

## **Rights in the Time of Exclusion**

### **The Role of ASEAN in Protecting the Rights of Migrant Workers in the Asia-Pacific**

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#### **Abstract**

According to the International Labour Organization (ILO), the Asia-Pacific region hosts around one-fifth of the nearly 164 million migrant workers in the world. With increasing manufacturing demands and aging domestic populations, developed economies in East Asia rely heavily on migrant workers, yet many migration corridors in the region, such as those involving members of ASEAN, are routes with high risks of migrant labor exploitation. International organizations and advocacy groups have focused on raising awareness of migrant labor abuses and increasing ratifications to international treaties that address the protection of migrant workers. This essay examines and frames ASEAN's work on migrant protection within international standard-setting regarding labor migration and the human rights of migrant workers. While ASEAN regional instruments are less comprehensive than international instruments for migrant protection, ASEAN nonetheless can have an important role in advocating for better migrant protections, provided that its current regional standards become more consistent with international standards and implementation mechanisms become more robust for the protection of all migrant workers.

**Keywords:** ASEAN, Asia-Pacific, employment, human rights, labor rights, migrant workers, migrants, migration, regional organization.

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**T**he Asia-Pacific is a region marked by migration. People are on the move, internally or internationally, to seek a better livelihood or to escape conflict. According to the International Labour Organization (ILO), the Asia-Pacific region hosts around one-fifth of the nearly 164 million migrant workers in the

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world.<sup>1</sup> Across the region, there is a complex web of migratory routes used by migrant workers as they traverse the region for employment opportunities abroad. The Association of Southeast Asian Nations (ASEAN) particularly reflects the complexity of these migratory dynamics in the composition of its member states as source, transit, and destination countries. ASEAN was founded in August 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand, and the organization has since expanded to also include Brunei, Cambodia, Laos, Myanmar, and Vietnam.<sup>2</sup> Within ASEAN, countries such as Indonesia, the Philippines, and Vietnam are migrant-sending countries, while Singapore and Brunei are migrant-receiving countries owing to their high level of national economic development and labor needs. Other countries, such as Thailand and Malaysia, simultaneously can be sending and receiving countries—as well as transit countries—of labor migration.

The economic force represented by migrant workers across the Asia-Pacific cannot be underestimated. Migrant workers from Southeast Asia meet a crucial labor shortage in the more developed economies in East Asia that are undergoing rapidly declining birth rates and increased life expectancy. For many developed economies in East Asia, the demography is a very pronounced inverted population pyramid, with the elderly far outstripping the young. Japan, for instance, has one of the most inverted population pyramids in the Asia-Pacific, with the ratio of those over sixty-five to the total population expected to reach over 40 percent by 2070.<sup>3</sup> Against this background, migrant workers are a crucial component of many Asian developed economies by supplementing the local workforce population and, moreover, meeting the pronounced labor shortages in what are considered 3D types of work—dirty, dangerous, and demanding (or, alternatively, degrading, or demeaning). In general, migrant workers worldwide have greater exposure to occupational risks when compared to their local counterparts, and they experience higher rates of poor health outcomes, workplace injuries, and occupational fatalities.<sup>4</sup>

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<sup>1</sup> International Labour Organization (ILO), *ILO Global Estimates on International Migrant Workers—Results and Methodology*, 2<sup>nd</sup> ed. (Geneva: International Labour Organization, 2018), xii, [https://www.ilo.org/global/publications/books/WCMS\\_652001/](https://www.ilo.org/global/publications/books/WCMS_652001/) (accessed April 18, 2020). The estimate of the Asia-Pacific region hosting around one-fifth of the nearly 164 million migrant workers worldwide is determined by combining the separate figures under the broad sub-regions used by the ILO for statistical gathering on migrant workers: Central and Western Asia (5.2 percent), Eastern Asia (3.6 percent), South-Eastern Asia and the Pacific (7.1 percent), and Southern Asia (4.5 percent).

<sup>2</sup> See Association of Southeast Asian Nations (ASEAN), “History: The Founding of ASEAN,” <https://asean.org/asean/about-asean/history/> (accessed April 18, 2020), and Shaun Narine, “Forty Years of ASEAN: A Historical Review,” *Pacific Review* 21, no. 4 (2008): 411–429.

<sup>3</sup> Yutaka Harada, “Policy Issues Regarding the Japanese Economy—the Great Recession, Inequality, Budget Deficit and the Aging Population,” *Japanese Journal of Political Science* 13, no. 2 (2012): 225.

<sup>4</sup> Sally C. Moyce and Marc Schenker, “Migrant Workers and Their Occupational Health and Safety,” *Annual Review of Public Health* 39, no. 1 (2018): 352–353.

Nevertheless, international migration has taken on a heightened emphasis concerning border control and security not only in the Asia-Pacific but worldwide, leading to the International Organization for Migration (IOM) to observe that “[b]arely a day goes by without multiple media reports... focusing on aspects of migration, frequently on negative aspects.”<sup>5</sup> Much of the security-driven political discussion on immigration has centered on the binary distinction of legality, of those who entered, reside, and work with valid documents versus those who do not. In international human rights law, the designation of migrant workers who are “nondocumented” or “in an irregular situation” is used over the popular variant of “illegal migrants” due to the latter term’s pejorative connotation with criminality. Documented migrant workers, those in a regular situation, are defined by international law as those who “are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.”<sup>6</sup>

Migrant workers are considered undocumented or in an irregular situation if they do not comply with conditions for authorized entry, residency, and employment activity in the host country.<sup>7</sup> Nevertheless, in light of the contemporary, often negative, discourse about global migration that is criticized by the IOM, it is perhaps worthwhile to recognize that all individuals, irrespective of their migration status, have fundamental human rights. The principle of equality and nondiscrimination is among the most central of state obligations regarding human rights.<sup>8</sup> This affirmation, though obvious, is of fundamental importance for ASEAN, owing to the fact that Southeast Asia is believed to host a significant, large population of irregular migrants. While reliable statistics of the extent are difficult, if not impossible, to obtain due to the clandestine nature of irregular migration, there are various piecemeal and country-specific estimates to give some indication of the extent of irregular migration, without offering a longitudinal regional overview. One report by the UN Office on Drugs and Crimes provided some statistics available on irregular migration in Southeast Asia in 2011: for instance, between 34,000 and 38,000 Lao nationals were caught by Thai authorities attempting to enter without valid means; between 120,000 and 180,000 Cambodian migrants were working irregularly in Thailand; as many as 447,590 irregular Filipino migrants lived

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<sup>5</sup> International Organization for Migration (IOM), *World Migration Report 2018* (Geneva: International Organization for Migration, 2017), 1, [https://www.iom.int/sites/default/files/country/docs/china/r5\\_world\\_migration\\_report\\_2018\\_en.pdf](https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf) (accessed May 15, 2020).

<sup>6</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), art. 5(a), 2220 U.N.T.S., 3.

<sup>7</sup> *Ibid.*, art. 5(b).

<sup>8</sup> See Daniel Moeckli, “Equality and Non-Discrimination,” in *International Human Rights Law*, 3rd ed., ed. Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran (Oxford: Oxford University Press, 2018), 148-164.

in Malaysia; and some 49,400 Filipino migrants were in an irregular status in Singapore.<sup>9</sup>

Migrant workers often face discrimination and social stigma as low-paid and low-skilled workers. They are frequently treated by receiving states' immigration policies as perpetual outsiders. This is particularly the case with the dominant policy model with respect to migration and ethnic diversity in the Asia-Pacific region, which has been criticized for the following three general characteristics: not allowing immigrants to settle; not offering foreign residents citizenship unless exceptionally warranted; and not modifying national culture and identity in response to external influences, such as those brought on by immigration.<sup>10</sup> Consequently, immigration rules across the region that tap the migrant workers for their labor often simultaneously and deliberately bar them from meeting the eligibility requirements for permanent residency. An example of this policy approach is found in South Korea, where it is impossible "for less-skilled workers to obtain permanent residency because the maximum length of employment is set as 4 years and 10 months and prevents them from fulfilling the 5-year employment requirement (without interruption) necessary for permanent residency."<sup>11</sup> Such types of measures effectively prohibit migrant workers, especially those considered low-skilled, from becoming new immigrants and fully integrated as citizens in the countries of employment.

In terms of their labor rights, low-skilled migrant workers are frequently exposed to a range of risks that can exacerbate their vulnerabilities, starting from how they are recruited for employment abroad in their countries of origin. In many countries, particularly in the Asia-Pacific, private labor agencies or individual brokers charge hefty fees to connect potential migrants to their employment contracts abroad. For example, while a Nepali migrant would pay fees of around USD 2,000 to secure employment in Qatar, a Vietnamese worker employed at a factory in Taiwan typically would pay around USD 4,000 to 7,000.<sup>12</sup> This system is rife with fraudulent practices and labor abuses that may give rise to situations of human trafficking and forced labor.<sup>13</sup> Some

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<sup>9</sup> United Nations Office on Drugs and Crime (UNODC), *Migrant Smuggling in Asia: Current Trends and Related Challenges* (Bangkok: UNODC, 2015), 57-58, [https://www.unodc.org/documents/southeastasiaandpacific/Publications/2015/som/Current\\_Trends\\_and\\_Related\\_Challenges\\_web.pdf](https://www.unodc.org/documents/southeastasiaandpacific/Publications/2015/som/Current_Trends_and_Related_Challenges_web.pdf) (accessed May 28, 2020).

<sup>10</sup> Stephen Castles, "Migrant Settlement, Transnational Communities and State Strategies in the Asia Pacific Region," in *Migration in the Asia Pacific: Population, Settlement, and Citizenship Issues*, ed. Robyn Iredale, Charles Hawksley, and Stephen Castles (Cheltenham, UK: Edward Elgar Publishing, 2003), 3-22.

<sup>11</sup> Dong-Hoon Seol, "The Citizenship of Foreign Workers in South Korea," *Citizenship Studies* 16, no. 1 (February 2012): 125-126.

<sup>12</sup> Open Working Group on Labour Migration and Recruitment, "Policy Brief 1: Recruitment Fees and Migrants' Rights Violations" (2014), <http://recruitmentreform.org> (accessed April 25, 2020).

<sup>13</sup> See Bassina Farbenblum and Justine Nolan, "The Business of Migrant Worker Recruitment: Who Has the Responsibility and Leverage to Protect Rights?" *Texas International Law Journal* 52, no. 1 (2017): 1-44.

of the recruitment fees may be manipulated and recorded, so that migrants have little clarity on their terms of repayment, resulting in a situation where “[e]xcessive recruitment fees [can] lock migrant workers into cycles of debt that cause and exacerbate vulnerability to exploitation.”<sup>14</sup> Their vulnerability to exploitation is increased, for instance, by their becoming more reluctant to report labor abuses that they have experienced—such as wage nonpayment, lower wages than contractually stipulated, or unsafe occupational conditions—in fear of their reporting jeopardizing their ability to repay debt.<sup>15</sup> These dynamics increase their risks to abusive labor conditions, especially when one considers that many migrant workers also find work outside the formal employment sector. Excluded from labor regulations to safeguard workers’ health and safety, migrant workers in the informal economy are exposed to increased precarity.<sup>16</sup>

Founded in 1967, ASEAN is Asia-Pacific’s oldest regional intergovernmental organization, a regional arrangement that deals with matters of maintaining international peace and security appropriate for regional action and entered into by members of the United Nations (UN).<sup>17</sup> Many regional organizations worldwide, such as the Organization of American States (OAS), African Union, and Council of Europe, have their own human rights system, with their own adopted standards, programs, and institutions to advance human rights.<sup>18</sup> Regional human rights systems are seen as a useful vector by which international human rights standards can become localized and be more easily incorporated into domestic legal frameworks, but the relationship also causes tension when international and regional standards are not aligned. In such cases, significant criticism can arise that regional human rights systems can undermine global norms and will dilute human rights protection. The role played by regional organizations can be a complicated one when it comes to standard-setting work in human rights, whereby standards are not static but are expected to evolve with time and to adapt to new situations. Different stakeholders can advocate new standards, and the advocacy, over time, can

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<sup>14</sup> Anne T. Gallagher, “Exploitation in Migration: Unacceptable but Inevitable,” *Journal of International Affairs* 68, no. 2 (Spring/Summer 2015): 67.

<sup>15</sup> See United Nations Office on Drugs and Crime (UNODC), *The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons* (Vienna: United Nations, 2015), 8-9, [https://www.unodc.org/documents/human-trafficking/2015/Recruitment\\_Fees\\_Report-Final-22\\_June\\_2015\\_AG\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf) (accessed April 25, 2020), and Verité, “Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy” (June 2010), [https://www.verite.org/wp-content/uploads/2016/11/Help\\_Wanted\\_2010.pdf](https://www.verite.org/wp-content/uploads/2016/11/Help_Wanted_2010.pdf) (accessed April 25, 2020).

<sup>16</sup> Moyce and Schenker, “Migrant Workers and Their Occupational Health and Safety,” 351-365.

<sup>17</sup> Charter of the United Nations, Chapter XIII, art. 52, 1 U.N.T.S., xvi.

<sup>18</sup> See Dinah Shelton and Paolo G. Carozza, *Regional Protection of Human Rights*, 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 2013), and Ilias Bantekas and Lutz Oette, “Regional Human Rights Treaty Systems,” in *International Human Rights Law and Practice*, 2<sup>nd</sup> ed. (Cambridge, UK: Cambridge University Press, 2016), 235-294.

evolve from soft sources of international law in the form of nonbinding declarations and principles into positive treaty law. However, treaty law also raises the important issue of implementation, namely that a ratification does not effectively mean that a State Party will fully implement the legal provisions contained in the treaty. Nonetheless, the process of treaty ratification indicates, at the minimum, a State Party's willingness to be legally bound by the provisions contained in the treaty, thus giving rise to domestic effects of international treaties through national legislation, policies, and other measures compatible with legal obligations under the treaty. For this reason, human rights treaties have in-built review mechanisms on a periodic basis, whereby a body of independent experts engages in reviews of the progress of domestic implementation by States Parties to the treaty. ILO also has institutional treaty monitoring mechanisms that issue comments and observations for governments to help them to take specific steps to comply with their legal obligations on domestic implementation.

The aim of this essay is to examine the efforts of ASEAN as a regional organization with respect to the protection of migrant workers and to frame them within the key international standard-setting work. The study also identifies critical gaps between regional and international standards as well as opportunities for action and advocacy. Given the multiplicity of instruments and mechanisms in the UN System that address issues of some connection with migrants and migration, the essay focuses on the two regimes that are the most central concerning the rights of workers who are migrating for employment: international human rights and labor rights. At the same time, each of these regimes has a multiplicity of treaties and other soft law instruments under the scope of protecting the rights of migrants in the context of labor migration. Addressing all the instruments and mechanisms of the ILO that have some bearing on improving aspects of labor migration would be too numerous and too detailed an account. The same is true for the various human rights instruments, owing to the overlapping of social labels and discrimination. For this reason, the present examination focuses on key instruments that most directly concern the rights of migrant workers or labor migration. The first section provides an overview of current international standards, highlighting international treaties that specifically address the protection of migrant workers. These international treaties include the main human rights treaty on the rights of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), as well as the host of ILO conventions on migration for employment. The second section focuses on the work of ASEAN on the theme of migrant protection, while the following two sections identify key lacunae in ASEAN's framework to protect migrant workers and opportunities for establishing a more comprehensive regional framework to protect migrant workers. The essay concludes with some observations on recent progress and areas of improvement for the organization, as well as the Asia-Pacific region at large, for concrete and meaningful work to better protect those who migrate for employment.

## International Standard-Setting

Given the complexity of the migratory dynamics across the Asia-Pacific, main focuses of international organizations are two-fold: to raise awareness of the types of labor abuses faced by migrant workers, and to increase the number of ratifications to international treaties that address their protection. Efforts in these areas can be broadly categorized under three headings: the international human rights regime, the international labor regime, and other international policy initiatives outside treaty law. Key international treaties focused on migrant workers include the human rights treaty, ICMW, as well as ILO conventions on migration for employment and migrant workers. Furthermore, the last few years also have seen intense international efforts to highlight awareness for “safe, orderly and regular” migration under the Global Compact for Safe, Orderly and Regular Migration (GCM),<sup>19</sup> a new intergovernmental initiative on migration, and the Sustainable Development Goals (SDGs). This section provides an overview of these various standard-setting initiatives in the international arena.

### *Human Rights: ICMW*

Worldwide, multiple UN programs and organizations have long focused on preventing the implementation of state-sanctioned measures that would increase migrant workers’ vulnerabilities. One of the most important international instruments is the ICMW, adopted by the UN General Assembly in 1990, taking thirteen years to enter into force. Because the ICMW affirmed the human rights of all migrant workers, including those who are undocumented, major receiving countries of immigration were concerned that their support for the treaty would be domestically unpopular. For this reason, the ICMW still does not enjoy wide ratification among the G20 countries.<sup>20</sup> Nevertheless, the ICMW represents an important advancement regarding standard-setting for the rights of all migrant workers and their family members. It is “the most ambitious and broad-ranging international instrument to date to address the human rights of migrants, other than refugees, who are outside their countries of nationality.”<sup>21</sup> Under the convention, both documented and undocumented migrant workers are entitled to the same basic level of human rights protection in the country of employment (Part III), including the prohibition of torture or cruel, inhuman, or degrading treatment or punishment; prohibition of slavery

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<sup>19</sup> United Nations, “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants” (December 19, 2018), <https://www.un.org/press/en/2018/ga12113.doc.htm> (accessed April 27, 2020).

<sup>20</sup> Only Argentina, Indonesia, Mexico, and Turkey have ratified ICMW within the G20 forum for global cooperation in economics, trade, and development.

<sup>21</sup> Linda S. Bosniak, “State Sovereignty, Human Rights and the New UN Migrant Workers Convention,” *American Society of International Law Proceedings* 86 (1992): 635.

or servitude, and forced or compulsory labor; freedom of thought, conscience, and religion; freedom of expression and opinion; right to liberty and security; and the right to a fair and public hearing.<sup>22</sup> While the convention itself affords more protections to migrant workers and members of their families who are documented (Part IV), it does not exclude undocumented migrants from the scope of the treaty and offers them a degree of basic human rights protection.

Like other human rights treaties, the ICMW has a body of independent experts responsible for monitoring implementation of the treaty based on constructive engagements with States Parties. Established by ICMW, article 72, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), issues concluding observation at the end of each state review to assist a State Party in its treaty implementation. The CMW also carries out other roles that are important with respect to international standard-setting, such as issuing General Comments to interpret treaty provisions and provide guidance. While the CMW is the main expert body to address the rights of migrant workers, it does not have exclusive competence, for the reason that the status of being a migrant worker can intersect with other social categorizations to create overlapping discrimination and vulnerabilities.<sup>23</sup> It is this intersectionality that has led other expert bodies to issue their own General Comments on migrant workers, such as General Recommendation No. 26 on women migrant workers, issued by the Committee on the Elimination of Discrimination against Women in 2008.<sup>24</sup> Moreover, these treaty-based mechanisms coexist with other mechanisms that derive their mandate from the UN Charter, such as the Special Rapporteur on the Human Rights of Migrants, whose mandate is to examine ways to overcome obstacles to the full and effective protection of migrants in the world, regardless of whether a state is a party to the ICMW.<sup>25</sup> Together, the Special Rapporteur and the human rights treaty bodies complement other mechanisms in the UN system to improve the protection of migrant workers. This is best represented by the work done by the International Labour Organization on the theme of migration for employment.

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<sup>22</sup> ICMW, arts. 10-13, 16, and 18.

<sup>23</sup> On intersectionality, see the seminal essay where the term was first coined: Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine," *University of Chicago Legal Forum* 1989, no. 1 (1989): 139-168.

<sup>24</sup> Committee on the Elimination of Discrimination against Women, "General Recommendation No. 26 on Women Migrant Workers (CEDAW/C/2009/WP.1/R)" (December 5, 2008), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_2009\\_WP-1\\_R\\_7138\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_2009_WP-1_R_7138_E.pdf) (accessed April 27, 2020).

<sup>25</sup> Commission on Human Rights, "Resolution 1999/44 Human Rights of Migrants (E/CN.4/RES/1999/44)" (April 27, 1999), <https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN-4-RES-1999-44.doc> (accessed April 27, 2020).



### ***Labor Treaties on Migration for Employment***

The ILO has a special mandate on labor and employment and is the only UN agency with a unique tripartite governance structure of representatives from governments, employers, and workers. The ILO has eight conventions that address four fundamental principles: (1) freedom of association and the right to collective bargaining;<sup>26</sup> (2) elimination of forced or compulsory labor;<sup>27</sup> (3) abolition of child labor;<sup>28</sup> and (4) elimination of discrimination in employment and occupation.<sup>29</sup> Due to the centrality of these four principles, the ILO declared in 1998 that all members to the ILO are bound by these principles.<sup>30</sup> Even if members have not ratified the specific conventions associated with each principle, they “have an obligation arising from the very fact of [their] membership...to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the[se] fundamental rights.”<sup>31</sup> These fundamental principles, along with other international labor standards of general applicability adopted by the International Labour Conference, as ILO’s governing body, apply to all workers, including migrant workers. Nonetheless, the topic of migration is given special attention in the international standard-setting work of the ILO, and the organization recognizes that workers employed outside their own countries could be placed in a more disadvantageous position when compared with local workers.<sup>32</sup>

Two ILO conventions, each with its corresponding set of recommendations, specifically address the theme of migration and those who migrate for employment: the 1949 Migration for Employment Convention (Revised) (C097) and Migration and Employment Recommendations (R086),<sup>33</sup> and the

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<sup>26</sup> The 1948 Freedom of Association and the Right to Organize Convention (C087) and the 1949 Right to Organize and Collective Bargaining Convention (C098).

<sup>27</sup> The 1930 Forced Labour Convention (C029) and the 1957 Abolition of Forced Labour Convention (C105).

<sup>28</sup> The 1973 Minimum Age Convention (C138) and the 1999 Worst Forms of Child Labour Convention (C182).

<sup>29</sup> The 1951 Equal Remuneration Convention (C100) and the 1958 Discrimination (Employment and Occupation) Convention (C111).

<sup>30</sup> International Labour Organization (ILO), “ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up” (June 18, 1998), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-ed\\_norm/---declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf) (accessed April 28, 2020).

<sup>31</sup> *Ibid.*, para. 2.

<sup>32</sup> International Labour Organization (ILO), “Constitution of the International Labour Organisation (ILO)” (April 1, 1919), [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907) (accessed April 28, 2020), Preamble.

<sup>33</sup> Principles in an earlier ILO Convention on migration for employment, the 1939 Migration for Employment Convention (C066), were revised and included in the 1949 Migration for Employment Convention (Revised) (C097). The 1939 Convention had no state ratification, and it was subsequently withdrawn at the ILO General Conference in May 2000.

1975 Migrant Workers (Supplementary Provisions) Convention (C143) and Migrant Workers Recommendation (R151). There are two treaty monitoring mechanisms of the ILO: the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards, which is a part of the International Labour Conference. The two monitoring bodies can issue comments and observations for governments to take specific steps to comply with their legal obligations under the ILO treaty. The Conference Committee on the Application of Standards can further request follow-up measures to assist States Parties in their domestic treaty implementation.

There also have been several notable efforts by the ILO to increase standards through soft law instruments to complement efforts aimed to increase treaty ratifications. Foremost in this direction are the two sets of migration-specific recommendations that accompany Conventions No. 97 and No. 143, which are nonbinding instruments with the aim to progressively improve the situation of migrant labor employment: Migration and Employment Recommendations (R086) and Migrant Workers Recommendation (R151). While these two sets of ILO recommendations are detailed supplements to their parent conventions, they provide some general guidance as to what types of measures ILO members could take to progressively improve their standard-setting work with respect to migration for employment. For this reason, ILO recommendations, even for those that are meant to be read in detail with their parent conventions, could offer a flexible channel outside positive law for member states that have yet to ratify particular ILO conventions but are working toward better alignment with international standards.<sup>34</sup> In addition, the ILO has the Decent Work Agenda, a set of programmatic activities outside treaty law with the aim to eliminate poverty, increase employment and social protection, and promote an inclusive and sustainable economy.<sup>35</sup>

The strategy of the ILO to complement the protection of the labor rights of migrants through treaty law with nonbinding instruments reflects a broader multiprong strategy that sees synergy between international human rights and labor rights frameworks. For instance, one migration scholar advocates the use of supplementary strategies to develop solutions outside the realm of positive law,<sup>36</sup> which would include the ICMW, ILO migration-specific treaties, and relevant provisions in other human and labor rights treaties. From the ILO, notable supplementary strategies to advance the labor rights of migrants

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<sup>34</sup> See Velibor Jakovleski, Scott Jerbi, and Thomas Biersteker, "The ILO's Role in Global Governance: Limits and Potential," *International Development Policy* 11 (June 2019): 82-108.

<sup>35</sup> International Labour Organization (ILO), "Decent Work" (September 15, 2015), <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> (accessed May 1, 2020).

<sup>36</sup> Ryszard Cholewinski, "The Rights of Migrant Workers," in *International Migration Law: Developing Paradigms and Key Challenges*, ed. Ryszard Cholewinski, Richard Perruchoud, and Euan MacDonald (The Hague: T.M.C. Asser Press, 2007), 255-274.

include the following: the Multilateral Framework on Labour Migration, a set of nonlegally binding principles and guidelines for a rights-based approach to labor migration, adopted in 2006;<sup>37</sup> the Trade Union Agreement on Migrant Workers' Rights that elaborates on the positive role that trade unions can play to advance the rights of migrant workers;<sup>38</sup> and the aforementioned Decent Work Agenda.

In recent years, these programs outside treaty law have been complemented by similar activities emanating from the UN General Assembly, which adopted a roadmap to meet the challenges of sustainable development by 2030. Billed as the Sustainable Development Goals (SDGs), migration and the rights of migrants are featured in this new global agenda.<sup>39</sup> In particular, SDG Target 10.7 has seen rapid uptake at both the international and national levels for its goal to facilitate “orderly, safe, regular and responsible migration and mobility of people,” which has since evolved into the Global Compact for Safe, Orderly and Regular Migration (GCM), adopted in December 2018 by the UN General Assembly.<sup>40</sup> While the GCM seeks to highlight the positive effects of international migration, it, much like the SDGs, is a nonbinding instrument. Nonetheless, international treaties and policy initiatives, such as the SDGs and GCM, are but one layer of multilateral mechanisms available to effect change at the domestic level. In addition to these mechanisms, there are regional organizations that work closely with the UN system but have developed their own distinct standard-setting work. One prominent example in this respect is ASEAN. With the ever-increasing numbers of people migrating abroad for employment in the Asia-Pacific, this extensive human movement binds the member states of ASEAN in an ever more interconnected web of mutual economic, social, and security concerns, thereby bringing to the fore the immense challenge of the protection of migrant workers.

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<sup>37</sup> International Labour Organization (ILO), *ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (Geneva: International Labour Organization, 2006), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_178672.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf) (accessed May 2, 2020).

<sup>38</sup> International Labour Organization (ILO), “Migrant Workers. ACTRAV: For a Rights-Based Approach to Labour Migration” (undated), [https://www.ilo.org/actrav/areas/WCMS\\_DOC\\_ATR\\_ARE\\_MIG\\_EN/lang-en/index.htm](https://www.ilo.org/actrav/areas/WCMS_DOC_ATR_ARE_MIG_EN/lang-en/index.htm) (accessed May 2, 2020).

<sup>39</sup> United Nations, *The Sustainable Development Goals Report 2016* (New York: United Nations, 2016), 48, <https://unstats.un.org/sdgs/report/2016/The%20Sustainable%20Development%20Goals%20Report%202016.pdf> (accessed May 3, 2020).

<sup>40</sup> United Nations General Assembly, “Resolution Adopted by the General Assembly on 19 September 2016: New York Declaration for Refugees and Migrants (A/RES/71/1)” (October 3, 2016), [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/1](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1) (accessed May 3, 2020); UN News, “‘Historic Moment’ for People on the Move, as UN Agrees First-Ever Global Compact on Migration” (July 13, 2018), <https://news.un.org/en/story/2018/07/1014632> (accessed May 31, 2020); and United Nations, “General Assembly Endorses First-Ever Global Compact on Migration.”

## Regional ASEAN Framework

Since its establishment in August 1967 by the five original member countries of Indonesia, Malaysia, the Philippines, Singapore, and Thailand, ASEAN has grown in members and activities. While ASEAN has made important contributions to regional economic integration and cooperation, it has been criticized as lacking in concerted effort to address concerns of a social dimension.<sup>41</sup> This can be attributed to the fact that ASEAN's heavy emphasis on sovereignty and principle of noninterference has hindered it from addressing social issues, given the risks of being seen as over-reaching into the domestic affairs of another member state.<sup>42</sup> Scholar Chien-Huei Wu, writing in 2016, noted regarding the development of the ASEAN human rights system: "So far the ASEAN has traveled; so little it has achieved. The ASEAN human rights discourse is still haunted by regional particularities which jealously guard sovereignty and value the noninterference principle."<sup>43</sup> The result is a deep tension between human rights, which ASEAN leaders recognize in principle as important through declarations and ministerial statements, and the reluctance to set into motion strong and functional regional institutions to protect human rights. This is particularly seen in the context of safeguarding the rights of migrant workers. As a regional body, ASEAN has sought since the Vientiane Action Programme of 2004 to highlight the issue of labor migration. Nonetheless, the ASEAN response to date lacks any legal sanction for member states that systematically violate the rights of migrant workers or other human rights. The result is an ASEAN human rights system that works more on the promotion, instead of the protection, of human rights.<sup>44</sup>

ASEAN countries are not fast adopters of international instruments that seek to protect the rights of migrant workers. This is true even for ASEAN members that are predominately migrant-sending states. For instance, Laos, Myanmar, Thailand, and Vietnam are not party to the ICMW, with Cambodia remaining only a signatory to the ICMW since 2004. For the migrant-sending country of Indonesia, for which the protection of migrant workers is a key component of its consular activities abroad, the government signed the ICMW only in 2004, more than a decade after the treaty was adopted, and then took close to a decade for the treaty to be ratified. The only exception is the

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<sup>41</sup> Jenina Joy Chavez, "Social Policy in ASEAN: The Prospects for Integrating Migrant Labour Rights and Protection," *Global Social Policy* 7, no. 3 (2007): 358-378.

<sup>42</sup> See Hiro Katsumata, "Reconstruction of Diplomatic Norms in Southeast Asia: The Case for Strict Adherence to the 'ASEAN Way'," *Contemporary Southeast Asia* 25, no. 1 (2003): 104-121.

<sup>43</sup> Chien-Huei Wu, "Human Rights in ASEAN Context: Between Universalism and Relativism," in *Legal Thoughts between the East and the West in the Multilevel Legal Order: A Liber Amicorum in Honour of Professor Herbert Han-Pao Ma*, ed. Chang-fa Lo, Nigel Li, and Tsai-yu Lin (Berlin: Springer, 2016), 288.

<sup>44</sup> *Ibid.*, 277-291.

Philippines, which signed the ICMW in 1993 and expeditiously ratified the treaty in 1995. On the other hand, Singapore, Malaysia, and Brunei Darussalam are considered migrant-receiving countries due to their economic reliance on migrant labor. As such, and similar to developed economies elsewhere, they are not party to the ICMW. Furthermore, there is no indication that they are likely to ratify the ICMW in the near future, even though ICMW is one of the nine core international human rights treaties.<sup>45</sup>

Similar to the ICMW, ASEAN members have shown lukewarm support for the ILO regime on migration for employment and labor rights. While both the 1949 Migration for Employment Convention (Revised) (C097) and the 1975 Migrant Workers (Supplementary Provisions) Convention (C143) are treaty law and binding for the countries that are States Parties, it is striking that very few of the ASEAN member states actually have acceded to these ILO treaties. In fact, the only exception is the Philippines, the only ASEAN member state to have ratified the two specific ILO treaties on migration, C097 and C143. This effectively means that ILO migration-specific treaties enjoy even less support from ASEAN member states than the ICMW under the international human rights framework. The low ratification rate of ILO migration treaties among ASEAN member states means that positive legal instruments under the international labor system are limited at this time in their effect to bring about systematic changes to increase regional protection for migrant workers. Furthermore, given that most ASEAN member states are not States Parties to C097 and C143, ILO monitoring mechanisms for treaty implementation would not be able to directly address most governments of ASEAN on how they can take measures to effectively improve labor standards with respect to migrant workers and labor migration under these two ILO conventions.

At the regional level, there is currently no binding instrument in the Asia-Pacific for the rights of migrant workers, even though the need for a regional instrument was considered by ASEAN member states as far back as 2004. The Vientiane Action Programme of November 2004 was notable in its clear support of human rights as a key prong of its regional security arrangements. Under the theme of “[e]nhancing peace, stability, democracy and prosperity in the region through comprehensive political and security cooperation,” ASEAN member states commit to promote human rights as a strategy to adhere to “peaceful ways of settling intra-regional differences.”<sup>46</sup> ASEAN leaders set out a series of programmatic areas and measures to meet its human rights goals. Under Annex 1.1.4 of the Vientiane Action Programme, some

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<sup>45</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), “The Core International Human Rights Instruments and Their Monitoring Bodies” (undated), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (accessed May 8, 2020).

<sup>46</sup> Association of Southeast Asian Nations (ASEAN), “2004-2010 Vientiane Action Programme, adopted in Vientiane, Laos” (November 29, 2004), chap. II.1.1, <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2004-2010-Vientiane-Action-Programme.pdf> (accessed May 9, 2020).

of these measures included: adopt Memorandums of Understanding to build network among human rights mechanisms and formulate a work program for the network; promote education and public awareness on human rights; and establish cooperation among existing human rights mechanisms.<sup>47</sup> It was at this time that ASEAN also made a commitment to address the human rights protection of marginalized groups. For instance, the Vientiane Action Programme specifically called for the establishment of an ASEAN commission on the promotion and protection of the rights of women and children,<sup>48</sup> and the elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers.<sup>49</sup>

While the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children was established in 2010 and quickly followed by the adoption of the regional organization's first Human Rights Declaration in November 2012,<sup>50</sup> regional negotiations have not produced a legal instrument on the protection of migrant workers, as envisioned in the Vientiane Action Programme. Efforts to codify an ASEAN treaty saw similar contention between migrant-sending and -receiving states that had plagued the codification of the ICMW. Whereas migrant-sending states, such as the Philippines, favored a binding treaty, migrant-receiving states, such as Brunei and Singapore, instead much preferred a set of nonbinding principles that affirmed the rights of migrants. The divide meant that a soft law declaration came into being much earlier than any serious effort on a regional treaty on the rights of migrants had begun. In January 2007, ASEAN adopted a Declaration on the Protection and Promotion of the Rights of Migrant Workers (the "Declaration"), an articulation of general commitments for ASEAN member states and the organization itself to protect and promote the rights of migrant workers. The Declaration was quickly followed in July 2007 by the regional mechanism, ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), aimed at ensuring the effective implementation of commitments made by member states under the Declaration and facilitating the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.<sup>51</sup>

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<sup>47</sup> Ibid., Annex I.1.1.4.2, 1.1.4.3, 1.1.4.4, and 1.1.4.5.

<sup>48</sup> Ibid., Annex I.1.1.4.7.

<sup>49</sup> Ibid., Annex I.1.1.4.6.

<sup>50</sup> Association of Southeast Asian Nations (ASEAN), "ASEAN Human Rights Declaration, Adopted in Phnom Penh, Cambodia" (November 18, 2012), <https://asean.org/asean-human-rights-declaration/> (accessed May 30, 2020).

<sup>51</sup> Association of Southeast Asian Nations (ASEAN), "Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Adopted in Manila, Philippines" (July 13, 2007), [https://asean.org/?static\\_post=statement-of-the-establishment-of-the-asean-committee-on-the-implementation-of-the-asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers](https://asean.org/?static_post=statement-of-the-establishment-of-the-asean-committee-on-the-implementation-of-the-asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers) (accessed May 31, 2020).

Since most of the provisions in the Declaration are not legally binding upon member states and remain primarily promotional in nature, both the Declaration and the corresponding work plan of the ACMW remain nebulous in their substantive content. For instance, the Declaration tasked migrant-sending states to promote and protect the rights of migrant workers by ensuring access to employment, establishing policies to facilitate their migration and eventual return, and regulating migrant recruitment.<sup>52</sup> Additionally, ASEAN's migrant-receiving states were urged to intensify their "efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers" through a host of measures to improve migrants' access to resources and remedies, fair employment protection, and prompt consular assistance.<sup>53</sup> Beyond these general declaratory statements, two notable observations arise from the Declaration. First, the Declaration specifically addressed the migrant-receiving states within ASEAN to "[w]ork towards the achievement of harmony and tolerance between receiving states and migrant workers."<sup>54</sup> However, the same exhortation was absent in the section on the obligations of migrant-sending states, an indication that the Declaration placed more of the onus in promoting and protecting the rights of migrant workers on migrant-receiving states.

Further, in establishing general obligations for its member states, the Declaration committed the regional organization to a host of measures. Most of them echo the substance of the obligations established for the members states, such as general work for promotion, awareness raising, capacity building, data-sharing, prevention of criminality, and international cooperation. The last measure in the section on commitment by ASEAN in the Declaration, however, builds concretely upon the vision of the Vientiane Action Programme of 2004, which underscores the importance of human rights for regional security by addressing the needs of migrant workers as a vulnerable group. It states:

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.<sup>55</sup>

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<sup>52</sup> Association of Southeast Asian Nations (ASEAN), "ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers [adopted on January 13, 2007 in Cebu, Philippines]" (May 10, 2012), Section on Obligations of Sending States, [https://asean.org/?static\\_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers](https://asean.org/?static_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers) (accessed May 12, 2020).

<sup>53</sup> *Ibid.*, Section on Obligations of Receiving States.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, Section on Commitments by ASEAN.

Measures in the Declaration largely mirror the promotional nature of the ACMW Work Plan of September 2008, namely along the three themes of (1) protection of migrant workers against exploitation, discrimination, and violence; (2) governance of labor migration; and (3) combatting trafficking in persons.<sup>56</sup> On the difficult issue of whether the next ASEAN instrument on the subject of the rights of migrant workers would be in the form of a legally binding treaty, the ACMW Work Plan remained noncommittal. Despite the Declaration's formally becoming a part of the strategic objectives of the ASEAN Socio-Cultural Community Blueprint a year later, in 2009,<sup>57</sup> development of a regional legal instrument on the protection and promotion of the rights of migrant workers continued to be extremely slow. Many have criticized the Declaration for its lack of implementation mechanisms and that the regional body has yet to develop any legal instrument that can sanction countries where there are flagrant abuses of the rights of migrant workers.<sup>58</sup> To date, no such ASEAN treaty on the rights of migrant workers has been drafted. Instead, the only regional treaty that has a migration dimension is the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, adopted in November 2015 and entered into force in March 2017. Its scope on victims of human trafficking, however, does not extend to all migrant workers and cannot replace the need for a treaty specifically aimed at the protection of migrant workers in the region.

### **Lacunae and Criticisms for Inaction**

The key matter that has obstructed negotiations for an Asian regional treaty on the rights of migrant workers concerns the issue of scope. Whereas the ICMW is specific in that it applies to all migrant workers and members of their families, diverging views within ASEAN on the scope of a potential treaty on migrant workers fall on the divide of whether a country is predominantly a migrant-sending or -receiving state. This dichotomy creates two potential lacunae in the scope of a future ASEAN treaty on the rights of migrant workers, especially when compared to the standard set by the international human rights treaty on the same topic. The two gaps pertain to whether protection also extends

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<sup>56</sup> Association of Southeast Asian Nations (ASEAN), "ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) Work Plan, Adopted in Singapore" (September 15–16, 2008), <https://asean.org/wp-content/uploads/images/archive/23062.pdf> (accessed May 31, 2020).

<sup>57</sup> Association of Southeast Asian Nations (ASEAN), "ASEAN Socio-Cultural Community Blueprint" (June 2009), sec. C.2, <https://asean.org/wp-content/uploads/archive/5187-19.pdf> (accessed May 15, 2020).

<sup>58</sup> See Rapeepong Suphanchaimat, Nareerut Pudpong, and Viroj Tangcharoensathien, "Extreme Exploitation in Southeast Asia Waters: Challenges in Progressing towards Universal Health Coverage for Migrant Workers," *PLOS Medicine* 14, no. 11 (November 22, 2017): 1-6, <https://doi.org/10.1371/journal.pmed.1002441> (accessed May 15, 2020).



to migrant workers with irregular status and to family members of migrant workers falling under the terms of the proposed treaty. These are topics of serious contention that, to date, have hindered meaningful progress on treaty negotiations as envisioned by the regional leaders who adopted the Vientiane Action Programme in 2004 and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007.

Whereas migrant-sending states, such as Indonesia and the Philippines, advocate that the regional treaty include migrant workers with undocumented status, migrant-receiving states, such as Brunei and Singapore, disagree with this approach.<sup>59</sup> Instead, their position is that such breadth and inclusivity with respect to migrant workers with irregular status would make the adoption of such a treaty domestically infeasible, especially for ASEAN migrant-receiving states. In addition to the contention regarding whether irregular migrant workers would fall within the terms of such a regional treaty, is the related matter of whether the treaty should include the family members of migrant workers. On this issue, the divide again falls on whether a state is predominately migrant-sending or -receiving. ASEAN migrant-sending states favor a more inclusive treaty by insisting that any regional legal instrument codified on migrant workers should include their family members, similar to the international standards set out in the ICMW. It is, however, not a surprise that such an approach has been rejected by ASEAN migrant-receiving states, who have been criticized for “prefer[ing] to treat this issue as merely a matter of technical labour and immigration” and not one involving familial relationships, which potentially could give rise to issues of immigration, nationality, and citizenship.<sup>60</sup>

In contrast to the political stalemate that has hindered negotiations for a regional treaty for the protection of migrant workers, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children demonstrates how speedily a regional treaty can be adopted and entered into force when there is political will for expeditious action. It is notable that the Convention entered into force a mere two years after its adoption in 2015. With respect to aligning with international standards, the ASEAN Convention Against Trafficking in Persons incorporates the international definition on trafficking in persons in its entirety and contains provisions on the protection of victims that exceed the standards established by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, under the UN Convention against Transnational Organized Crime.<sup>61</sup> Nevertheless, the ASEAN Convention Against Trafficking in Persons addresses only a very

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<sup>59</sup> Abdulkadir Jailani, “The Need for an ASEAN Treaty on Migrant Workers,” *The Diplomat*, January 22, 2015, <https://thediplomat.com/2015/01/the-need-for-an-asean-treaty-on-migrant-workers/> (accessed May 16, 2020).

<sup>60</sup> Ibid.

<sup>61</sup> Ranyta Yusran, “The ASEAN Convention Against Trafficking in Persons: A Preliminary Assessment,” *Asian Journal of International Law* 8, no. 1 (2018): 258-292.

narrow aspect of migration for employment and does not supplant the need for a regional treaty on the protection of migrant workers. This is mainly because the purpose of egregious labor exploitation inherent in the definition of human trafficking is a very high bar that would exclude the situation of most of the migrant workers in the region. It is, therefore, not a treaty that aims to improve the legal framework for migrant workers, in general.

In the absence of a regional treaty on migrants, the 2007 Declaration on the Protection and Promotion of the Rights of Migrant Workers was followed in 2017 by the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (the “Consensus”), billed as “a living and evolving document” that “stipulates the general principles, fundamental rights of migrant workers and members of their families, specific rights of migrant workers, obligations and commitments of ASEAN Member States.”<sup>62</sup> Having seven chapters and almost ten pages of provisions, the Consensus is more elaborated and formalized than the Declaration of the same name. Nonetheless, the Consensus is not legally binding and does not resolve the problematic issue of scope that had stymied negotiations to date for an Asian regional treaty on the rights of migrant workers: whether any ASEAN legal instrument on the protection of migrant workers should include people with undocumented status and considered to be in an irregular status, as well as the family members of migrant workers.

Regarding undocumented migrant workers, the Consensus states it “only covers migrant workers who are documented and those who become undocumented through no fault of their own.”<sup>63</sup> This exclusionary formulation regarding those not authorized to enter, reside, and engage in employment in the destination country demonstrates how ASEAN leaders tried to overcome the political sensitivities of irregular migration, without appearing as if they would completely overlook the plight of individuals caught in extremely exploitative situations, irrespective of their migration status. However, the caveat of the Consensus insofar as it only applies in principle to irregular migrant workers “who become undocumented through no fault of their own” will be difficult to discern. A central question is how will different member states interpret the meaning of “fault”? Will it be the requirement of intent (*mens rea*) or a combination of various factors of vulnerability that can overlap and culminate to bring about a situation in which an individual feels as though

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<sup>62</sup> Association of Southeast Asian Nations (ASEAN), “ASEAN Leaders Commit to Safeguard the Rights of Migrant Workers” (November 14, 2017), <https://asean.org/asean-leaders-commit-safeguard-rights-migrant-workers> (accessed May 16, 2020).

<sup>63</sup> Association of Southeast Asian Nations (ASEAN), “ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers [adopted on November 14, 2017 in Manila, Philippines]” (March 2018), chap. 1, art. 2, <https://asean.org/storage/2019/01/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf> (accessed May 16, 2020).

he or she has no other option but to migrate for employment, even without documentation? These are important factors to consider, especially in light of the complex migration dynamics in the Asia-Pacific, mixing the push-pulls of labor migration with those of forced migration. A good case in point is the plight of the Rohingya minorities of Myanmar. Long denied nationality by Myanmar and formal status in neighboring countries,<sup>64</sup> it remains unclear whether they would fall within the scope of the ASEAN Consensus, which affirms the exclusion of undocumented migrants from a regional instrument on the protection of migrant workers, unless no “fault” on the part of the migrants can be attributed.

On the matter of family members of migrant workers, the Consensus appears to resolve this contentious issue, but in fact its approach is meaningless because it addresses only family members who already are admitted into the country of employment of the migrant workers. As such, the Consensus does not seek to break new ground. It is unequivocal in that there is no right of family reunification and only a right of family visitation.<sup>65</sup> It specifies that member states, “[f]or the purposes of protecting and promoting the rights of migrant workers...will [t]ake into account the fundamental rights and dignity of migrant workers and *family members already residing with them* without undermining the application by the Receiving State of their laws, regulations and policies [emphasis added].”<sup>66</sup> The Consensus, therefore, is unwilling to go beyond what is currently permitted by migrant-receiving states concerning the rights of residency and employment afforded to the family members of regular migrant workers. As a consequence, the Consensus effectively excludes the dependants of low-skilled migrant workers, thereby continuing the charge that ASEAN as a regional body has tended to address labor migration through the lens of high-skilled migrants and their family members. This was especially noted in the negotiations leading to the adoption of the Declaration in 2007, during which discussions did not center on low-skilled migrant workers and their dependants or other situations involving egregious labor exploitation in migration.<sup>67</sup>

The dichotomy in the immigration regime for high- versus low-skilled workers is not unique for ASEAN member states. Worldwide, the immigration of low-skilled workers typically comes under greater political scrutiny and

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<sup>64</sup> See Katherine Southwick, “Preventing Mass Atrocities against the Stateless Rohingya in Myanmar: A Call for Solutions,” *Journal of International Affairs* 68, no. 2 (Spring/Summer 2015): 137-156, and The Institute on Statelessness and Inclusion (ISI), *The World’s Stateless 2020: Deprivation of Nationality* (March 2020), 73-75, [https://files.institutesi.org/WORLD'S\\_STATELESS\\_2020.pdf](https://files.institutesi.org/WORLD'S_STATELESS_2020.pdf) (accessed May 16, 2020).

<sup>65</sup> ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, chap. 3, art. 8.

<sup>66</sup> *Ibid.*, chap. 7, art. 44.

<sup>67</sup> Suphanchaimat et al., “Extreme Exploitation in Southeast Asia Waters,” 3.

restrictions than for high-skilled workers.<sup>68</sup> However, for a region where the vast majority of migrant workers are low-skilled, the approach favored by ASEAN for the Consensus in 2017 of excluding irregular migrants, unless they are undocumented through no “fault” of their own and not advocating for the rights of migrant workers’ family members, is likely to be untenable in the long run. Issues surrounding the rights of irregular migrant workers and the rights of family members of migrant workers are central areas of contention that do not simply dissipate with caveats on the scope of application. The risk is that the only two ASEAN standard-setting instruments to date on the rights of migrant workers, the Declaration and the Consensus, become substantively irrelevant for offering less protection than international standards established by the ICMW, further marginalizing an already vulnerable population. For instance, on the exclusion of irregular migrants, one senior diplomat of Indonesia opined, “The exclusion of undocumented migrant workers from the instrument is certainly not agreeable as it is both unjust and destined to fail.”<sup>69</sup> Seen in this regard, the ICMW, with its base level of protection for all migrant workers irrespective of their status, as well as the separate rights applicable for those with or without documentation—although not ideal and with its share of criticism—may be more preferable than a regional treaty that aims to protect the rights of migrant workers, but excludes irregular migrants.

## **Opportunities: Time for Action**

In the absence of a legally binding regional instrument on the rights of migrant workers, ASEAN has relied mostly on political statements that tread the same grounds of cooperation, capacity building, and information sharing among member states. The ASEAN Intergovernmental Commission on Human Rights was established in October 2009 and billed as an institution that “demonstrates ASEAN’s commitment to pursue forward-looking strategies to strengthen the regional cooperation on human rights.”<sup>70</sup> Nonetheless, it has not, to date, spearheaded an ambitious program for the protection of migrant workers. For instance, in the Commission’s Five-year Plan (2016–2020), the only instance where migration was referenced was with respect to initiating a regional-base study on the theme of migration, minimum one issue per year and in

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<sup>68</sup> Martin Ruhs and Philip Martin, “Numbers vs. Rights: Trade-Offs and Guest Worker Programs,” *International Migration Review* 42, no. 1 (Spring 2008): 249-265.

<sup>69</sup> Jailani, “The Need for an ASEAN Treaty on Migrant Workers.”

<sup>70</sup> Association of Southeast Asian Nations (ASEAN), “ASEAN Intergovernmental Commission on Human Rights (AICHR)” (undated), <https://asean.org/asean-political-security-community/asean-intergovernmental-commission-on-human-rights-aichr/> (accessed May 18, 2020). See also, Mathew Davies, “Explaining the Vientiane Action Programme: ASEAN and the Institutionalisation of Human Rights,” *Pacific Review* 26, no. 4 (2013): 385-406.

consultation with sectoral and other relevant ASEAN bodies.<sup>71</sup> This repeats the work on migration in the Commission's first five-year plan from 2010 to 2015.<sup>72</sup> The lack of programmatic benchmarks and indicators in the respective work plans of the Commission echoes the broader frustrations with ASEAN's perceived lack of implementation when it comes to its political statements reiterating commitment to protect migrant workers.<sup>73</sup>

Notwithstanding the criticism of inaction at the regional level, there have been some positive developments pointing to opportunities for meaningful engagement for the protection of migrant workers at the domestic level. In recent years, some national developments have seen concrete steps toward facilitating migrant recruitment and better-mandated conditions for the employment of migrant workers in key migrant-receiving states of ASEAN, such as the oil-producing country of Brunei Darussalam and the international financial city-state of Singapore. For instance, in 2017, Brunei simplified procedures for migrant workers to obtain an employment permit by reducing the days for processing from forty-one to nine working days and also by lowering the deposit threshold by 25 percent that employers must pay to hire workers from Cambodia, Laos, Myanmar, and Vietnam.<sup>74</sup> These changes are primarily driven by the benefits for the employers and the economic imperative of meeting domestic labor demands in Brunei. Nonetheless, these procedural changes to facilitate migrant recruitment were borne out of a simple recognition that migrant workers are essential for the country's sound economic growth. Put simply, affluent economies of the region would suffer without migrant labor.

Whereas these recruitment procedural changes in Brunei were largely driven by employer interests as opposed to concerns for the well-being of the migrant workers, there have been legal and policy changes more directly concerned with migrant workers' employment conditions in other predominately migrant-receiving states in the region. A notable example in this respect is Singapore's

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<sup>71</sup> Association of Southeast Asian Nations (ASEAN), "Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2016–2020) [adopted on June 15, 2015 and endorsed at the 48th ASEAN Ministerial Meeting (AMM) on August 3, 2015]" (August 2015), 9, [https://aichr.org/wp-content/uploads/2018/10/AICHR\\_Five-Year\\_Work\\_Plan\\_2016-2020.pdf](https://aichr.org/wp-content/uploads/2018/10/AICHR_Five-Year_Work_Plan_2016-2020.pdf) (accessed May 18, 2020).

<sup>72</sup> Association of Southeast Asian Nations (ASEAN), "Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2010–2015) [adopted on January 11, 2012, at the ASEAN Foreign Ministers' Retreat (AMM Retreat)], Siem Reap" (January 2012), 4, [https://aichr.org/wp-content/uploads/2018/10/AICHR\\_Five-Year\\_Work\\_Plan\\_2012-2015.pdf](https://aichr.org/wp-content/uploads/2018/10/AICHR_Five-Year_Work_Plan_2012-2015.pdf) (accessed May 18, 2020).

<sup>73</sup> See Andrea Durbach, Catherine Renshaw, and Andrew Byrnes, "'A Tongue but No Teeth'? The Emergence of a Regional Human Rights Mechanism in the Asia-Pacific," *Sydney Law Review* 31, no. 2 (2009): 211-238.

<sup>74</sup> John Pennington, "Life after Foreign Labour: Why Brunei Needs to Get to Work," *ASEAN Today*, April 4, 2017, <https://www.aseantoday.com/2017/04/life-after-foreign-labour-why-brunei-needs-to-get-to-work/> (accessed May 19, 2020).

instituting a mandatory weekly rest day for foreign domestic workers in 2013, after a decade-long campaign to overhaul the previous system of only one rest day in a month.<sup>75</sup> In addition, following a highly-publicized abuse case of a foreign domestic maid by her Singaporean employers, in 2018, the High Court in Singapore introduced more severe criminal sentencing to be used in cases of egregious abuse—psychological and/or physical abuse—committed against domestic workers by their employers. In its landmark judgment concerning the vulnerabilities of foreign domestic workers toiling in private homes, the High Court ruled that such cases warranted extended powers of sentencing, owing to domestic workers being particularly vulnerable to both psychological and physical abuse by their employers as result of their subordinate status, such that “[t]he psychological harm and mental anguish that a domestic maid can suffer from being trapped in a situation of fear, abuse and oppression can be just as acute and enduring as physical harm, if not more.”<sup>76</sup>

These various legal and policy changes, especially in migrant-receiving states that have tended to be regarded as less enthusiastic about supporting the rights of migrant workers, are concrete steps forward for the protection of migrant workers at the national level. Although such changes are inevitably followed by the practical challenge of effective implementation,<sup>77</sup> they carry the potential to overcome the migrant-sending or -receiving divide that has long stalled negotiations for a regional legal instrument on the protection of migrant workers. These measures point to the imperative that the advocacy for better protection of labor migration takes place beyond the binary characterization of whether a country is primarily one that sends or receives migrant workers. Countries at both ends of the labor migration process must have infrastructure in place to protect migrant workers throughout the entire process, from predeparture recruitment to their eventual return and reintegration. Seen in this light of greater legal recognition of the special vulnerabilities of migrant workers, there is also growing impetus from ASEAN to push for consensus on the types of regional measures needed for the better protection of migrant workers. The push for consensus and cooperation brought about the Consensus in 2017, which lives true to its name as a consensus-based document that does not tread new ground on either the contentious issues of irregular migration or the rights of family members of migrant workers. Nonetheless, reaction to

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<sup>75</sup> Sharanjit Leyl, “Singapore Domestic Workers’ Day Off,” *BBC News*, September 26, 2013, <https://www.bbc.co.uk/news/world-asia-24216611> (accessed May 19, 2020).

<sup>76</sup> Tay Wee Kiat and Another v. Public Prosecutor and Another Appeal, 2018 SGHC 42, 35-36 (March 2, 2018), [https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ma-9079-and-9080-of-2017-tay-wee-kiat-v-pp-judgment-\(final\)-v2-pdf.pdf](https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ma-9079-and-9080-of-2017-tay-wee-kiat-v-pp-judgment-(final)-v2-pdf.pdf) (accessed May 22, 2020).

<sup>77</sup> For example, on how Singapore’s mandated rest day for foreign domestic workers is not being implemented, see Anju Mary Paul, “Commentary: Maids’ Overtime Pay Is Long Overdue,” *Channel News Asia*, April 9, 2018, <https://www.channelnewsasia.com/news/singapore/maids-foreign-domestic-worker-deserve-overtime-rest-days-10104036> (accessed May 22, 2020).

the Consensus has been largely positive, ranging from characterizations of its being a “sweeping agreement”<sup>78</sup> to other more tempered assessments of its reflecting slow and steady progress in a good direction of travel.<sup>79</sup>

It is also important to raise the potential that stakeholders beyond the member states of ASEAN can use the Consensus to promote the rights of migrant workers. The drafters of the Consensus were well aware that the agreement would have an important role outside the regional organization and the intergovernmental framework within which ASEAN operates. For instance, the Consensus calls for “collaboration with ASEAN Dialogue Partners and other countries, international organisations, and other stakeholders in respecting the principles and taking measures to protect and promote the rights of migrant workers as contained in this Consensus.”<sup>80</sup> Whether the Consensus evolves into a binding treaty remains an unanswered question. Nonetheless, in the broader context of norm- and capacity-building, the Consensus can be skillfully used by all interested parties to strengthen advocacy for the rights of migrant workers across the region. Beyond the ten ASEAN member states, “stakeholders” is a broad term that extends far beyond formal state-to-state relations and can include advocacy groups, labor unions, as well as other governments and intergovernmental organizations.

One notable example is the role that civil society organizations can play to influence the content of bilateral migration agreements for governments to manage migration flows. Countries in the Asia-Pacific, as in other parts of the world, frequently rely on directly negotiated agreements to manage specific migration corridors.<sup>81</sup> This includes the Memorandum of Understanding (MOU) between the Philippines and Taiwan, which offers a concrete example of how improving the protection of migrant workers within ASEAN can have a positive impact beyond its member states. The Taiwan–Philippines MOU, signed in 2011, formally implemented a special hiring program that

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<sup>78</sup> Natalia Figge and Theresa Cua, “ASEAN Signs Breakthrough Agreement on Migrant Workers’ Rights,” *Friedrich-Ebert-Stiftung* (November 24, 2017), <https://www.fes-asia.org/news/asean-signs-breakthrough-agreement-on-migrant-workers-rights/> (accessed May 22, 2020).

<sup>79</sup> Tommy K. S. Koh, “Manila’s Parting Gift: ASEAN’s Next Steps on Labor Migration,” *The Diplomat*, November 22, 2017, <https://thediplomat.com/2017/11/manilas-parting-gift-aseans-next-steps-on-labor-migration/> (accessed May 22, 2020).

<sup>80</sup> ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, chap. 7, art. 58.

<sup>81</sup> See Piyasiri Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, report prepared for the Labour Migration Branch of the International Labour Organization (ILO) (Geneva: International Labour Organization, 2015), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_385582.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf) (accessed May 23, 2020), and Stella P. Go, “Asian Labor Migration: The Role of Bilateral Labor and Similar Agreements,” paper presented at the Regional Informal Workshop on Labor Migration in Southeast Asia: What Role for Parliaments, September 21–23, 2007, Manila, Philippines (2007), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.467.254&rep=rep1&type=pdf> (accessed May 23, 2020).

would allow employers in Taiwan to directly hire Filipino workers without using recruitment agencies.<sup>82</sup> Long advocated by civil society organizations as a way to reduce the risk of migrant workers falling victim to debt bondage through fees owed to labor agencies or brokers, the Taiwan–Philippines MOU attempts to bypass these labor intermediaries, with the result that the directly hired Filipino workers would not have to pay the excessive recruitment fees associated with their employment in Taiwan.<sup>83</sup> Furthermore, since most bilateral agreements with Taiwan are labeled as MOUs, due to Taiwan’s special status in international relations, the Taiwan–Philippines MOU has more legal force with respect to domestic implementation in both Taiwan and the Philippines than nonbinding ASEAN instruments. This is significant, considering that the Taiwan–Philippines MOU was signed in 2011, well before the Consensus was adopted in 2017, and contains details of a bilateral hiring program that provides content and meaning to one of the provisions of the Consensus, in which ASEAN urges sending and receiving states—in articles 23(b) and 33, respectively—to take necessary actions to prohibit the overcharging of recruitment fees to migrant workers.

## Conclusions

ASEAN has undoubtedly come a long way from the late 1990s, when leaders proclaimed “Asian Values” to resist what was then viewed as the Western imposition of human rights.<sup>84</sup> Since the turn of the century, ASEAN has had several notable milestones in the area of human rights. Foremost is the adoption of the regional organization’s first Human Rights Declaration in November 2012, following the establishment of the ASEAN Intergovernmental Commission on Human Rights in October 2009. While the international community generally had welcomed these steps for their potential to advance the human rights agenda in the Asian region, it also criticized ASEAN for diverging from international standards. For example, the then UN High Commissioner for Human Rights, Navi Pillay, expressed her concern that elements of the ASEAN Human Rights Declaration fell below international

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<sup>82</sup> Hein de Haas, Stephen Castles, and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 6th ed. (London: Red Globe Press, 2020), 189, and Wei Yun-ling and S.C. Chang, “Taiwan, Philippines Sign MOU on Hiring Laborers,” *Focus Taiwan*, July 26, 2011, <https://focustaiwan.tw/society/201107260042> (accessed May 23, 2020). The Taiwanese government established a direct hiring platform in 2007 to assist Taiwanese employers to hire migrant workers directly, but the MOU with the Philippines was signed in 2011.

<sup>83</sup> Rupa Chanda and Sasidaran Gopalan, “Managing Migration in Asia: The Role of Interstate Cooperation,” in *Migration, Nation States, and International Cooperation*, ed. Randall Hansen, Jobst Koehler, and Jeannette Money (New York: Routledge, 2011), 199.

<sup>84</sup> See Randall Peerenboom, “Beyond Universalism and Relativism: The Evolving Debates about ‘Values in Asia’,” *Indiana International and Comparative Law Review* 14, no. 1 (2003): 1-86, and Yash Ghai, “Human Rights and Asian Values,” *Journal of the Indian Law Institute* 40, nos. 1-4 (1998): 67-86.



standards and that the document did not reflect “inclusive and meaningful consultation with civil society in the region during its preparation.”<sup>85</sup> The High Commissioner, therefore, called on ASEAN leaders to review their efforts on the Human Rights Declaration, with the view to ensure that “any language inconsistent with international human rights standards does not become a part of any binding regional human rights convention.”<sup>86</sup>

ASEAN’s efforts and programs regarding migrant workers offer no exception for the cautious view of the regional organization’s standard-setting work on human rights. The provisions of the Consensus reveal a deep tension between plaudits that the organization appears to make progress toward a binding regional treaty and criticisms that the Consensus deviates significantly from international standards on the rights of migrant workers. A concrete example is the Consensus’s exclusion of undocumented migrant workers from its scope, unless in the very narrow circumstance where no fault can be attributed. There also appears, at first glance, to be no intent for negotiations for a future legal instrument based on the Consensus to be closely aligned with the international human rights treaty on migrant workers, the ICMW. The Consensus explicitly references only the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child in its preamble and does not actively refer to the ICMW. Not looking to the ICMW for possible guidance on workable provisions to overcome potential contentious issues may well mean that ASEAN’s future work on the rights of migrant workers is likely to follow the trajectory of the Consensus by excluding the vast majority of irregular migrant workers and the family members of migrant workers.

At the current rate, it does not appear likely that ASEAN will pursue the model of compromise established by the ICMW of protecting the rights of all migrant workers, albeit under an approach whereby those with documented status are entitled to a wider set of rights. As a point of comparison, ASEAN’s approach also deviates from those of the Organization of American States, another regional organization with a significant migrant worker population in its member states. For instance, through its jurisprudence, the Inter-American Court of Human Rights of the OAS has consistently affirmed that, while the state may grant differentiated treatment to documented migrants when compared to undocumented migrants, this treatment must not infringe on fundamental human rights and must meet the criteria of reasonableness, objectivity, and proportionality.<sup>87</sup> Further, the scope of the Inter-American Program for the

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<sup>85</sup> UN News, “UN Official Welcomes ASEAN Commitment to Human Rights, but Concerned over Declaration Wording” (November 19, 2012), <https://news.un.org/en/story/2012/11/426012> (accessed May 26, 2020).

<sup>86</sup> Ibid.

<sup>87</sup> “Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants,” OC-18/03 Inter-American Court of Human Rights 102 (September 17, 2003), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf) (accessed May 27, 2020).

Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families, established by the OAS in 2005, is consistent with the international standards established by the ICMW by including all migrant workers and members of their families.<sup>88</sup>

ASEAN's heavy emphasis on cooperation and consensus has meant that divisions are difficult to quickly overcome and that negotiations, especially on contentious matters, can easily stall. Nonetheless, there are opportunities for greater synergy between international and regional standard-setting work to protect the rights of migrant workers through other strategies. One prong is international labor rights that, until now, generally have had less traction than the human rights discourse. This may change with the adoption of the ASEAN Declaration on Strengthening Social Protection in 2013 and the corresponding Regional Framework and Action Plan in November 2018, which affirm the rights of all, particularly those who are marginalized in society such as migrant workers, to have equitable access to social protection as a basic human right.<sup>89</sup> While the issue of migration is not explicitly addressed, the scope of the ASEAN Declaration on Strengthening Social Protection and the respective Framework and Action Plan, as well as their natural alignment with the social protection mandate of the ILO, can provide to national and international civil society organizations and trade unions yet another channel of engagement and advocacy on issues concerning ASEAN and labor rights. All these developments point to various avenues of engagement and advocacy on different fronts, beyond the traditional realm of interstate relations. The role played by regional organizations in shaping, setting, and adhering to international human rights norms also is becoming ever more dynamic, with the Inter-American mechanisms long seen as strong supporters of migrant rights advocacy and the European Union becoming the first regional organization to ratify and become a party to an international human rights treaty, the UN Convention on the Rights of People with Disabilities, in 2011.<sup>90</sup> While

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<sup>88</sup> Organization of American States General Assembly, "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and Their Families (AG/RES. 2141 (XXXV-O/05))" (June 7, 2005), [http://rialnet.org/sites/default/files/AG-RES\\_2141\\_XXXV-O-05\\_eng.pdf](http://rialnet.org/sites/default/files/AG-RES_2141_XXXV-O-05_eng.pdf) (accessed May 27, 2020).

<sup>89</sup> Association of Southeast Asian Nations (ASEAN), "ASEAN Declaration on Strengthening Social Protection [adopted on October 9, 2013 in Bandar Seri Begawan, Brunei Darussalam]" (October 2013), Principle 1, <https://cil.nus.edu.sg/wp-content/uploads/2019/12/2013-ASEAN-Decl-Social-Protection.pdf> (accessed May 27, 2020), and Association of Southeast Asian Nations (ASEAN), "ASEAN Declaration on Strengthening Social Protection—Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection" (November 2018), <https://asean.org/storage/2019/01/26.-November-2018-ASEAN-Declaration-on-Strengthening-Social-Protection-1st-Reprint.pdf> (accessed May 27, 2020).

<sup>90</sup> European Commission, "Press Release: EU Ratifies UN Convention on Disability Rights," January 5, 2011, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_4](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_4) (accessed May 27, 2020).

ASEAN regional instruments are less comprehensive than their international counterparts regarding migrant protection—there is much to be improved—ASEAN nonetheless has an important advocacy role for the rights of migrant workers in this dynamic landscape.

The essay examined the efforts of ASEAN as a regional organization in its standard-setting work on the protection of migrant workers and found it lacking in substance when compared to international standards. The organization, however, must meet its own commitment of “respect for and promotion and protection of human rights and fundamental freedoms,”<sup>91</sup> rather than largely lingering within the well-trodden ground of human rights studies and promotion. It must view the protection of migrant workers comprehensively and inclusively by addressing the human rights and labor rights of all migrant workers. This means that ASEAN leaders must be forward-looking and recognize that regional standards cannot significantly deviate from their international counterparts. Concerning the protection of all migrant workers, changing laws and improving standards is only the very first step in the long process of improving the reality faced by migrant workers across the Asia-Pacific. Beyond the laws and policies of each jurisdiction, the opportunity for action by all stakeholders, within and outside ASEAN, ultimately is to shift the stigmatized perception of migrant workers away from their being unskilled and excluded, to their simply being people on the move for employment.

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<sup>91</sup> ASEAN, “ASEAN Human Rights Declaration,” Preamble.