about their job, but not about labour rights
	Pre-departure training (i.e. Cambodia for domestic workers)	

Migration process	Cambodia: reduction in costs of passports for MW	Takes a long time to issue (3 months), only one location
	From Vietnam to Cambodia or China, they can use a 'daily pass'	
Healthcare	China: Mobile workers can access basic health care in other places	
	Thailand: migrant health insurance Some NGOs have had success in trying to convince hospitals to have a MW interpreter (use money from migrant health insurance), and provide MW language radio programs with information about health and other services/rights Policy for vaccination of children under 6 years old, but not everyone knows this (mobile health workers are useful for this to reach community)	Thailand: Not for serious accidents or illnesses; limited ARVs and no shelter for HIV positive MW can buy health insurance, but not dependents
	China: For HIV positive MW, 150 Yuan of welfare	
		Many destination countries: refused a work permit if they have HIV (i.e. Malaysia and Korea require test); Cambodia tests for it before allowing for migration-
Legal Justice System	NGOs provide some help in Korea, Thailand	Many countries, MWs are already considered 'illegal'

		so they are considered outside the legal system
		If MWs have conflicts with the employer, they may lose their legal status
		Mechanism for complaint: MWs don't know who to contact
Support for Integration (host countries) and Reintegration	Cambodia provides some language training before migration	
		Vietnam: MW children can become stateless in their parents' country, when they return to Vietnam if they are born abroad
		Lack of birth certificates for migrant children going home
		Agents (authorized and unauthorized) give unrealistic or incomplete information to MW
		Lack of saving schemes/services, and no training for returnees

Group 3: Identify gaps and limitation of policies

Facilitator: Jackie Pollock

Group 3 provided the following notes from their discussion:

- Policies do not deal with protection of incoming migrants, rather the current focus is on developing policies as “Sending Country,” “Country of Origin,” or “Exporting Migrants” rather than as a “Receiving Country,” or “Destination Country”
- Lack of long-term migration policies
- Lack of policies to address permanent settlement
- Failure to effectively implement of migration policies in place (Monitoring, Inability to access services, Enforcement of Laws)
- Nationality Verification Process is not practical (delays, migrants not given information, costs)
- GMS –lack of recognition of mixed migration (refugees, families migrating together, workers, development/disaster/climate refugees)

- An overemphasis on extreme forms of exploitation (trafficking), without addressing the pervasive forms of exploitation that are the root causes of trafficking
- Certain sectors of workers lack recognition under the law
- The periods for permission to work according to MoU (after 4 years migrants must return to their country for three years) is unrealistic for migrants (migrants will want to stay); it encourages irregular migration, and lacks recognition that workers gain skills
- Lack of recognition of stateless people (i.e. dealing with nationality of migrant children)
- No protection of social and cultural rights; lack of attention to social and cultural integration

Secondary issues:

- Lack of attention paid to political relationships in GMS and policies regarding migrants/migration
- No consistency in policy (through changing governments) Lack of multi-sectoral participation in policy formation
- Exclusion of migrants from social security
- No regional view (Lack of seeing the development of region as inter-connected), focus on individual nations
- Failure to address all stages of the migration cycle (i.e. Protection of returnees)
- Overemphasis on migrants as contributors to labour for economic development, migration as a policy based on labour need only, with no recognition of the rights of migrants and their families
- No common history or education about neighboring countries (leads to misunderstandings of and discrimination against migrants)
- Lack of way to implement ASEAN Declaration on the Protection and Promotion of MW (continued non-interference policy means there is no meaningful enforcement)
- ASEAN does not accommodate the GMS “cross-border” style of migration (the GMS countries voices are less well heard), and instead follows model of Phillipines/Indonesia
- Lack of space for unions
- Separation between rights of unskilled and skilled workers is problematic (i.e. ASEAN’s model for economic integration by 2015 allows free movement of skilled labourers only)

Open Discussion:

Sub-contracting and worker vulnerabilities: Mr. Pracha Vasuprasat of the ILO called attention to the **proliferation of sub-contracting**, which he explained is a result of employers’ not wanting to have links with migrant workers. He said that migrants working in these situations don’t have employers, and are as a result very vulnerable. Ms. Pranom Somwong (Network of Action for Migrants in Malaysia) pointed to the example of Indonesians migrating to Malaysia: since such workers lose their legal status, **you can manage working conditions but not migration itself.**

Questioning ASEAN's 'model of migration,' 'common' history, and regional integration: Mr. Rex Varona (Asian Migrant Centre) made several responses to group 3's presentation. First, he claimed that there is in fact no ASEAN model, but that practices are based on crackdowns on irregular migration. In response to the group's point on common history, Mr. Rex Verona noted that this is not a gap, because when there is a common history it comes from the dominant powers. A participant from the group responded by saying that the group was referring to multiple, multicultural histories. A participant from Thailand later added that in regard to the discussion about regional integration, the question that should be asked is integration for whom, for which communities. On a related note, she added that in terms of gaps and limitations of policies, there is a need to look at what they realistically mean for local communities.

Space for unions in the region: Mr. Rex Verona pointed out that there are in fact unions, just no independent unions. Ms. Jackie Pollock added that there is no space for existing unions, with many union leaders in the region sacked and disappeared. She called attention to a union in Lamphun, Thailand, which after just one month, had all of its leaders sacked.