

THE MISSING WOMEN:

Implications of the ASEAN Integration on
Women Migrant Workers' Rights



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Acronyms and Abbreviations

ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ACTIP	ASEAN Convention on Trafficking in Persons
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
AFML	ASEAN Forum on Migrant Labour
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIA	ASEAN Investment Area
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
AMNP	ASEAN Agreement on the Movement of Natural Persons
AMS	ASEAN Member States
APSC	ASEAN Political-Security Community
AQRF	ASEAN Qualifications Reference Framework
ARF	ASEAN Regional Forum
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CEPT	Common Effective Preferential Tariffs
CLMV	Cambodia, Lao PDR, Myanmar, Vietnam
CSO	Civil Society Organisations
FDI	Foreign Direct Investment
IGA	Investment Guarantee Agreement
IAI	Initiative on ASEAN Integration
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MRA	Mutual Recognition Agreement
NGO	Non-Governmental Organisation
RCEP	Regional Comprehensive Economic Partnership
SLOM	Senior Labour Officials Meeting
SRHR	Sexual and Reproductive Health Rights
TF AMW	Task Force for ASEAN Migrant Workers
VAW	Violence Against Women

Executive Summary

This report examines the implications of the ASEAN economic integration on women's human rights particularly of women migrant workers drawing from a review of literature and interviews with NGOs working in the Mekong region. It highlights the implications to the rights of women migrant workers especially from Cambodia, Lao PDR, Myanmar and Vietnam (CLMV).

ASEAN struggles to meet the goals of the Economic Community Blueprint given the economic and political disparities within and among ASEAN Member States. Cambodia, Lao PDR, Myanmar and Vietnam continue to lag behind, and will likely find it hard to catch up with the requirements of the economic integration.

Women fare the worst in the economic and political-security pillars of ASEAN integration. As the paper seeks to illustrate, there are concerns that the ASEAN economic integration will cause more harm than good in the lives of women and of the poorest and most marginalized peoples and communities in Southeast Asia. The Political-Security Community neglects and marginalizes women and their issues despite having the overarching human rights body, the ASEAN Intergovernmental Commission on Human Rights (AICHR) built under this community. On the other hand, women's rights are protected in the Socio-Cultural Community, which represents the 'human dimension of the integration', and is expected to address solely the negative impacts or consequences of the economic and political-security communities.

Regulatory frameworks of labour migration intersect across the three pillars of ASEAN. However, as the ASEAN Economic Community (AEC) takes primacy in the over-all regional integration of ASEAN, the free flow of labour espoused by the AEC underpins and directs ASEAN's policies for managing labour migration in the region. The agreements made by the ASEAN Member States (AMS) on labour strongly resonate with the General Agreement of Trade in Services (GATS) 'Mode-4' on Movement of Natural Persons characterized by temporary entry or stay of natural persons and restricted only to sectors engaged in business, skilled and professional work.

Several other policy instruments that address migration-related issues of trafficking and violence against women are found in the Political-Security and Socio-Cultural pillars. The ASEAN Declaration on the Rights of Migrant Workers guarantees the rights of migrant workers in general and outlines the obligations of both migrant-sending and –receiving states in the region. While there is no explicit mention of women migrant workers and the gender dimension of migration, the Declaration referred to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) among other international instruments that the AMS have acceded to. However to date, the Framework Instrument that serves as the enabling guidelines of the AMS in implementing the Declaration is beset with the inability of the labour-sending and receiving countries to reach a resolution.

Labour migration in ASEAN is largely characterized by temporary migration of less skilled, low wage work in sectors. There are more irregular than regular migrant workers in the region. According to estimates, many of low-skilled, low wage, irregular migrant workers in the region are women employed in informal work sectors.

Violations of women's rights are committed throughout the migration cycle in labour-sending and -receiving countries in the region. Among them are: restrictions on women's right to work and mobility, the phenomenon of feminization of migration where women's work is undervalued; lack of social protection for women, violations of women migrant's sexual and reproductive health rights, trafficking in women and girls, and barriers to women's access to justice in violence against women and economic, social and cultural rights violations.

The cases of women migrant workers from Lao PDR and Myanmar illustrate the conditions of women and girls whose rights are violated under the existing framework of labour migration in the region. Support from family and NGOs, and adequate response from law enforcers are important factors that facilitate women migrant workers' access to remedy.

ASEAN established institutions and mechanisms to protect and promote the rights of women migrant workers. Various civil society formations engage these institutions and mechanisms. Civil society advocacy focuses on developing a rights-based, gender-sensitive regional framework and policies on labour migration.

The paper puts forward the following recommendations:

For ASEAN

- Develop a rights-based and gender-responsive framework on labour migration. Uphold the rights of all migrant workers
- Provide equal valuation of all types of work. Recognize the care and unpaid work women provide
- Decriminalize illegal or undocumented migrants in the region
- Strengthen the human rights protection mechanisms
- Expedite and implement the Declaration on the Rights of Migrant Workers
- Institutionalize meaningful and informed participation of women migrant workers in ASEAN both at the regional and country level
- Generate gender and age-disaggregated data on migration in the region, especially in Cambodia, Lao PDR, Myanmar and Vietnam
- Promote best practices in the region in protecting rights of undocumented and documented women migrant workers

For ASEAN Member States

- Fulfil the legal obligations in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ASEAN Human Rights Declaration
- Develop gender-responsive national policies providing adequate focus on women migrant workers
- Enter into bilateral agreements and memorandums of understanding that will ensure promotion and protection of the rights migrant workers. Cambodia, Lao PDR, Myanmar and Vietnam must initiate agreements with major labour-receiving countries
- Recognize women migrant's right to travel, decent work and health, including sexual and reproductive health
- Investigate and prosecute perpetrators and ensure women's access to justice
- Create conditions for sustainable development and for safe and decent jobs for women in the region

For NGOs and Civil Society Organizations

- Support women's and migrant's rights movements in Cambodia, Lao PDR, Myanmar and Vietnam. Strengthen collaboration and people-to-people dialogues
- Conduct independent and strategic research and studies. Initiate comprehensive, evidence-based policy advocacy in the region
- Promote participation of national groups and organizations in regional civil society-led initiatives and platforms. Promote genuine participation of women migrant workers

Introduction

Most studies on ASEAN integration focus on the benefits and prospects of the economic integration; or on the ASEAN Economic Community in boosting economic growth in the region. A number of studies and articles looked into economic indicators to show that ASEAN is indeed reaping the benefits from the ASEAN Economic Community. While there is admission from ASEAN that the regional integration was not met by the scheduled deadline of 2015, this did not prompt a shift in the bloc's trade and market-driven track. What is evident however, is the scarcity of discussion on the impact or implications of the ASEAN integration to the lives and livelihoods of the marginalized and the poorest segment of the population in the region. Thus far, discourses on regional integration fail to give equal attention to human rights much less the implications of the ASEAN integration, especially the economic integration on women's human rights. The direction ASEAN is taking the regional integration towards appears to be mostly uninformed by studies or analysis that surfaces the gender and political economy dimension of the integration.

This paper intends to start the gender discussion on the ASEAN integration. It draws from available and accessible literature on the ASEAN integration and issues of women migrant workers, providing an overview of the interrelationship of the three ASEAN community pillars and some of their implications on women and women migrant workers.

The paper looks into the ASEAN economic integration and its implications to women's rights particularly in the context of women migrant workers. As ASEAN did envisage completing the regional integration in 2015, the paper aims to contribute on the discussion by highlighting potential impacts of the ASEAN integration to women's rights, particularly women migrant's rights. The paper sets out with the following objectives:

- a. Identify the key gendered issues and priorities for women's human rights in the ASEAN economic integration in the context of women migrant workers.
- b. Illustrate the implications of the ASEAN economic integration to the rights of women migrant workers.
- c. Identify relevant regional institutions and actors and their respective roles in the promotion and protection of rights of women migrant workers.
- d. Develop recommendations towards the promotion and protection of women migrant workers in the region.

The paper has four chapters.

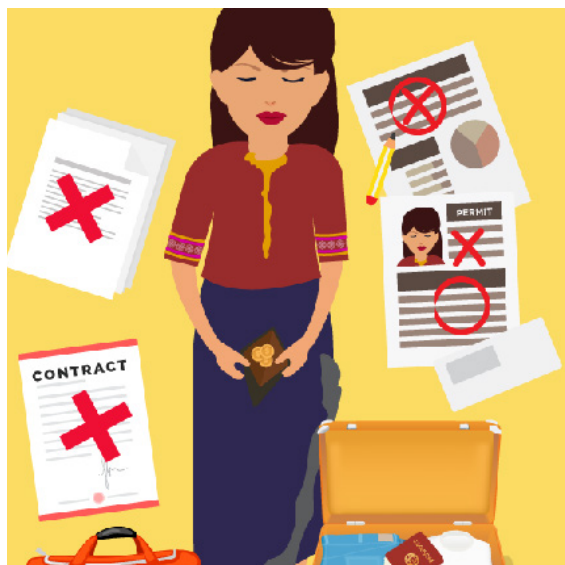
Chapter 1

Provides an overview of economic integration and discusses the relevant features of the political-security and socio-cultural integration, situating gender and women migrant workers' issues in the integration. It likewise provides a discussion on ASEAN's framework for managing labour migration in the region and related institutions.



Chapter 2

Discusses critical gender issues women migrant workers given the prevailing framework of ASEAN economic integration and labour migration in the region.



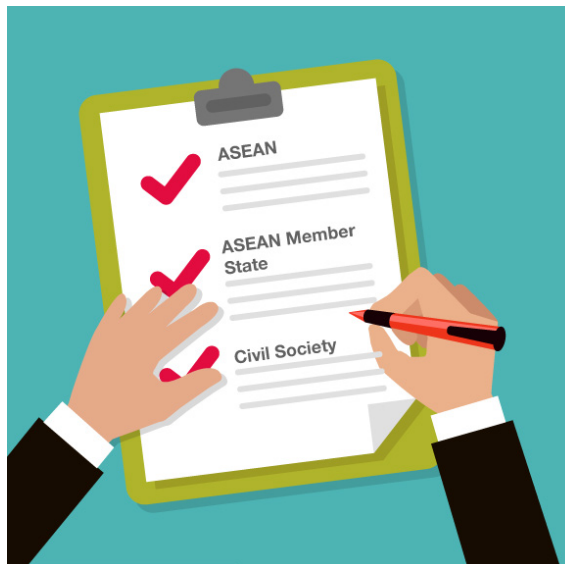
Chapter 3

Offers an overview of non-government organizations or civil society formations engaging with the ASEAN on the issue of rights of migrant workers.



Chapter 4

Offers conclusions and recommendations.



Chapter 1

A Vision of an Integrated Region



The year 2015 marked a “major milestone” for ASEAN (also referred to as the Association in this paper); as it formally declared an integrated regional community by the end of the year “under the rubric of One Vision, One Identity, One Community”.²

The central goal of regional integration is the establishment of the ASEAN Economic Community (AEC) whereby ASEAN is to become “a more liberalised and integrated economic region.”³ The Association has been “determined to shape a bold and forward-looking future for ASEAN which will enhance and strengthen the ASEAN Community that is “politically cohesive, economically integrated, socially responsible, and a truly people-oriented, people-centred and rules-based.”⁴

With the beginnings of the Association situated in a Post-Cold War area, the motivations of five autocratic-led, non-communist original members⁵ were mainly political – prevent brewing interstate conflicts and growing communist movements in the region.⁶ It was considered “Southeast Asia, at that time, was in the midst of political instability aggravated by economic underdevelopment.”⁷ Yet, in the Bangkok Declaration the role of the Association to promote regional economic, social and cultural cooperation was highlighted instead of being seen as a purely political organization.⁸

Foremost in the aims and purposes of the Association is to “accelerate the economic growth, social progress and cultural development in the region” and promoting “regional peace and stability through abiding respect for justice and the rule of law”, was secondary. Towards this end, the ASEAN Member States (AMS) are to be guided by the principles of “mutual respect for one another’s sovereignty, non-interference in internal affairs, the peaceful settlement of intra-regional disputes and effective cooperation” as impressed upon by the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976. ASEAN has subscribed to these principles and propagated it as “The ASEAN Way.”

Thirty years later, ASEAN came up with “ASEAN Vision 2020⁹” envisioning “ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.” Paving the way to the Association’s “journey to community building”¹⁰ was the Declaration of the ASEAN Concord II or the Bali Concord II signed in 2003, which provided basis for the ASEAN Community to be comprised of “three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation.” The Bali Concord also “fleshed out”¹¹ the vision of an ASEAN Economic Community. It was in the year 2007 inspired by the Cebu Declaration that ASEAN decided to accelerate economic integration by 2015.

The ASEAN Charter adopted in 2007 and came into force in 2008, transformed the Association into a rules-based organization with a legal entity. While the Charter provided for the establishment of a human rights body which laid the basis for building the “pillars of a regional human rights system,”¹² it also firmed up the principles of non-interference and consensus which constitute the “ASEAN Way.” In 2009, furthering the realization of the regional integration, the ASEAN Roadmap was established consisting of the three Community Blueprints – Economic, Political-Security, and Socio-Cultural – and the Initiatives for ASEAN Integration (IAI) as provided for in the Cha-Am Hua Hin Declaration on the ASEAN Roadmap for an ASEAN Community 2009-2015. The ASEAN Community 2015 also called the ASEAN regional integration, places the ASEAN Economic Community and correspondingly, the ASEAN economic integration at its centre: The AEC is the goal of regional economic integration by 2015.¹³

ASEAN’s optimism and ambitious projections for the economic integration are countered by the scepticism and pessimism of critics and analysts on the inauguration of the AEC in 2015. Many concurred that the region “contains countries with wider-ranging levels of development, political cultures, and political systems than in Western Europe, and thus integration is more challenging.

¹⁴ Various studies¹⁵ on the impact of the AEC cautioned that there will be winners and losers in the economic integration.

The ASEAN Economic Community will struggle given the economic and political disparities of the different Member States.¹⁶ The CLMV (Cambodia, Lao PDR, Myanmar and Vietnam) countries in the Mekong region for instance, are lagging behind and will likely find it hard to catch up in the accelerated economic integration¹⁷. Further, there remains a “generalized awareness deficit of ASEAN and AEC across the region – citizens in Southeast Asia know very little about ASEAN.”¹⁸

1.1. The ASEAN Regional Integration: ASEAN’s Economic, Political and Socio-Cultural Agenda and Implications to Women

The ASEAN Economic Integration and ASEAN’s Ambitions of Stronger Economies

The ASEAN Economic Community (AEC) has been at the centre of the ASEAN regional integration. From the economic vantage point, ASEAN is reaping the benefits of the economic integration. Boasting the \$2.4 trillion gross domestic product (GDP) in 2013^{19,20} recorded in 2012 to have almost doubled since 2000, ASEAN’s economic performance has been lauded as “remarkable” given “impressive economic and social development over the past two decades.”²¹

ASEAN economies within the period 2007-2013, with the exception of Brunei Darussalam, “grew faster than the global average, proving relatively resilient to successive international crises in the late- 2000s.”²² ASEAN’s GDP growth surpassed even that of the world as a whole with 4.9 percent growth compared to the latter’s 3.0 percent.²³ The region is said to have “weathered the global financial crisis very well, maintaining robust growth and strong domestic demand.”²⁴ It is said that the region’s “[s]trong economic performance has enabled all ten ASEAN Member States to achieve significantly higher living standards for its 600 million women and men.” With the steady growth of the region’s economy, ASEAN is said to be in “its time” and “poised to seize the moment”.²⁵

The ASEAN Economic Community is the vehicle that shall realize the predominantly trade and market-oriented paradigm of the regional integration of ASEAN. In view of the ASEAN Vision 2020, the AEC Blueprint is envisioned to lead to “higher levels of economic dynamism, sustained prosperity, inclusive growth and integrated development of ASEAN.”²⁶ The AEC is the “realization of the end goal of economic integration.”²⁷

ASEAN through the AEC, clearly subscribes to the neoliberal paradigm of trade liberalization and market integration, in line with the World Trade Organization (WTO) framework, whose membership includes the majority of ASEAN member states. This neoliberal framework of development is biased in favour of multinational corporations, which are predominantly foreign owned and have a significant impact on small, locally-owned enterprises and the exploitation of natural resources. It is also characterized by liberalization of trade and services that undermine workers’ rights, as illustrated in the succeeding chapters of this report.

The establishment of the AEC is “in accordance to the principles of an open, outward-looking, inclusive, and market-driven economy.”²⁸ ASEAN cannot however deny the uneven development levels of its members. Thus, there is a risk of further widening the gap among the AMS; despite the ASEAN Economic Community being mandated to “address the development divide and accelerate integration of Cambodia, Lao PDR, Myanmar and Vietnam through the Initiative for ASEAN Integration and other regional initiatives.”²⁹

Towards an Open Economic Community: The ASEAN Economic Community (AEC) Blueprint

With economic integration in mind, “the AEC will transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital”³⁰. To achieve this, the ASEAN Economic Community is characterized by the following pillars of the economic integration: a single market and production base, a highly competitive economic region, equitable economic development; and integration with the global economy. Establishing ASEAN as a single market and production base has five core elements: free flow of goods, free flow of services; free flow of investment; freer flow of capital; and free flow of skilled labour.

The free flow of goods embodies the trade liberalization pursuit of the Association as it aims to establish a single market of goods eliminating tariffs and removal of non-tariff barriers. This is where the ASEAN Free Trade Area (AFTA); complemented by the ASEAN Single Window, Common Effective Preferential Tariffs (CEPT), becomes relevant. For free flow of services, liberalization of services will take effect by removing restriction to ASEAN services supplies; guided by the ASEAN Framework Agreement on Services (AFAS) and Mutual Recognition Arrangements (MRAs). Further, the free flow of investment makes ASEAN an open market to foreign investments with a “free and open investment regime” that attracts foreign direct investments (FDI). The ASEAN investment cooperation is implemented through the Framework Agreement on the ASEAN Investment Area (AIA) with the investment protection from the ASEAN Agreement for the Promotion and Protection of Investment of ASEAN Investment Guarantee Agreement (IGA). For freer flow of capital ASEAN aims for harmonization of capital market standards and liberalization of capital movements. Further, free flow of skilled labour covers only ASEAN professionals, high-skilled workers or natural persons engaged in goods, services and investments; guided by the ASEAN Agreement on the Movement of Natural Persons (MNP) and MRAs for eight professions.³¹

With the different levels of development among ASEAN Member States, the Association developed the Initiative for ASEAN Integration (IAI) which aims to provide support to Cambodia, Lao PDR, Myanmar and Vietnam, ASEAN’s newer and least-developed member states. The IAI seeks to contribute to narrowing the development gap and accelerating integration of CLMV as the newer members of ASEAN. It is hoped that augmenting the capacity of CLMV to implement regional agreements will accelerate the regional integration process as a whole. Narrowing the Development Gap is ASEAN’s framework for addressing various forms of disparities among and within Member States.

With AEC’s goal of integrating into the global economy, AEC establishes external economic relations facilitated by the Regional Comprehensive Economic Partnership (RCEP) with the Association’s Free Trade Agreement Partners (i.e., Australia, China, India, Japan, the Republic of Korea and New Zealand). A mechanism for members to opt out of the agreements or economic schemes is in place through the “ASEAN-X” or “ASEAN Minus X” which allows “flexible” implementation of commitments, where a subgroup or select members may proceed with an economic policy without waiting for participation of other member states.³²

The targets for the regional Integration were not met by 2015. ASEAN admits that some countries, particularly Cambodia, Lao PDR, Myanmar and Vietnam “are lagging behind others.”³³ As of this writing, ASEAN is at the juncture of developing the Post-2015 Vision. While noting that the “formal establishment of the AEC by end-2015 marks a major milestone in ASEAN’s effort to fulfil the

goal of an integrated region," ASEAN did not become a single economic entity by 1 January 2016, "rather it sends a strong signal that positive measures have been put in place towards a more liberalised and integrated economic region"³⁴ as the ASEAN Economic Ministers concluded in their February 2015 meeting.

The AEC framework and its ills

Contrary to ASEAN's claim of promoting equitable development, the bloc is "far from democratizing assets and resources."³⁵ Under the framework of AEC, "ASEAN member countries continue to pursue an economic growth track that mainly benefits a handful of politically powerful and already wealthy local elites. Member states remain, by and large, neglectful and unmindful of grassroots communities' rights, the sustainability of local economies and production for domestic needs."³⁶ The ASEAN economic integration will cause more harm than good especially in the lives of the poorest and most marginalized communities.

In Cambodia, the land grabbing phenomenon is "induced" by "globalisation, the liberalisation of land markets, and increased foreign direct investment."³⁷ Furthermore, this is the direction that the AEC obliges Member States to take. Land grabbing or the "large-scale acquisitions of land by domestic and transnational investors in the Global South either through leases or concessions"³⁸ is regulated by law in Cambodia anchored on "large-scale, market-oriented development". However, it has been found, that "these concessions have adversely affected the rights and livelihoods of Cambodia's rural communities³⁹ and led to rapid and extensive deforestation⁴⁰". This would potentially intensify given the AEC's desire for accelerated economic growth.

Similarly for Lao PDR, the government subscribes to the single market agenda of the AEC, offering "numerous investment incentives, including generous concessions, tax holidays and cheap labour costs"⁴¹ to entice foreign investors to the country." This led to the growing concerns of small producers in Lao PDR who fear losing their small businesses in the course of opening up markets. As J&C state:

"... when the borders are fully opened, many local egg producers and broiler farms may go bankrupt, unable to compete with Thai operators who have more business experience, greater cost efficiencies and economies of scale.

...most small businesses in Lao PDR are likely to face more challenges than opportunities when AEC comes into force. [She says] the country's production base is simply too small while poor infrastructure and lack of education remains significant impediments to growth. "⁴²

Further, ASEAN's economic agenda through the AEC "also points to further undermining the land rights of peoples and heightening food insecurity, with extractive industries such as large-scale mining corporations encroaching on ancestral and agricultural lands. Local economies, where large numbers of grassroots women producers are located, are at the losing end of policies pushing for the removal of all tariff protections, in line with the drive for free trade. There is a dearth of opportunities for women to pursue local trade or viably sustain micro and small-to-medium enterprises."⁴³

The ASEAN Economic Community and its Implications for Women

Economies earn from both reproductive and productive work of women. Most businesses and industries capitalize on women's productive work which is considered cheap labour (e.g. in electronics, garments, etc.) and without women's reproductive or care work attending to the needs of households, both the labour and private sector will not be able to produce and earn profits.

However, ASEAN's recognition and valuation of women and their role in the economic growth of the region and the in the respective ASEAN Member States cannot be found in the AEC blueprint, nor in any-related declarations or documents of the AEC. Whilst AEC espouses free flow of skilled labour, migrant labour in ASEAN is largely irregular and considered as low-skilled work occupied mostly by women. Women's contribution to the economy which is largely on reproductive or care work remains invisible and unrecognized.

The predominance of trade and market liberalization, along with the entry of foreign direct investments in the region has a disproportionate impact on women. The practices under AEC such as flexibilization of labour and contractualization of workers result in low wages and poor working conditions that put women at risk of violations of their rights, including discrimination and sexual harassment in the workplace.⁴⁴

Congruent with AEC policies, the directions and economic policies, particularly in relation to the removal of tariffs cause harms in local economies are gravely affecting grassroots women producers. This in turn, forms part of the "push" factors for women to find opportunities elsewhere.

Rural women, often deprived of basic education and highly subject to patriarchal beliefs, are among those often drawn to domestic work abroad, which requires no "professional" skill. In turn, pull factors in the form for instance, of high demand for female domestic worker... interact with push factors in the home countries, and further spur the migration trend. States exploit these pull factors, as part of their drive for growth, albeit growth without employment creation, but consumption-led due to migrant workers' remittances.⁴⁵

With AEC's trade and market-orientation, "the trend of migrating for work under risky conditions and oppressive terms of employment" is one of its outcomes. "It has proven to be a highly gendered terrain, with women domestic workers counting among the most adversely affected from the exploitation of their reproductive labours [in the global service sectors and the gross undervaluation of their work in a profit-driven and male-privileging world]."⁴⁶

Indicative of the efforts at realizing the goal of "free flow of labour" under the AEC⁴⁷ is the increasing intra-ASEAN labour mobility⁴⁸. This conversely is attributed to "income, wealth, and wage disparities among member States which also present obstacles to increase integration."⁴⁹

Given the unequal levels of development across the region, labour mobility across ASEAN is asymmetrical.

There are countries that are net labour recipients such as Singapore, Malaysia, Brunei Darussalam and Thailand; and the rest, including CLMV countries are net labour-sending.⁵⁰ The intra-ASEAN migration flows or worker movements in ASEAN are “dominated by unskilled and semi-skilled workers”⁵¹; the latter involves “unskilled labour for construction, agriculture, and domestic work”⁵². These types of movements are characterized by irregular migration, “mainly because of lack of avenues for legal migration”⁵³. Unskilled work, such as domestic work characterizes the nature of work that women from ASEAN countries occupy. Indonesia and Philippines are the two top sending countries of domestic work in ASEAN and worldwide.⁵⁴ It has been noted that migrant domestic work is feminized, owing to the perception of women’s “extension of the invisible, subordinate and unpaid care or social reproduction labours that they render at home.”⁵⁵

Intra-ASEAN migration increased from 1.5M to 6.5M between 1990 and 2013 (UN 2013). Data shows that in 2010, top source countries for international migration were the Philippines, Indonesia, Myanmar, Lao PDR and Cambodia.⁵⁶ The International Organisation on Migration notes that three countries host 90 percent of intra-ASEAN migrants: Malaysia (35%), Thailand (35%) and Singapore (21%). Most of these migrants are low- and medium-skilled workers.

A large majority of Cambodian migrants to Thailand are women employed in agriculture, construction and domestic work sectors. More recently, Cambodia became a major sender of domestic workers in Malaysia. Cambodian women and children cross the borders of Vietnam to work on streets often as beggars. Migrant workers from Lao PDR also go to Thailand to be employed in sectors including animal husbandry, construction, domestic work, food processing, garment factories and services. However, because of severe lack of data, it is not possible to account for how many are women, men and children.⁵⁷

Table 1: The Greater Mekong Sub region (2008)

	Total GMS	Thailand	Myanmar	Cambodia	LAO PDR	Vietnam	GMS Areas of PRC
Migrant Stock 2008	3918000	2553000	125000	1048000	118000	27000	47000
Thailand	44000		5000	20000	12000	4000	3000
Myanmar	2083000	2072000		0	0	0	11
Cambodia	262000	248000	0		6000	8000	0
Lao PDR	217000	208000	0	3000		1000	5000
Vietnam	1073000	25000	0	1000000	20000		28000
GMS Areas of PRC	239000	0	120000	25000	80000	14000	

Source: ADB (2012). GMS Regional Investment Framework Sector Report on Labour Migration

ASEAN's Geo-Politics and Political Security Issues Impeding Regional Integration

The political motivations behind establishing the regional organization is telling given the geo-political climate of its inception. ASEAN, as many analysts concurred, began mainly as a “[purely] security arrangement — a combination of a de facto non-aggression pact and soft bulwark against the spread of communism in Southeast Asia.”⁵⁸ ASEAN was formed in the midst of the post-Cold War era “[a]gainst the backdrop of conflict in the then Indochina”⁵⁹ and the rising communist insurgencies in the region⁶⁰. The founding of the regional organization was seen as a “historical event represented the culmination of the decolonization process that had started after World War II.”⁶¹ It is hence in the “interest of preserving and enhancing peace and stability in the region”⁶² that ASEAN’s political directions have been shaped. “The goal was to preserve long-term peace in Southeast Asia and, by unifying, to balance the roles that outside powers, including the United States, China, and Japan, played in Southeast Asia.”⁶³

ASEAN is said to be in strategic position “standing at the forefront” and with the potential to be “convener and centre of future regional security architecture” in East Asian regional security involving regional powers such as China and Japan.⁶⁴ However, “during the Cold War, most ASEAN member states sided closely with the United States” taking cues on “most major regional foreign policy issues. As a result, these ASEAN states now are even more dependent on the United States for their defence.” Meanwhile, Mekong countries, namely Cambodia, Lao PDR and Myanmar “have become dependent on China” and many observed that Beijing aspires “to establish a regional order in which it is the dominant power and prevents the United States from continuing to maintain a large security presence in the region.”⁶⁵

Noting that national and collective resilience would not be achieved with the intervention of external powers, the founding members of ASEAN signed the Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration in 1971, better known as the Kuala Lumpur Declaration of 1971. The ZOPFAN Declaration underlined the commitment of all AMS to “exert initially necessary efforts to secure the recognition of and respect for Southeast Asia as a Zone of Peace, Freedom and Neutrality, free from any manner of interference by outside Powers.” ASEAN’s resistance from external influence was fortified in the Treaty of Amity and Cooperation in Southeast Asia (TAC) where principles of “mutual respect for one another’s sovereignty, non-interference in internal affairs, the peaceful settlement of intra-regional disputes and effective cooperation” must be adhered to by the AMS. The treaty is seen as the “only indigenous regional diplomatic instrument providing a mechanism and processes for a pacific settlement of disputes.”⁶⁶

The regional bloc has gained small successes along the way. It is in the formation of the organization that interstate conflicts in Southeast Asia were prevented; despite several brewing territorial disputes in the region.⁶⁷ ASEAN’s role in resolving the Kampuchean conflict or the Cambodia-Vietnamese war in 1975-1985 was seen as a “diplomatic breakthrough.”⁶⁸ ASEAN Member States also adopted common positions in global issues such as their “condemnation of South Africa’s apartheid system and its occupation of Namibia, the then Soviet Union’s occupation of Afghanistan, support for the PLO-Israeli Declaration of Principles on Interim Self-Government, expression of grave concern on the situation in Bosnia-Herzegovina, call for a resumption of political dialogue in the Korean Peninsula, and support for the Nuclear Non-Proliferation Treaty and Comprehensive Test Ban Treaty, among others.

The ASEAN Political Security and ASEAN Political Integration

The ASEAN region is a host of diverse political regimes and systems of government, from military regimes, monarchies, communist-socialist states to opening democracies. ASEAN's aspirations for political integration are set against this context. The region envisions a "fully functional" ASEAN Political-Security Community (APSC) by 2015. The APSC is envisioned to "take on a role of central importance to Southeast Asia, functioning as a body for collective security and becoming the region's mediator and adjudicator in any and all security disputes that might emerge among members."⁶⁹

In the ASEAN Political-Security Community Blueprint, '[i]t is envisaged that the APSC will bring ASEAN's political and security cooperation to a higher plane ensuring that the peoples and Member States of ASEAN live in peace with one another and with the world at large in a just, democratic and harmonious environment."⁷⁰

Through the ASEAN Political-Security Community, principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms are promoted. The Blueprint promotes a people-oriented ASEAN in which all sectors of society, regardless of gender, race, religion, language or social and cultural background, are encouraged to participate in, and benefit from, the process of ASEAN integration and community building. Noted in the blueprint is the importance of promoting and supporting gender mainstreaming, tolerance and respect for diversity, equality and mutual understanding in its implementation.⁷¹

The blueprint contains the framework by which the ASEAN Political-Security Community operates in relation to security. The ASEAN Political-Security Community subscribes to a comprehensive approach to security, which acknowledges the interwoven relationships of political, economic, social-cultural and environmental dimensions of development. It promotes renunciation of aggression and the threat or use of force or other actions in any manner inconsistent with international law and reliance of peaceful settlements of dispute.⁷²

The ASEAN Political-Security Community envisages the following three key characteristics: a) a rules-based community of shared values and norms; b) a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security; and c) a dynamic and outward-looking region in an increasingly integrated and interdependent world.⁷³ By embodying these characters, the ASEAN Political-Security Community will work towards political integration of the region.

Weaknesses of the ASEAN Political-Security Community and Challenges to Political Integration

Political integration however continues to be “imperiled” by intra-state conflicts and territorial disputes in the region. Observations were made as to ASEAN facing “challenging political and security issues [in the region], including an arms race, corruption, the development gap and the impact of it, ethnic clashes and intolerance, human trafficking, human rights abuses, an illicit drug trade, migration, money laundering, social injustice, terrorism, territorial maritime disputes, and other forms of transnational crimes.”⁷⁴

ASEAN is confronted with different challenges among its members, including rife human rights violations, shrinking civil society space, political unrest, for example the coup in Thailand.

Issues of political security are more sensitive to some members, given the differences on the state of their political development in terms of democracy, quasi-democracy and authoritarian government. These issues including the “exodus of illegal Cambodian workers from Thailand, following the coup points to larger problems of integration as a whole in the region.”⁷⁵ Further, the discord concerning the South China Sea could potentially “muddy” the path to the regional integration, particularly the economic community given the “competing national interests” and political and economic relations of different Member States with China.⁷⁶

These territorial and security problems involving two or more countries point to the weaknesses and limitations of the ASEAN Political-Security Community and the ASEAN as a whole. The Sabah crisis involving Malaysia and Philippines, as well as “cases of the South China Sea and Cambodia-Thailand territorial disputes, trans-boundary haze pollution and Rohingya human rights issues demonstrate that that the institutional framework of the APSC is weak in resolving disputes and maintaining peace in the region.”⁷⁷ The institutional framework is “not effective in managing and resolving the problems.”⁷⁸ The region does not have the “proper mechanisms in place to tackle sensitive political or security matters.”⁷⁹ The press took notice of ASEAN’s inaction and expressed concerns that the “Political-Security Community will be inoperable or at least ineffectual upon its official formation in 2015”.⁸⁰ ASEAN has thus far “demonstrated little capability to handle either traditional or non-traditional regional security challenges” as seen in “divisions between China and ASEAN, and within ASEAN itself.”⁸¹

Critics exposed the pitfalls of the “ASEAN way” of consensus and non-intervention:

“ASEAN’s weak handling of the choking smog that annually covers much of Southeast Asia after forest fires erupt in Indonesia, the organization has also developed little capacity to combat drug trafficking, human trafficking, pandemic disease outbreaks, terrorism, and other high-priority non-traditional security threats. Even when severe violence has broken out within the region, as in the case of civil strife in East Timor in 1999, ASEAN proved incapable of taking steps to combat the violence because of the “ASEAN way,” its aversion to intervening in any member state’s affairs.

... ASEAN’s consensual style has also hindered its response to human rights abuses in Myanmar.

...Similarly, ASEAN has failed to diffuse tensions between Malaysia and Thailand over the insurgency in southern Thailand. Instead, despite the potential for a third party like ASEAN to help mediate talks, Thailand and Malaysia had to handle border issues and the insurgency bilaterally, and mutual suspicions between the two countries doomed this bilateral approach.”⁸²

ASEAN in its defence responded that the bloc’s lack of “impassioned call to undertake common political positions,” as can be gleaned from its founding documents is due to the “restraint” of the founding members from being mistaken as a “military arrangement” or getting their intentions misunderstood.”⁸³ These criticisms are raised against ASEAN to this day; with the ASEAN human rights body, the ASEAN Intergovernmental Commission on Human Rights (AICHR) seen as “toothless”⁸⁴ in addressing the critical concerns including human rights issues in the region.

The Women’s Human Rights Question in the ASEAN Political-Security Community

The establishment of the ASEAN human rights body, now the ASEAN Intergovernmental Commission on Human Rights (AICHR) as provided in Article 14 of the ASEAN Charter establishes the ASEAN Political-Security Community. Yet despite the institutionalization of a human rights body, by and large, women’s issues have not been tackled as part of the central issues in the Political-Security Community. The clamour for the integration of gender dimension and women’s perspectives and political participation in the discussions on peace negotiations and conflict resolutions has hardly been given serious attention.

“...to date, the institutional structure of ASEAN has precluded deeper engagement [with women, peace and security] as a political-security concern... when the role and participation of women is discussed in ASEAN documents and dialogue on the political security agenda, the primary focus is on women’s protection. There are few references to women as actors who can engage in peace building, security sector reform and conflict prevention.”⁸⁵

Even the formulation of the ASEAN Convention on Trafficking in Persons (ACTIP) handled by the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) is largely from a transnational perspective and is bereft of consultative dialogues with human rights and women’s rights groups. This comes as no surprise given that the bodies constituting the ASEAN Political-Security Community are predominantly represented by men.

The “Human Dimension” of ASEAN: The Socio-Cultural Community

The ASEAN Socio-Cultural Community (ASCC) is said to represent the “human dimension of ASEAN cooperation and upholds ASEAN commitment to address the region’s aspiration to lift the quality of life of its peoples.” As such, the regional bloc’s mandate is to “contribute to realising an ASEAN Community that is people-oriented and socially responsible” in line with the view “to achieving enduring solidarity and unity among the peoples and Member States of ASEAN”. The ASEAN Socio-Cultural Community is the community that seeks to “forge a common identity and build a caring and sharing society which is inclusive and where the well-being, livelihood, and welfare of the peoples are enhanced.”⁸⁶

With the economic and political-security thrusts of the ASEAN Economic Community and the ASEAN Political-Security Community respectively, the ASEAN Socio-Cultural Community for its part focuses on “nurturing the human, cultural and natural resources for sustained development in a harmonious and people-oriented ASEAN.” Admitting that there are risks and negative consequences of the regional integration, ASEAN’s main response is social welfare and social protection. This is also the main strategy as ASEAN seeks to “[f]ully address socio-economic disparities and poverty that persist across ASEAN Member States including achieving the MDG goal of eradicating extreme poverty and hunger.” The ASEAN Socio-Cultural Community blueprint also looks into food security and safety, access to healthcare and promotion of healthy lifestyles; including improving capability to control communicable diseases (i.e., HIV and AIDS) as well as building disaster-resilient nations and safer communities.

The ASEAN Socio-Cultural Community has the following characteristics: (a) Human Development; (b) Social Welfare and Protection; (c) Social Justice and Rights; (d) Ensuring Environmental Sustainability (e) Building the ASEAN Identity; and (f) Narrowing the Development Gap.

It is in the ASEAN Socio-Cultural Community that regional cooperation is more pronounced by noting the assumption that “the three pillars of the ASEAN Community are interdependent and interrelated and that linkages are imperative to ensure complementarity and unity of purpose.” While AICHR as the overarching human rights body is lodged in the ASEAN Political-Security Community, “Social Justice and Rights” is an important element of the ASEAN Socio-Cultural Community. While the ASEAN Economic Community tackles economic integration which covers “Equitable Economic Development”, the ASEAN Socio-Cultural Community undertakes measures under the area of “Narrowing the Development Gap.” As the ASEAN Economic Community espouses the framework of free flow of labour, the ASEAN Socio-Cultural Community takes on the protection and promotion of the rights of migrant workers as part of its work. With the ASEAN Economic Community’s free flow of goods and investments, is the ASEAN Socio-Cultural Community’s balancing act of promoting corporate social responsibility.

Under Social Justice and Rights, the ASEAN Socio-Cultural Community is guided by ASEAN’s commitment to “promoting social justice and mainstreaming people’s rights into its policies and all spheres of life, including the rights and welfare of disadvantaged, vulnerable and marginalized groups such as women, children, the elderly, persons with disabilities and migrant workers.” Hence, it looks into the “promotion and protection of the rights and welfare of women, children, the elderly, and persons with disabilities.” The ASEAN Socio-Cultural Community provides for the establishment of another human rights body, this time focusing on women, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

The ASEAN Socio-Cultural Community is mandated with the role of building the ASEAN identity. The ASEAN identity constitutes ASEAN's "collective personality, norms, values and beliefs as well as aspirations as one ASEAN community." To be able to promote this identity, the ASEAN Socio-Cultural Community is to "create a sense of belonging, consolidate unity in diversity and enhance deeper mutual understanding among ASEAN Member States about their culture, history, religion, and civilisation."

In the process of achieving a "people-oriented and socially-responsible" ASEAN community, the ASEAN Socio-Cultural Community committed actions in view of addressing the issues of the identified marginalized groups. In 2011, the ASEAN signed the Bali Declaration on the Enhancement of the Role and Participation of the persons with Disabilities in ASEAN Community and Mobilisation Framework of the ASEAN Decade of Persons with Disabilities (2011-2020). Under this framework, specific areas on women and older persons were identified. Meanwhile as the ASEAN Socio-Cultural Community looks into "[b]uilding disaster-resilient nations and safer communities," its initiatives include rendering assistance to countries such as the Philippines and Malaysia who are hit by calamities; and institutionalizing a body such as the ASEAN Disaster Management Training Institutes Network.

The issues of migrant workers are also taken up by the ASEAN Socio-Cultural Community. This will be further discussed in the section on Legal Framework of Migrant Labour in ASEAN.

Women's Rights in the ASEAN Socio-Cultural Community and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

With the ASEAN Socio-Cultural Community as representing the "human dimension" of ASEAN, women's rights are – almost solely – taken up in this pillar through the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). The work of the ACWC, despite challenges in terms of resources; is to gain grounds in women's rights promotion and protection. Much of its work relates to norm setting and initiating dialogues on thematic issues of women in the region. There are efforts to promote women's issues as crosscutting and hence, necessitate attention and responses from the different pillars and bodies of ASEAN.

The ACWC enhanced the framework on addressing violence against women (VAW) with the adoption of the ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children. The ACWC also organized the ASEAN Regional Conference of Senior Officials on Strengthening the Protection and Empowerment of Women Migrant Workers.

One of the recent meetings led to the adoption of the Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons, which was also reviewed and enriched by the inputs of the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and other relevant ASEAN sectoral bodies. The ACWC is also pushing for the establishment of the ASEAN Network of Social Service Agencies (NOSSA) with members that include social service agencies involved in preventing, protecting and helping victims of violence against women and violence against children from ten ASEAN Member States.

1.2 ASEAN's Framework on Labour Migration

ASEAN's Framework on Labour Migration can be found in the nexus between and within the three pillars of the ASEAN – the economic (AEC), political-security (APSC) and socio-cultural communities (ASCC). While women's rights and migrant workers' issues are crosscutting, ASEAN's approach in addressing these issues is fragmented and incoherent.

The overarching premise of labour migration in ASEAN is hinged upon AEC's goal of free flow of labour. Among the "push" factors of labour migration in the region is the conflict situation in some ASEAN Member States, as observed in the movement of migrant workers, particularly from CLMV. The APSC also examines trafficking, which is inextricably linked to migration. When it comes to the rights of migrant workers, corollary to the mandate of the ASCC to address the issues of the vulnerable and marginalized groups; is a specific section in the ASCC Blueprint on the promotion and protection of the rights and welfare of women, children, the elderly and persons with disabilities.

The framework on migrant labour as espoused by the AEC only covers skilled work or professional services classified for purposes of trade and only provides for temporary labour migration, resonating the General Agreement of Trade in Services (GATS) 'Mode-4' on Movement of Natural Persons. The framework can be drawn from two issuances of the AEC – the ASEAN Framework Agreement on Services (AFAS) and the ASEAN Agreement on the Movement of Natural Persons (AMNP).

The ASEAN Framework Agreement on Services⁸⁷

The ASEAN Framework Agreement on Services adopted in 1995 makes evident ASEAN's view of migrant work as mainly a medium for trade or part of the "measures on border and non-border areas of cooperation to supplement and complement the liberalisation of trade." The AFAS itself reiterated ASEAN's "commitments to the rules and principles of the General Agreement on Trade in Services", noting "that Article V of GATS permits the liberalising of trade in services between or among the parties to an economic integration agreement." Through the AFAS, ASEAN Member States "shall liberalise trade in services" and mutually recognize the "education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers."⁸⁸

The framework limits ASEAN's recognition of services engaged in trade or service suppliers or professions that can provide services across ASEAN countries. With the adoption of the AEC blueprint in 2007, ASEAN limits the recognized professions even more with the Mutual Recognition Arrangements (MRAs). Under these arrangements, only services or professions covered by MRAs are facilitated for "free flow of labour". Thus far, only eight professions, namely: engineering services, nursing services, architecture, land surveying, medical practice, dental practice, accountancy and tourism are with MRA and granted privileges thereto. These services or professions are classified as high-skilled work.

The ASEAN Qualifications Reference Framework⁸⁹

In view of enhancing the mobility of skilled labour and professionals, the ASEAN Qualifications Reference Framework (AQRF) was developed. The AQRF is a "proposed regional framework" that will "function as a device to enable comparisons of qualifications across ASEAN Member States while at the same time support and enhance each country's national qualifications framework or qualifications systems that are currently at varying levels of development, scope and implementation."⁹⁰

ASEAN Agreement on the Movement of Natural Persons⁹¹

One of the core elements in establishing a single market and production base is free flow of labour. This “allows for managed mobility or facilitated entry for the movement of natural persons engaged in trade in goods, trade in services and investment” subject “to the prevailing regulations of the receiving country.”

The ASEAN Agreement on the Movement of Natural Persons (hereafter the Agreement) signed in 2012 seeks to pave the way “for an effective mechanism to further liberalise and facilitate movement of natural persons towards free flow of skilled labour in ASEAN through close cooperation among related ASEAN bodies in the areas, including and not limited to trade in goods, trade in services, investment, immigration, and labour.” In line with the GATS framework, the Agreement works towards eliminating “all restrictions in the temporary cross-border movement of natural persons involved in the provision of trade in goods, trade in services and investment within the provisions [of this Agreement].”⁹² The Agreement aims to:

- a. provide within the scope [of this Agreement] the rights and obligations additional to those set out in the ASEAN Framework Agreement on Services and its Implementing Protocols in relation to the movement of natural persons between Member States;
- b. facilitate the movement of natural persons engaged in the conduct of trade: in goods, trade in services and investment between Member States;
- c. establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry or temporary stay of natural persons to whom this Agreement applies; and
- d. protect the integrity of Member States’ borders and protect the domestic labour force and permanent employment in the territories of Member States.

The scope of the Agreement applies to the temporary entry or temporary stay of natural persons of a Member State into the territory of another Member State. These are identified in the Agreement as (a) business visitors; (b) intra-corporate transferees; (c) contractual service suppliers; (d) other categories as may be specified in the Schedules of Commitments for the temporary entry and temporary stay of natural persons of the Member State.

The Agreement does not cover natural persons who are “seeking access to the employment market of another Member State, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.” What appears to be incongruous given the Agreement’s aims of eliminating all restrictions to facilitate entry and mobility of natural persons, is Member States can apply their own measures to “regulate the entry into and temporary stay of natural persons in their territory”, and “to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders.” Against the goal of facilitating movement, the Agreement does not see “visa requirements prior to entry into the territory of a Member State” as “nullifying or impairing benefits” that it is supposed to provide.

The restrictiveness and narrowness of the Agreement on the Movement of Natural Persons, or the ASEAN's framework on labour mobility as a whole as it subscribes to GATS Mode-4 is a concern. The framework is criticized to be "narrow, applying only to the services sector and, in practice, negotiations have been restricted to the business, skilled and professional migration." Following Mode-4 of GATS that has precise and narrow connotation, the framework only "relates to the temporary travel for a limited period by workers to perform a specific service abroad in connection with other foreign funded or traded activities in services." The restrictiveness of the GATS Mode-4 as reinforced by the Agreement on the Movement of Natural Persons, is manifested in the following:

- a. The GATS specifically disallows such workers from seeking permanent jobs in the labour market of the foreign country.
- b. It does not cover work outside the service industries, for example in mining, manufacturing and agriculture or, construction.
- c. [Finally,] in practice, it tends not to cover foreign workers engaged in wage employment in domestic service activities, although this issue is still a matter of controversy.

The ASEAN Economic Ministers are responsible for the implementation of the Agreement, assisted by ASEAN Coordinating Committee on Services (CCS).

Framework on the Rights of Migrant Workers

The rights of migrant workers are not explicitly enshrined in the regulatory framework of free flow of skilled labour. The framework as provided by the AFAS and AMNP is strongly linked to trade; recognizing only a number of professions or trade services.

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers⁹⁴ otherwise known as the Cebu Declaration was signed in 2007, the same year that the AEC Blueprint was adopted and earlier than the ASEAN Agreement on the Movement of Natural Persons. The Cebu Declaration sets the framework for protection and promotion of rights of migrant works in the region. Notable in the Declaration is how "protection" precedes "promotion." The Declaration, while cognizant of "the contributions of migrant workers to the society and economy of both receiving states and sending states of ASEAN"; also equally recognizes the "sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain." The Declaration tries to find balance between the "legitimate concerns of the receiving and sending states over migrant work" and "the need to address cases of abuse and violence against migrant workers whenever such cases occur."

While affording a set of rights and providing for enabling conditions for migrant workers to enjoy their rights and fundamental freedoms, the Declaration maintains that fulfilling these rights are "in accordance with the laws, regulations, and policies of respective ASEAN Member Countries."

The Declaration recognizes undocumented migrant workers, "implying the regularisation of the situation of migrant workers who are undocumented" and mandated the receiving states and the sending states, "for humanitarian reasons," to closely cooperate to resolve these cases. The family members of the migrant workers are also recognized in the Declaration.

The obligations of the receiving states and the sending states are outlined in the Declaration, “pursuant to the prevailing laws, regulations and policies” of the respective receiving and sending states. As expressed in the Cebu Declaration, the receiving states are tasked to:

- Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
- Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfil the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;
- Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
- Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
- Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

Meanwhile the obligations of sending states include:

- Enhance measures related to the promotion and protection of the rights of migrant workers; Ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers;
- Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin; and
- Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.

The commitments by ASEAN and yet again, “ASEAN Member Countries **in accordance with national laws, regulations and policies**,”⁹⁵ are stipulated in the Declaration. The Declaration obliges ASEAN Member States to:

- Promote decent, humane, productive, dignified and remunerative employment for migrant workers.”
- Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
- Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities; Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
- Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers’ rights and welfare;
- Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;
- Encourage international organizations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
- Task the relevant ASEAN bodies to follow up on the Declaration, develop an ASEAN instrument on the protection and promotion of the rights of migrant workers consistent with ASEAN’s vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

With the Declaration providing for the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers, shortly after the Declaration, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers (ACMW) was established.

The rights of migrant workers are also enshrined in the ASEAN Human Rights Declaration adopted in 2012; and the Declaration on the Elimination of Violence against Women (DEVAW) and Elimination of Violence against Children (DEVAC) in ASEAN were signed in 2013. However, these declarations do not contain specific articulation or stipulation on the specific rights or contexts of women migrant workers.

The following legal or policy instruments provide for the framework for addressing migration-related issues of trafficking and violence against women in ASEAN: ASEAN Declaration on Transnational Crime of 1997, Hanoi Plan of Action in 1998, Bangkok Declaration on Irregular Migration of 1998, ASEAN Declaration against Trafficking in Persons Particularly Women and Children of 2004; and Vientiane Action Programme in 2004.⁹⁶

Developing the Framework Instrument

The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers established a drafting team tasked to outline the rights to be covered by the instrument. In the course of the drafting, the negotiations met a deadlock, as the drafting task force was not able to resolve whether the Instrument will be legally binding, cover undocumented or irregular migrant workers, cover members of migrant workers' families and migrant workers who are not from ASEAN member states. Adopting a "Phase" approach and involving representatives from all ten countries, the Instrument was expected to be finalized in 2014. However to date, the drafting is beset with differing opinions and resistance from sending countries. One of the "major stumbling blocks" on the deliberation is the issue of including the family and undocumented migrant workers in the Instrument.

1.3. ASEAN Regional Institutions Involved in the Protection and Promotion of Migrant Workers in ASEAN

The issues of migrant workers and women are often taken separately as reflected in the ASEAN structures and processes. For instance, issues of women are addressed mainly by the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and of migrant workers by the ASEAN Committee (ACWC) on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers (ACMW). The ASEAN Intergovernmental Commission on Human Rights as the overarching human rights institution, is expected to address a range of human rights issues in ASEAN, including issues of women and migrant workers. Both the ACWC and ACMW are under the auspices of the ASEAN Socio-Cultural Community and the AICHR under the ASEAN Political-Security Community. What is evidently missing is a human rights mechanism in the ASEAN Economic Community – which is no less the pillar that shapes the development and regional integration agenda and hence over-all directions of the region.

The ASEAN Socio-Cultural Community's role in the Protection and Promotion of the Rights of Migrant Workers⁹⁸

The implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers is among the mandates of the ASEAN Socio-Cultural Community (ASCC), under its thrust on Social Justice and Rights. One of the ASCC's strategic objectives is to "[e]nsure fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws, regulations and policies of respective ASEAN Member States as well as implement the ASEAN."

The ASCC is expected to operationalise the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers (ACMW) under the auspices of the Senior Labour Officials Meeting (SLOM). The ACMW is delegated to implement the provisions of the Declaration and work towards the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

The ASCC also is tasked to institutionalise and convene on a regular basis the ASEAN Forum on Migrant Labour (AFML) as a platform for broad-based discussions on migrant labour issues under the ASCC, which reports to SLOM.

The issues on fair and appropriate employment protection, payment of wages and adequate access to decent work and living conditions for migrant workers are also assigned to the ASCC. Furthermore the ASCC is to ensure that migrant workers, who may be victims of discrimination, abuse, exploitation, violence, are provided with adequate access to the legal and judicial system of the receiving states.

The ASCC also strives to intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers. This will be achieved by, among others, facilitating the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested, imprisoned, in custody or detained in any other manner, under the laws and regulation of the receiving state and in accordance with the Vienna Convention and Consular Relations.

Other actions identified under the ASCC Blueprint are as follows:

- Facilitate data-sharing on matters related to migrant workers for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
- Strengthen policies and procedures in the sending state to facilitate aspects of migration workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin;
- Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation and of the receiving state, provided that they fulfil the requirements under applicable laws, regulations, and policies of the said state, bilateral agreements and multilateral treaties;
- Establish and promote legal practice of the sending state to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation, and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies; and
- Promote capacity building by sharing of information, best practices as well as opportunities and challenges in relation to protection and promotion of migrant workers' rights and welfare.

A specific reference to women migrant workers is found in the ASCC blueprint, noting ASCC's task to "conduct research studies on the impact of economic integration and globalisation from gender perspective in order to have concrete bases in formulating appropriate gender-responsive interventions;" and "strengthen ASEAN cooperation in protecting female migrant workers."⁹⁹

The ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)

The ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) is tasked with developing an ASEAN instrument on the protection and promotion of the rights of migrant workers as provided in the Cebu Declaration. Unlike the AICHR and ACWC, the ACMW does not have a Terms of Reference. Nonetheless, it can be gleaned from its work plan that its mandate goes beyond developing a Framework instrument; and it is expected to take other concrete steps or measures to address the human rights situation of migrant workers in the region. The ACMW reports to Senior Labour Officials Meeting (SLOM) under the ASEAN Socio-Cultural Community. The four thrust areas under its work plan include:

- Step up protection and promotion of the rights of migrant workers against exploitation and mistreatment,
- Strengthen protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries,
- Regional cooperation to fight human trafficking in ASEAN,
- Develop an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

The AICHR is created by virtue of Article 14 of the ASEAN Charter. It serves as the overarching human rights body of the region. The purposes of AICHR deal largely with promotion and protection of human rights in the region including contributing in the realization of community-building which is the expression for regional integration. The existence of the human rights body is also envisioned to enhance regional cooperation and uphold international human rights standards. As outlined in its terms of reference, the following are the purposes of the AICHR:

1. promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
2. uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
3. contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;
4. promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
5. enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
6. uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.”

The AICHR has been criticized to be toothless, given the reference to “national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities” in its Terms of Reference. The AICHR falls short in setting the human rights standards and norms in the region with the adoption of the “flawed” and retrogressive ASEAN Human Rights Declaration (AHRD).

The AICHR’s work on migration is through the development of a thematic study on migration. There is no clear indication however how the AICHR will use the study or whether based on the study, it will take concrete steps to address the issues of migrant workers, especially women migrant workers in ASEAN.

The ACWC for its part has a specific mandate on the promotion and protection of the human rights and fundamental freedoms of women and children. While still containing provision on its deference to the “different historical, political sociocultural, religious and economic context in the region and the balances between rights and responsibilities” the ACWC underlines in its principles that the “primary responsibility to promote and protect the fundamental freedoms and rights of women and children rests with each Member State.” The ACWC’s work is guided by the principles provided in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). It seeks to “complement, [rather than duplicate] the function of the CEDAW and CRC¹⁰¹.

As mentioned, ACWC organized a Regional Conference of Senior Officials on Strengthening the Protection and Empowerment of Women Migrant Workers in November 2014. The conference was attended by representatives from ACWC, representatives of the labour ministries responsible for the concerns of migrants, the International Labour Organization (ILO), the ASEAN Confederation of Employers (ACE), ASEAN Trade Union Council (ATUC), the Task Force for ASEAN Migrant Workers (TFAMW), UN Women, International Organization for Migration (IOM), civil society organizations working with migrants from ASEAN Member States, the ASEAN Secretariat, and women migrant workers groups. The Conference yielded recommendations for incorporation in the Framework Instrument being developed by the (ACMW).¹⁰²

The ASEAN Forum on Migrant Labour (AFML)

The ASEAN Forum on Migrant Labour (AFML) is a migration forum hosted by ASEAN that boasts of its tripartite nature involving governments, workers’ and employers’ organizations and civil society stakeholders; including the International Labour Organization (ILO). It convenes annually to discuss, share experiences, build consensus on the protection of migrant workers issues committed under the ASEAN Declaration on the Protection and Promotion of migrant workers, and results in the adoption of Recommendations on implementing the Cebu Declaration.¹⁰³

The ASEAN Regional Forum (ARF)

The ASEAN Regional Forum (ARF) is a platform established by the ASEAN Political-Security Community to “foster constructive dialogue and consultation on political and security issues of common interest and concern; and to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region.”¹⁰⁴ The ARF concluded its regional forum workshop on Security, Stability, and International Migration in the ASEAN Region last 10-11 March 2015. The forum workshop on migration is linked to human security; reviewing ARF’s “priorities for promoting the benefits of legal, safe and orderly migration and addressing human security challenges associated with irregular migration, including the prevention of: radicalization, terrorist manipulation of migrants or migration infrastructure, and the mobility of known or suspected terrorists into or from refugee populations”.¹⁰⁵

ASEAN’S Framework for Managing Labor Migration and Related Issues

AEC: Free flow of Labor	APSC: Security and Border Control	ASCC: Welfare and Human Rights Promotion
ASEAN Framework Agreement on Services 2003	ASEAN Declaration on Transnational Crime 1997	Declaration on the Elimination of Violence against Women in ASEAN 2004
Mutual Recognition Arrangements	Bangkok Declaration on Irregular Migration 1999	Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007
ASEAN Agreement on the Movement of Natural Persons	ASEAN Declaration against Trafficking in Person Particularly Women and Children	Declaration on the Elimination of Violence against Women and Children 2013
ASEAN Qualifications Reference Framework	ASEAN Human Rights Declaration 2012	
ASEAN Economic Ministers	ASEAN Ministerial Meeting on Transnational Crime ASEAN Intergovernmental Commission on Hum Rights	ASCC: Welfare and Human Rights Promotion ASEAN Commission on Women and Children

Chapter 2

Women's Rights Issues in the Context of Labour Migration in ASEAN



As illustrated in previous sections, ASEAN agreements generally exclude migration. Facilitation of movement of natural persons and mobility of labour has been least developed compared to other trade liberalization measures undertaken by ASEAN (i.e. trade facilitation and reduction of tariffs). The Mutual Recognition Agreements regulate convergence and harmonization of services and provides for the facilitation of movement of professionals and highly skilled workers who constitute a small fraction of all migrant workers in the region. Gaps and critical women's rights violations arise as ASEAN's policies and initiatives remain fragmented and fail to recognize the nature of intra-ASEAN migration flow (i.e. involves low-skilled workers, reflective of labour flow imbalances within the region and irregular migration that remains intractable).

2.1. Restrictions on right to work and mobility, dependency on temporary, irregular, undocumented women migrant workers



As many economists, policy-makers and researchers have already noted, the ASEAN Economic Community (AEC) tends to replicate the World Trade Organisation General Agreement on Trade in Services Mode 4 by favouring highly skilled and professional workers and by linking investments with specialized skills.¹⁰⁶ Even so, the AEC is currently limited at mutual recognition agreements for eight professions only. It does not guarantee freer mobility even among the highly skilled and professionals in the region¹⁰⁷. Who is it, then, that oils the gears of the AEC and ASEAN economies, to keep to their targets of economic growth and better productivity supposed to benefit *most* ASEAN peoples?

Labour migration in ASEAN largely occurs under temporary migration regimes and for less skilled, low wage work in sectors including domestic and care work, construction, manufacturing and agriculture (including fishing and forestry sectors).

The number of irregular migrant workers surpasses that of regular migrants. At least a million of the estimated 2.5M migrant workers in Thailand are undocumented. Regular and irregular migration from Cambodia steadily increased, where irregular migrants account for 93% of the estimated total number of immigrants in 2010. Women comprise 43% of these flows and are concentrated in domestic and care work¹⁰⁸. According to estimates, majority of these migrant workers are women in low-wage jobs.

There are three undocumented for every documented migrant worker in Malaysia¹⁰⁹ from Myanmar, Vietnam, Philippines, Cambodia and Thailand. In Thailand, estimates show that there are 2.46M low-skilled migrant workers who came through informal cross-border lines from Cambodia, Lao PDR and Myanmar, 53% of which are unregistered or undocumented and approximately 45% are women.

Table 2 Employment of women migrant workers from CLMV

Origin	Destination	Sector where majority are employed
Cambodia	Thailand Malaysia Singapore	Domestic work, Agriculture, marine and fisheries
Lao PDR	Thailand	Domestic work, Animal husbandry, construction, garments and textile factories, food processing
Myanmar	Thailand Malaysia	Domestic work, agriculture, livestock, seafood processing, construction
Vietnam	Malaysia Cambodia Lao PDR	Factory work, Agriculture and fishery, Self-employed: street vending, store sellers, market traders
Thailand	Singapore	Domestic work
Philippines	Singapore	Domestic work
Indonesia	Malaysia Singapore	Domestic work

Source: Mekong Migration Network and Asian Migrant Center. (2013). Migration in the Greater Mekong Sub region. Chiang Mai; ADBI, ILO, OECD. (2015). Building Human Capital through Labour Migration in Asia. Japan; UN Women (2013) Managing Labour Migration. Bangkok

Women have greater difficulty in accessing safe, legal migration channels because they tend to have less money and access to resources, lack credible and gender-responsive information on regular modes of migration and encounter more restrictions in freedom of movement prior to migrating in some countries. Migrant women, especially those who are undocumented, face more severe barriers to accessing services because of linguistic and cultural difficulties, exclusion from services and minimal contact with support networks.¹¹⁰

Migration of low skilled workers is subject to harsher border control and immigration restrictions. Low skilled migrant workers are barred from permanent, gainful employment in host countries, from accessing a range of social services, social protection and security. They are restricted from bringing in their family or marrying a national or co-migrant worker, a 'privilege' highly skilled workers and (usually male) expatriates enjoy in host countries. Pregnant low-skilled migrant workers in "3D" (dirty, dangerous and demeaning) job sectors are dismissed from work and, in some cases, deported. Of the dismissed, many end up becoming irregular or undocumented in status.

The need to remain competitive in a very dynamic and fluid regional economy, such as what the ASEAN Economic Community hopes to achieve, depends on cheaper and more "flexible" sources of labour. Gender stereotyping (e.g. female employees are more docile, submissive to managerial authority, less prone to organize into unions, more willing to accept lower wages and easier to dismiss due to marriage or pregnancy) is prevalent among employers who also reinforce the preference for hiring women migrant workers.¹¹¹

2.2 Feminization of migration, feminization of reproductive labour

The goals of the ASEAN Economic Community for better productivity and economic growth of the region and its Member States rests on the cheap labour that migrant workers provide.

It is difficult to establish feminization of migration based on numbers, especially from Greater Mekong sub region countries because women's migration tends to be underrepresented in official statistics, employed in informal economies and take irregular often unsafe channels to migration. Nevertheless, estimates, as shown above, indicate that a significant proportion of undocumented migrants from CLMV are women.

The rigid, gendered division of labour dictates migration flows. Migrant women dominate in jobs connected to reproduction (domestic and care work, entertainment sectors, textile/garments sectors) while men are in the construction sector, security services and plantations. The demand for foreign workers in domestic and care work will continue to rise because of the rapidly expanding elderly population, especially in Singapore and Thailand and the increasing focus on providing for geriatric care. Migration of women in the region has grown in numbers over the past two decades. The increasing number of women from Indonesia, Philippines, Lao PDR move across borders for domestic work in neighbouring countries. Estimates also show that this number can be larger since many migrants from CLMV are undocumented.¹¹²

Intermarriages in CLMV and the role it plays in ASEAN integration (economic, social, and political) is a subject that needs further research. The lines of marriage migration and labour migration are blurred in the sense that women may migrate for work and marry in a host country later (worker-turned-wife) or they may marry a national of the host country and later be able to work (wife-turned-worker). It pays to mention here the phenomenon of marriage

migration, especially from Cambodia, Vietnam, Thailand and the Philippines to East Asian countries for marriage. The significance of intermarriages among Greater Mekong sub region (GMS) peoples, however, is not to be underestimated, taking into consideration the geographical proximity as well as the historical and cultural affinity they might share.

Unpaid household work (an expectation that women who migrate for marriage will provide) and paid domestic work (for which women migrants are especially recruited) are often treated separately in research and policy when both are but characteristics of the feminization of reproductive labour across public and private spheres. The recruitment of women migrant workers for domestic work is a class- and gender-specific solution to an alleged care deficit in host countries as native workers do not take on domestic and care work, and agriculture and other 'menial' jobs as better prospects open up in more modern, higher-paying job sectors. Rather than negotiate among family members, professional middle class families in host countries transfer their care obligations to low-paid irregular, undocumented migrant women.

2.3 Decent work, social protection of women migrant workers

Migrant workers are often left out of social protection schemes in ASEAN member states. Integrated into ASEAN economies through irregular, informal, and poorly paid terms, ('low-skilled') women migrant workers are not entitled to social security, unemployment protection, pension programs and access to basic health services, including sexual and reproductive health programs that native workers are entitled to.

The precariousness of migrant women's work also exposes them to higher risks of exploitation, abuse and human rights violations. Pushed and pulled into precarious work and consistently placed at the bottom of the value production chain, migrant women become highly vulnerable. For example, women in the informal market of domestic work compete intensely. Racist hierarchies emerge as employers and recruiters prefer more 'docile' women who are 'less entitled', than (often Filipino) migrant women who are relatively organized, more able to demand higher wages and perhaps supported by their national governments (through overseas employment facilitation and job contracting, signing Memorandums of Understanding (MOUs) with destination countries, consular programs and services).

2.4 Sexual and reproductive health rights

It is the interest of the neoliberal agenda of economic growth, efficiency and productivity to control women migrants' bodies and sexualities in order to reap the benefits of cheap labour they may provide. This results in routine violation of the rights of women migrant workers.

Most women migrants in ASEAN are young and of reproductive age (between 20 and 39 years old) at the time of migration. To begin with, they have very limited access to sexual and reproductive health education and services in their home countries, as evidenced by high maternal mortality rates, rates of contraception use, misinformation. The United Nations Population Fund notes that in the region, many of the cultural barriers that prevent women, youth and men from accessing reproductive health services "are rooted in gender inequalities that restrict women's access to income, mobility, decision-making power."¹¹³

Migrant women's sexuality and reproductive behaviours are targets of regulation by both sending and receiving countries. Thailand conducts regular and compulsory background checks and medical screenings that require migrants to undergo pregnancy tests and if

found pregnant deports them. There is no information prior to the tests, translation services are not readily available at the border or testing centres, migrant workers do not have a choice over male or female medical attendants and results of the tests are indiscriminately handed down to employers. These are violations of women's, migrant's and patient's rights to informed consent for any medical procedure and to privacy. Furthermore, the expenses for the mandatory check-ups are borne by migrant workers. Employers illegally terminate migrant workers who did not pass the medical check-ups. These workers are deported immediately.¹¹⁴ Many of those dismissed due to pregnancy fall into irregular status, barring them from accessing maternal and other reproductive services, to information and reliable medical care.

Keeping migrant women 'safe' has become an excuse to restrict their freedom of movement and association. To prevent women migrant workers from having sexual contact and fraternizing with men has in many instances been used as an excuse for not allowing a day-off or withholding passports, documents or both, as in the case of many migrant women domestic workers in the region.

Furthermore, migrant workers, especially women perceived to be in sex work are stigmatized as 'carriers' of HIV AIDS. Brunei, Malaysia and Singapore enforce HIV-specific restrictions on entry and at periodic intervals upon stay. Many risk immediate deportation when they test positive.¹¹⁵ Women migrant workers also lack access to condoms and other contraceptive methods, to skilled birthing assistance and antenatal care. They refrain from accessing NGO support and preventive programs due to their illegal status and perceived risks of being identified by authorities.¹¹⁶

2.5 Trafficking

Trafficking in ASEAN takes place for a wide range of reasons. A survey by the International Organisation for Migration (IOM) on trafficking in persons from Cambodia, Vietnam and Thailand shows that survivors were trafficked mainly into three sectors: sex work (29.9%), fishing (25%) and factory work (12.3%). Over half of survey participants under age 18 were trafficked for sex work (51.9%). Others were trafficked as brides/wives, for domestic servitude and begging. The same study reports that one in six was raped ('forced sex') while in trafficking situation. Of these, 97 percent were female and 2.9 percent male¹¹⁷.

Among the trafficking survivors surveyed, 57.8 percent were women and 42.2 percent men. Other estimates however, show that numbers may differ depending on the sector to which migrant workers were trafficked. A survey estimate by the United Nations Interagency Project on Human Trafficking (2011) of labour trafficking in the seafood processing industry in Samut Sakhon Thailand shows that risks of being trafficked or involved in forced labour do not differ at all between males and females. Awareness of trafficking is another factor that affects vulnerability in becoming a victim of trafficking. World Vision (2014) reports that nearly two thirds of children and youth surveyed in Lao PDR had never heard of human trafficking, in contrast with more than half children and youth in Cambodia, Myanmar and Vietnam who are aware of human trafficking and risks involved. Further, in Lao PDR and Vietnam more girls than boys were aware of trafficking and in Myanmar and Vietnam children who had participated in clubs and organizations were more likely to have heard about human trafficking.

Migrant women who use irregular and undocumented migration channels are at greater risk of trafficking and smuggling. Illegal entry increases a trafficked person's reliance on traffickers and serves as an effective deterrent to seeking outside help. The UNIAP study further shows that migrant workers who do not receive adequate health care at work were at a higher risk of being trafficked and involved in forced labour.¹¹⁸

Trafficking survivors may be prevented from seeking help due to lack of viable options for gainful employment, fear of the new environment and fear of arrest. According to the same IOM survey, many (43%) fear they might still be in danger from a trafficker even if they were no longer in the trafficking situation and over half (56.3%) were worried about how they would be treated by people upon arrival at home. Most of the survey participants (60%) reported a desire to be employed.

The Asian Forum on Parliamentarians on Population and Development (AFPPD, 2013) observes that anti-trafficking response have been inadequate and law enforcement officials are not equipped with dealing with labour trafficking. Few countries in ASEAN have adequate laws for corporate accountability for human trafficking, including their supply chains.¹¹⁹

Trafficking in persons is a criminal activity and is highly organized. Networks involved in trafficking in ASEAN are informal groups of individuals linked by family or ethnic ties or syndicates operating on a more sophisticated scale. Traffickers employ a variety of recruitment methods but more commonly use fraud or deception about the cost of services and repayment conditions and the nature and conditions of prospective work. Child trafficking may involve gaining the cooperation of a parent or guardian through payment and deception about the nature of the child's work.¹²⁰

There is significant progress in policy that better responds to the issue of human trafficking. The anti-trafficking laws of Thailand and Cambodia decriminalize victim-survivors (men, women, girls and boys) of trafficking. Cambodia, Lao PDR, Myanmar and Thailand now define human trafficking that generally reflects the internationally accepted definition. Further, ASEAN regional cooperation for trafficking in persons includes extradition, provision of mutual legal assistance and more informal means, which includes police-to-police cooperation.

There remains much to be done towards eliminating human trafficking in the region, ensuring redress for rights violations committed against trafficked persons. Of urgent concern is the physical and mental health impact on trafficked persons, particularly in relation to pregnancy, abortion and work-related injuries¹²¹ Ensuring awareness of human trafficking and risks associated with it through formal and informal education strategies for children, youth and communities is also needed.

Case Study: Trafficking in women and illicit drug trafficking

Mary Jane Veloso is a 30-year old Filipino migrant worker sentenced to execution by firing squad for attempting to smuggle heroin into Indonesia. President Widodo of Indonesia granted the last-minute appeal from President Aquino III of the Philippines and stayed her execution on 29 April 2015. The Philippine Government reported that the people who recruited Mary Jane, who had potential links to transnational criminal syndicates surrendered. Mary Jane, on death row for 5 years, remained imprisoned in Indonesia, still hopes for a commutation of her sentence. A case of illegal recruitment, human trafficking and swindling has been filed against her recruiters in the Philippines.

Indonesian authorities arrested Mary Jane in 2009 for trying to bring in a suitcase containing heroin from Malaysia. According to MaryJane¹²², a close family friend, Cristina, promised her a job in Malaysia. When they arrived in Kuala Lumpur, the job was no longer available. Cristina and her friends promised another job to Mary Jane but first she must go to Yogyakarta. Mary Jane's luggage was not big enough for the trip, so Cristina lent her a suitcase. In Yogyakarta, the authorities found

the packs of heroin wrapped in the lining of the suitcase. Mary Jane claimed that the luggage was not hers and Cristina and her friends had duped her. Mary Jane lacked adequate legal support during her trial. The authorities did not understand her, and she did not speak Bahasa Indonesia or English.

Mary Jane first worked in Dubai as a domestic worker until she had to flee to Manila when her employer allegedly tried to rape her. As Mary Jane did not complete high school, she could not find decent work in the Philippines. Consequently, she attempted to find work abroad in order to provide for her two children.

National reports in the Philippines indicate that the West African drug syndicates operate worldwide, particularly in the production and trafficking of heroin and cocaine. These syndicates tend to recruit women to carry illicit drugs across national borders. Of the 678 Filipino drug couriers arrested in 2010 in foreign countries, 425 (or almost 63%) were women. Furthermore, the percentage of women convicted in Southeast Asia continues to rise.¹²³

Many ASEAN women share the experience of not having access to education and consequently, being forced by economic need to seek work abroad, where they are preyed upon by recruiters, traffickers and employers who take advantage of their desperate situation.

A 2006 UNODC study:

“...Identifies an overall rising trend in the abuse of drugs” in the Southeast Asia. It further notes that “the increased trade and mobility that ASEAN citizens enjoy... has also augmented opportunities for criminals to traffic illicit drugs. ...[Therefore] the region is now faced with even greater challenges as it moves forward towards greater integration”.

The study concludes that the “uneven law enforcement, porous borders, and uneven operational capacity [of ASEAN Member States] all point to a region that is not fully prepared to address the current challenges of illicit trade.”¹²⁴ Criminal syndicates have shifted from large-scale manufacturing and transport to small-scale production spread across the region, including transport of smaller packages carried by a large number of individuals heading towards a single destination.¹²⁵

Transnational criminal organizations recruit women as drug couriers through the internet or personal contacts. According to official reports in the Philippines, foreign nationals entice women into relationships and later exploit them as drug couriers. Transnational criminal syndicates reportedly shifted from male to female couriers to avoid suspicion from authorities as women are believed to attract less attention, are considered dispensable and more easily manipulated, especially when engaged in romantic relationships with drug traffickers.¹²⁶

2.6 Migrant women's access to justice for violence against women and violations of economic, social and cultural rights

Women migrant workers in CLMV end up in “3D” jobs and face human rights violations. Table 3 summarizes the common problems and violations against women migrants in CLMV.

Table 3 Violations against rights of women migrants in ASEAN

Phase	Violation
Conditions in country of origin	<ul style="list-style-type: none"> • Massive unemployment; insecurity and risks in informal sector; women render unpaid work • Conflict situations and displacement of peoples and communities • Prevalence of domestic violence, sexual violence against women • Poor access to sexual and reproductive health education and services
Pre-departure	<ul style="list-style-type: none"> • Illegal recruitment • Trafficking of women, especially for the purpose of sexual exploitation • Excessive placement and documentation fees • Forced loans • Wrong information, lack of or wrong orientation (on political, social, cultural and labour conditions in destination countries) • Mandatory sexual and reproductive health-related tests and qualifications (pregnancy, HIV AIDS testing, civil status) • Non-recognition of women with diverse sexual orientation, gender identity and expression (SOGIE)
Arrival	<ul style="list-style-type: none"> • Contract violations (substitution, blank contracts, employer substitution) • No appropriate orientation about destination countries' culture, laws
	<ul style="list-style-type: none"> • Contract violations (non-payment of wages, unauthorized deductions, unfair compensation, excessive work hours) • Maltreatment and abuse, poor working and living conditions • Forced labour (deception about wages and working conditions, withheld wages, withheld passports and other documents, threats of denunciation to authorities) • Sexual violence • Discrimination in housing and other services, including sexual and reproductive health services

Phase	Violation
	<ul style="list-style-type: none"> • Lack or no access to information • Lack of access to justice, access to legal networks in cases of rights violations • Illegal termination • Crackdowns against low-skilled undocumented migrant workers, illegal detention, sexual abuse in detention centres • Discrimination against migrant women (stigma against women in sex work, migrants as carriers of HIV/AIDS, migrants as a threat to local economy) • Restrictions on freedom of association and collective bargaining
Return and reintegration	<ul style="list-style-type: none"> • Unpaid wages • Illegal arrest and inhumane conditions in detention and deportation • Inadequate reintegration support in countries of origin

Source: Asian Migrant Center. (2012). *From Our Eyes*. Chiang Mai; Mekong Migration Network (2013). *No Choice in the Matter: Migrant's experience of arrest, detention and deportation*; UN Women (2013). *Managing Labour Migration in ASEAN: concerns for women migrant workers*. Bangkok

Migration laws and policies in many countries in ASEAN do not expressly ensure migrants' access to justice in cases of human rights violations, despite signing clear and binding commitments under international human rights law, including ICESCR, CEDAW, CRC, the ILO Conventions and regional instruments like the ASEAN Human Rights Declaration and the declarations protecting rights of women, including migrant women in home, transit and host countries.

Migrant workers are exploited despite national laws on minimum wage, number of working hours and days per week. In Thailand, Myanmar women in garment factories are overworked, underpaid and work under non-existent or forged employment contracts, while being held hostage by their employers who usually keep their identity documents. Those who file complaints against exploitative employers are often immediately dismissed and left with no recourse, but to turn to brokers who charge exorbitant placement fees.¹²⁷

Restrictions on access to justice result in an inability of women migrant workers to defend their economic, social and cultural rights. Migrants may not seek to defend these rights for fear of arrest, detention and deportation, for inability to sustain themselves while their case is ongoing, and the slim chance of finding work at home or elsewhere. Violations of labour rights of migrant workers, especially irregular and undocumented women, is rampant in destination countries in ASEAN.

The same is true for violence against women where domestic workers are threatened with deportation or dismissal if they report violations committed by their employers.

Gender-based violence is pervasive. Among adult migrant workers in ASEAN, 15.1 per cent have experienced at least one act of physical or sexual violence before leaving home. Almost one-fifth (22.0%) of children were exposed to physical or sexual violence. Females (20.6%) reported a higher level of pre-departure physical or sexual violence than males (14.6%).¹²⁸

2.7 Migrant women's access to justice for violence against women and violations of economic, social and cultural rights

Cases of Women Migrant Workers from Lao PDR ¹²⁹

Seventy percent of workers from Lao PDR go to Thailand. They often come from income-poor families living in remote and rural areas in Lao PDR. They are usually young and have lower levels of education. Women migrant workers from Lao PDR end up working in different segments of the service sector in Thailand. They are mostly domestic workers or work in the sex industry. In the Deep South of Thailand, in the frontier provinces shared with Malaysia, migrant workers, mostly women from Lao PDR, work in massage parlours. Most workers from Lao PDR are undocumented and trafficked to Thailand. Whilst migrant workers from Lao PDR may be aware of the high costs involved in acquiring the documentation necessary to work in a foreign country, but may not know what documents are required.. Most carry a border pass, rather than a passport. Migrant workers also need a letter of guarantee from their employer in Thailand. Sometimes, employers deliberately withhold the letters.. Women migrant workers from Lao PDR are often unaware of the law in their destination country, particularly in relation to migration.

Brokers in Lao PDR and Thailand facilitate travel and entry of migrants from Lao PDR via a secret route that is not patrolled by border police. The brokers transport up to 40 women, men and children at a time cramped in a van. Some die in transit. Others pay the border police of up to THB 40,000 to allow them to cross the border. Others cross the river. If arrested, police alledged ask for sexual favours. If they resist, they face detention and deportation.

In some instances, brokers arrange for the passport. They falsify information, most especially the age of women and girls. There are girls as young as 12 trafficked to work in garment factories and girls as young as 15 trafficked into the sex industry.

Some Lao PDR migrant men, especially those working in the fishery sector, bring Lao PDR women to Thailand as their prospective wives. The husband's employers may also subcontract these women. They often receive lower wages and less protection than their male counterparts. Subcontracting women is also practiced in the garment and food packaging sectors.

Undocumented migrants usually get wages THB 300B lower than documented migrant workers. And undocumented women usually get lower than this. Moreover, they receive wage deductions from the employer for the cost of recruitment via the broker. They send remittances through the bank or a person they know. They request the recruitment agency or the broker to send the remittance to their families in Lao PDR. There is usually a 50% cut.

Migrant worker populations or communities are more visible in certain towns, for example in provinces where fishing is a major industry. In some areas, they are less visible because they work in secluded areas such as the condition of women in plantations.

Case study

Vatsana (not her real name) is a 16 year-old girl from Lao PDR. She worked in a pineapple farm in rural Thailand. She was forced into this labour. One day, Vatsana escaped from the farm. However, she was re-captured by her employer. To prevent her from escaping again, her employer forced her to work naked. One day, she found a way to contact her family in Lao PDR. Her family then contacted an NGO in Lao PDR that deals with human trafficking. The NGO, in coordination with Thai police rescued Vatsana from the farm. The employer was prosecuted and later convicted for harassment and trafficking. Vatsana returned home in Lao PDR.

Access to communication, support and from law enforcement enabled Vatsana to attain a remedy for the violations she experienced. Like Vatsana, many women migrant workers attempt to escape from exploitative work conditions. However, most do not have access to justice and do not receive a remedy for the violation of their human rights.

Conditions of migrant workers such as Vatsana in plantations like the pineapple farm in rural Thailand need to be further investigated, particularly sugarcane and rubber plantations. Because these plantations are often far from urban centres, migrants working there have less access to information, networks and social support. Eloy (not her real name) worked in a poultry farm. Every day she separated eggs according to their sizes and put them in crates. The employer denied all migrant workers to leave the farm. The conditions at the farm were poor, so Eloy escaped. She was found by the police who arrested her failing to produce a work permit. She was subsequently detained.

Vatsana and Eloy are children. Due to their vulnerability as children they are afforded special protection. However, quite often law enforcement officials do not recognise this special vulnerability and only view them as illegal migrants to be arrested, detained and sent back to the border. Some women migrant workers become more isolated because they do not speak Lao. They speak the language of their ethnic communities.

Vatsana, Eloy and many migrant women from Lao PDR are unaware of ASEAN policies on migration that affect their lives. Lao PDR does not have laws protecting the rights of women migrant workers. There are no bilateral agreements existing between Lao PDR and Thailand or other major destination countries for Lao workers. Both Lao PDR and Thailand have not ratified the Convention on Migrant Workers.

“The Case of Anna”: A Myanmar refugee turned undocumented migrant worker ¹³⁰

Anna (not her real name) is a 27 year-old single undocumented Myanmar migrant worker working in a garment factory in Malaysia.

Anna arrived in Malaysia 3 years ago as an asylum seeker. She is awaiting official UN refugee status.

A case of rape

Anna is currently pregnant. It is an unwanted pregnancy as a result of rape by her Malaysia employer.

Anna does not want to report the crime to the police for fear of deportation. Malaysia has a policy against foreign workers who get pregnant while employed¹³¹. Anna also fears retaliation from her employer as he purportedly has a connection with a gang.

Anna’s case was brought to the Myanmar community leaders in Malaysia. There are clandestine refugee communities in the country formed based on the districts in Myanmar. Myanmar refugees cannot report to authorities due to their illegal status. Hence Anna’s case, if reported to the Police might expose the refugee community in Malaysia.

Economic Migration

Anna’s plight is characterized by economic migration. Anna’s reason for leaving her country is both political and economic. Because of her ethnic nationality (which she does not wish to disclose), Anna also experienced political discrimination. But there is also no jobs or economic opportunities in Anna’s village. Many people like Anna find that migration is the only solution.

Malaysia is a transit country for Myanmar refugees. Most of the refugees seek asylum in countries such as the United States of America, Australia, etc. They stay in Malaysia as they apply for refugee status and await approval of their asylum in the third country¹³².

Nature of migration in Myanmar

Migration in Myanmar is pushed by political repression and ethnic conflicts. Of the eight ethnic groups¹³³, only one group, the Bama (or “Bamar”) are able to access easy pathways to legal migration. Other ethnic groups are left to become refugees and since refugees are not recognized in countries such as Malaysia, they in turn become undocumented migrants.

The issue of Myanmar migrants and refugees is characterized by syndicated, risky and dangerous conditions. As the majority of migrants and refugees take illegal routes controlled by traffickers they, face dangers such as becoming the victims of violence.

With the political crisis in Myanmar, the government can be viewed as tolerating external migration without affording due protection and services for migrant workers, including refugees.

The Route of Migration

Undocumented migrants and refugees transit through Thailand to Malaysia by bus. The journey takes two to three days. When the roads are “blocked” (i.e. when there are strict checkpoints) migrants and refugees often go into hiding and stay in the jungle for about a month.

The application process for passport, visa and travel documents is onerous and can take months. Even with a passport, it is difficult to get a visa. For this reason, Myanmar people take the illegal and more risky route. Many Myanmar people resort to migration through a smuggler without the necessary documentation. Myanmar refugees and migrants pay approximately USD 5,000 to secure fraudulent travel documents. During transit, Myanmar migrants and refugees often bribe immigration officers at checkpoints.

The Myanmar migrants and refugees often travel in cargo vehicles; hiding behind fruit and vegetables. At checkpoints, police often use spears to pierce through the vegetables to check if there are people inside the vehicle. This has not only injured migrants and refugees, in some cases people have died.

Trafficking

Recently, there has been a case reported of two young women missing on the migration route. The women were approximately 20 to 30 years old.

Services for Myanmar refugees and migrant workers in Malaysia

Like many destination countries in ASEAN, only legal migrant workers are able to access services and protection. Illegal migrants and refugees cannot avail of any protection or services. Only a guarantee of deportation

Awareness of ASEAN

Myanmar migrant workers and refugees are generally not aware of ASEAN or how it may benefit them.

While they have some information about policies in Myanmar, they do not have access to information about their rights.

Chapter 3

Critical Engagements with the ASEAN: Civil Society Organizations Influencing ASEAN Labour Migration Policies



It is through the vigorous and intensive advocacy and engagement of civil society organizations (CSOs) that compelled ASEAN to give serious attention to the issues of migrant workers in the region. The CSOs pushed ASEAN to develop a rights-based and gender-sensitive regional framework and policies on labour migration.

Most of the CSOs active in the ASEAN are regional groups who have demanded space in the various platforms in ASEAN, particularly in relation to the rights of migrant workers and women.

Issues for national organizations at the country level include a general lack of awareness of migrant women's rights and resources for CSOs to engage with ASEAN. The "awareness deficit" contributes to the barriers national groups face, especially women's rights organizations who attempt to navigate the structures and processes of ASEAN. Furthermore, decisions in ASEAN are mostly made by political leaders at the ASEAN Summit and at regional human rights bodies meetings. CSOs may hold parallel events at the ASEAN Civil Society Conference/ASEAN Peoples' Forum (ACSC/APF). In these regional meetings national groups often lack support and resources to attend in order to bring the voices and issues from the ground.

Task Force on ASEAN Migrant Workers¹³⁴

The Task Force on ASEAN Migrant Workers, comprised of trade unions, human rights and migrant rights NGOs, and migrant worker associations aims at supporting the development of a rights-based framework for the protection and promotion of the rights of migrant workers. The Task Force seeks to cooperate with ASEAN to advance the implementation of the Cebu Declaration. Since the formulation of the Declaration and the development of the Framework Instrument, the Task Force has been actively intervening through submitting recommendations and position papers. The Task Force also holds consultations on the protection and promotion of the rights of migrant workers at the national and regional levels. Together with its members, the Task Force has developed studies on the situation of migrant workers in ASEAN.

Migrant Forum in Asia¹³⁵

The Migrant Forum in Asia (MFA) is a regional network of NGOs, associations and trade unions for migrant workers in Asia who are committed to protecting and promoting the rights of migrant workers. MFA is a regional communication and coordination point between member organizations and advocates, forging concerted action to address discriminatory laws and policies, violence against women migrants, unjust living conditions, unemployment in the homeland and other issues affecting migrant workers. The network has also worked on studies on labour migration and the rights of migrant workers including domestic workers in the region.

Southeast Asia Women's Caucus on ASEAN¹³⁶

Probably the first regional network of women's rights groups formed specifically to engage the ASEAN, the Southeast Asia Women's Caucus on ASEAN (otherwise known as the Women's Caucus) is a network of more than 100 organizations and networks that engage ASEAN to advance women's human rights. Its membership is spread across 11 countries, including Timor-Leste. The Women's Caucus seeks to influence the ASEAN processes to promote a gender and women's rights perspective; such as in the formulation of the ASEAN Human Rights Declaration and the Declaration on the Elimination of Violence Against Women and the Declaration on the Elimination of Violence Against Children. The Caucus developed studies on gender and women's issues in the ASEAN Economic Community, particularly on Corporate Social Accountability; as well as a thematic study on migration particularly on migrant women domestic work.

Mekong Migration Network

The Mekong Migration Network (MMN) was launched specifically to look into the issues of migrant workers in the Greater Mekong Sub-Region (GMS). The Mekong Migration Network has initiated collaborative action research projects on migration in the Mekong region. The Network has held consultations on the impact of ASEAN on the situation of women migrant workers from the countries in the Mekong region, which refer to the "bottom of ASEAN." In one of the consultations, the members of the Network analysed issues related to exploitation in the global supply chain and the impact of foreign direct investment on labour and migration in countries with limited labour protection mechanisms, including Myanmar, Cambodia and Lao PDR.¹³⁷

Civil society organizations, human rights groups, grassroots and women's organisations made a range of responses to the issues concerning migrant workers and women migrant workers in particular:

- Awareness-raising, training and education on human rights, women's and migrant's rights. Discussions in particular include labour rights of migrants, on human trafficking, information about redress mechanisms and related policies, health rights of migrants;
- Direct services: legal aid, case referral, rescue and tracking, emergency shelters, counselling;
- Advocacy and campaigns on various human rights issues in the region. Groups continue to call for the implementation of various human rights instruments signed by ASEAN Member States, of the declarations promoting and protecting rights of migrant workers, and for stronger mechanisms and accountability for migrant's rights in the region. Advocacy particularly focused on rights of undocumented and irregular migrants, and a binding legal framework for decent work for domestic migrant workers in all ASEAN countries;
- Building alliances and broad-based coalitions, from sub-national, national and regional levels, among grassroots organizations, NGOs and regional civil society groups; and
- Engagement with ASEAN bodies, notably the ACMW, ACWC and AICHR. It is significant to note here that most organizations engaging the ASEAN Economic Community focus on advocacy against trade agreements and frameworks, on issues such as food security and climate related issues

Chapter 4

Conclusion and Recommendations



ASEAN mimics the global development model, where economic growth is the prime means, measure and motivation for development. Many development issues are side-lined while the ASEAN Economic Community focuses on economic growth, rather than the reduction of inequalities across and within the ASEAN Member States.

As the paper seeks to illustrate, the prevailing framework of labour migration in ASEAN, as well as the overarching vision of an integrated ASEAN Community is situated within and is reinforced by the neoliberal paradigm— one that treats labour as a commodity essential to the market and trade-oriented ASEAN Economic Community. Furthermore, the social hierarchy that defines the value of work often devalues women's work.

Women migrant workers, especially in Cambodia, Lao PDR, Myanmar and Vietnam are often in low-skilled or unskilled work and undocumented and illegal. Given the lack of recognition by ASEAN to these types and status of workers, women migrant workers are more at risk and vulnerable to human rights violations. Yet, it is questionable whether ASEAN adequately addresses these issues.. Women's human rights are not prioritized at ASEAN and the multiple layers of discrimination remain pervasive in many countries in ASEAN. This points to the fundamental question of valuation of women's work. Furthermore, irregular and undocumented status of women migrant workers exacerbates vulnerabilities women face such as gender-based violence, discrimination, lack of access to resources and services.

Human rights, particularly the human rights issues of women migrant workers are missing in the ASEAN integration agenda, more so in the ASEAN Economic Community. ASEAN does not have a clear and integrated human rights agenda at the heart of its regional integration project. Contrary to its claims of inclusive growth and building a people-oriented community, the directions that ASEAN has taken thus far, mainly through the ASEAN Economic Community, is devoid of inclusion of peoples' voices and interests especially of the most marginalized and the poorest populations in the region.

ASEAN's fragmented and incoherent approach to human rights results in a lack of an effective mechanism for human rights cooperation across the three pillars and among the ASEAN Member States in the region. For one, the ASEAN Economic Community does not have a human rights mechanism in place and appears to be disconnected with the ASEAN human rights bodies. ASEAN's complex structures and processes make it difficult for advocates to navigate and intervene on human rights issues. To date, there has been no clear indication of ASEAN establishing a human rights mechanism that will provide redress for the human rights abuses committed in the region.

The lack of legal and human-rights based framework for the recognition of the rights of undocumented migrant workers remains a great challenge in the region. ASEAN has not made any significant steps to provide for the recognition and protection of rights of undocumented migrants within the region. This is also due to the fact that governments criminalise undocumented migrant workers. While there is a significant data gap in Cambodia, Lao PDR, Myanmar and Vietnam, women migrant workers due to repressive policies on human rights research within these countries, initial research has found that there has been a grave lack of attention and adequate response from sending country governments in addressing the abuses suffered by undocumented women migrant workers. The receiving country economies that benefit from cheap and unprotected labour of irregular migrants, remain hostile and punitive to undocumented migrants. Many ASEAN countries (e.g. Malaysia, Singapore) criminalize undocumented or irregular migrants and are particularly oppressive to women migrant workers (for example, Malaysia's deportation policy on pregnant foreign workers).

Despite claims of a “people-centered” ASEAN Community, the “awareness-deficit” amongst ASEAN people persists. ASEAN’s accreditation system for CSOs further limits and impedes peoples’ meaningful participation in the region. As ASEAN’s decision-making processes are mostly at the regional level, there is no institutionalized space for CSOs, including women to engage and participate in these processes. While there may be CSO-led initiatives at the regional level, national CSOs lack resources and support to participate to bring the voices and issues from the ground.

For ASEAN Member States

- Fulfil the legal obligations in the CEDAW, CRC, ICESCR and the various international human rights conventions ASEAN Member States have ratified, and the progressive provisions in the ASEAN Human Rights Declaration. Ratify the Convention on Migrant Workers and comply with the ILO Conventions and the fundamental principles and rights at work and the ILO convention on decent work.
- Develop gender-responsive national policies providing adequate focus on women migrant workers and for comprehensive and coordinated action towards the promotion of women’s human rights. Show progress on the de facto realization of women human rights and migrant’s rights at the regional and country level. ASEAN Member States must enforce progressive laws and policies protecting rights of women migrant workers and their families and recognizing work of women in informal sectors.
- Enter into bilateral agreements and memorandums of understanding that will ensure promotion and protection of migrant workers. The Governments of Cambodia, Lao PDR, Myanmar and Vietnam must initiate agreements with the Government of Thailand and Malaysia as major labour-receiving countries, for protection of rights of women migrant workers and their families. Both sending and receiving countries must take progressive steps to enact laws protecting women migrant workers, provide mechanisms of support and services for women migrant workers, and make sure that information is accessible and accurate. Design appropriate and effective pre-departure, in-transit, upon-arrival and repatriation programs for women migrant workers in Cambodia, Lao PDR, Myanmar and Vietnam.
- Recognize women migrant’s right to travel, decent work and health, including sexual and reproductive health. Protect them from exploitative working conditions including withholding of travel documents by agents or employers. Investigate and prosecute perpetrators of violence against women migrant workers, especially perpetrators of human trafficking, forced labour and the various forms of violence against women. Enable women migrant workers’ access to justice for human rights violations.
- All Member States must strive to create conditions for sustainable development and for safe and decent jobs for women in the region.
- Strengthen the role and resources of the labour ministries in monitoring and ensuring the protection of women migrant workers.
- Protect freedom of expression, assembly and association as critical rights for a framework on labour rights protections.
- Strengthen regulatory and accountability mechanisms to monitor and investigate violations to women migrant workers. For example, establish autonomous rights bodies.

For NGOs and Civil Society Organizations

- Support women's and migrant's rights movements in Cambodia, Lao PDR, Myanmar and Vietnam. Strengthen collaboration among women, migrant workers and other human rights groups and organizations in the region. Promote community exchanges and create more opportunities for people-to-people dialogues.
- Conduct independent and strategic research. Initiate comprehensive, evidence-based policy and advocacy in the region.
- Promote participation of national groups and organizations in regional civil society-led initiatives and platforms. Promote genuine participation of women migrant workers.

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Appendices

Appendix 1 ASEAN Framework Agreement on Services

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam, Member States of the Association of South East Asian Nations (hereinafter referred to as "ASEAN");

RECOGNISING the Singapore Declaration of 1992 which provides that ASEAN shall move towards a higher plane of economic cooperation to secure regional peace and prosperity;

RECALLING that the Heads of Government, at the Fourth Summit held in Singapore on 27-28 January 1992 declared that an ASEAN Free Trade Area (AFTA) shall be established in the region;

NOTING that the Framework Agreement on Enhancing ASEAN Economic Cooperation signed in Singapore on 28 January 1992 provides that ASEAN Member States shall explore further measures on border and non-border areas of cooperation to supplement and complement the liberalisation of trade;

RECOGNISING that intra-ASEAN economic cooperation will secure a liberal trading framework for trade in services which would strengthen and enhance trade in services among ASEAN Member States;

DESIRING to mobilise the private sector in the realisation of economic development of ASEAN Member States in order to improve the efficiency and competitiveness of their service industry sector;

REITERATING their commitments to the rules and principles of the General Agreement on Trade in Services (hereinafter referred to as "GATS") and noting that Article V of GATS permits the liberalising of trade in services between or among the parties to an economic integration agreement;

AFFIRMING that ASEAN Member States shall extend to one another preference in trade in services;

Article I: Objectives

HAVE AGREED AS FOLLOWS:

The objectives of the Member States under the ASEAN Framework Agreement on Services (hereinafter referred to as "this Framework Agreement") are:

- a. to enhance cooperation in services amongst Member States in order to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN;
- b. to eliminate substantially restrictions to trade in services amongst Member States; and
- c. to liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the GATS with the aim to realising a free trade area in services.

Article II: Areas of Cooperation

1. All Member States shall participate in the cooperation arrangements under this Framework Agreement. However, taking cognizance of paragraph 3 of Article I of this Framework Agreement on Enhancing ASEAN Economic Cooperation, two or more Member States may proceed first if other Member States are not ready to implement these arrangements.
2. Member States shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through inter alia: establishing or improving infrastructural facilities; joint production, marketing and purchasing arrangements; research and development; and exchange of information.
 - a. establishing or improving infrastructural facilities;
 - b. joint production, marketing and purchasing arrangements;
 - c. research and development; and
 - d. exchange of information.
3. Member States shall identify sectors for cooperation and formulate Action Plans, Programmes and Understandings that shall provide details on the nature and extent of cooperation.

Article III: Liberalisation

Pursuant to Article 1 (c), Member States shall liberalise trade in services in a substantial number of sectors within a reasonable time-frame by:

- a. eliminating substantially all existing discriminatory measures and market access limitations amongst Member States; and
- b. prohibiting new or more discriminatory measures and market access limitations.

Article IV: Negotiation of Specific Commitments

1. Member States shall enter into negotiations on measures affecting trade in specific service sectors. Such negotiations shall be directed towards achieving commitments which are beyond those inscribed in each Member State's schedule of specific commitments under the GATS and for which Member States shall accord preferential treatment to one another on an MFN basis.
2. Each Member State shall set out in a schedule, the specific commitments it shall undertake under paragraph 1.
3. The provisions of this Framework Agreement shall not be so construed as to prevent any Member State from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article V: Mutual Recognition

1. Each Member State may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. Such recognition may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously.
2. Nothing in paragraph 1 shall be so construed as to require any Member State to accept or to enter into such mutual recognition agreements or arrangements.

Article VI: Denial of Benefits

The benefits of this Framework Agreement shall be denied to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a Member State, but not engaged in substantive business operations in the territory of Member State(s)

Article VII: Settlement of Disputes

1. The Protocol on Dispute Settlement Mechanism for ASEAN shall generally be referred to and applied with respect to any disputes arising from, or any differences between Member States concerning the interpretation or application of, this Framework Agreement or any arrangements arising therefrom.
2. A specific dispute settlement mechanism may be established for the purposes of this Framework Agreement which shall form an integral part of this Framework Agreement.

Article VIII: Supplementary Agreements or Arrangements

Schedules of specific commitments and Understandings arising from subsequent negotiations under this Framework Agreement and any other agreements or arrangements, Action Plans and Programmes arising thereunder shall form an integral part of this Framework Agreement.

Article IX: Other Agreements

1. This Framework Agreement or any action taken under it shall not affect the rights and obligations of the Member States under any existing agreements² to which they are parties.
2. Nothing in this Framework Agreement shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of this Framework Agreement.
3. Upon the signing of this Framework Agreement, Member States shall promptly notify the ASEAN Secretariat of any agreements pertaining to or affecting trade in services to which that Member is a signatory.

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2. Existing Agreements are not affected as these have been notified in the MFN Exemption List of the GATS.

Article X: Modification of Schedules of Specific Commitments

1. A Member State may modify or withdraw any commitment in its schedule of specific commitments, at any time after three years from the date on which that commitment entered into force provided:
 - a. that it notifies other Member States and the ASEAN Secretariat of the intent to modify or withdraw a commitment three months before the intended date of implementation of the modification or withdrawal; and
 - b. that it enters into negotiations with an affected Member State to agree to necessary compensatory adjustment.
2. In achieving a compensatory adjustment, Member States shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than that provided for in the schedules of specific commitments prior to such negotiations.
3. Compensatory adjustment shall be made on an MFN basis to all other Member States.
4. The SEOM with the endorsement of the AEM may draw up additional procedures to give effect to this Article.

Article XI: Institutional Arrangements

1. The SEOM shall carry out such functions to facilitate the operation of this Framework Agreement and further its objectives, including the Organisation of the conduct of negotiations, review and supervision of the implementation of this Framework Agreement.
2. The ASEAN Secretariat shall assist SEOM in carrying out its functions, including providing the support for supervising, coordinating and reviewing the implementation of this Framework Agreement.

Article XII: Amendments

The provisions of this Framework Agreement may be amended through the consent of all the Member States and such amendments shall become effective upon acceptance by all Member States.

Article XIII: Accession of New Members

New Members of ASEAN shall accede to this Framework Agreement on terms and conditions agreed between them and signatories to this Framework Agreement.

Article XIV: Final Provision

1. The terms and definitions and other provisions of the GATS shall be referred to and applied to matters arising under this Framework Agreement for which no specific provision has been made under it.
2. This Framework Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.
3. This Framework Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed the ASEAN Framework Agreement on Services.

DONE at **Bangkok**, this 15th day of **December 1995** in a single copy in the English Language.

Appendix 2 Informational Sheet on the ASEAN Qualification Reference Framework

Informational Sheet on the ASEAN Qualification Reference Framework¹³⁷

What is ASEAN Qualification Reference Framework?

ASEAN Qualification Reference Framework (AQRF) is a translation device to enable comparisons of qualifications across participating ASEAN countries, including National Qualification Framework (NQF), Mutual Recognition Agreements (MRA) in sectors like tourism, surveyor, engineers, etc.

What does it mean in practice?

For example, an Indonesian engineer who hold certificate A according to Indonesia Qualification Framework is going to work in Singapore. AQRF will translate this certificate A into certain level in the Singapore qualification framework. AQRF is aimed to facilitate free movement of labour in the ASEAN region.

What sectors does it cover?

It will cover all sectors, but only implemented for skilled labour. There is no clear definition or scope yet about the term “skilled labour”.

What are the key features of AQRF?

It is agreed so far that AQRF is voluntary. This means that the process for endorsing the AQRF shall be by mutual agreement by the participating countries.

When is the target to complete the AQRF?

AQRF is targeted to be established by 2015, as one of the components of the ASEAN Integration.

Why is it important for trade union to be involved in the development of the AQRF?

Firstly, the development of AQRF is aimed at facilitating the free movement of labour in ASEAN; and consequently, has direct implications for workers migrating to work in the region such as whether labour laws and benefits of countries of destination would be applicable to all ASEAN workers or whether migrant workers would be allowed to freely join or form a union and bargain collectively.

Secondly, the AQRF was based on the ASEAN Framework Arrangement on Services (AFAS) of 1995 that was agreed to by ASEAN economic ministers. AFAS was aimed at substantially eliminating restrictions to trades in services among ASEAN. This means that the spirit of this framework was based on the principle of liberalization of economy and trade. Thus, it is important for trade unions to make effort in ensuring that the AQRF takes into account the interests of workers and not just only the interests of business.

Lastly, a large number of migrant workers are already moving within the ASEAN, such as in domestic work, services sectors in restaurants, hotels and retail, and construction sectors. So far, trade unions are organizing and representing them. With the development of AQRF, trade unions must make sure that the said migrant workers’ interests are included in the AQRF.

Appendix 3 ASEAN Agreement on the Movement of Natural Persons

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam, Member States of the Association of South East Asian Nations (hereinafter referred to as "ASEAN");

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 - b. that it enters into negotiations with an affected Member State to agree to necessary compensatory adjustment.

2. In achieving a compensatory adjustment, Member States shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than that provided for in the schedules of specific commitments prior to such negotiations.
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4. The SEOM with the endorsement of the AEM may draw up additional procedures to give effect to this Article.

Article XI: Institutional Arrangements

1. The SEOM shall carry out such functions to facilitate the operation of this Framework Agreement and further its objectives, including the Organisation of the conduct of negotiations, review and supervision of the implementation of this Framework Agreement.
2. The ASEAN Secretariat shall assist SEOM in carrying out its functions, including providing the support for supervising, coordinating and reviewing the implementation of this Framework Agreement.

Article XII: Amendments

The provisions of this Framework Agreement may be amended through the consent of all the Member States and such amendments shall become effective upon acceptance by all Member States.

Article XIII: Accession of New Members

New Members of ASEAN shall accede to this Framework Agreement on terms and conditions agreed between them and signatories to this Framework Agreement.

Article XIV: Final Provision

1. The terms and definitions and other provisions of the GATS shall be referred to and applied to matters arising under this Framework Agreement for which no specific provision has been made under it.
2. This Framework Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.
3. This Framework Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed the ASEAN Framework Agreement on Services.

DONE at Bangkok, this 15th day of December 1995 in a single copy in the English Language.

Appendix 4 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

WE, the Heads of State/Government of the Member Countries of the Association of Southeast Asian Nations (hereinafter referred to as ASEAN), attending the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines;

RECALLING the Declaration of ASEAN Concord II adopted at the 9th ASEAN Summit in Bali, Indonesia, which stipulated the establishment of an ASEAN Community resting on three pillars: an ASEAN Security Community, an ASEAN Economic Community and an ASEAN Socio-Cultural Community;

RECALLING also the Universal Declaration on Human Rights adopted and proclaimed by General Assembly Resolution 217(A) (III) of 10 December 1948, as well as other appropriate international instruments which all the ASEAN Member Countries have acceded to, in order to safeguard the human rights and fundamental freedoms of individuals such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;

RECALLING further the Vientiane Action Programme adopted at the 10th ASEAN Summit in Vientiane, Lao PDR, which provides for, inter alia, the promotion of human rights and obligations to realise an open, dynamic and resilient ASEAN Community;

CONFIRMING our shared responsibility to realise a common vision for a secure and prosperous ASEAN Community by improving the quality of life of its people and strengthening its cultural identity towards a people-centred ASEAN through, among others, measures on the protection and promotion of the rights of migrant workers;

RECOGNISING the contributions of migrant workers to the society and economy of both receiving states and sending states of ASEAN;

RECOGNISING further the sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain;

ACKNOWLEDGING the legitimate concerns of the receiving and sending states over migrant workers, as well as the need to adopt appropriate and comprehensive migration policies on migrant workers;

ACKNOWLEDGING also the need to address cases of abuse and violence against migrant workers whenever such cases occur;

REITERATING that ASEAN should make further progress as a cohesive and caring society committed to enhancing the quality of life and wellbeing of its people, especially those in the vulnerable and disadvantaged sectors;

HEREBY DECLARE AS FOLLOWS:

GENERAL PRINCIPLES

1. Both the receiving states and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries;
2. The receiving states and the sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;
3. The receiving states and the sending states shall take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies; and
4. Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:

5. Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
6. Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
7. Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfil the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;
8. Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
9. Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
10. Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective sending states, the sending states will:

11. Enhance measures related to the promotion and protection of the rights of migrant workers;
12. Ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers;
13. Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin; and
14. Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.

COMMITMENTS BY ASEAN

15. Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
16. Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
17. Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;
18. Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
19. Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;
20. Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;
21. Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
22. Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

DONE at Cebu, Philippines, this Thirteenth Day of January in the Year Two Thousand and Seven, in a single original copy in the English Language.

International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special Consultative Status with the Economic and Social Council of the United Nations. IWRAP Asia Pacific has gained expertise, experience and credibility from 20 years work of mobilizing and organizing women's groups and NGOs to support the work of the State in fulfilling its obligations to Respect, Protect and Fulfill women's human rights under CEDAW, through capacity building, advocacy and knowledge creation initiatives aimed toward development of effective national women's rights advocacy strategies.