



Managing Labour Migration in ASEAN :

Concerns for Women Migrant Workers



United Nations Entity for Gender Equality and the Empowerment of Women

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Abbreviations and Acronyms

ACMW	ASEAN Committee on the Declaration on the Protection and Promotion of the Rights of Migrant Workers
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
ASEAN Declaration	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ASEAN Trafficking	ASEAN Declaration Against Trafficking in Persons Particularly Women and Children Declaration
BNP2TKI	<i>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia</i> (The National Authority for the Placement and Protection of Indonesian Overseas Workers)
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	United Nations Committee on the Elimination of Discrimination against Women
CEDAW GR. No. 26	CEDAW General Recommendation No. 26 on Women Migrant Workers
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, also called the Committee on Migrant Workers
CMW GC. No. 1	Committee on Migrant Workers' General Comment No. 1 on Migrant Domestic Workers
Colombo Process	A Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia, also known as the Ministerial Consultations for Asian Labour-Sending Countries
EFMA	Employment of Foreign Manpower Act (Singapore)
GFMD	Global Forum on Migration and Development
GMS	Greater Mekong Sub-region
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organization
ILO C 189	ILO Convention Concerning Decent Work for Domestic Workers
ILO R 201	ILO Recommendation Concerning Decent Work for Domestic Workers
IOM	International Organization for Migration

Kafala system	Foreign worker sponsorship system used in several countries in the Arab States region to recruit temporary labour migrants. Under the kafala system, kafeels or sponsors recruit labour either directly or through intermediaries, such as recruitment agencies, according to permits granted by the relevant ministries in man Gulf countries.
MoU	Memorandum of Understanding
OWWA	Overseas Workers Welfare Administration (the Philippines)
POEA	Philippine Overseas Employment Administration
TFWP	Temporary Foreign Worker Programme
UNTOC	United Nations Convention on Transnational Organized Crime (2000)

Foreword

Over the past four decades, the Association of Southeast Asian Nations (ASEAN) has evolved into a community collaborating towards a shared, outward-looking vision of living in peace, stability and prosperity, bonded together in partnership for dynamic and sustainable development and caring societies. The substantial levels of international migration within and from the region, specifically of temporary labour migrants, have contributed significantly to ASEAN Member States' economic growth in recent years. To date, Member States have addressed and regulated migration through national laws, administrative measures, and bi-lateral agreements. In 2007, ASEAN adopted its Declaration on the Protection and Promotion of the Rights of Migrant Workers and established a Committee to implement this Declaration. However, protection gaps still exist between international and regional human rights and labour law standards, and how these standards are actually enforced at the country level. Concerted action and political will are needed to address the human rights concerns of migrant workers, especially women. As ASEAN becomes a more integrated community in 2015, there is a need for a legally binding regional instrument that is both gender-responsive and human-rights based, to ensure effective labour migration governance.

Significant numbers of migrant workers, especially women, are employed in the informal economy, including many who are undocumented and/or trafficked. They are often excluded from protection under current legislation and administrative measures, and are a source of concern for governments, civil society, including migrant women's organizations and domestic workers' groups, and the development community. For UN Women, the extreme marginalization of women migrant workers, many of whom are employed in low-wage jobs in the informal economy, is of particular concern. These women typically occupy jobs in gendered employment sectors, including domestic or care work, garment and manufacturing work, sex work, and the entertainment and hospitality industries. The multiple and intersecting discriminations faced by women migrant workers on the basis of sex, gender, race, ethnicity, class, nationality, age, and other bases, seriously undermines both their human rights and their economic and social contributions to development in countries of origin and destination.

While ASEAN has taken crucial steps to address human rights concerns and protection gaps in labour migration governance, there is still work to do. Much of the difficulty in enforcing gender-sensitive, rights-based labour migration governance is also due to the systemic lack of sex-disaggregated data and statistics; the exclusion of women migrant workers from policy-creation and decision-making processes; and the absence of a strong, unified regional approach towards governing the movement of migrant workers throughout the migration cycle (pre-departure, in transit, on site in countries of destination, and on return to countries of origin). UN Women has developed this publication to support ASEAN Member States to develop and implement an effective regional instrument that will protect all migrant workers, especially women, to empower them to claim their rights and celebrate their contributions to sustainable development.

Roberta Clarke
Regional Director and Representative in Thailand
UN Women Regional Office for Asia and the Pacific

1. Introduction

“We asked for guest workers. We got human beings”. This well-known aphorism by the Swiss writer, Max Frisch, has a worrying corollary: if migrant workers are seen merely as human resources, and not human beings, with rights, responsibilities, and diverse needs and capabilities, they may be excluded from protections under labour, migration and trafficking laws and policies, and their contributions to development may be minimized and invisibilized. Many migrant workers who are affected by these protection gaps are women - especially young women who are increasingly migrating independently to support themselves and their families.¹ As discussed below, women migrant workers face unique risks and challenges throughout the migration cycle that must be addressed via gender-sensitive, rights-based labour migrant governance.² Although this introduction gives an overview of temporary labour migration across the Asia-Pacific and Arab States regions, the report will focus on labour migration management in the Association of South-east Asian Nations (ASEAN.) Member States of ASEAN, as of September 2012, are: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.

The Asia-Pacific and Arab States regions have emerged as hubs for labour migration through temporary foreign worker programmes (TFWPs), engaging many migrant workers in low-wage jobs. TFWPs are also known as circular migration schemes, which are defined by the IOM as schemes that facilitate “the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination”.³ A UN Women report on countries of destination in Asia states that most governments implement TFWPs.⁴ Although TFWPs are transient and short-term by nature, in practice they often engage migrant workers in long-term employment. In Singapore for instance, employers apply for two-year work permits on behalf of women foreign domestic workers (FDWs).⁵ These women migrant workers would fall under the IOM definition of a “long-term migrant” who is “a person who moves to a country other than that of his or her usual residence for a period of at least a year so that the country of destination effectively becomes his or her new country of usual residence.”⁶ Migrant workers, especially women, who migrate via TFWPs for long-term employment, should be considered long-term migrants. They should receive the same human rights and labour and social protections as citizens and long-term residents in countries of destination – and be included in national laws and policies.

Circular migration schemes are now the dominant migration scheme in the Asia Pacific and Arab States regions. They are driven by economic growth and a corresponding demand for low-cost, mobile labour to meet urgent shortages, and declining labour migration schemes in Europe, North America, and the global North. Unlike European and North American countries of destination, which have allowed some migrant workers to permanently settle, TFWPs in Asia and Pacific and the Arab States have no pathways to residency or citizenship. Most migrant workers in Asia are temporary, with

1 UN Women, IOM and UNDP (2011) “Enhancing the contributions of young migrants to development”, briefing paper, Global Migration Group Symposium, 17-18 May 2011, available from: http://www.globalmigrationgroup.org/uploads/news/2011-symposium/Briefing_Paper_Session_3.pdf

2 CEDAW Committee, *General Recommendation No 26 on Women Migrant Workers* (CEDAW/C/2009/WP.1/R, 2008), 5 December 2008, available from: http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

3 IOM, “Key Migration Terms”, (November 2011), available from: <http://www.iom.int/jahia/Jahia/about-migration/key-migration-terms/lang/en#Circular-migration>.

4 UN Women *Good Practices to Protect Women Migrant Worker; High -Level Government Meeting of Countries of Employment* (Bangkok, 2006) p 17, available from: http://www.migration-unifem-apas.org/docs/Good_Practices_To_protect_Women_Migrant_Workers.pdf

5 Ministry of Manpower, Singapore “Work Permit: Foreign Domestic Worker – Before you apply” (31 May 2012), available from: <http://www.mom.gov.sg/foreign-manpower/passses-visas/work-permit-fdw/before-you-apply/Pages/default.aspx>

6 IOM (November 2011).

women representing a considerable proportion of those from South and Southeast Asia, especially Indonesia, Myanmar, the Philippines, Sri Lanka⁷ and Nepal.⁸Data from 2009 indicates that around 97 percent of Indian and Pakistani migrant workers, and 87 percent of Sri Lankan migrant workers, sought employment in the Gulf Cooperation Council (GCC) countries⁹ via TFWPs.¹⁰In the same year, women represented 83% of all outgoing migrant workers from Indonesia,¹¹ and 85.3 percent of those migrating to the Arab States, with 90% employed in Saudi Arabia.¹²

Many developed and middle-income countries, including across ASEAN, are experiencing rising demand for women migrant workers, especially in women-dominated (women preferred) sectors of employment like domestic and care work.¹³This demand is fuelled by women's increasing participation in the labour force; ageing populations; the desire to maintain a certain lifestyle and social status, and the reluctance of nationals to undertake low-wage jobs. Temporary female domestic and care workers become part of complex global care chains that are formed by the intersecting phenomena of women from countries of origin migrating for work to support themselves and their families, and the unmet demand for care in countries of destination with inadequate or expensive care available from the state or privately for children, the elderly, and persons with disabilities. At the other end of the care chains are transnational households left behind who must adapt and find solutions to their own changing care needs caused by temporary migration.¹⁴

All 10 ASEAN Member States have benefitted from the substantial economic contributions of migrant workers. In 2009, countries of origin received an estimated 21.9 billion USD in remittances,¹⁵which are migrants' saved income transferred to families and communities. The lack of sex-disaggregated data makes it difficult to estimate women's contribution to this overall figure. But data from the Philippines shows that of the estimated 2.47 billion USD in remittances received in 2010, 33.9 percent came from women migrant workers, up from 31.7 percent in 2009.¹⁶Research by UN Women and UNDP in Asia, namely the Philippines and Indonesia, further indicates that women tend to remit a higher proportion of their lower incomes than men. Women also tend to be more or equally stable remitters compared with men, and their remittances also tend to be spent on education, health, food, clothing, and housing, whereas men's remittances tend to be spent on so-called productive assets.¹⁷ A UN Women report on gender concerns in migration in Lao PDR also cites a study which found that women migrant workers remitted slightly more than their male counterparts, sending their families, on average, 348 USD per year compared with 297 USD from the men. Laotian women migrant workers also dominated the category of high remittances, with over 8 percent of women remitting over 817 USD per year,

7 UNESCAP, *Statistical Yearbook for Asia and the Pacific 2011*, (Bangkok, 2011), p 14, available from:

<http://www.unescap.org/stat/data/syb2011/ESCAP-syb2011.pdf>.

8 UN Women and V V Giri National Labour Institute of India *Migration of Women Workers from South Asia to the Gulf*. (New Delhi, 2006) p. 22.

9 As of June 2012 the Gulf Cooperation Council Member States are: the United Arab Emirates, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, Qatar and Kuwait.

10 IOM, *World Migration Report 2011: Communicating Effectively about Migration* (Geneva, 2011), p. 68, available from: http://publications.iom.int/bookstore/free/WMR2011_English.pdf.

11 IOM and Migration Policy Institute, *Labour Migration in Colombo Process Countries: Good Practices, Challenges and Way Forward* (Geneva, 2011), p. 24, available from: http://publications.iom.int/bookstore/free/ColomboProcessStudy_final.pdf.

12 UNESCAP Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report on International Migration in East and South-East Asia*, (Bangkok, 2008), p.36 available from: http://publications.iom.int/bookstore/free/Situation_Report.pdf.

13 CEDAW Committee (2008).

14 UN Women, *Annex to GFMD 2010 Roundtable 2.2 Background Paper, "Uncovering the interfaces between Gender, Family, Migration and Development: The Global Care Economy and Chains"* (2010), available from: http://gfmd.org/en/gfmd-documents-library/mexico-gfmd-2010/cat_view/989-mexico-gfmd-2010/1008-roundtables/1012-roundtable-2-background-papers.html.

15 UNESCAP (2011), p. 235.

16 Philippine National Commission on Women, "Statistics on Filipino women and men's overseas employment" (2012) available from: <http://pcw.gov.ph/statistics/201205/statistics-filipino-women-and-mens-overseas-employment>

17 UN Women-UNDP, *Migration, Remittances and Gender-Responsive Local Development: Case Study of the Philippines* (New York, 2010), pp. 3-4, available from: <http://www.un-instraw.org/view-document-details/747-migration-remittances-and-gender-responsive-local-development-the-case-of-the-philippines.html>, and UN Women, *Gender Dimensions of Remittances: A Study of Indonesian Domestic Workers in East and South-East Asia* (Bangkok, 2008), p. xii, available from: http://www.migration-unifem-apas.org/Publications/Gender_Dimensions_of_Remittances.html

compared to only 3 percent of men.¹⁸

Implementing gender-responsive remittance transfer mechanisms and savings and investment schemes, including those by diaspora, for women migrant workers, is a public investment that would not only uphold their human rights but would harness their contributions towards sustainable development. These measures would ensure that they avoid paying overly high or even exorbitant remittance transfer fees, or using illegal and unsafe channels to remit money home. Women migrant workers, their families and communities, would be empowered to maximise their contributions towards sustainable development. Often, it is the women themselves and their families, communities, and support groups, who take the lead in harnessing remittances for development. A UN Women-UNDP joint report on remittances, savings, and investment for gender-responsive local development, notes that according to the Philippines Secretary of Labour and Employment, around 12,000 associations worldwide undertake “diaspora philanthropy,” such as medical missions and investments in schools, churches, water systems and public markets.¹⁹ Informal diaspora groups also support local communities. The UN Women-UNDP report shows, for instance, how families of migrant workers from Lemery, in the Philippine province of Batangas who have established successful businesses, significantly contribute to community development by promoting the provinces’ products overseas.²⁰ Civil society organizations, such as the Asian Migrant Centre in Hong Kong SAR, and its partner Unlad Kabayan, have also galvanized Filipino women migrant workers, who are mostly domestic workers, to form savings groups. A social network called the Forum of Filipino Reintegration Savings Group (FFRSG), linked to Unlad Kabayan, both promotes collective savings and facilitates the reintegration of women migrant workers. All women who participate must attend three-day learning seminars discussing the root causes and socio-economic implications of migration, as well as the stages and problems throughout the migration cycle, migrants’ rights, and savings and credit information.²¹

In 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers,²² and established the ASEAN Committee on the Implementation of the Declaration (ACMW) in 2008. The ACMW is now working on the next step of drafting an ASEAN Instrument on the Protection and Promotion of Migrant Workers, which may provide a binding framework for the protection of migrants’ human rights through the effective management of labour migration in the region.²³ As ASEAN moves towards an ASEAN Economic Community (AEC), with a vision of regional integration by 2015 that includes the promotion of the free flow of skilled labour (similar to policies in the European Union),²⁴ it is crucial that Member States align their governance and management of labour migration with international and regional obligations, guidance, and best practice.

This assessment of temporary labour migration from a gender perspective, commissioned by UN Women, maps out the situation of women migrant workers in ASEAN . It especially highlights the issues and challenges in enforcing human rights and labour and social protections for women migrant workers. The specific components discussed in this report include:

18 UN Women, *Gender Concerns in Migration in Lao PDR Migration Mapping Study: A Review of Trends, Policy and Programme Initiatives* (Bangkok, 2007), p. 38., available from: http://migration-unifem-apas.org/docs/GENDER_CONCERNS.pdf

19 UN Women-UNDP (2010), p. 44.

20 UN Women-UNDP (2010), p. 8.

21 Masami Helen Ochi, “Return Migration of Filipino Overseas Workers – Some Implications from “Reintegration” Programmes”, paper presented at International Conference: Mobilités au Féminin (Feminine Mobilities), 16-19 November 2005, Tangiers, Morocco, (*Journal of Gender Studies* Vol 13 (Tokyo, 2005), p. 8., available from: <http://ames.mmsh.univ-aix.fr/Papers/Ochi.pdf>

22 ASEAN, *Declaration on the Protection and Promotion of the Rights of Migrant Workers*, adopted at the 12th ASEAN Summit, 13 January 2007, Cebu, Philippines, available from: <http://www.aseansec.org/19264.htm>

23 Given that migration impinges on a core principle of state sovereignty, migration policies are largely determined by the national governments concerned. However, steps have been taken towards establishing an international legal framework for governing labour migration with the adoption of the CEDAW Committee’s General Recommendation No. 26 on Women Migrant Workers (GR. No. 26), and the International Convention on the Protection and of the Rights of All Migrant Workers and Members of Their Families (ICRMW) There has also been increasing cooperation between states with regard to migration issues through consultative mechanisms. Apart from ASEAN itself, various ASEAN Member States are engaged in the Global Forum for Migration and Development (GFMD), the Ministerial Consultations for Labour Sending Countries (Colombo Process) and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process).

24 ASEAN *Economic Community Blueprint* (Jakarta, 2008), para 33-4, available from: <http://www.aseansec.org/5187-10.pdf>

- A. Data and statistics, including numbers of migrant workers, sectors and nature of employment, working conditions, and the specific human rights concerns of women migrant workers;
- B. Current labour migration laws and policies, the protection gaps in existing governance frameworks and their adequacy in upholding the rights of women migrant workers.
- C. The issue of undocumented migrant workers in the ASEAN region and the links between migration, trafficking in persons, and migrant smuggling.

It should be noted that extensive extra-regional migrant flows also exist, both into and out of the region. For the purpose of this report, only low-wage, transient temporary labour migration from and within ASEAN has been taken into consideration. This is because low-skilled, low-wage women migrant workers and their families face unique risks and challenges and require specific protection, whether they migrate under legal TFWPs or via undocumented channel. These needs apply throughout the migration cycle, including prior to departure, in transit, in countries of employment and on return to countries of origin.²⁵

For terminology, migrant workers who move without the proper documentation, such as the necessary visa or work permits, are referred to as either irregular or undocumented migrant workers. Conversely, those who migrate with the proper documentation required by the transit or destination country are commonly referred to as either documented or regular migrants. This report uses the terms undocumented and documented.

This report uses the definition of informal employment adopted by the ILO at the 17th International Conference of Labour Statisticians (ICLS), as comprising the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference period.²⁶

It includes the following types of jobs:

- (i) own-account workers employed in their own informal sector enterprises;
- (ii) employers employed in their own informal sector enterprises;
- (iii) contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- (iv) members of informal producers' cooperatives;
- (v) employees holding informal jobs (as defined below) in formal sector enterprises, informal sector enterprises, or as paid domestic workers employed by households;
- (vi) own-account workers engaged in the production of goods exclusively for own final use by their household.²⁷

Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national legislation, income taxation, social protection or entitlement to certain employment benefits (notice periods, severance pay, paid annual or sick leave, etc.). The reasons may include the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions); employment by unincorporated enterprises or by persons in households; jobs where the employee's place of work is outside the premises of the employer's enterprise (e.g. outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason. The operational criteria for defining informal jobs of employees are to be further determined in accordance with national circumstances and data availability.²⁸

²⁵ CEDAW (2008).

²⁶ ILO, "Annex II: Guidelines concerning a statistical definition of informal employment, endorsed by the Seventeenth International Conference of Labour Statisticians" (November-December 2003)" in *Measuring the Informal Economy: From Informal Employment in the Informal Sector*, ILO Working Paper No. 53 (2003), pp.26.

²⁷ Ibid.

²⁸ Ibid.

2. Overview of Intra-ASEAN labour migration

2.1 Data and Statistics on ASEAN Migration Flows

Between 2000 and 2006, 27.8 million new jobs were created in ASEAN countries, a growth rate of 11.8 percent and an increase from 235.2 to 263 million workers.²⁹ Many of these new jobs were filled by migrant workers from other ASEAN s. In 2002-2003 for instance, women made up 73 percent of labour migrants departing from the Philippines and Indonesia.³⁰

In 2005, there were an estimated 13.5 million migrant workers originating from the ASEAN region, with around 40 percent or 5.3 million people working in other ASEAN Member Countries.³¹ In 2008 it was estimated that migrant workers represented around 30 percent of Singapore's labour force, and around 20 percent of Malaysia's, with the figures probably higher for Brunei Darussalam.³² All three are major destination countries in ASEAN. According to informal estimates, migrant workers from and within ASEAN were undocumented and engaged in low-wage jobs, and a majority were women. The feminization of migration in Asia, especially Southeast Asia, may not be accurately captured in migration data because women's migration tends to be invisibilized and underreported in official statistics. Not only do women migrant workers tend to be employed in the informal economy, they may be counted as accompanying spouses and not independent migrant workers.³³ Also, women are increasingly migrating through undocumented channels in some ASEAN nations. In the Philippines for instance, the percentage of newly hired documented women migrant workers engaged in land-based employment decreased from 71 percent to 52 percent between 2005 and 2009. According to the International Organization for Migration (IOM) and Migration Policy Institute, this indicates a probable rise in women's undocumented migration.³⁴

Except for Singapore and Brunei Darussalam, all other ASEAN Member States are countries of origin. Cambodia, Malaysia and Thailand, are both origin and destination countries for migrant workers; Indonesia, the Philippines, Viet Nam and Myanmar, are significant countries of origin to ASEAN Member States and beyond. Cambodia and Lao PDR³⁵, have more recently engaged in labour migration, with significant numbers of undocumented outgoing migrant workers, and Thailand as the main country of destination.

2.2 ASEAN countries of destination

The four major regional destination "hubs" for migration within ASEAN are Brunei Darussalam, Singapore, Malaysia, and Thailand.

In 2007, there were 124,000 migrants in **Brunei Darussalam**, representing 33.2 percent of its total population.³⁶ Out of this figure, an estimated 88,000 were "low-skilled" migrant workers from

29 H.E Yong, Ong Keng, ASEAN Secretary-General, 'Growth, Employment, and Decent Work,' remarks at Asian Employment Forum (Beijing, 2007), available from: www.aseansec.org/20826.htm.

30 Graeme Hugo, *Migration in the Asia-Pacific Region*. Global Commission on International Migration (Geneva, 2005), p. 18.

31 H.E, Yong, Ong Keng. (2007).

32 Rene E Ofreneo "Strengthening Migrant Protection in an Integrated ASEAN" *Philippine Journal of Labor and Industrial Relations*, VolXXVIII, Nos. 1 and 2, p. 98.

33 UN Women, *Gender, Migration and Development* (Bangkok, 2008), p. 4.

34 IOM and MPI (2011).

35 According to ILO, Cambodia is a country both of origin and destination for migrants within ASEAN; however, data only includes documented migrants, whereas Cambodia has a very large number of undocumented migrants both traveling into and out of the country. Lao PDR is a country of origin, with people mostly migrating out of the country.

36 UN Secretariat, *World Population Prospects* (Population Division of the Department of Economic and Social Affairs, New York, 2009). Data is based on official census data which excludes much temporary and undocumented migration.

Indonesia,³⁷ over 19,600 were from the Philippines³⁸, and more than 4,140 were from Thailand³⁹ and Viet Nam.⁴⁰ Overall, there were around 25,000 documented women migrant workers employed in the domestic work sector.⁴¹

Singapore, as stated earlier, has a significant migrant worker population, originating from all ASEAN Member States, except for Brunei Darussalam. In 2009, there were 1,843,000 migrants in Singapore, making up a considerable 42.6 percent of its population.⁴² In 2006 there were around 580,000 so-called “low-skilled” migrant workers with work permits, including 160,000 women migrant domestic workers.⁴³ This represented a rise of 170 percent since 1990, when there were approximately 248,000 “low-skilled” migrant workers.⁴⁴ The number of domestic workers has since risen to over 200,000 in 2011, according to Singapore’s Ministry of Manpower.⁴⁵ According to the 2012 Singapore Yearbook of Manpower Statistics, Singaporean nationals and permanent residents accounted for 2.08 million of the 3.24-million strong labour force, with migrant workers representing the remaining 1.16 million.⁴⁶ Additional data disaggregated by sex, nationality and sector of employment is unavailable.

In **Malaysia**, there are an estimated 1.8 million documented migrants,⁴⁷ with the Government estimating a further 500,000 to 1.8 million undocumented migrants in 2011.⁴⁸ Data for 2010 shows that a total of 1,803,260 work permits had been issued to migrant workers, of whom over 917,930 were from Indonesia, around 140,260 were from Myanmar, more than 74,840 were from Viet Nam, around 18,640 were from the Philippines, over 12,000 were from Cambodia, and around 7,100 were from Thailand.⁴⁹ Additionally, according to the Malaysian Federation of Employers there are three undocumented migrant workers to every documented migrant worker in Malaysia.⁵⁰ The available data is not sex-disaggregated, although it is disaggregated by migrant workers’ origin countries and sectors of employment (see section 2.2 below). In 2010, over 12.4% of documented migrant workers were employed as domestic workers,⁵¹ many of who were women. Given the sizeable undocumented migrant worker population, it is likely that many undocumented women are also employed in domestic work and other sectors in the informal economy. Civil society organizations estimate that for every documented migrant domestic worker in Malaysia there is another who is undocumented.⁵²

37 US Department of State, *Trafficking in Persons Report 2010* (Washington, 2010), p. 92, available from: <http://www.state.gov/j/tip/rls/tiprpt/2010/>.

38 Philippines Overseas Employment Administration (POEA), *Overseas Employment Statistics 2010* (Manila, 2010) available from: http://www.poea.gov.ph/stats/2010_Stats.pdf

39 IOM, *International Migration in Thailand 2009* (Bangkok, 2009), p. 17. available from: http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/studies_and_reports/International-Migration-in-Thailand-2009-English.pdf.

40 ibid.

41 US Department of State (2010).

42 UN Secretariat (2009).

43 Migration Policy Institute, “Rapid Growth in Singapore’s Immigrant Population Brings Policy Challenges”, Country Profile (April 2012), available from: <http://www.migrationinformation.org/Profiles/display.cfm?ID=570>.

44 ILO (2010), p. 39.

45 Ministry of Manpower, Singapore, “Levy aimed for moderating demand for maids, not wages”, press release (18 February 2011), available from: <http://www.mom.gov.sg/newsroom/Pages/PressRepliesDetail.aspx?listid=172>

46 Ministry of Manpower, Singapore, *Singapore Yearbook of Manpower Statistics 2012*, Table A.1, available from: <http://www.mom.gov.sg/statistics-publications/national-labour-market-information/publications/Pages/singapore-yearbook-manpower-stats-2012.aspx>

47 Immigration Department, Malaysia, February 2010, cited in ILO, *Research on occupational safety and health for migrant workers in five Asia and the Pacific countries: Australia, Republic of Korea, Malaysia, Singapore and Thailand*, ILO Asia-Pacific Working Paper Series, (Bangkok, 2011), p 21.

48 Azizah Kassim and Ragayah Haji Mat Zin, *Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and Effectiveness*, Discussion Paper Series No. 2011-34, Philippine Institute of Development Studies, p. 2.

49 Tuan Haji MD Sabri Bin Haji Karmani, Deputy Director-General, Labour Department, Malaysia “Migration of Labour to Malaysia”, presentation to the ASEAN Services Employees Trade Union Council (ASETUC) at the National Advocacy Workshop: “ASETUC for ASEAN Community - From Vision to Action”, 8-9 June 2010, Kuala Lumpur.

50 Azizah Kassim, “Migrant Workers and Undocumented Persons in Malaysia”, paper presented at a Consultation on Domestic Legislation Concerning Migrant Workers (Kuala Lumpur, 2008).

51 Immigration Department, Malaysia (February 2010).

52 *Trafficking in Persons Report 2011: Malaysia*.

For **Thailand**, the UN World Population Prospects report estimates a total migrant stock of 1,050,000, with these documented migrants accounting for 1.6 percent of the total population.⁵³ Unlike the other three ASEAN destination countries, Thailand's migrant workforce is almost entirely derived from informal cross-border flows from its immediate neighbours.⁵⁴ The Ministry of Interior of the Royal Thai Government estimates that there are 2.46 million "low-skilled" migrant workers from Cambodia, Lao PDR, and Myanmar, of whom 1.4 million are unregistered or undocumented.⁵⁵ News reports from July 2012 have even higher estimates, claiming that there are at least 2 million undocumented migrant workers in Thailand from Myanmar alone.⁵⁶ According to the IOM around 80% of Thailand's migrant workers are from Myanmar.⁵⁷ In the 2009/10 registration process initiated by the Royal Thai Government to regularize migrant workers, 932,255 migrant workers were issued documents, 812,984 of whom were from Myanmar, 62,792 from Lao PDR and 56,479 from Cambodia.⁵⁸ In 2009 it was estimated that there were around 144,800 unregistered migrants from Cambodia, Lao PDR, and Myanmar, with a further unregistered population of over 65,000 overstaying expatriates, and over 45,000 asylum seekers falling under the "unregistered and other" category.⁵⁹ Women represent a significant proportion of Thailand's undocumented migrant workers. The Ministry of Interior estimates that approximately 45 percent of "low-skilled" migrant workers in Thailand are women, mostly from Lao PDR.⁶⁰ Lao PDR, a major source of women migrant domestic workers, was the only country of origin that had more women than men migrating to Thailand.⁶¹

2.3 ASEAN countries of origin

Since the 1990s, **Thailand** has been evolving from a country of origin to one of destination, with the rise of as "low-skilled" migrant workers from neighbouring countries.⁶² According to official data from the Royal Thai Government for 2007, there were 16,271 Thai workers in Singapore, 4,143 in Brunei Darussalam and 3,432 in Malaysia.⁶³ Another 200,000 Thais are estimated to be undocumented migrant workers in Malaysia.⁶⁴ In 2007, women constituted an estimated 15 percent of all Thai migrant workers overseas.⁶⁵

Malaysia is an important origin country of Singapore's migrant workers, with around 73% of the estimated 1.5 million Malaysian migrant workers employed in Singapore.⁶⁶ These figures do not include Malaysian migrant workers who have acquired Singaporean permanent residence or citizenship, and sex-disaggregated data is unavailable.

The **Philippines** has the most outgoing migrant workers across Asia. In 2010, there were 1,470,586 Filipino migrant workers, of whom 103,660 were land-based migrant workers in other ASEAN countries, especially Singapore, Malaysia and Brunei Darussalam.⁶⁷ Singapore rose from being the fifth major

53 UN Secretariat (2009).

54 IOM and UN, *Thailand Migration Report 2011*, (Bangkok, 2011), p. 110, available from: <http://www.un.or.th/documents/TMR-2011.pdf>

55 IOM and UN (2011) p. 11.

56 Thomas Fuller "In Thailand, Burmese Workers Call out to 'Mother Suu'", (30 May 2012), *The New York Times*, available from: <http://www.nytimes.com/2012/05/31/world/asia/in-thailand-a-warm-welcome-for-daw-aung-san-suu-kyi.html>

57 IRIN, "Myanmar-Thailand - Undocumented migrant workers exploited post-floods", (30 November 2011), available from: <http://www.irinnews.org/Report/94162/MYANMAR-THAILAND-Undocumented-workers-exploited-post-floods>

58 Akansha Singh, "Thailand registers nearly one million undocumented migrants", (20 May 2010), *Thailand Business News*, available from: <http://thailand-business-news.com/burma/15405-thailand-registers-nearly-one-million-undocumented-migrants>

59 UN and IOM (2011) p. 9.

60 Ibid. p. 11.

61 IOM (2009), p. 62.

62 IOM and UN (2011), p. 14.

63 Ibid. p. 17.

64 ASEAN Affairs, "Remittance from workers in Malaysia on the rise", (12 February 2008) available from: http://www.aseanaffairs.com/thailand_oversea_workers_remittance_from_workers_in_malaysia_on_the_rise

65 IOM (2009), p. 47.

66 UNESCAP Thematic Working Group (2008), p. 139.

67 POEA (2010), tables 1 and 4.

destination country for land-based migrant workers in 2010,⁶⁸ to the third in 2011,⁶⁹ and Malaysia overtook Canada as the tenth.⁷⁰ Women, mostly employed as domestic workers, represented the majority of migrant workers in the three major ASEAN countries of destination. Of all newly recruited land-based migrant workers from the Philippines in 2011, around 217,830 were women, compared to 181,145 men.⁷¹ In 2011, domestic workers, categorized as “household service workers” were by far the largest group of land-based migrant workers, representing over one-third of land-based new hires. Of these household service workers, 135,870 were women, while only around 3,200 were men.⁷²

Indonesia is second only to the Philippines in the scale of its labour migration, with the Government estimating 4.3 million outgoing migrant workers in 2009.⁷³ Women increasingly represent the overwhelming majority of Indonesia’s migrant workers, from 75.3% of in 2006,⁷⁴ to 83% in 2009.⁷⁵ The main destination country is Malaysia, with a population of 917,932 officially deployed workers in 2010.⁷⁶ Over 90 percent of Indonesian women migrant workers deployed overseas are domestic workers.⁷⁷

Viet Nam has over 500,000 documented migrant workers in 40 countries and territories, according to a report released by UN Women and the Ministry of Labour, Invalids, and Social Affairs (MoLISA) in 2012.⁷⁸ Of the 150,000 Vietnamese migrant workers employed in ASEAN, some 100,000 were in Malaysia, with the remainder mostly in Singapore and Brunei Darussalam, according to a 2007 report.⁷⁹ There are also many undocumented Vietnamese migrant workers in Cambodia.⁸⁰ The number of annually deployed migrant workers has steadily risen from over 70,590 in 2005 to over 88,000 in 2011, when 36% were women migrant workers.⁸¹ In 2003, around 25 percent of Vietnamese migrant workers in Malaysia were women,⁸² where they continue to be mostly employed as factory workers.⁸³ The number of documented women migrant workers more than tripled from 2000 to 2009, from 9,000 to 28,000.⁸⁴

Myanmar is a major country of origin, and it is estimated that around 10% of the population migrate internationally, although data is scarce because most migrant workers are undocumented.⁸⁵ In 2010, there were 812,984 migrant workers from Myanmar registered in Thailand in 2010,⁸⁶ 140,260 in Malaysia⁸⁷ and an estimated 100,000 in Singapore.⁸⁸ Significant numbers of undocumented migrant workers are also estimated to be employed in Thailand, where there are 2 million migrant workers overall⁸⁹ of whom over 540,000 were undocumented at the end of 2010 (having not completed the

68 Ibid table 10.

69 Philippines Senate Economic Planning Office (SEPO) “Overseas Filipino Workers at a Glance”, issues brief, (May 2012), available from: <http://www.senate.gov.ph/publications/AG%202012-04%20-%20200FW.pdf>

70 Ibid.

71 POEA (2010).

72 Philippines SEPO (May 2012).

73 Indonesia, cited in IOM “Indonesia”, (August 2011), available from: <http://www.iom.int/jahia/Jahia/Indonesia>

74 UNESCAP Thematic Working Group (2008), p. 34.

75 IOM and MPI (2011).

76 Sabri (2010).

77 ILO Jakarta, “Special Edition on Domestic Workers: Recognizing Domestic Work as Work” (April 2010) p. 6.

78 UN Women and Ministry of Labour, Invalids, and Social Affairs, Viet Nam, *Women in International Migration from Viet Nam : A Situation Analysis* (2012).

79 Dang Nguyen Anh, “Labour Export from Viet Nam: Issues of Policy and Practice”, paper presented at the 8th International Conference of Asia Pacific Migration Research Network (APMRN), Fuzhou, 25-29 May 2007 (Beijing, 2007).

80 UNESCAP Thematic Working Group (2008), p. 48.

81 UN Women and MoLISA (2012), pp. 28-9.

82 Dang (2007).

83 UN Women and MoLISA (2012), p. 8.

84 UN Women, “Factsheet briefing on gender issues in migration and urbanization as they relate to poverty” (Bangkok, 2011), available from: <http://www.unwomen.eseasia.org/Vietnam/docs/GCGenderFactsheet021211.pdf>

85 UNESCAP Thematic Working Group (2008), p. 69.

86 IOM and UN (2011), p. 11.

87 ILO (2011), p. 21.

88 Kate Hodal, “A day in the life of a migrant worker in Singapore (part 2), (24 July 2011), CNN Go, available from: <http://www.cngo.com/singapore/life/day-life-migrant-worker-singapore-part-2-604578>.

89 UNESCAP Thematic Working Group (2008), p. 71.

nationality verification process introduced by the Royal Thai Government).⁹⁰ Male migrant workers outnumber their female counterparts,⁹¹ despite women slightly outnumbering men in Myanmar's general population.⁹² However there are high percentages of women and children among migrant workers.

Cambodia has recently opened its doors to documented migrant workers and has signed Memorandums of Understanding (MOUs) with Thailand, Malaysia and the Republic of Korea.⁹³ Between 1998 and the end of 2007, 20,630 documented Cambodian migrant workers travelled to Malaysia, Republic of Korea and Thailand.⁹⁴ In 2009 there were around 124,670 documented migrant workers in Thailand⁹⁵ and in 2010 just over 12,090 in Malaysia,⁹⁶ most of whom were women migrant domestic workers.⁹⁷ As with Lao PDR and Myanmar, most Cambodian migrant workers are undocumented.⁹⁸

According to the Ministry of Labour and Social Welfare of Lao PDR and the ILO, around 7 percent of **Lao PDR's** population was migratory in 2006.⁹⁹ It is estimated that 85% of Lao PDR's cross border movements are informal.¹⁰⁰ Thailand is the key destination country for most Laotian migrant workers,¹⁰¹ 70 percent of whom are women.¹⁰² The 2007 UN Women report on Lao PDR cited the Government as stating that 90% of Laotian women migrant workers were domestic workers.¹⁰³ Despite the lack of sex-disaggregated data, anecdotal evidence shows that increasing numbers of Laotian women migrating to Thailand via undocumented channels, to mostly work in the service and domestic work sectors.¹⁰⁴ The overwhelming majority are domestic workers.¹⁰⁵ Although more than 32,000 Laotian domestic workers were registered in 2007, this represented only 73% of total employer demand – indicating that many domestic workers are undocumented.¹⁰⁶

2.4 Major characteristics of ASEAN migration flows

Consistently high levels of feminization: One of the most significant characteristics of labour migration in the ASEAN region is its feminization. Whereas women constitute 49.1 percent of all migrants globally,¹⁰⁷ the unofficial figures for ASEAN countries of origin indicate that a majority of migrant workers, who are recruited via TFWPs, are women.¹⁰⁸ Most Asian women migrant workers are poor and young – aged between 20 and 39 at the time of migration.¹⁰⁹

Structural dependency on TFWPs, which are the dominant labour migration scheme in ASEAN. In countries of destination, this dependency is evident in the significant numbers of temporary migrant workers and their families, including the underemployed and unemployed, as discussed in later sections. In countries of origin, it is evident in migrant workers' utilization of migration as a personal and family survival strategy, in search of decent work and remittances to sustain livelihoods.

90 IOM and UN (2011), p. 11.

91 IOM "Myanmar", (May 2012), available from: <http://www.iom.int/jahia/Jahia/myanmar>

92 World Bank, "World Development Indicators – Myanmar" (2011) available from: http://data.worldbank.org/country/myanmar#cp_wdi. The latest available data as of September 2012 showed that women represented 50.7% of the population as of 2011.

93 UNESCAP Thematic Working Group (2008) pp. 12-13.

94 ILO, *Review of labour migration management, policies and legal framework in Cambodia*, ILO Asia-Pacific Working Paper Series (Bangkok, 2009), p.4.

95 IOM and UN (2011), p. 12.

96 MD Sabri (2010).

97 IOM and UN (2011) p. 12, and ILO (2009), p. 4.

98 UNESCAP Thematic Working Group (2008) p. 48.

Ibid p. 11.

Ibid. p. 48.

100 IOM "Lao PDR", (April 2012), available from: <http://www.iom.int/jahia/Jahia/lao-pdr>

101 UN Women, "Factsheet: Lao People's Democratic Republic", (2012), available from: <http://www.unwomen-eseasia.org/docs/factsheets/04%20Lao%20PDR%20factsheet.pdf>

102 UN Women (2007), p. 9.

103 Ibid.

104 Ibid.

105 Ibid. p 6.

106 Ibid. p. 7.

107 UN Secretariat (2011), available from: <http://esa.un.org/migration/>.

108 UNESCAP Thematic Working Group (2008), p. xviii.

109 Nana Oishi, *Women in Motion: Globalisation, State Policies and Labour Migration in Asia* (Stanford University Press, 2005), p.238.

High levels of undocumented migration: All ASEAN destination countries, except Singapore, experience high levels of undocumented migration. The biggest pools of undocumented migrant workers are found in Thailand and Malaysia, with at least an estimated 2.1 million undocumented migrant workers in these countries.¹¹⁰ Levels of undocumented migration in South-East Asia are comparable to undocumented migration flows in Europe, and along the US/Mexican border.¹¹¹ In 2007, it was estimated that the stream of undocumented migration from Indonesia to Malaysia was second only that from Mexico to the US.¹¹²

Significant cross-border flows: Migrant workers, when faced with expensive, complex, and inaccessible legal migration schemes tend to migrate via undocumented channels, especially in the Greater Mekong Sub-region (GMS) and other cross-border regions in ASEAN. Women encounter greater difficulties than men in accessing safe, low-cost, and legal migration channels because they tend to have less money and ownership of resources and assets, lack credible, reliable and gender-responsive information on documented labour migration, and experience more restrictions on freedom of movement, prior to migrating in some countries.

High levels of informal employment: Most migrant workers in the informal economy work in small and medium-sized enterprises (SMEs) in sectors including construction, agriculture, and fisheries. Others are employed in, households, employer-owned businesses, and services, especially domestic and care work, which are excluded from labour and social protections. In ASEAN nations, many of informal migrant workers are women. For instance in Indonesia in 2006, almost 80 percent of all migrant workers were women, and 88 percent of those were employed in the informal economy overseas.¹¹³

Significant levels of trafficking: The highly gendered nature of migration flows could be linked to the prevalence of sex and labour trafficking within the region. In the US Department of State *Trafficking in Persons Report 2012*, two of the four destination hubs –Malaysia and Thailand – were ranked as Tier 2 Watch List countries.¹¹⁴ Singapore and Brunei Darussalam were ranked as Tier 2, improving from being on the Tier 2 Watch List in 2011. Migrant women and girls are particularly at risk of trafficking. In Malaysia, where there were over 250,000 registered migrant domestic workers in 2011, mostly from Indonesia, an additional 100,000 documented and undocumented migrant domestic workers may be trafficking victims according to the report.¹¹⁵

2.5 Sectors of employment

Among the ASEAN destination countries of Brunei Darussalam, Malaysia, Thailand, and Singapore), most migrant workers are employed in the construction, manufacturing, and service sectors. Women migrant workers tend to work as domestic workers, care-givers, entertainers, retail assistants, as well as in low-end manufacturing and cottage industry jobs, such as in fish processing, while men migrant workers tend to be employed in construction, agriculture and fishing,¹¹⁶ with some variations across the countries.

110 IOM and (2011), p. 11, which states that there are 1.4 million unregistered "low-skilled" migrant workers in Thailand according to the Ministry of Interior; UNESCAP Thematic Working Group (2008) p. 149, Figure 3: in 2007 it was estimated that there were 700,000 undocumented migrant workers in Malaysia.

111 Hugo (2005).

112 Graeme Hugo, "Country Profile: Indonesia's labor looks abroad" (article for Migration Policy Institute's Migration Information Source) (2007), available from: <http://www.migrationinformation.org/feature/display.cfm?ID=594>.

113 World Bank, *The Malaysia-Indonesia Remittance Corridor: Making Formal Transfers the Best Option for Women and Undocumented Migrants* (Washington, 2008), p. xiii.

114 US Department of State, *Trafficking in Persons Report 2012* (Washington, 2012) – see the country reports for Brunei Darussalam, Malaysia, Thailand and Singapore at <http://www.state.gov/j/tip/rls/tiprpt/2012/>. Countries are ranked into Tier 1, Tier 2, Tier 2 Watch List, and Tier 3 according to the United States Trafficking Victims Protection Act, Tier 2 countries are those where governments do not comply with the TVPA's minimum standards, but are making significant efforts to do so. Tier 2 Watch List countries are those that qualify as Tier 2 and also where: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking from the previous year; or the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

115 US Department of State (2012) p. 235.

116 IOM (2009), p. 86.

The feminization of migration in ASEAN is driven primarily, though not solely, by the demand in the domestic work, hospitality and entertainment sectors. This demand is itself fuelled by gendered perceptions of women migrant workers as young, needy, pliable, portable and disposable labour force.¹¹⁷ The data on sectors of employment for the four countries of destination below highlights the gendered segmentation of women migrant workers into feminized jobs and sectors of employment.

In Brunei Darussalam, according to the ILO, nearly half the workforce is employed in the public sector, while migrant workers tend to work in the private sector.¹¹⁸ Migrant workers are largely employed as cleaners and domestic workers, in crafts and trade, as factory workers and machine operators, and in skilled agriculture and fisheries jobs. Over 80 percent of women migrant workers are cleaners and labourers.¹¹⁹

In Malaysia, the manufacturing sector employs the lion's share of migrant workers. In February 2010, 688,886 of the 1,803,260 work permits issued were for the manufacturing sector.¹²⁰ The next-largest sectors were construction and plantation, with 288,722 and 256,382 work permits issued respectively. In the agricultural sector 163,836 permits were issued, while 180,890 were issued for service sector jobs. Domestic workers accounted for a sizeable 224,544 of all work permits.¹²¹ A 2008 UN Women report on Indonesian domestic workers, cites the Ministry of Home Affairs of the Malaysian Government, which stated that in 2007, domestic workers represented 16.6 percent of migrant workers with work permits, and 95 percent of these were from Indonesia.¹²²

In Thailand as of 2009, of the “low-skilled” migrant workers, 1 percent worked on fishing boats or in seafood processing; 17 percent each were employed in agriculture and construction, and 8 percent were employed in domestic work. The remaining 43 percent were employed in a range of other businesses. Of the 1.3 million migrant workers from the GMS countries of Cambodia, Lao PDR and Myanmar who held work permits for “low-skilled employment” in 2009, 82 percent were from Myanmar. Additionally, 45 percent of these migrant workers were women, who were mostly employed in domestic work, construction and agriculture.¹²³ Of the nearly 129,790 migrant domestic workers from the three Mekong countries, 84,968 were Burmese women migrant workers.¹²⁴ Cambodian migrant workers were mostly employed in the construction, agriculture and fishing industries. The top industries for Cambodia's women migrant workers were construction and agriculture, with only 5,156 employed as registered migrant domestic workers.¹²⁵ Household work was the biggest employment sector for migrant workers from Lao PDR, with 21,267 migrant domestic workers, of whom just over 18,000 were women, of a total of 110,854 migrant workers.¹²⁶ Other key employment sectors for Laotian migrant workers were agriculture (18,035), construction (12,635) and other (13,106).¹²⁷ Many migrant workers from Lao PDR are young women and girls – with direct evidence that girls embark on labour migration earlier than boys. In 2004, women made up 71 percent of registered Laotian migrants aged 12-14 years; 50 percent of those aged 0-11; and 55 percent of those who were 15 and older.¹²⁸

In Singapore, sector-specific and sex- and age-disaggregated data on migrant workers is not readily available, despite the steady rise in labour migration. The “non-resident” labour force grew

117 UN Women, *Empowering Women Migrant Workers in Asia: A Briefing Kit*, (Bangkok, 2002), p 2, available from: http://www.unwomen-eseasia.org/projects/migrant/mig_pub.htm.

118 ILO, “Brunei Darussalam”, available from: <http://www.ilo.org/asia/countries/brunei-darussalam/lang-en/index.htm>

119 UNESCAP Thematic Working Group (2008), pp 5-6.

120 Md Sabri (2010).

121 Md Sabri (2010).

122 UN Women, *Gender Dimensions of Remittances: A Study of Indonesian Domestic Workers in East and South-East Asia* (Bangkok, 2008), p. 8, available from: http://www.unwomen-eseasia.org/docs/2008_Gender_dimension_of_Remittances.pdf.

123 IOM and UN (2011), p 11.

124 IOM and UN (2011) Table 1.4, p. 12.

125 Ibid.

126 UNESCAP Thematic Working Group (2008), p. 50.

127 Ibid.

128 Ibid. p. 186.

by 6.3% in 2011, up from 4.2% in 2010.¹²⁹ In 2009, the Singapore Chinese Chamber of Commerce, reported that the proportion of migrant workers was highest in construction (70.7 percent), followed by manufacturing (46.8 percent) and services (28.9 percent).¹³⁰ The *Report on the Labour Force in Singapore, 2011*, and the *Singapore Yearbook of Manpower Statistics 2012*, almost exclusively focus on data concerning the resident labour force – and as such only analyses two-thirds of the country's workers. As stated earlier, in 2011, there were over 200,000 foreign domestic workers in Singapore,¹³¹ all of whom were women. In Singapore, a visa for a “Foreign Domestic Worker” can only be granted to an employer of a woman migrant worker, where she is between 18 and 50 years old, is from a range of selected South, Southeast and East Asian countries and fulfils certain other criteria.¹³²

2.6 Nature of employment

Women and men migrant workers in Southeast Asia, especially those who are undocumented, tend to find employment in some of the most vulnerable sectors of the informal economy. The proportion of migrant workers in vulnerable employment within ASEAN increased slightly from 60.6 percent in 2008 to 61.3 percent in 2009. A higher proportion of women, many of whom are migrant workers, are engaged in vulnerable employment than men, approximately 65 percent of women compared to 56 percent of men.¹³³ Additionally, gender segmentation across employment sectors in the informal economy, coupled with women's relative lack of access to resources and skills, leads to a large gender gap in earnings.¹³⁴ A 2011 report on informal employment the Asian Development Bank (ADB) and the ILO found that women migrant workers in Asia were less affected by job losses than other women due to the global economic and financial crisis than other women workers. However, the crisis had also highlighted their vulnerability to discrimination, exploitation and abuse¹³⁵ (outlined in the following section that spotlights women migrant domestic and sex workers).

In recent years migrant workers in **Singapore** and **Malaysia** have faced unemployment and under-employment, which has pushed them into informal employment. Government responses have generally been to restrict labour migration. In July 2012, *The Star*, a Malaysian newspaper, reported that the Government of Singapore was tightening its immigration policy especially for migrant workers seeking permanent residency.¹³⁶ The *Financial Express*, also in July 2012, announced the lifting of a Malaysian ban on Bangladeshi migrant workers.¹³⁷ The ban had been imposed when 300,000 of the-then 500,000 Bangladeshi migrant workers in Malaysia became undocumented, some because of a lack of jobs (many subsequently underwent regularization procedures).¹³⁸ The *IOM World Migration Report 2011* cites Malaysia as a country where a high percentage of the public, via media polls and surveys, reportedly believed that immigration should be further restricted and controlled.¹³⁹ All these public perceptions have a profound effect on the working conditions of migrant workers especially migrant domestic workers as it is this public which very often are the employers of the domestic workers.

129 Ministry of Manpower, Singapore, *Report on the Labour Force in Singapore, 2011* (2011), p 2, available from: http://www.mom.gov.sg/Documents/statistics-publications/manpower-supply/report-labour-2011/mrdsd_2011LabourForce.pdf

130 Singapore Chinese Chamber of Commerce and Industry (2009).

131 Ministry of Manpower, Singapore (11 February 2011).

132 Ministry of Manpower, Singapore, “Basic Requirements of a Foreign Domestic Worker”, (11 May 2012), available from: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/basic-requirements-of-a-foreign-domestic-worker.aspx>. Note that first time applicants must be at least 23 years old at the time of applying, whereas those who have previously worked in Singapore may be 18 years old at the time of applying.

133 ILO, *Labour and Social Trends in ASEAN 2008: Driving Competitiveness and Prosperity with Decent Work* (Bangkok, 2008), p. 14, available from: <http://www.ilo.org/public/english/region/asro/bangkok/library/download/pub08-36.pdf>

134 Asian Development Bank and ILO, *Women and Labour Markets in Asia: Rebalancing for Gender Equality* (Bangkok, 2011), p. 13, available from: <http://www.adb.org/publications/women-and-labour-markets-asia-rebalancing-gender-equality>.

135 *Ibid.*, p. vii.

136 Seah Chiang Lee “Stemming the Singapore PR tide”, (14 July 2012), *The Star*, available from: <http://thestar.com.my/news/story.asp?file=/2012/7/14/focus/11652857&sec=focus>

137 Asafat Ara, “KL set to reopen doors for BD workers this month”, (7 July 2012), *The Financial Express*, available from: http://www.thefinancialexpress-bd.com/more.php?news_id=135736&date=2012-07-07.

138 *Ibid.*

139 IOM and UN (2011.), p.9.

Working conditions in the informal economy are generally worse for migrant workers compared to nationals. In **Thailand**, there are reports of employers paying migrant workers from Myanmar 60-70 percent of the wages paid to Thai nationals.¹⁴⁰ Thai employers have also reportedly threaten undocumented migrant workers with deportation, to get them to work for overly long hours in hazardous conditions, such as 28-hour shifts in crowded factories with poor ventilation and limited safety.¹⁴¹ Women migrant workers also earn lower wages than their male counterparts,¹⁴² and often subsist in worse working and living conditions. Those from **Viet Nam** for instance, many of whom work in ASEAN countries of destination, earn much less on average than non-migrant women, and even less than men.¹⁴³ The 2008 *Migration Impact Survey* shows significant income inequality between men and women migrant workers, with the latter earning around 25% less than the former.¹⁴⁴

2.7 Specific concerns of two women dominated sectors: women migrant domestic and sex workers

Women migrant domestic and sex worker, face unique challenges because of the sex- and gender-based discrimination and abuse they encounter throughout the migration cycle (pre-departure, in transit, on-site in countries of destination, and on return to countries of origin). They also experience intersecting forms of discrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status that may be expressed in sex- or gender-specific ways.¹⁴⁵ The key resulting challenges affecting these women migrant workers are a lack of access to safe, legal, low-cost migration schemes, the denial of labour and social protections in the informal economy, exploitation, abuse, and human rights violations, especially sexual and gender-based violence (SGBV).

Most women migrant workers in Southeast Asia are domestic workers. Those who are documented migrate via TFWPs where their visa is often tied to their job and employer. They often pay recruitment fees to employment agencies that may be high enough to amount to extortion and exploitation. Women who are most at-risk include those who may become undocumented if they lose their contract, especially if they escape abusive or exploitative employers or are unfairly dismissed. Some women also become trapped by “fly now, pay later” schemes which leave them in debt bondage to agencies, or their employers, if the debt is transferred to an employer who may also hold their visa. This problem persists even when agencies operate legally, because the industry is unregulated and privatized.¹⁴⁶ Women are more likely than men to borrow from family, friends, or at higher rates from money-lenders. The 2012 UN Women-MoLISA report, indicates that while both Vietnamese men and women migrant workers usually take a year and a half to repay their debt, this burden affects men and women differently.¹⁴⁷ Vietnamese women migrant workers, many of whom are domestic workers, may be more pressured to remit a higher proportion of their income to families at home and accordingly may accept unfair working conditions, or find work in the informal economy when their contracts end.¹⁴⁸

Undocumented migrant domestic workers, many of whom migrate in cross-border regions, may also pay excessive fees to illegal employment agencies and intermediaries, and in the worst cases, traffickers and migrant smugglers (the issue of trafficking is discussed below). They are at heightened risk of violence, including sexual and gender based violence. Research by UN Women in Lao PDR, for example, indicates that undocumented Laotian women migrant domestic workers are especially at risk of physical and sexual abuse and harassment by traffickers, employment agencies and employers.¹⁴⁹

140 Bryant Fu Yang Yuan, “Life and Death away from the Golden Land: the Plight of Burmese Migrant workers in Thailand,” *Thailand Journal of Law and Policy*, Vol 1:12, (Bangkok, 2009).

141 Ibid.

142 UN Women (2006), p. 7.

143 UN Women, “Factsheet briefing on gender issues in migration and urbanisation as they relate to poverty” (2011).

144 Ibid.

145 CEDAW (2008), para 14.

146 UN Women, *Human Rights Protections Applicable to Women Migrant Workers: A UNIFEM Briefing Paper*, (Bangkok, 2003), p.6.

147 UN Women and MoLISA (2012) p. 47.

148 Ibid.

149 UN Women (2007) p. 7.

Women who are undocumented migrants, or who lose their documented status, risk criminalization, detention, and deportation. In 2003, the UN Special Rapporteur on the Human Rights of Migrants found that detained migrant women and girls were especially at risk of ill-treatment, as immigration detention laws and policies often lack specific provisions on the detention of pregnant women and girls, children, and other vulnerable groups.¹⁵⁰

Domestic workers are also denied labour and social protections, because domestic work is largely relegated to the informal economy. The invisibilization of domestic work from labour laws is linked to the isolated, private nature of domestic work itself, which largely takes place in the home, and gendered stereotypes that it is “women’s work” and a labour of love that carries the low value attached to unpaid care work.¹⁵¹ The ILO reported in 2010 that 40% of countries excluded domestic work from their labour laws worldwide.¹⁵² The report also surveyed selected countries to show that the labour laws of two ASEAN countries of destination, **Malaysia** and **Thailand**, had some coverage for domestic workers (Singapore and Brunei Darussalam were not surveyed).¹⁵³ Although **Singapore** has introduced a weekly day off for domestic workers, they are still denied key labour and social protections in the Employment of Foreign Manpower Act (2009) (EFMA).¹⁵⁴ Domestic workers are also mostly excluded from labour legislation in **Brunei Darussalam**, where enforcement against the withholding of wages and forced labour remains a problem according to the United States Department of State reports on *Trafficking in Persons 2012* and *Human Rights 2011*.¹⁵⁵

In the informal economy, domestic workers experience compounded, intersecting discriminations faced. A UN Women study of Indonesian domestic workers found that the lack of pay parity seriously reduces women’s ability to send home savings to their families and invest in community development, including diaspora-led initiatives.¹⁵⁶ Reviewing legal protection for migrant domestic workers across a range of countries, UN Women found that within women-dominated sectors, especially domestic work, women are further stratified on the basis of ethnicity, nationality, legal status, and perceived qualities associated with their race and gender that stem from racial and sex- and gender-based discrimination.¹⁵⁷ Filipino migrant domestic workers, for instance, command higher wages than Indonesian migrant domestic workers in the informal economy, because of stereotypes that they are hardworking, well qualified (some are university-educated, for example as teachers and nurses), polite, compliant and trustworthy.¹⁵⁸ Migrant domestic workers employed in the informal economy also find it difficult to access justice. As recently as May 2012, the Government of the Philippines noted that of around 1,000 filed cases by migrant workers claiming human rights abuses, many of whom were women, only 180 had been acted upon.¹⁵⁹

150 See for instance Gabriela Rodríguez Pizarro, “Addressing Human Rights Violations Against Women Migrant Workers through CEDAW,” in UN Women, *UNIFEM-CEDAW Panel on Addressing Women Migrant Workers Concerns*, (New York, 2003), p. 11, available at:

http://cedaw-seasia.org/docs/general/CEDAW_PANEL_AddrWomenMigrantWorkersConcerns.pdf

151 UN Women and IOM (2011) “Domestic Workers Count Too: Visibilizing and Protecting Women Migrant Domestic Workers through Legal and Social Protections”, EC UN Joint Migration and Development Initiative E-Discussion Summary Report, available from: <http://www.migration4development.org/content/e-discussion-domestic-workers-count-too-visibilising-and-protecting-women-migrant-domestic-workers>

152 ILO, *Report IV(1): Decent Work for Domestic Workers*, Report of the 99th Session of the International Labour Conference, (Geneva, 2010).

153 Ibid, *Appendix A: Coverage of domestic workers by labour laws in labour laws and regulations, by country*.

154 Ministry of Manpower, Singapore, “Weekly Rest Days for Foreign Domestic Workers”, press release (5 March 2012), available from:

<http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=411>

155 *Trafficking in Persons Report 2012: Brunei*; and *Country Report on Human Practices 2011: Brunei*, pp.15-17, available from: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186262>

156 UN Women (2008), pp 12-17.

157 UN Women, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States* (Bangkok, 2008), p 3, available from: http://migration-unifem-apas.org/docs/Legal_Protection.pdf.

158 I., Josiah, et al.: *Protection of foreign domestic workers in Malaysia: Laws and policies, implication and intervention*, programme consultation meeting on the protection of domestic workers against the threat of forced labour and trafficking, Hong Kong, China, 16–19 February 2003, p. 13.

159 H.E. Linlingay F. Lacanlale, Philippines Ambassador to Thailand, presentation delivered at the launch of the IOM and Migration Policy Institute Panel Discussion on Labour Migration from Colombo Process Countries, 14 May 2012, Bangkok, Thailand.

In June 2009, following several reported cases of severe abuse, Indonesia banned the out-migration of domestic workers, the overwhelming majority of whom were women, to Malaysia until new protections could be put in place. In May 2011, the ban was lifted and a memorandum of understanding (MoU) allowed for domestic workers to keep their passports and receive a weekly day off; however, the agreement did not set a minimum wage nor eliminate recruitment fees.¹⁶⁰ In Singapore, there have been 154 deaths of Indonesian migrant domestic workers between 1999 and 2007.¹⁶¹ The Singaporean Government has enforced penalties against abusive employers. From 2001 to 2007, 28 employers, spouses or household members were jailed for abusing women migrant domestic workers. Employers convicted of abuse are permanently barred from employing another foreign domestic worker (FDW). The Government states that under its monitoring and oversight, the number of substantiated abuse cases handled by the policy falling from 157 cases in 1997 to 68 in 2007, despite the rising numbers of women migrant domestic workers in Singapore.¹⁶²

Migrant women sex workers, who cannot be legally recruited, use undocumented migration channels that place them at risk of trafficking in persons and migrant smuggling. Many sex workers are young migrant women and girls who move to escape childhood marriages or to contribute to family incomes, sometimes as sole providers.¹⁶³ The *AIDS 2031* report on *Asian economies in rapid transition: HIV now and through 2031*, confirms that increased migration and mobility, combined with changing social patterns, increased economic uncertainty, and proliferating networking opportunities, is making sex more readily available and easier to sell across Asia.¹⁶⁴ The sex work industry is characterized by overly long working hours, violence including SGBV, and unsafe sex.¹⁶⁵

According to the 2011 UNAIDS report *Getting to Zero: HIV and AIDS in Asia and the Pacific*, of the four ASEAN destination countries, **Brunei Darussalam** and **Thailand** enforced laws that deemed “sex work” to be illegal, although the former enforced HIV-specific restrictions on entry or stay while the latter did not. **Malaysia** and **Singapore** did not have laws that deemed “sex work” to be illegal, but both countries did have HIV-specific restrictions on entry or stay.¹⁶⁶ In 2003, Gabriela Rodríguez Pizarro, former UN Special Rapporteur on the human rights of migrants, noted that some women migrant workers were forced into working in situations of sexual exploitation after migrating under special visas for women to work as entertainers in night-clubs and bars.¹⁶⁷ Some who migrate seeking employment as domestic workers are forced into sex work, either on arrival or after escaping abusive employment situations. Migrant sex workers, especially those who are undocumented, face particularly severe barriers to accessing services because of cultural and linguistic difficulties, exclusion from locally available services, and minimal contact with support networks.¹⁶⁸

The protection gaps – de jure and de facto – experienced by women migrant workers are highlighted by the CEDAW General Recommendation No 26 on Women Migrant Workers (CEDAW GR No. 26), and the General Comment No. 1 on Migrant Domestic Workers (CMW GC No. 1).¹⁶⁹ These two international standards are part of the growing human rights framework protecting women migrant workers. This complementary and mutually reinforcing framework, outlined below in Figure 1, also includes the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);

160 Jakarta Post, “RI-Malaysia MoU fails to provide needed safeguards for migrant workers”, (1 June 2011), available from: <http://www.thejakartapost.com/news/2011/06/01/ri-malaysia-mou-fails-to-provide-needed-safeguards-migrant-workers.html>.

161 IOM, *Labour Migration from Indonesia An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*. (Jakarta, 2010), p 56, available from: http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf

162 Singapore, CEDAW Country Report. (CEDAW C/GSP/4) (2011) Para 11.39.

163 UNAIDS, *Guidance Note on HIV/AIDS* (New York, 2009), p. 19, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

164 AIDS2031, *Asian economies in rapid transition: HIV now and through 2031* (Bangkok, 2009), p. xiv.

165 SNAP-UNDP, *Sex Trafficking and STI/HIV in South-East Asia: Connections between Sexual Exploitation, Violence and Sexual Risk* (Bangkok, 2009) p. 4. <http://www.snap-undp.org/eLibrary/Publications/SexTrafficking.pdf>

166 UNAIDS, *Getting to Zero: HIV/AIDS in Asia and the Pacific* (Bangkok, 2011), pp. 91-97.

167 UN Women, *UNIFEM-CEDAW Panel on Addressing Women Migrant Workers Concerns* (2003), p. 12.

168 UNAIDS (2009), p. 5.

169 UN Secretariat, *Violence against women migrant workers: Report of the Secretary-General (A/66/212)*, New York, 2011), p. 4, available from: http://www.un.org/ga/search/view_doc.asp?symbol=A/66/212.

the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Women migrant domestic workers are also protected by the ILO Convention No. 189 and Recommendation No. 201 Concerning Decent Work for Domestic Workers.

In Southeast Asia, the framework protecting women and girl migrant workers draws particularly on CEDAW, which has been ratified by all ASEAN Member States, confirming the centrality of gender equality and the empowerment of women to the development agenda of ASEAN.¹⁷⁰ The framework also includes the ASEAN Declaration on the Protection and Promotion of Migrant Workers (the Declaration), which reinforces the commitment of all Member States to implementing CEDAW and to the Convention on the Rights of the Child (CRC).¹⁷¹ The ACMW aims to implement the Declaration in its four main work areas: stepping up against exploitation and mistreatment; enhancing labour migration governance; cooperating at the regional level to fight human trafficking in ASEAN; and working towards an ASEAN instrument to further protect migrant workers.¹⁷² It is hoped that the ACMW, in formulating a binding instrument to protect and empower migrant workers, will incorporate CEDAW and its accompanying GR. No. 26, and the other international human rights instruments in the framework.

FIGURE: 1 THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK FOR ASEAN WOMEN MIGRANT WORKERS THROUGHOUT THE MIGRATION CYCLE¹⁷³

Human rights violations and concerns	Protections under the Framework
Pre-departure in countries of origin	
Decision to migrate	
Socio-economic and political marginalization that compels migration for work.	<ul style="list-style-type: none"> • CEDAW Articles (Art) 1-16, on factors that compel migration for work and GR No. 26 paragraph (Para) 8 on factors influencing women's migration. • The ASEAN Declaration Para 12: obliges countries of origin to ensure access to employment and livelihood opportunities as sustainable alternatives to migration.
Bans or restrictions on migration based on sex and gender. This ranges from requirements for a male spouse or relative to consent to a woman migrating or travelling with them to blanket bans on women's migration..	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; GR No. 26 Recs 24(a) and 26(a) requiring both sending and receiving countries to lift bans on women's labour migration. • ICRMW Art 8: freedom of movement to and from state of origin; and GC No 1. Para 61 on removing bans on women's migration.

170 Jean D'Cunha, foreword, in UN Women, *Time for Action: Implementing CEDAW in Southeast Asia* (Bangkok, 2009), available from: http://cedaw-seasia.org/docs/timeforaction/1_Forward_and_Intro.pdf.

171 ASEAN Declaration (2008).

172 ASEAN, *Workplan of the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers*, adopted on 15-16 September 2008, Singapore (Singapore, 2008), available from: <http://www.aseansec.org/23062.pdf>

173 UN Women, *Claim and Celebrate Women Migrants' Human Rights through CEDAW* (Bangkok, 2005), Figure 1, p. 42, available from: http://www.migration-unifem-apas.org/Publications/Claim_and_Celebrate.html.

Human rights violations and concerns	Protections under the Framework
Recruitment and immediate pre-departure	
<p>Lack of access to credible, reliable information, education and training on how to:</p> <ul style="list-style-type: none"> • migrate via safe, legal and affordable channels; • avoid exposure to trafficking; • access labour and social protections such as health insurance and services and education for women and their families, in destination countries; • access justice mechanisms for rights violations in countries of transit and destination. 	<ul style="list-style-type: none"> • CEDAW Art 10: equal rights to education and GR No. 26 Para 8: factors influencing women's migration; Para 10: pre-departure human rights concerns; Para 21: access to justice; and Rec 24(b): duties of countries of origin including comprehensive gender-sensitive information service provision. • ICRMW Arts 13(2) and 33 and GC No 1 Paras 9 and 28: right to pre-departure information, awareness raising and training. • ASEAN Declaration Paras 11 and 13 oblige countries of origin to: enhance measures protecting and promoting migrant workers' rights and prepare them for deployment. Para 17 calls on ASEAN to take concrete measures against trafficking.
<p>Economic exploitation and abuse including sexual and gender-based violence (SGBV) by employment agencies and other service providers.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations, Art 5: gender discrimination, Art 11: equal rights in employment and 16: equal rights in the family. GR No. 26 Para10 and Rec 26(c) on regulating employment agencies. • ICRMW Arts 64-66 on regulating migration including recruitment and GC No. 1 Paras 9 and 33-36 on exploitation by employment agents and measures to regulate them. • ASEAN Declaration Para 14 requires recruiters to be regulated and monitored.
In countries of transit	
<p>Lack of knowledge on travel routes and destination, abandonment, physical and sexual abuse, etc.</p>	<ul style="list-style-type: none"> • CEDAW Art. 10: equal rights to education; GR No. 26 Para 12 and Rec 25: human rights concerns in transit and responsibilities of transit countries. • GC No 1. Paras 10 and 31: women face particular risks including SGBV; and transit, sending and receiving countries must cooperate to regulate migration. • The ASEAN Declaration Para 20 promotes assistance to ASEAN migrant workers in crisis or conflict from embassies and consulates, including outside ASEAN.
On site in countries of destination	
<p>Sex- and gender-specific labour market discrimination: non-recognition of women's work, exploitative terms and conditions of work and stay, and unfair and abusive living conditions including for domestic workers.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations, Art.5: discriminatory gender role/ trait stereotypes, Art. 11: equal rights to employment, Art.15: equality before the law. GR No. 26 Rec 26(b) legal protection for the rights of women migrant workers. • ICRMW Art 25: conditions of work and GC No.1 Paras 13 on: abusive work conditions; Paras 37-44, on conditions of work; and Paras 45-47 on: the right to organize for collective bargaining and collective protection. • The ASEAN Declaration Para 15 promotes decent work for migrant workers.

Human rights violations and concerns	Protections under the Framework
<p>Gendered racism and xenophobia against women migrant workers (cultural stereotypes on sexual availability; lower wages for some ethnic and nationality groups compared to others, etc.)</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations, Art.5: discriminatory gender role/ trait stereotypes; Art.11: equal rights to employment, Art.15: equality before the law. GR No. 26 Para 14: racism experienced in countries of employment. • ICRMW Art 7 non-discrimination; Art 31: respect for cultural identity of migrant workers and their families. GC No. 1 Para 60: gender discrimination. • The ASEAN Declaration affirms CEDAW which has been ratified by all ASEAN Member States
<p>Restrictions on freedom of movement and on organizing and associating for collective bargaining and protection.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; Art.5: discriminatory gender role/ trait stereotypes; Art.11: equal rights to employment; Art.15: equality before the law. GR No. 26 Para 22: access to justice including right to organize and associat; Recs 26 (b) legal protection of women migrant workers' rights including to organize and associate; Rec 26(d): legal protection on freedom of movement,. • ICRMW Art 8: freedom of movement to and from country of origin, Art 26: right to organize and freely associate, and Art 39: freedom of movement within country of destination; GC. No. 1 Para 12: restriction of movement due to employers' confiscation of passports; Para 13 (a) working conditions restricting freedom of movement to the home; Para 39: freedom of movement, especially for live-in domestic workers ; and Paras 45-47 right to organize for collective bargaining and protection. • ASEAN Declaration affirms CEDAW.
<p>Physical and mental health and well-being concerns, such as discrimination on the basis of pregnancy and HIV status, including mandatory sexual and reproductive health testing, without consent, access to wider sexual and reproductive health service, and counselling. Migrant workers' children and families may also face de facto and de jure barriers to accessing health care, including emergency medical care.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; Art 12: equal rights to health and health care. GR. No 26: Para 17: inequalities threatening women migrant workers' health; Para 18: pregnancy-related discrimination; Rec24(d) health services especially pre-departure by countries of origin; Rec 26 (i) and (j): access to health services, including for undocumented migrant women, in countries of destination. • ICRMW Art 27: social security for migrant workers and their families on par with nationals in countries of employment; Art 28: emergency medical care: GC. No. 1: Para 22: mandatory health testing including for sexual and reproductive health; Para 24: exclusion from social security laws and lack of gender-sensitive health-care coverage; Para 42-44: social security protection; Para 56: special protections preventing children from performing hazardous work; Para 59; health and education for children of migrant workers; • ASEAN Declaration reaffirms the organization's commitment to improving the quality of life and well-being of their people, especially the vulnerable and disadvantaged.
<p>Lack of safety and privacy, including specific privacy concerns faced by women migrant workers, such as the accommodation arrangements of live-in domestic workers.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violation. GR. No 26: Para 17 lack of privacy and hygiene in working and living conditions, especially related to health. • ICRMW Art 14: privacy of migrant workers and their families. GC. No. 1: Para 26(d) privacy concerns of employers regarding inspections of their homes as workplaces noted; and Para 61: gender discrimination. • ASEAN Declaration Para 6 obliges states of destination to work towards harmony and tolerance.

Human rights violations and concerns	Protections under the Framework
<p>Physical, psychological, and sexual and gender-based violence (SGBV), including from: employers, employment agencies, spouses and family members, law enforcement authorities including police, border and customs officials and judicial officers.</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; GR. No. 26; Para 10: pre-departure abuse including detainment; Paras 20-22: women migrant workers' vulnerability to sexual abuse and violence, including the undocumented; Rec 26 (c) (i) prevention of violence, Rec 26(f) allowing workers to leave abusive employers without losing their visa, Rec 26 (i) social services including for victims of abuse; (k) protection for undocumented migrant women especially victims of abuse. • ICRMW Art 16(2) protection against violence towards migrant workers and their families; GC. No. 1. Para 13: abusive working conditions; Para 14: heightened risk of abuse for child domestic workers. Para 53: States should avoid making visa status tied to employers to prevent and address violence and abuse. • ASEAN Declaration provides access to justice for victims of discrimination, abuse, exploitation and violence.
<p>Trafficking (acts of overt and covert deception, coercion, exploitation: e.g. contract substitution, bondage and slavery).</p>	<ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations. GR No. 19 on violence against women addresses trafficking. • ICRMW Preamble acknowledges trafficking. GC no. 1 Para 51 supports access to legal migration channels to prevent trafficking and smuggling. • ASEAN Declaration Para 17 commits Member States to take concrete measures to prevent or curb smuggling and trafficking in persons, including by introducing stronger penalties.
Return and reintegration	
<p>Disproportionate personal and social costs and discrimination upon return (e.g. moral rehabilitation of young women returnees, stigmatization in sex-segregated contexts, appropriation of remittances by family, lack of gender-sensitive reintegration services).</p>	<ul style="list-style-type: none"> • CEDAW: Art 5: gender discrimination; Art 11: equal rights in employment; Art 12: equal rights to health and health care; Art 15: equality before the law; Art 16: equal rights within the family. GR No. 26 Paras 24(h): facilitating women's right to return free of coercion and abuse; Para 24(i): comprehensive socio-economic, psychological and legal services aimed at facilitating migrant women's reintegration. • ICRMW Arts 67: cooperation by States Parties for orderly return, with a view to promoting adequate economic conditions for resettlement and facilitating durable social and cultural reintegration. GC No. 1 Para 16: difficulties in reintegrating into labour market and society and transferring pensions and social security benefits; Para 17: access to justice impeded because of legal status; Para 50(c) States Parties encouraged to enter into bilateral agreements to ensure access to justice for migrant domestic workers; Para 62(c) expedite the return of migrant domestic workers to avoid trapping them in shelters for lengthy periods. • ASEAN Declaration Para 16 commits Member States to enforce human resource development and reintegration programmes.

3. Labour Migration Governance in ASEAN

Many ASEAN Member states currently have, or are in the process of implementing labour migration laws and policies to address migrant workers' human rights. However, labour migration governance in Southeast Asia is largely gender-blind, as it has been developed without that institutionalised and capacitated participation of women migrant workers and their advocates, including women's organizations and Ministries of Women's Affairs. ASEAN Member States have also signed bilateral agreements or Memoranda of Understanding (MoUs) which are crucial to managing labour migration. Although outside the scope of this report, it should be noted that governments are also involved in regional and global forums on international migration, including the Regional Consultative Processes (RCPs), which are information-sharing and discussion forums for states to promote cooperation on migration,¹⁷⁴ and the Global Forum on Migration and Development (GFMD), created by United Nations Member States in 2007 as the world's largest policy dialogue on international migration and development. This section draws on guidance developed by the GFMD on addressing gender and human rights concerns in labour migration laws and policies that may be useful to ASEAN Member States.

Of the **countries of origin**, the **Philippines** was the first to develop a TFWP and accompanying work permit system in the 1970s, followed by **Thailand** and **Indonesia** in the 1980s. **Viet Nam** and **Myanmar** have since followed suit. **Lao PDR** and **Cambodia** are in the process of developing effective systems to implement TFWPs, but are confronting challenges stemming from long-standing patterns of undocumented migration. In Cambodia, challenges include the oversupply of new entrants into the workforce (numbering between 250,000 to 300,000) compared to the productive job creation, and the relative cost and inconvenience of documented migration, in light of the well-established tradition of undocumented migration to Thailand.¹⁷⁵

Of the four **countries of destination**, Singapore was the first to develop a TFWP and work permit system in the late 1970s, governed by the EFMA, which as of September 2012 was being amended to tighten labour migration and keep Singaporeans "at the core of [the] workforce",¹⁷⁶ by up-scaling monitoring of employers and agencies via increased penalties for those who exploit migrant workers or hire those who are undocumented, and the expansion of workplace inspection and investigatory powers.¹⁷⁷ **Thailand** also utilized a work permit system under the Alien Employment Act (2008) and is currently implementing a TFWP.¹⁷⁸ **Malaysia** does not currently have a specific labour migration law, but as of 2012 the Government indicated that it was planning a new law and comprehensive labour migration governance system.¹⁷⁹ **Brunei Darussalam** is the only ASEAN destination country without a formal TFWP.¹⁸⁰

The TFWPs and work permit systems of Singapore, Malaysia, and Thailand, are all governed by national labour laws – the EFMA in Singapore, the Malaysian Employment Act (1955) and Thailand's Labour Protection Act (2008), respectively. These provide standard labour protections including a minimum of one rest day per week, a maximum work week of 44 hours, limits on salary deductions, and 14 days of annual paid sick leave. Migrant workers with work permits also fall under each country's Workmen's Compensation Act. However, women migrant workers in domestic work are often denied

174 ASEAN Member States belong to the Abu Dhabi Dialogue (also known as the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia); the APC (the Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants); and the Bali Process.

175 ILO (2009) pp 1, 6.

176 Ministry of Manpower, Singapore. "Amendments to the Foreign Manpower Act (EFMA)", (2011), available from: <http://www.mom.gov.sg/foreign-manpower/amendments-to-the-efma/Pages/default.aspx>

177 *ibid.*

178 IOM (2009), p. 21.

179 The Star "Nazri: Foreign Workers Act Needed to Manage the Four Million Migrant Workers" (17 May 2012) available from: <http://thestar.com.my/news/story.asp?file=/2012/5/17/nation/20120517201350&sec=nation>

180 UNESCAP Thematic Working Group (2008), p. 8.

such protections. In Malaysia, for instance, almost all would fall outside the definition of “workman”.¹⁸¹ Although the Malaysian Government has announced its intention to extend the coverage of the Workmen’s Compensation Act to domestic workers,¹⁸² it is not known when this reform will be enforced.

3.1 Common Features of TFWPs and work permit systems in ASEAN countries of destination

TFWPs and work permit systems share three common measures that are applied to migrant workers throughout the migration cycle: **off-shore recruitment**, **restrictions on mobility**, and **deportation**.

- a. **Off-shore recruitment**, which applies pre-departure and in transit, authorizes migrant workers to depart for work in countries of destination after having received the necessary paperwork. While designed to prevent undocumented migration, this policy has resulted a booming, privatized recruitment industry which has raised the costs of migration for both employers and migrant workers, especially women as noted above. The effects of privatization are discussed below in Section 3.1.2.
- b. **Work permits may restrict migrant workers’ mobility** in countries of destination because they are usually issued to employers and not migrant workers themselves. Migrant workers may not be able to change their employer or occupation category without losing their documented status.
- c. **Deportation** for migrant workers who do not leave countries of destination after their contracts are terminated, or who test positive for mandatory health tests. As stated in Section 2.7, detention and deportation procedures raise particular human rights concerns for women migrant workers.

3.1.1 Restricted mobility under TFWPs and work permits

TFWPs and work permits often limit migrant workers’ ability to move freely, change employers and occupations, migrate with their families, and integrate with societies in destination countries. These are effectively the protection gaps between the commitments that ASEAN Member States may have made under international and regional human rights standards, and how they actually manage and govern labour migration. Women and men migrant workers are affected differently by restricted mobility. Many encounter barriers to accessing justice, especially where employers threaten to, or actually revoke, their work permits, or confiscate their travel and identity documents.

By creating work permits that are personalised to employers, governments remove the autonomy of migrant workers to choose their employer and job, to manage their own immigration status, and to control their own mobility. While these migrant workers can seek redress against abusive employers because they are documented, they often lack access to justice because they may be unwilling or unable to make claims in light of their employers’s power to revoke their permit. The lack of coherence between labour and migration laws and policies means that migrant workers cannot seek redress if their employer cancels their work permit. In Malaysia, migrant workers who lose their permit and want to bring claims must request a special visa that costs roughly 30 USD and bars them from working, which especially prevents women migrant workers from accessing justice, given their lower incomes and financial and other resources compared to men.¹⁸³ Often, even the mere threat of cancelling permits allows exploitative employers and employment agencies to evade prosecution. The *Trafficking in Persons Report 2012* notes that in Singapore, for instance, some employers collude with agencies to seize, confine and accompany migrant workers to the airport – including by assaults, threats, coercion,

¹⁸¹ Malaysia, Workmen’s Compensation Act (1952), section 2(1).

¹⁸² IOM (2010), p. 49.

¹⁸³ IOM (2010), p. 45.

to prevent them from accessing justice before they leave the country.¹⁸⁴ Women migrant workers face other significant barriers, including a lack of access to legal aid and assistance, shelters, diplomatic assistance, and gender-responsive, culturally and linguistically appropriate support services.¹⁸⁵

Work permits are specific to both employer and sector. Work permits are issued to, and hence personalized for the employer, not the worker, creating a gaping protection gap. The employer of a migrant worker is directly responsible for him or her in all respects, including eventual return to the country or origin. State responsibility for the welfare and wellbeing of women and men migrant workers is effectively relegated to employers, giving them the right to terminate the contract and cancel the work permit at any time. Migrant workers on the other hand are bound to the employer for the specified time-frame of the work permit, which is usually two years, and risk becoming undocumented, and criminalized, if they lose their job. According to national immigration laws, upon the termination of the work permit the migrant worker must immediately leave the country. This means that even though they are officially covered by the law, in effect they have no choice but to accept the wages and work and safety conditions, and for live-in domestic workers, housing, food and other living conditions imposed by the employer during her contract. The worker cannot improve working conditions by changing employers because she or he is prohibited from doing so.

A recurring human rights violation experienced by women migrant workers, especially domestic workers, is the confiscation of their passports and other travel and identity documents by employers. The *Trafficking in Persons Report 2012* notes that is a persistent problem for migrant workers in **Brunei Darussalam, Singapore**, and **Thailand**, and especially for domestic workers in **Malaysia**.¹⁸⁶ All four ASEAN destination countries hold employers who confiscate migrant workers' passports accountable, but there may be gaps between these penalties on paper and in practice. The Report notes, that in Malaysia, where employers or agents can legally possess migrant workers' passports,¹⁸⁷ domestic workers whose passports or wages were withheld may have been victims of trafficking (the link between migration and trafficking are discussed in Section 4). However, officials may not have investigated or recognized their cases as potential trafficking situations.¹⁸⁸ In **Thailand**, officials investigated reports of migrant workers allegedly experiencing passport confiscation, withheld wages, unsafe living conditions, and deportation threats, but these did not result in prosecution or conviction.¹⁸⁹

Under TFWPs and work permit system in ASEAN, migrant workers cannot migrate with spouses or children. This is notably of concern for women migrant workers, who are mostly employed on two-year contracts as domestic workers. Not only do they fall within the IOM definition of a "long-term migrant", as noted earlier, women and their families left behind bear the social costs of migration, especially children who suffer the impacts of losing their mothers and primary caregivers.¹⁹⁰

Migrant workers must undergo mandatory health testing to gain and maintain their documented status, which further restricts their mobility. For women migrant workers these "screenings" raise concerns over their sexual and reproductive health rights. In the ASEAN destination countries, all migrant workers are screened for infectious and communicable diseases, including HIV, and women migrant workers undergo periodic pregnancy tests. Many risk immediate deportation if they test positive. **Malaysia** requires all migrant workers to be tested before they gain entry into the country and when they renew their work permit annually, and those who are HIV-positive are liable to deportation.¹⁹¹ In **Singapore** foreign domestic workers are tested every six months and must either have an abortion or leave the

184 *Trafficking in Persons Report 2012: Singapore*.

185 *Report of the Secretary-General (A/66/212)*, p. 18.

186 *Trafficking in Persons Reports 2012: Brunei Darussalam, Malaysia, Singapore and Thailand*.

187 IOM (2010) p. 45.

188 *Trafficking in Persons Report 2012: Malaysia*.

189 *Trafficking in Persons Report 2012: Singapore*.

190 Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, *General Comment No. 1 on migrant domestic workers (CMWIC/GC/1)*, para. 15, available from: http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm

191 Malaysia, *UNGASS Global Aids Response Country Progress Report: Malaysia 2010 to 2011* (2012), p.24.

country if they are pregnant.¹⁹² In **Brunei Darussalam** migrant workers are screened on arrival and at periodic intervals,¹⁹³ while in **Thailand** all registered migrant workers are tested for communicable diseases.¹⁹⁴ In July 2012, the Royal Thai Government reversed a decision to deport pregnant women migrant workers that was aimed at preventing child labour, due to sustained international and local pressure from civil society, including migrants' organizations.¹⁹⁵ In August 2012, the United Nations Committee on the Elimination of Racial Discrimination urged Thailand to abandon the draft proposal, which was still under discussion according to the Government.¹⁹⁶

3.1.2 The privatization of TFWPs and work permits

Across Southeast Asia, although the state creates labour migration laws and policies, it is the private sector that effectively operationalizes TFWPs and work permits – namely employment agencies in a market-driven recruitment industry. The privatization of labour migration governance raises serious concerns for women and men migrant workers and their families. It has created a protection gap that leaves migrant workers caught between a private industry that administers TFWPs and work permits, and the governments that are responsible for regulating agencies and for protecting migrant workers and employers. This gap has resulted in high transaction costs for all – although some agencies and employers transfer these costs to migrant workers by charging excessive fees, reducing wages, or increasing working hours. Some employment agencies in ASEAN and across Asia have taken steps, supported by UN Women and others, to remedy the lack of accountability resulting from privatization, adopting a Covenant of Ethical Conduct and Good Practices in 2005.¹⁹⁷ ASEAN itself has taken a proactive approach to regulating the recruitment industry. The ASEAN Declaration states that sending countries must create and promote legal practices to regulate recruitment and adopt mechanisms to eliminate malpractices, including legal, binding contracts, the monitoring and accreditation of agencies and employers, and consequently blacklisting recruiters who behave negligently or unlawfully (See Figure 1).¹⁹⁸

Among the major destination countries, **Singapore** prevents employment agencies from charging fees higher than one month's salary for migrant workers.¹⁹⁹ Agencies must also refund a portion of fees if migrant workers' contracts are terminated in the first six months of employment, and they must pay a security deposit to obtain the licence required to operate legally.²⁰⁰ Regulation remains a challenge in **Malaysia**, where the large recruitment industry and the prevalence of cross-border migration are linked to the persistently high levels of undocumented migration.²⁰¹ Malaysia amended its regulation of employment agencies under the Employment Act (1955) in 2011 and 2012 (the industry is also regulated by the Private Employment Agencies Act (1981)). In both years the Government of Malaysia increasingly gave agencies analogous status, rights and duties as employers of all workers, including migrants. Both reforms were criticized by diverse civil society groups including migrants' organizations, trade unions, and the Malaysian Bar, for terminating the direct relationship employers who owned

192 IOM (2010), p. 54.

193 Joint UN Initiative on Mobility and HIV/AIDS in South-East Asia (JUNIMA), "Country Profile: Brunei Darussalam" (2007).

194 IOM and WHO, *Financing Healthcare for Migrants: A Case Study from Thailand* (Bangkok, 2009), p. 43.

195 The Nation, "Government to allow pregnant migrant workers to give birth here" (24 July 2012), available from: <http://www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html>

196 Committee on the Elimination of Racial Discrimination "Concluding Observations: Thailand" (CERD/C/THA/CO/1-3) (2012), available from:

<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.THA.CO.1-3.pdf> p. 6.

197 UN Women, "Covenant of Good Practices and Ethical Conduct," (Bangkok, 2005), available from: http://www.unwomen-eseasia.org/docs/Covenant_ethical_conduct.pdf

198 ASEAN Declaration, para 14.

199 Ministry of Manpower, Singapore, "New Employment Agency (EA) Regulatory Framework", (26 July 2011), available from: <http://www.mom.gov.sg/foreign-manpower/employment-agencies/Pages/Faq-Feeecaps.aspx>

200 Ministry of Manpower, Singapore "Changes to the Employment Agency Regulatory Framework", (1 April 2011), available from: <http://www.mom.gov.sg/Documents/foreign-manpower/Employment%20Agencies/Guide%20for%20employment%20agencies%20on%20new%20regulatory%20framework.pdf>

201 UNESCAP Thematic Working Group (2008), p. 55.

and operated businesses and their employees.²⁰² **Brunei Darussalam** amended its regulations in 2009 to introduce harsher penalties for agencies operating illegally (although domestic workers were excluded from all protections under the amendment),²⁰³ and renewed efforts in 2012 to close protection gaps by requiring a monetary deposit for license applications and conducting background checks on agencies and individuals.²⁰⁴ In **Thailand** employment agencies or brokers are unregulated, and unconstrained from capitalizing on opportunities to privatize the complex and time-consuming recruitment processes for temporary labour migration.²⁰⁵ According to the IOM and the UN, although the Royal Thai Government periodically announces crackdowns on illegal agencies and brokers and undocumented migrant workers, enforcement against agencies is rare, especially when compared to the regular rounding up of thousands of migrant workers each month.²⁰⁶

In a privatized labour migration industry, it is essential not only to regulate agencies but also to enforce fundamental human rights, especially labour rights. In all major ASEAN destination hubs, migrant workers are restricted from organizing to collectively bargain for decent working and living conditions. In **Thailand**, **Malaysia** and **Singapore**, migrant workers may join national trade unions but are not permitted to form their own unions. **Brunei Darussalam** does not allow migrant workers to freely associate.²⁰⁷ However, women migrant workers, especially domestic workers, are devising innovative and creative strategies to bypass these barriers by joining unions, and forming migrant and women's groups and social networks. In Malaysia domestic workers groups are joining the Malaysian Trade Union Confederation (MTUC). Through MTUC, they have formed a 250-member strong Migrant Worker Forum created in 2011 as an alternative to a domestic workers' union, that voices human rights concerns to the Government of Malaysia.²⁰⁸ In Singapore, supported by an NGO called the Home Organization for Migration Economics (HOME), women migrant domestic workers are organizing via social media – as of July 2012 over 9,000 Filipino domestic workers were connected to "HOME Gabriela", while, over 2,000 Indonesian domestic workers were connected to "HOME Kartini".²⁰⁹ These networks are crucial for these women as they lack the time and other resources to meet, especially before January 2013 when the Governments' decision to guarantee a weekly day off will come into effect.²¹⁰

3.2 Closing the protection gaps – implementing human rights in national laws and policies

Bridging the protection gaps requires targeted, gender-responsive and rights-based labour migration laws and policies. At the 2011 Global Forum on Migration and Development, governments and other stakeholders from Africa, Latin America and the Caribbean, three other major regions experiencing labour migration, especially of women domestic workers, agreed on a checklist, supported by UN Women and others, to implement the protections in Figure 1 for women migrant domestic and care

202 Malaysia, Employment (Amendment) Act (2011); and Malaysia, Employment (Amendment) Act (2012); Charles Hector and Pranom Somwong, "114 groups ask Malaysia to stop amending the Employment Act for the sake of workers and employers", press statement, (1 January 2011), available from: <http://www.imfmetal.org/files/11110316184282/Media%20Statement%20November%201-2011.pdf>; and the Malaysian Bar "Resolution on maintaining a just employment relationship, worker and trade union rights in Malaysia", adopted at the 66th Annual General Meeting of the Malaysian Bar, available from: http://www.malaysianbar.org.my/malaysian_bar_s_resolutions/resolutions_adopted_at_the_66th_annual_general_meeting_of_the_malaysian_bar_held_at_sunway_putra_hotel_kuala_lumpur_saturday_10_mar_2012.html

203 Brunei, Darussalam, Employment Order (2009).

204 *Trafficking in Persons Report 2012: Brunei*.

205 IOM and UN (2011), p. 32.

206 Ibid.

207 *Country Report on Human Rights Practices 2011: Brunei*.

208 International Trade Union Confederation "Spotlight interview with Pari Moses (MTUC)" (8 February 2012), available from: <http://www.ituc-csi.org/spotlight-interview-with-pari.html?lang=en>

209 The Employment (Amendment) Acts 2011 and 2012 of Malaysia explicitly exclude domestic workers, while the Employment Order 2009 in Brunei Darussalam also excludes domestic workers from some protections. Brunei Darussalam passed a separate order for domestic workers called the Employment (Domestic Workers) Order (2009) that guarantees them some of the protections extended to other workers, including those regarding contents of employment contracts, timely payment of salaries and prohibition on unauthorized deduction, and health and safety, accommodation and medical care.

210 International Domestic Workers Network, "A Voice for Domestic Workers in Singapore", (24 July 2012), available from: <http://www.idwn.info/news/voice-domestic-workers-singapore-myvoice-newsletter>.

workers.²¹¹ Figure 2 adapts this checklist to apply to labour migration governance for all migrant workers in ASEAN. The adapted checklist below could be a starting point for reform, where necessary, together with guidance from ASEAN including the Declaration and the upcoming Instrument.

Figure: 2 A Checklist for Developing and Implementing Gender-responsive and Rights-based Labour Migration Governance for All Migrant Workers, especially Women

1. The Institutionalized Mainstreaming of Gender and Human Rights Concerns
 - A coordinated multi-stakeholder, multi-sector reform process that is gender-mainstreamed and involves coherence between ministries and departments for labour, migration, women's affairs, foreign affairs and trade; the capacitated engagement of civil society including women migrant workers and their organizations; and the inclusion of the private sector including employers and recruitment agencies.
 - Political will and commitment to achieving coherence between labour, migration and trafficking laws and policies, to protect all migrant workers, especially women, throughout the migration cycle (pre-departure, in transit, on-site in countries of destination, and on return to countries of origin).

2. The Elements of Gender-responsive and Rights-based Laws and Policies
 - Recognition of work from sectors in the informal economy where migrant workers are employed as real work, and ensuring migrant workers receive the same treatment as nationals.
 - Protection of fundamental human rights and freedoms, including for undocumented migrant workers, and measures against all rights violations including abuse, harassment and violence.
 - Access to gender-responsive, rights-based information service provision on issues concerning migration, labour and trafficking, throughout the migration cycle.
 - Fair employment terms and decent working and living conditions.
 - Social protection coverage including insurance, maternity protections, healthcare including social and reproductive healthcare, education and training, adequate housing, and essential social services.
 - Removal of undue restrictions on freedom of movement, especially bans on women's migration based on sex and gender discrimination, excessively costly or time-consuming requirements for documented migration, and the confiscation of travel and identity documents.
 - Access to justice at all stages of the migration cycle in countries of origin, transit and destination, including by implementing gender-responsive legal and justice systems.
 - Gender-responsive remittance mechanisms and savings and investment schemes, including those initiated by diaspora communities, for sustainable development.
 - Measures to prevent and address undocumented migration, smuggling and trafficking, especially of women and girls.

3. Monitoring and Accountability Mechanisms to Enforce and Improve Labour Migration Governance
 - Accountability mechanisms to end impunity for rights violations including: civil and criminal remedies for violators including employers, public officials and recruitment agencies; and regulations to monitor and provide redress mechanisms for agencies.
 - Monitoring and evaluation to compile and evaluate the effectiveness of laws and policies.
 - Sufficient and appropriate financial and human resources to implement laws and policies.
 - Gender-sensitive, rights-based training and awareness raising for public officials, recruitment agencies and employers.
 - Sex-disaggregated data collection and gender-responsive research and analysis of migrant workers and their families.
 - Cooperation between states, including at bilateral, regional and multilateral levels.

²¹¹ GFMD, "Checklist for the Ghana and Jamaica regional care worker workshops", co-organized by the Governments of Ghana, Jamaica, and Switzerland, in cooperation with UN Women and others (2011), available from: <http://gfmd-fmmd.org/en/docs/switzerland-2011/thematic-meetings>.

All ASEAN Member States go some way towards following the above checklist in their national laws and policies. Perhaps political will and dedicated human and financial resources are the most essential elements of any efforts to reform or better implement labour migration governance. However, the benefits would greatly outweigh any costs in a region where labour migration is an entrenched and expanding trend. Better labour migration governance will not only uphold the human rights of all migrant workers, but also improve migration management, and harness the economic and social contributions of migrant workers towards sustainable development. Although this report focuses on labour and migration laws and policies, the checklist also recommends that they are coherent with trafficking laws and policies (further discussed in Section 4). The examples below highlight some of the good practices to be replicated, and protection gaps to be closed, throughout the region.

3.2.1 Countries of destination

The good practices of destination countries must either be properly enforced or extended to fully protect and empower migrant workers, especially women. **Brunei Darussalam** improved access to justice for migrant workers, including women, according to the US Department of State *Country Report on Human Rights Practices 2011*. In 2010 the commissioner responsible for labour disputes was authorized to uphold migrant workers' rights, although some, especially construction workers in the informal economy, remained largely unprotected.²¹² **Malaysia**, as noted above, is committed to reforms that would follow some of the guidance in the checklist. These include new provisions to be introduced in the Employment Act (1955) to protect migrant domestic workers' wages and working conditions, and to control the exploitative employment of migrant workers.²¹³ **Singapore**, despite moving to restrict immigration overall, improved its work permit (Work Pass) conditions in 2011 for foreign domestic workers (FDWs). To obtain and retain the Work Pass for FDWs, employers must now take necessary measures to ensure health and safety at work, and to provide accommodation consistent with laws or policies. Employers must also pay wages except when FDWs are on no-pay leave outside of Singapore. Employers must also not use unlicensed agencies. FDWs (and other workers) must also work for their specified employer in the occupation and sector-specified, or lose their work permit.²¹⁴

3.2.2 Countries of origin

Indonesia and the **Philippines** have some good practices that could be up-scaled and replicated, especially in other origin countries that are still developing labour migration laws and policies - **Cambodia**, **Lao PDR**, **Myanmar**, and **Viet Nam**. In the Philippines the central labour migration law is the Migrant Workers and Overseas Filipinos Act (1995),²¹⁵ amended in 2009 to: promote commitment to international conventions and bilateral agreements to protect Filipino migrant workers;²¹⁶ address the lack of access to justice caused by poverty;²¹⁷ and better regulate recruitment by expanding the scope of illegal recruitment to include "reprocessing job orders" or sending migrant workers overseas to non-existent jobs, or work that is different to their actual overseas work, or with a different employer²¹⁸ and introducing harsher penalties for agencies acting illegally.²¹⁹ Other innovative policies include: recruitment caps and a standard employment contract for domestic workers; labour attachés in consulates and embassies; and a legal assistance fund for victims of human rights abuses; and livelihoods schemes for returnee migrant workers.²²⁰ However, according to the European Commission,

212 *Country Report on Human Rights Practices 2011: Burma*, p 16, available from: <http://www.state.gov/documents/organization/186475.pdf>

213 IOM (2010) p. 49.

214 Ministry of Manpower, Singapore "Work Pass Conditions Amended to Clarify Existing Rules" (2011), available from: [http://www.mom.gov.sg/legislation/Documents/Changes%20to%20work%20pass%20conditions%20\(FDW%20employers\).pdf](http://www.mom.gov.sg/legislation/Documents/Changes%20to%20work%20pass%20conditions%20(FDW%20employers).pdf)

215 This law is also known as the Republic Act or RA8042. The amending legislation is known as the Act Amending Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, or RA 10022.

216 RA 8042, section 2(a).

217 Ibid, section 2(e).

218 Ibid, section 6(c).

219 Ibid, section 7.

220 Lacanlale (2012).

the Philippines needs to better protect returnee and incoming migrant workers, and address migration and development issues (including remittances).²²¹ In Thailand, the Recruitment and Job Seekers Protection Act (1985), amended in 1994 and 2001, needs stronger monitoring and enforcement.²²² However Thailand does have good practices as a destination country, including a health insurance scheme and mass regularization procedures for undocumented migrant workers.²²³ Indonesia enacted the Law Concerning the Placement and Protection of Indonesian Workers Abroad (39/2004), and has also developed local legislation with protections for migrant workers. According to the IOM, the current law also has enforcement problems.²²⁴ However, the Government has acknowledged this and has drafted an amendment bill after ratifying the ICRMW (Migrant Workers' Convention) in April 2012. News reports from September 2012 quote legislators as stating that the bill aims to improve the protection system for placing migrant workers abroad.²²⁵

There are perhaps greater opportunities for reform in labour migration management in **Cambodia**, **Lao PDR**, **Myanmar**, and **Viet Nam**. **Cambodia's** labour migration policy is outlined in Sub-decree 57 on Sending Khmer Migrants to Work Abroad (1995), and Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (2011). Worryingly, Sub-decree 190 follows the privatization trend, devolving authority to agencies for pre-departure training, working and living conditions pre-departure, health testing, and employment contracts for migrant workers.²²⁶ Currently, the Government has limited monitoring powers, including requiring the payment of a guarantee/deposit, and obligations to inspect agencies.²²⁷ **Lao PDR** has several decrees and directives passed in 2002, including a Prime Minister's Decree on labour migration to Thailand and accompanying guidance and a Ministerial Directive on preventing migrant workers from engaging in informal work.²²⁸ The Ministerial Decree especially affects women migrant workers as it bans them from working in sectors where most of them are employed including domestic work.²²⁹ The recommendations of the 2007 UN Women study on Lao PDR are yet to be implemented - that the Government include a chapter on labour migration and recognize domestic work under labour laws; better regulate the recruitment industry; and align labour migration laws and policies with the MoU with Thailand and similar agreements.²³⁰ **Myanmar** has enacted a Law Relating to Overseas Employment (1999), but only provides guidelines to employment agencies. According to the Government, in 2008 most of the 70 licensed agencies in the country recruited skilled workers²³¹ - which indicates that "low-skilled" migrant workers were undocumented. In **Viet Nam** the key legislation is the Law on Vietnamese Workers Going Abroad under Contract (2006), which is supported by various policies.²³² The recommendations by UN Women and MoLISA in 2012, may be apt for all ASEAN countries:

- 221 European Commission *Migration Profile: Philippines* (2009), available from: http://eeas.europa.eu/philippines/docs/migration_profile_annex3_en.pdf
- 222 Although Thailand has the Recruitment and Job-Seekers Protection Act (1985), amended in 1994 and 2001, which contains several protections for migrant workers, according to the IOM and UN in the *Thailand Migration Report 2011*, enforcement is a major problem and very few Thai migrant workers go through the legal procedures required by the Act (p. 14).
- 223 See for instance IOM and WHO (2009); Ms. Thineeporn Wachaweisith, Senior Labour Specialist Officer, Ministry of Labour, Royal Thai Government "Regularization of status for migrant workers, including women migrant workers", presentation delivered at a Regional Conference on Human Rights Instruments, International Labour Standards, and Women Migrant Workers' Rights, 4-5 September 2012, Phnom Penh, Cambodia, held by UN Women, Royal Government of Cambodia and in collaboration with the ILO.
- 224 IOM (2010) p. 14.
- 225 The Jakarta Post "Migrant workers need more protection", (25 September 2012), available from: <http://www.thejakartapost.com/news/2012/09/25/migrant-workers-need-more-protection.html>
- 226 See Chapters 15, 19-22, Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (2011).
- 227 Ibid, Chapters 9 and 10.
- 228 The full titles are Prime Minister's Decree No. 68/2002 on "Export of Lao Workers Abroad" and accompanying guidelines No. 2417/MoLSW 'on Implementation of Decree on Export of Lao Workers Abroad'; and Ministerial Decree No. 3824/LSW (2002).
- 229 See Part 2, Ministerial Decree No. 3824/LSW.
- 230 UN Women (2007) paragraphs no. 8, 9, 11, 14.
- 231 San San, Director, Department of Labour, Ministry of Labour, Myanmar "Labour Migration Management", presentation delivered at the Asian Development Bank Institute Regional Conference on Labour Migration Management in the Process of Regional Integration, 29 May 2008, Bangkok, Thailand, available from: http://www.adbi.org/files/2008.05.29.cpp.san.country_presentations.myanmar.pdf
- 232 UN Women and MoLISA (2012) p. 7.

“Viet Nam has made significant efforts to introduce laws and accompanying regulations to provide for a strong system of governance for international labour migration and rights protection. However, the protection of migrant workers’ rights and gender- sensitivity within the legal and policy frameworks could be better developed and articulated. Moreover, the capacity of duty bearers to implement and monitor the laws may need strengthening.”

3.3 Governance Structures for Managing Labour Migration Management

For ASEAN Member States, the governance structures to manage labour migration include relevant government departments, ministries, agencies, and other key bodies. To date, **Singapore** among the destination countries and the **Philippines** among the origin countries have comparatively comprehensive labour migration governance structures. In Singapore, the Ministry of Manpower functions as a centralised body that governs the complex Work Pass regulations and other schemes that manage labour migration. In the Philippines, four government entities are responsible for labour migration – the Philippines Overseas Employment Administration (POEA); the Overseas Workers’ Welfare Association (OWWA); the Department of Foreign Affairs; and the National Reintegration Center of Overseas Filipino Workers. Both countries could still benefit from further reforms. However, as discussed in following sections, Singapore and the Philippines have several good practices that could be up-scaled and replicated across the region.

Other Southeast Asian countries are still developing their own labour migration governance structures. The overall challenges they face are both administrative and structural. These include: the difficulty of tackling the privatization of TFWPs and work permit systems; the need to begin law and policy reform from a multi-stakeholder, multi-sectoral perspective as outlined in the checklist in Figure 2; a lack of financial and enabled human resources to effectively tackle all aspects of migration governance from a gender-responsive, rights-based perspective; and perhaps, most importantly, a dearth of political will to effectively manage labour migration and address the human rights concerns of migrant workers.

3.3.1 Countries of destination

In **Brunei Darussalam** the governance structure to manage labour migration includes the Department of Immigration and National Registration (DoINR), which issues employment visas and passes including those specific to domestic workers.²³³ Other relevant government bodies include the Department of Labour, which has undertaken positive efforts together with the DoINR conducted nationwide road shows to publicize workers’ rights and the prevention of forced labour, including the non-payment of wages.²³⁴ A Heads of Specialist Trafficking Unit was also formed within the Royal Brunei Police Force in August 2011, to cover migrant workers who were victims of trafficking for forced labour.²³⁵ However, authorities are struggling to cope with new migration patterns, especially the rise in undocumented migration despite harsh penalties.²³⁶ This could be because protections for migrant workers are dispersed across many laws and regulations, an issue not uncommon in other ASEAN Member States. In Brunei Darussalam, migrant workers’ rights are covered by: the Labour Act (1954) (amended in 1984 and revised in 2002), which defines the rights and responsibilities of employers and workers; the Workmen’s Compensation Act (1957) (amended in 1984) which hold employers responsible for workers’ safety; the Trade Union Act (1961) (amended in 1972) and the Trade Dispute Act (1961) which deal with conflicts between workers and employers; and the Employment Information Act (1974) (amended in 1978) which aims for improve governance through better monitoring and data management. Other regulations cover maternity benefits, the protection of children against

233 Department of Immigration and National Registration, Brunei, “Working”, available from: <http://www.immigration.gov.bn/working.htm>

234 *Trafficking in Persons Report 2011: Brunei*.

235 *Ibid*.

236 UNESCAP Thematic Working Group (2008), p. 3.

exploitation, workplace safety, public holidays, the rights of domestic workers, and wage payments.²³⁷ The growing number of authorities that address migrant workers' rights could streamline their approach by developing a unified, gender-responsive, rights-based labour migration law and/or policy.

In Malaysia, the Immigration Department of the Ministry of Home Affairs enforces immigration laws, including by processing work permits and visas and admitting migrant workers into the country.²³⁸ The Department also supervises the licensing of recruitment agencies and has jurisdiction over the running of detention centres (called "depots") and the deportation of undocumented migrant workers. The Ministry of Human Resources (MoHR) enforces labour laws and policies and oversees workforce and skills training programmes, and the Foreign Workers' Medical Examination Monitoring Agency (FOMEMA) conducts annual mandatory health tests for migrant workers.²³⁹ With a reported total of approximately 1,200 officers, the Immigration Department needs greater human and financial resources to address the increasing levels of labour migration. According to the Ministry of Human Resources, in 2008 the Department was processing around 20,000 visa applications each month.²⁴⁰ All three government bodies should coordinate to uphold the rights of migrant workers. For instance, the current legalization policy for undocumented migrant workers does not apply to their families and the necessary visas are prohibitively expensive for those in low-wage employment sectors, especially women migrant domestic workers.²⁴¹ The Department, the MoHR and FOMEMA could cooperate to form a gender-responsive, rights-based governance structure with lower costs and the inclusion of families. .

Thailand, for the past two decades, has had no specific host agency tasked with planning long-term migration policies, or for managing the increasing intakes of so-called "low-skilled" migrant workers.²⁴² The "piecemeal migration policy" has involved Cabinet decisions between officials and main agencies, especially the National Security Council (NSC), as short-term responses to labour shortages, employer pressure, and political expediency.²⁴³ According to the UN and the IOM, this approach has created confusion and inadequately protected migrant workers, fostering the thriving informal recruitment industry.²⁴⁴ In addition to the NSC, other governance structures include the Illegal Alien Workers Management Committee (IAWMC) and the Office of Foreign Workers Administration in the Ministry of Labour and Social Welfare, under the Department of Labour. While administrative capacity has been improving, the true test will be the Office's ability to administer work permits. As with the other destination countries, the necessary coordination and cooperation between government bodies would require dedicated financial and human resources, training and capacity-building, and other technical and financial assistance, as requested by governments.

3.3.2 Countries of origin

In **Cambodia**, a lack of capacity is one of the main roadblocks to effectively managing labour migration. The Department of Employment and Manpower in the Ministry of Labour and Vocational Training (MoLVT) is directly responsible for managing labour migration. This Department consists of only 57 officials who are mandated to oversee out-going and incoming migrant workers, as well as employment within the country.²⁴⁵ Within the Department of Statistics and Passports, a total of 75 officials are responsible for processing passport applications for all migrant workers and citizens, except civil servants, in Cambodia.²⁴⁶ As of January 2008, the few recruitment agencies in Cambodia

237 Ibid.

238 IOM (2010), p. 44.

239 Ibid.

240 Mr Ahmad Badri Bin Jafar "Malaysia: Labour Migration Management, Trends, and Challenges", presentation delivered at the Asian Development Bank Institute Regional Conference on Labour Migration Management in the Process of Regional Integration, 29 May 2008, Bangkok, Thailand, available from: http://www.adbi.org/files/2008.05.28.cpp.badri.managing.the.labor.migration.labor_receiving.malaysia.pdf

241 Kassim and Haji Mat Zin (2011), pp. 23-5.

242 IOM and UN (2011), p. 24.

243 Ibid.

244 Ibid.

245 ILO (2009), p. 14.

246 Ibid. p. 13.

lacked the capacity to process applications for the legal exit of outgoing migrant workers.²⁴⁷ The MoLVT needs adequate human and financial resources, which could perhaps be guaranteed by another Sub-decree.²⁴⁸ Once the MoLVT's governance structures are strengthened, the existing sub-Decrees No. 57 and 109 that address labour migration could be improved to include provisions like standard pre-departure training curricula for outgoing migrant workers; minimum standards for migrant workers' transport and accommodation; stronger monitoring and penalties of recruitment agencies; and comprehensive model employment contracts between migrant workers, employers and agencies.²⁴⁹

Indonesia faces a lack of coordination and coherence in its governance structures. At least 13 government bodies are currently involved in deploying migrant workers and addressing their concerns, the most important of which are the Ministry for Manpower and Transmigration and the National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI), established in 2007.²⁵⁰ BNP2TKI was intended to operate under the Ministry's direct coordination and hold authority for all labour migration programs, while the Ministry was to retain decision-making responsibility to form migration policy.²⁵¹ According to the IOM report, there have been institutional conflicts between the Ministry and BNP2TKI. These include a lack of clarity regarding the division of jurisdiction among various state institutions at both the central and provincial levels, and a lack of transparency in coordination leading to duplicated work and information gaps.²⁵² Some governance-strengthening measures include a new BNP2TKI database and national identity workers' card system which registered over 581,000 migrant workers in 2011, an especially useful initiative as Indonesia's migrant workforce remains mostly undocumented and feminized. This database improved verification of eligibility and reduced opportunities for corruption. Despite a lack of information sharing by BNP2TKI, the Ministry also reported revoking the licenses of 28 employment agencies that were acting illegally in 2011.²⁵³

Lao PDR has also faced challenges to its capacity to manage outgoing undocumented migration flows. UN Women noted in 2007 that the Government was committed to both supporting better labour migration management and promoting employment opportunities within the country. The two main activities included revising the labour law and extending the current "Employment Promotion Division" to become a fully-fledged "Department of Employment Promotion" separate from the Department of Labour.²⁵⁴ This plan is currently in transition, along with other initiatives identified in the National Socio-Economic Development Plan (2011-2015) and other plans, decrees and regulations on skills development and employment. According to a joint initiative by the ILO and the Ministry of Labour and Social Welfare, the following positive results had been achieved as of 2011: creating 500,000 jobs in Lao PDR; achieving an unemployment rate of 3 percent or less; reducing incoming and outgoing labour migration; and diversifying the labour market.²⁵⁵ The Government is committed to strengthening the capacity of the MOLSW,²⁵⁶ and should also incorporate a gender-responsive and rights-based perspective in all capacity-building initiatives.

In **Myanmar**, the Overseas Employment Service was established in 1990 as a branch of the Employment and Training Section in the Ministry of Labour. The Service is officially responsible for managing outgoing labour migration, and for regulating the recruitment agencies that facilitate all documented migration. To mitigate the high costs of the privatized recruitment industry, the Ministry reported in 2008 that it had introduced 77 Employment Exchanges/Township Labour Offices, with

247 Ibid. p. 7.

248 ILO (2009), p. 33.

249 The Asia Foundation, Cambodia's Labor Migration: Analysis of the Legal Framework (2011), pp. 51-2.

250 According to the IOM the other government bodies are: the Ministry of Foreign Affairs; the Ministry of Social Affairs; the Coordinating Ministry of Economic Affairs; the Coordinating Ministry of People's Welfare; the Ministry of Health; the Ministry of Communication; the Ministry of Home Affairs; the Directorate-General of Immigration; the Indonesian National Police; and the National Body for Professional Certification and the Professional Certification Institute.

251 IOM (2010), p. 33.

252 Ibid. p. 35.

253 *Trafficking in Persons Report 2012: Indonesia*.

254 UN Women (2007), p. 94.

255 ILO "ILO-MOLSW Cooperation on ESJC Establishment Orientation, Comprehensive Training and Training on Employment Services for Migrant Workers" (2011) available from: skills-ap.ilobkk.or.th/events/training-on-employment...for.../file1

256 UN Women (2007), p. 94.

information service provision for prospective migrant workers.²⁵⁷ The Department also opened a training centre for outgoing migrant workers,²⁵⁸ although little is known about the effectiveness of these two measures. The US Department of State *Trafficking in Persons Report 2012* commends the Ministry of Labour for negotiating with the Royal Thai Government to place a labour attaché at the Embassy of Myanmar in Thailand,²⁵⁹ and to open five labour assistance centres in Thailand,²⁶⁰ to be staffed by Ministry personnel. Although not yet approved by the Royal Thai Government, these centres would assist migrant workers with obtaining identity documents.²⁶¹ They may be much needed, given reports from NGOs that for the vast majority of migrant workers from Myanmar, even the temporary passport scheme introduced in 2009 has not abated the denial of labour and social protections to migrant workers from Myanmar.²⁶²

Created in 2008, the Department of Overseas Labour in MoLISA, (DOLAB) manages outgoing labour migration from **Viet Nam**, replacing the former Department for the Administration of Foreign Employment, which had largely been unable to control the privatized recruitment industry.²⁶³ DOLAB enforces some positive measures, including mandatory pre-departure training program for migrant workers on customs, culture and laws in Viet Nam and in the country of destination, details of the contract between the worker and the employment/recruitment agency, and working and living condition,²⁶⁴ although this program could be strengthened on its gender-responsive or rights-based framework. Like several other ASEAN Member States, Viet Nam is promoting better governance by creating a database on migrant workers, disaggregated by sex, age, province of origin, country of destination, and other characteristics.²⁶⁵ However, the database is limited because it only captures information at the point of departure, and not throughout the migration cycle.²⁶⁶ DOLAB has also admitted to facing barriers in tracking outgoing migrant workers who migrate individually, rather than through formal enterprise channels.²⁶⁷ The DOLAB inspection department monitors and administers fines for employment/recruitment agencies acting illegally, but the UN Women-MoLISA report shows that in practice it is difficult to regulate the intermediaries who approach prospective migrant workers on behalf of agencies, because of the limited resources of DOLAB and the informal and private nature of contracts.²⁶⁸ The Ministry of Public Security is another key government body that manages the anti-trafficking programme under the National Plan of Action on Trafficking in Persons 2011-2015.²⁶⁹

Spotlight on labour migration, trafficking in persons and migrant smuggling

There are crucial differences between migration for work, trafficking and smuggling. While the right to migrate is part of the wider right to freedom of movement; trafficking and migrant smuggling are both human rights violations in and of themselves.²⁷⁰ The links between migration, trafficking in persons (trafficking) and migrant smuggling (smuggling) are forged by the growing demand for labour within or across national borders in the informal economy, especially the manufacturing and service sectors, where conditions of forced labour and sexual slavery may equate to trafficking.²⁷¹ Restrictive labour

257 Ms San San (2008).

258 Ibid.

259 *Trafficking in Persons Report 2012: Myanmar*.

260 Ibid.

261 Ibid.

262 Nyien Nyien "Burmese Labor Minister Meets Labor Rights NGOs", (24 July 2012), *The Irrawaddy*, available from: <http://www.mekongmigration.org/?p=1144>

263 Dang (2007).

264 UN Women-MoLISA (2012), p. 23.

265 Ibid p. 28.

266 Ibid.

267 Ibid. p. 23.

268 Ibid. p. 38.

269 Ibid. p. 25.

270 UN Women (2002), "Migration and Trafficking: Links and Differences" (factsheet).

271 Undersecretary General Michelle Bachelet, Executive Director of UN Women "Fighting Human Trafficking: Partnership and Innovation to End Violence Against Women and Children" (speech delivered on 3 April 2012), available from: <http://www.unwomen.org/2012/04/remarks-of-michellebachelet-fighting-human-trafficking-partnership-and-innovation-to-end-violence-against-women/>

migration labour laws and policies expose migrant workers to traffickers, smugglers,²⁷² and their intermediaries, many of whom are located in the privatized recruitment industry. Bans or restrictions on women's migration, routinely introduced by ASEAN Member States, place women migrant workers at particular risk of trafficking and smuggling.²⁷³

While precise statistics are hard to obtain, it is clear that trafficking is an endemic problem in South-East Asia, especially for women and girls. In **Indonesia**, of 3,696 trafficked persons helped by IOM between March 2005 and December 2009, 90 percent were female and 24 percent were children.²⁷⁴ Nearly 56 percent of Indonesian trafficking survivors were trafficked as domestic workers and 16 per percent were forced into sex work.²⁷⁵ In **Thailand**, there are an estimated 157,000 trafficking survivors from the Greater Mekong Sub-region (GMS).²⁷⁶ In **Brunei Darussalam**, there are also reports of women migrant workers being forced into sex work. Brunei Darussalam is a transit country via which women migrant workers, are brought to the country for work permit re-authorization before being returned to Malaysia.²⁷⁷ A particularly egregious example allegedly took place at the Thai-Malaysian border involving deported migrant workers from Myanmar. Migrant workers who were unable to raise the steep fees that were required to be smuggled to Malaysia, were sold by Thai traffickers. Men migrant workers were forced to work in fisheries and factories, and on farms and plantations, while women migrant workers were sold into brothels, hotels, and domestic work.²⁷⁸ Overall, Asia and the Pacific is estimated to host 1.4 million trafficking victims, or 56 percent of the global total.²⁷⁹ Of the estimated USD 31.6 billion in annual global profits made from the exploitation of trafficking victims for forced labour, USD 9.7 billion, or over 30 percent, is generated in Asia and the Pacific.²⁸⁰

ASEAN has been a precedent-setter in tackling trafficking at the regional level – the issue was first addressed in the ASEAN Declaration on Transnational Crime (1997).²⁸¹ In 2004 ASEAN adopted the Declaration Against Trafficking in Persons, Particularly Women and Children (Trafficking Declaration).²⁸² The Trafficking Declaration acknowledges in its Preamble that the “social, economic and other factors that cause people to migrate also make them vulnerable to trafficking in persons”.²⁸³ It obligates Member States to regularly exchange views, and share information on relevant migration flows, trends and patterns, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary laws.²⁸⁴

In the GMS, Cambodia, China, Lao PDR, Myanmar, Thailand, and Viet Nam also initiated COMMIT (Coordinating Mekong Ministerial Initiative against Trafficking). The five ASEAN Member States, and China, signed a Memorandum of Understanding in 2004 that included a commitment to promoting gender and child sensitivity in all anti-trafficking measures.²⁸⁵ They have since formed country-level taskforces led by relevant government bodies addressing the issue.²⁸⁶ In 2007 COMMIT signed a

272 Ibid.

273 UN Women “Factsheet: Trafficking, Smuggling, and Migration of Women in Asia” (2012), available from: http://migration-unifem-apas.org/docs/factsheets/04_UNW_FACTSHEET_TRAFFICKING_2.pdf

274 IOM (2010), p. 38.

275 IOM “Factsheet: Combatting Human Trafficking: The Recovery Centre”, (2010), available from: [http://www.iom.or.id/project/eng/updates/Counter%20Trafficking%20Unit%20Recovery%20Centre%20Fact%20Sheet_2010_eng\(o\).pdf](http://www.iom.or.id/project/eng/updates/Counter%20Trafficking%20Unit%20Recovery%20Centre%20Fact%20Sheet_2010_eng(o).pdf)

276 IOM (2009), p. 88.

277 US Department of State (2010), p. 92.

278 US Committee on Foreign Relations, “Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand” Report to the Senate, (Washington, 2009), available from <http://www.gpo.gov/fdsys/pkg/CPRT-111SPRT48323/html/CPRT-111SPRT48323.htm>.

279 ILO (2007), Factsheet: Forced Labour Statistics.

280 ILO, *Forced Labour and Human Trafficking: Estimating the Profits*, Working Paper (Geneva, 2005), p. 17, available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081971.pdf

281 ASEAN, *Declaration on Transnational Crime*, adopted at the First ASEAN Conference on Transnational Crime, 20 December 1997, Manila, Philippines, Preamble, available from: <http://www.aseansec.org/5640.htm>

282 ASEAN *Declaration against Trafficking in Persons, Especially Women and Children*, adopted on 24 on 29 November 2004, Vientiane, Lao PDR, available from: <http://www.aseansec.org/16793.htm>.

283 ASEAN Trafficking Declaration, Preamble.

284 Ibid, para 3.

285 COMMIT, *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region*, (2004), article 15, available from: http://www.no-trafficking.org/reports_docs/commit/commit_eng_mou.pdf

286 UNIAP *ibid*.

Declaration against trafficking, and the Initiative is currently enforcing its third Sub-regional Plan of Action for 2011-2013, which includes providing gender- and age- appropriate, individualized assistance to trafficking survivors.²⁸⁷

Trafficking and smuggling are interrelated - but separate - crimes. Trafficking is a crime against the person that has been trafficked. However, smuggling is a crime against one or more states by the persons being smuggled and the smugglers, if involved. Migrant workers generally choose to be assisted by smugglers, who may serve as agents or brokers. Conversely, a migrant worker is not trafficked voluntarily. A further distinction is to be found in the fact that smuggling only occurs while migrant workers are in-transit (arriving at or departing from countries of destination), whereas trafficking may take place at any point during the migration cycle. Although smuggling is widespread across the region its informal and illicit nature makes it difficult to track.

For ASEAN to manage people's mobility for labour purposes in its region most effectively, it is important to acknowledge and understand the inter-sectionality between labour migration, human smuggling and human trafficking. By developing a gender-responsive, rights-based, legally binding regional instrument with a strong set of monitoring measures, within a broader context of sound development and growth strategies, not only will ASEAN member states be able to address rights violations in labour migration but AMS might be able to reduce trafficking in the region considerably.

²⁸⁷ COMMIT, *Third Sub-regional Plan of Action 2011-2013 (COMMIT SPA 2011-2013)*, version finalized at Pre-COMMIT SOM/ IMM 3 Meeting, January 2011, Bangkok, p. 23, available from: http://www.no-trafficking.org/reports_docs/commit/commit_resources/commit_spaiii_en.pdf

4. Recommendations for an ASEAN policy and instrument on intra-regional labour migration

4.1 Reforming labour migration governance in ASEAN

Given the persistence of labour migration, especially cross-border flows, in Southeast Asia, there is need for a comprehensive and coherent gender-responsive, rights-based **regional policy** to manage and govern labour migration, and for a binding regional instrument to implement it. This policy would build on the growing international human rights law framework protecting migrant workers, especially women and girls (Figure 1), and the checklist for gender-responsive, rights-based labour migration governance (Figure 2). The commitment of the ASEAN Labour Ministers to building on the Declaration, reaffirmed in the Joint Communiqué of the 22ndst ASEAN Labour Ministers Meeting in Phnom Penh, Cambodia, on 10 May 2012,²⁸⁸ makes it imperative that ASEAN develops a binding ASEAN Instrument on the Protection and Promotion of Migrant Workers. The binding instrument must mainstream gender equality and human rights to protect all migrant workers, especially women and girls. It must also be coherent with regional anti-trafficking measures like the ASEAN Trafficking Declaration.

At the country level, better governance of TFWPs and work permits, would shift the balance of power away from employers and a privatized recruitment industry towards shared responsibility for managing labour migration between governments, migrant workers, and all stakeholders. Closing the protection gaps requires the political will and dedicated resources to **address persistent patterns of labour migration using a gender-responsive, rights-based framework**. This may prove more effective in addressing the concerns of women migrant workers, their families, employers, agencies and ASEAN Member States, than a **criminalizing, rigid and restrictive approach**. The suggested reforms below would be timely and necessary as ASEAN moves towards the AEC and free mobility of skilled labour.

- A. Migrant workers should be able to apply for a temporary work permit upon arrival in the destination country with valid identity documents.** This would end the practice of off-shore recruitment from the country of origin, providing an escape from the current monopoly held by privatized recruitment industry. The economic and social costs would decrease for migrant workers and employers. Not only would labour migration management be more efficient, the rights and responsibilities of both migrant workers and employers would be clearly negotiated and understood.
- B. Temporary work visas or work permits should be personal to the worker, and not to the employer. Visas and permits should also be sector-specific.** These changes would ensure the right of freedom of movement and guarantee access to justice for migrant workers, especially women migrant workers who have particularly experienced abuses because of employer-controlled visas and permits.
- C. If labour migration management systems continue as per current status, there should be a fee cap or a ceiling on the costs and time involved in documented migration procedures.** The limit of one months' salary for recruitment fees, enforced by the Government of Singapore, is recommended. Procedures should also be streamlined and accessible for women migrant workers, created and delivered in a language and manner they understand.

²⁸⁸ ASEAN, 22nd ASEAN Labour Ministers' Meeting, *Joint Communiqué*, (10 May 2012), para 23, available from: [http://www.aseansec.org/Joint%20Communique%20The%20Twenty%20Second%20ASEAN%20Labour%20Ministers%20Meeting%2022nd%20ALMM\).pdf](http://www.aseansec.org/Joint%20Communique%20The%20Twenty%20Second%20ASEAN%20Labour%20Ministers%20Meeting%2022nd%20ALMM).pdf)

- D. Migrant workers with temporary work visas and permits should enjoy the same guarantees of their human rights and access to labour and social protections as national workers. Standard employment contracts should be legally binding, including for domestic workers.** Migrant workers should be able to migrate with their families. Children, including those who are undocumented, should have access to education.
- E. The sector-specific quota and levy system,²⁸⁹, as practiced in Singapore, could be applied to safeguard the interests of the local workforce.** An exception should be made for employing migrant domestic workers, which should be exempt from an employer levy, as in the case of Hong Kong SAR. This will lower the cost of employing migrant domestic workers, and encourage employers to participate in a fair system with reasonable costs for all parties.

4.2 Gender-responsive and rights-based protections for women migrant domestic workers

In June 2011, the ILO Convention No. 189 and Recommendation No. 201 Concerning Decent Work for Domestic Workers were adopted at the 100th session of the International Labour Conference in Geneva. The ILO C 189 and R 201 were adopted following a sustained global campaign by civil society for an international instrument to specifically protect domestic workers, with strong participation from South-East Asian migrant women's organizations, domestic workers' groups, and trade unions. These international standards are a crucial addition to the growing international human rights and labour law framework protecting women migrant domestic workers. In September 2012, the Philippines became the second country in the world to ratify the ILO C 189 and bring it into legal effect.²⁹⁰ All remaining ASEAN Member States are urged to ratify this Convention, especially given that several already enforce, or plan to introduce, many of its protections in their labour migration laws and policies.

The approach of Hong Kong SAR to managing the migration of domestic workers has some good practices that ASEAN Member States can upscale and replicate. In Hong Kong SAR, migrant domestic workers are protected by the Employment Ordinance.²⁹¹ The terms of employment are regulated by a statutory Standard Employment Contract with an attached Schedule of Accommodation and Domestic Duties. These include the following working and living conditions: a minimum allowable wage, weekly rest days and public holidays, decent accommodation and suitable privacy, medical care and compensation for occupational injury, and a prohibition on forcing domestic workers to undertake other work, namely for other people for free. Employers must give one month's notice if they intend to terminate the contract, and the migrant domestic worker is given two weeks to find another employer before having to leave the country.²⁹² Domestic workers' advocates and organizations claim that the two-week window is insufficient for finding employment, and also prevents access to justice because of costly and lengthy procedures to make legal claims.²⁹³ Also, although domestic workers have independent visas, but they must obtain these before they depart their countries of origin and they cannot usually change employers.²⁹⁴

²⁸⁹ A sector-specific quota refers to the practice that certain sectors limit the number of migrants that can be employed. A levy system refers to fees that sectors or employers must pay to employ migrant workers.

²⁹⁰ Philippine Star "Domestic workers get labour rights as Phl ratifies pact", (6 September 2012), available from: <http://www.philstar.com/Article.aspx?articleId=845912&publicationSubCategoryId=200>

²⁹¹ Employment Ordinance (Cap 57) (1968).

²⁹² Immigration Department, Hong Kong SAR, "Foreign Domestic Helpers: Frequently Asked Questions" (19 September 2012), available from: http://www.immd.gov.hk/ehtml/faq_fdh.htm#80

²⁹³ Elizabeth Tang, "Access to Justice for Women Migrant Workers in Hong Kong SAR", presentation delivered at a Regional Conference on Human Rights Instruments, International Labour Standards, and Women Migrant Workers' Rights, 4-5 September 2012, Phnom Penh, Cambodia, held by UN Women, Royal Government of Cambodia and in collaboration with the ILO.

²⁹⁴ Immigration Department, Hong Kong SAR, "Quick Guide for the Employment of Domestic Helpers from Abroad (ID 989)", (19 September 2012), available from: [http://www.immd.gov.hk/ehml/ID\(E\)989.htm](http://www.immd.gov.hk/ehml/ID(E)989.htm)

The Philippines also has several good practices for governing and managing the migration of Overseas Filipino Workers (OFWs), many of whom are migrant domestic workers. These include: a standard employment contract to be endorsed and monitored by the Philippine embassy in the country of destination; the regulation of recruitment agencies, which are to share responsibility for protecting the welfare of migrant workers; and pre-departure skills training and certification for migrant workers.²⁹⁵ The POEA also enforces a minimum wage in its Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, which require:²⁹⁶

Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest;

The Philippines has been largely successful in enforcing this protection, including through diplomatic negotiations. In January 2012, Saudi Arabia, a major destination country of Household Service Workers (HSWs) lifted a ban and agreed to a minimum wage of USD 400 per month.²⁹⁷

The approach of the Philippines of protecting and empowering HSWs throughout the migration cycle is also a precedent-setting practice. Since 2009, the OWWA has delivered a free comprehensive pre-departure orientation program for HSWs that lasts for 4-6 days and is jointly administered jointly by OWWA and the POEA, accredited NGOs, and providers of the Pre-Departure Orientation Seminar (PDOS).²⁹⁸ The program includes a specific course for ASEAN destination countries - a language and culture orientation or HSWs employed in Singapore.²⁹⁹ The National Reintegration Center for OFWs, created in 2007, provides reintegration services for returnee HSWs who have suffered human rights abuses such as rescue and temporary shelter, and post-repatriation services including airport, medical legal and economic assistance. The Center delivers these services together with the POEA, Department of Health, Department of Social Welfare and Development, and law enforcement bodies.³⁰⁰

Concluding remarks

Labour migration governance in ASEAN must address the realities of migration flows and patterns in South-East Asia. The emergence of a transient, exportable, feminized migrant workforce employed in low-wage, "low-skill," and low-status jobs raises human rights concerns. These concerns must be effectively addressed to uphold the rights and responsibilities of women migrant workers and their families, as well as, governments, civil society including women's organizations, the private sector including employers and the recruitment industry, and other stakeholders. Gender-responsive, rights-based labour migration governance can complement sustainable development strategies to achieve growth, stability, and cohesion across the ASEAN region. The first, necessary step on the path to effectively managing labour migration is to close the existing protection gaps by reforming and enforcing laws and policies to fully protect and empower migrant workers, especially women.

295 IOM, *Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits* (Geneva, 2005), p. 35, available from: http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=162

296 POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, p. 15, available from: <http://www.poea.gov.ph/rules/POEA%20Rules.pdf>

297 ABS CBN News, "Saudi to accept PH domestic workers' applications", (10 January 2012), available from: <http://www.abs-cbnnews.com/global-filipino/10/01/12/saudi-accept-ph-domestic-workers-applications>

298 The Philippines "Pre-Departure Orientation Program", Good Practice shared on the GFMD Platform for Partnerships, (10 May 2011), available from: <http://www.gfmd.org/en/pfp/practices/item/183-pre-departure-orientation-program>

299 Ibid.

300 UN Women *Report of the Regional Conference on Human Rights Instruments, International Labour Standards, and Women Migrant Workers Rights* (2012), forthcoming.

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United Nations Entity for Gender Equality
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UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

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