



## LABOR PROTECTION IN THE NEWLY INTEGRATED ASEAN COMMUNITY

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On January 1, 2016, the Association of Southeast Asian Nations (ASEAN) took a new step toward regional integration, with the launching of the ASEAN Community, comprising three pillars: the ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC). ASEAN as a whole is a major grouping of countries in Southeast Asia that boasts a gross domestic product (GDP) that exceeded \$2.4 trillion in 2013;<sup>1</sup> the member countries are blessed with a wide array of natural resources. ASEAN member countries, namely Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, are highly diverse in terms of religion, ethnicity, language, form of government, and socioeconomic development, among other things.

One area where considerable disparity exists among ASEAN member states is their labour laws. ASEAN is home to about 600 million people who are both consumers and workers; this large population complements the objective of AEC to make the region a single market and production base. It is also widely known that the people in Southeast Asia are highly mobile within the region. It is estimated that about 3.9 million ASEAN nationals are working in ASEAN countries other than their own.<sup>2</sup> The existing differences in labor protection systems across the region may result in not only disadvantages for migrant workers who often are not familiar with the host country's rules and regulations in relation to labor and thus become vulnerable to exploitation, but also risks to investors who may unknowingly violate the labor laws in the country in which they

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<sup>1</sup> *Asia Matters for America*, "ASEAN GDP and GDP per Capita," <http://www.asiamattersforamerica.org/ASEAN/data/gdpper capita> (Retrieved on January 18, 2016).

<sup>2</sup> Aniceto Orbeta, Jr., and Kathrina Gonzales, "Managing International Labour Migration in ASEAN: Themes from a Six-Country Study," [http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=22788DE1584F00BEC1257D42002A5935&parentdoctype=paper&netitpath=80256B3C005BCCF9/\(httpAuxPages\)/22788DE1584F00BEC1257D42002A5935/\\$file/Orbeta\\_Managing%20International%20Labour%20Migration%20in%20ASEAN.pdf](http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=22788DE1584F00BEC1257D42002A5935&parentdoctype=paper&netitpath=80256B3C005BCCF9/(httpAuxPages)/22788DE1584F00BEC1257D42002A5935/$file/Orbeta_Managing%20International%20Labour%20Migration%20in%20ASEAN.pdf) (Retrieved on January 18, 2016).

are investing. Hence, it is imperative that ASEAN leaders take serious steps to bridge the gap in their labor protection standards in order to enable the ASEAN Community to function effectively.

This article is based largely on the findings of the study entitled, “Labour Protection Systems in ASEAN,” which explores the different labor laws in ASEAN member states.<sup>3</sup> The presentation of this article is divided into three parts. First, an overview of labor laws in ASEAN countries is presented, followed by the challenges in labor protection systems in ASEAN. The article ends with several recommendations for both Thailand and ASEAN as a whole to improve their labor protection systems in preparation for an integrated regional community.

## 1. AN OVERVIEW OF LABOR LAWS IN ASEAN

All 10 ASEAN countries are members of the International Labor Organization (ILO), an international organization that encourages good practices in employment and promotes social protection. ILO established international labor standards, such as hours of work, minimum wage, minimum age, maternity leave, and other employment conditions, through instruments in the form of conventions, protocols, declarations, recommendations, and code of practices. Since many ASEAN members had become politically independent only after the Second World War, adopting existing international standards is a way to be recognized as equal sovereign states on the world stage. However, ASEAN countries have selectively ratified only a few ILO conventions, and their choices of ratification vary distinctly. Of the total 190 ILO conventions, only one ILO convention, the Worst Forms of Child Labor Convention, 1999 (No. 182), was ratified by all 10 ASEAN member states. While the Philippines has actively ratified 30 ILO conventions, Cambodia ratified 13, and

Brunei Darussalam ratified only two, a situation which reflects the diversity of labor standards across ASEAN countries. This section briefly presents the shared and diverse aspects of labor laws in ASEAN.

Tables 1 and 2 summarize some of the key aspects of labor laws in ASEAN countries. As can be seen, ASEAN countries have only two aspects in common, hours of work and weekly day of rest. The Hours of Work (Industry) Convention, 1919 (No. 1), which sets the standard of working hours as 8 hours a day and 48 hours a week, was among the first conventions introduced by ILO. Colonial influence is also evident in Brunei Darussalam, Malaysia, and Singapore, which differentiate between hospitalization sick leave and non-hospitalization sick leave. These seem to be the only similarities in the ASEAN labor laws.

Other employment conditions, such as minimum working age, rest time, and maternity leave, vary across member countries, which may be explained by individual local conditions. The minimum working age, for example, reflects the demographic structure in each ASEAN state. The Lao PDR has the lowest population density among ASEAN countries and hence needs every able worker in the country, similar to the situation in Cambodia, which ended its civil war only two decades ago. The minimum working age in these two countries is thus lower than that of other ASEAN countries. Minimum wages also vary according to the level of economic development across member countries. Countries with a small population size but high income, such as Brunei Darussalam and Singapore, do not guarantee a minimum wage, while Indonesia, Malaysia, the Philippines, and Vietnam implement different rates of minimum wage to suit the various local socioeconomic needs.

As already mentioned, the existing wide disparity in labor laws can be an impediment to the AEC goal of developing a single market and production base by causing confusion among government officials, employees and employers alike. The greater the difference in labor laws in ASEAN, the more important is the need for governments to provide the people with information about their entitlements and welfare.

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<sup>3</sup> Boonwara Sumano et al. 2015. *Labour Protection Systems in ASEAN*. Paper prepared for Department of Labour Protection and Welfare. (in Thai)

**Table 1: Minimum age, hours of work, rest time, maximum overtime (OT) work, OT payment, and minimum wage**

	Minimum age (years)	Hours of work	Rest time (minutes)	Maximum OT (hours)	OT pay (x regular wage)	Minimum wage/day (baht)
Thailand	15	8 hours/day, 48 hours/week	60	NI	1.5	300
Brunei	16		45	72 hours/month	1.5	None
Cambodia	12		NI	2 hours/day	0.5	147.9
Indonesia	13		30	3 hours/day	1.5	229-106
Lao PDR	12		60	3 hours/day	1.5	130
Malaysia	14		30	NI	1.5	260-231
Myanmar	13		30	16 hours/day	2	100.45
Philippines	15		60	NI	1.25	361-333
Singapore	13		45	72 hours/month	1.5	None
Vietnam	13		30	4 hours/day	1.5	166-115

Abbreviation: NI = No information.

**Table 2: Weekly rest days, paid annual leave, public holiday, sick leave, maternity leave**

	Weekly rest days	Paid annual leave (days)	Public holidays/year	Sick leave/year (days)	Maternity leave/year (days)
Thailand	1	6	13	Actual case	90
Brunei		7	11	14 (Out) 60 (In)	63
Cambodia		18	NI	~180	90
Indonesia		12	NI	~120	45 before + 45 after
Lao PDR		15	7-9	30	105
Malaysia		8	11	14 (Out) 60 (In)	60
Myanmar		10	14	30	42 before +56 after
Philippines		5	12	12	60
Singapore		7	11	14 (Out) 60 (In)	84
Vietnam		12	10	30	180

Abbreviations: NI = No information.

Out = Outpatient care.

In = Inpatient care.

Ultimately, developing a more uniform standard would not only make the region more conducive to foreign investment but would also lead to better protection of workers.

## 2. CHALLENGES TO LABOR PROTECTION IN ASEAN

Having laws that guarantee the minimum rights of workers does not necessarily mean that labor protection systems can function effectively. There are two main labor protection mechanisms: labor inspection and labor unions. As shown in this section, ASEAN countries suffer limitations in both mechanisms. Challenges in labor protection commonly found in ASEAN are presented below.

### 2.1 Insufficient number of labor inspectors

A labor inspection system was introduced by ILO as the state's mechanism to enforce the protection of labor rights in each country. Labor inspectors, who are mostly government officials, are trained to inspect annually the condition of employment in enterprises in order to ensure that workers are treated fairly and receive their entitlements under the law. Unfortunately, ASEAN member countries seem to have an insufficient number of labor inspectors to thoroughly oversee the welfare of workers in their countries. In Thailand, for example, there are only 710 labor inspectors for almost 40 million workers. Indonesia, with more than 120 million workers, has only 2,165 labor inspectors. This is probably due to the limited resources of government agencies dealing with labor issues in ASEAN. At the same time, it is difficult to estimate how many labor inspectors are needed in order to properly oversee employment standards throughout an entire country.

### 2.2 Restrictions on the right to association and collective action

ASEAN member countries are known for many things but not for having vibrant trade unions. This situation may be explained by the hard won independence of many ASEAN states, which may have induced policymakers to put national security and public order before the rights and freedoms of the people. Even though trade unions exist in all ASEAN member countries, it is uncertain whether they are able to guarantee the protection of labor rights in their countries for at least two reasons: ambiguous representations, and restrictions on union activities. In

terms of representation, it has been found that trade unions in some ASEAN states may not exclusively represent the interest of workers.<sup>4</sup> In Vietnam, for instance, every trade union is required to be a member of the Vietnam General Confederation of Labor (VGCL) which is governed by an executive board comprising members of the ruling Communist Party. This means that Vietnam's labor unions are not actually independent from the government and therefore may not always have the workers' best interests at heart, especially if the workers' interests clash with the government's. Unions in ASEAN countries also face several restrictions on their activities. For example, any strikes, lock-outs, and other industrial actions in Singapore would be considered illegal if they adversely affect the community, according to the country's Trade Dispute Act. Since it is highly likely that even one disruption in a small island city-state might interrupt public services, organizing legal collective action could be extremely difficult in Singapore.

### 2.3 Informal economy

Currently, many ASEAN economies are reliant on the agricultural sector and the services sector, both of which employ a large number of informal workers. Agricultural work is seasonal, which means that many workers have to migrate out of agriculture into another economic sector. Many of them attempt to find work in the services sector during the off-season to earn year-round wages. Workers in the services sector are often either freelancers or temporary workers whose employment status is unknown or not fixed. The lack of information about such informal workers thus makes it difficult to monitor their conditions of employment.

### 2.4 Irregular migrants

There remain a large number of irregular migrant workers in ASEAN. Irregular migrant workers, as defined by ILO, are those that work without appropriate authorization in a particular country.<sup>5</sup> Irregular workers are usually very vulnerable to exploitation, forced labor, human trafficking and other forms of maltreatment as officials

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<sup>4</sup> Boonwara Sumano et al. 2015. *Labour Protection Systems in ASEAN. Paper prepared for Department of Labour Protection and Welfare. (in Thai)*

<sup>5</sup> International Labour Organization, "Facts on Labour Migration," [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_067570.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067570.pdf) (Retrieved on January 27, 2016).

tend to have very little to no information about them. This lack of information keeps irregular workers beyond the protection of the law. Irregular workers themselves tend to avoid government officials because of their immigration and/or employment status. Thus, it is almost impossible for labor inspectors to protect irregular migrant workers. Coupled with the limitation on establishing a labor union of their own in a destination country, irregular migrants are considered the most vulnerable to exploitation.

### **2.5 Lack of awareness of rights and responsibilities among employers, employees, and government officials**

Awareness of labor laws is a major problem in ASEAN. Labor laws are by nature complex and often contain exceptions for many cases due to different working environments. For example, crews in fishing boats do not have the same working hours as workers in industrial plants. Labor regulations in some ASEAN countries are separated into many different pieces of legislation, thus making them not readily accessible. For example, Thailand has the Labour Protection Act B.E. 2541 (1998), the Working of Aliens Act B.E. 2551 (2008), and the Occupational Safety, Health, and Environment Act B.E. 2554 (2011). In many ASEAN countries, there is also a lack of outreach effort to disseminate information about labor laws. As a result, employers, employees and even government officials in many cases are not adequately informative about the relevant laws. Such unawareness makes it difficult for workers to defend their rights, for employers to avoid violating the law, and for government officials to safeguard the national labor protection system.

## **3. POLICY RECOMMENDATIONS**

The presentation in this section follows the policy recommendations in the study of the “Labour Protection Systems in ASEAN,” which were made for the Department of Labour Protection and Welfare, Ministry of Labour Thailand. The recommendations are divided into two levels: national-level recommendations and regional-level recommendations.

### **National-level Recommendations**

#### *1) Increase awareness of labor protection laws*

The study shows that awareness about labor rights and welfare in many workplaces in Thailand is limited. This situation usually causes workers to be underprotected and

can also lead to disputes as employees and employers are unsure about, respectively, what rights they are entitled to or are obliged to offer. Therefore, more outreach efforts are needed to raise greater awareness of the regulations in relation to labor rights. Such information should be made in languages other than Thai, especially the other ASEAN languages, to make the information more easily accessible for foreign workers.

#### *2) Increase labor-related information*

To adequately protect all workers, the Department of Labour Protection and Welfare must maintain a database on labor in the country as expansive and comprehensive as possible. This is particularly pertinent for informal workers and foreign workers about whom the Department still lacks significant data; therefore, it is not able to properly protect such workers. If the Department knows in which industry these workers generally work and what their work conditions are like, for instance, the Department would be able to prescribe more targeted and effective policies rather than blanket ones. This task should be supported by other governmental agencies such as the Immigration Bureau and the National Statistical Office.

#### *3) Compile existing regulations*

Although Thailand has one labor protection law, the Labour Protection Act B.E. 2541 (1998), there are several regulations contained in other pieces of legislation which are related to employment conditions in the country. This situation often makes it difficult for employers, employees and labor inspectors alike to keep track of all the different regulations. It would, therefore, be helpful for stakeholders if all labor-related regulations could be gathered into a single law, something like the labor code in the Philippines or Vietnam. Rules and regulations which are outdated and no longer applicable or useful to the current employment situation should be cancelled. This could also help in increasing awareness of labor regulations by making them more convenient to access and easier to understand.

#### *4) Increase the number of labor inspectors*

Labor inspectors are very important to ensure the protection of labor rights and welfare. However, there are still insufficient numbers of them relative to the number of workers and workplaces currently in Thailand. It is, therefore, important that more labor inspectors be employed and trained.

#### *5) Expand whistle-blower protection*

In addition to increasing the number of channels and raising awareness of such channels for so-called whistle-blowers to file complaints when experiencing or witnessing violations of labor rights, the government must also take additional measures to protect whistle-blowers. Very often workers are abused by influential figures. Such workers are reluctant to file complaints against their abusers for fear of jeopardizing their own employment status and endangering their personal security. It is, therefore, crucial that the process of filing complaints ensure the protection and confidentiality of whistle-blowers, as well as victims of abuse.

#### *6) Increase collaboration with related governmental and non-governmental bodies*

Labor protection is a multifaceted and dynamic issue that involves several governmental bodies both within the Ministry of Labour, such as the Social Security Office, and outside the Ministry, such as the Ministry of Public Health, the Ministry of Social Development and Human Security, the National Committee on Informal Workers Management and the Immigration Bureau (in the case of foreign workers). The Department of Labour Protection and Welfare should, therefore, closely collaborate with these bodies in order to ensure comprehensive protection for workers of all types. There are also several non-governmental organizations (NGOs) that provide workers with support and are active in labor issues. Such NGOs could thus share information and experience with government agencies in order to upgrade the country's labor protection system.

#### *7) Encourage and support labor unions*

Since finding and training efficient labor inspectors may take time, another way to improve the labor protection system is to encourage workers to protect themselves. However, the laws in Thailand, particularly in the current political climate, are relatively unfavorable toward association and collective action. Therefore, laws should be reviewed and revised to allow trade unions more freedom to voice the workers' interests and grievances to help improve the labor protection system. Such steps would empower workers while simultaneously reducing the workload of labor inspectors as workers would be better equipped to protect themselves.

### **Regional-level Recommendations**

#### *1) Formulate region-wide or bilateral agreements on foreign labor protection*

As labor becomes more mobile, ASEAN countries should create a comprehensive formal agreement regarding how to protect foreign workers. Issues that need to be considered include the following questions:

- What rights do foreign workers have in the host country? Do they need to be protected by a different set of regulations?
- Who pays for foreign workers' benefits, such as health care and compensation for work-related accidents?

Such agreements should be made through a central body or at least bilaterally between the labor-exporting country and the labor-importing country.

#### *2) Create a central labor protection body*

ASEAN should establish a central body that oversees region-wide labor protection laws. Such a body should also compile information about labor in the region, such as minimum wages, number of foreign workers, and level of migration in the region. Such a regional body should also be able to provide ASEAN member countries with consultation on best practices in employment.

#### *3) Share labor data*

Most ASEAN countries lack comprehensive data on labor, particularly regarding labor movements in the region. ASEAN countries should enhance their data-gathering and data-sharing processes in order to better protect workers, especially foreign workers. A central labor protection body could play a key role in facilitating such sharing of data.

#### *4) Strengthen enforcement mechanisms*

ASEAN is operated on a non-intervention basis, which, coupled with the region's non-confrontational values, has meant that many region-wide agreements have not been adhered to by many member states. In the current era of an integrated community, ASEAN should have enforcement mechanisms in place, such as joint trade sanctions on non-complying countries. Again, a central body could be vital in enforcing region-wide agreements.