

Extended Abstract

IRREGULAR MIGRATION IN ASIA: DIMENSIONS, ISSUES AND RESPONSES

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The objective of the paper is to contribute to the debate on irregular migration in Asia. The paper will first examine various terms used to describe irregular migration (illegal, unregistered, undocumented, clandestine, etc.) and make a case for the all-encompassing term, ‘irregular’ migration. Next it will look at magnitudes and trends on the basis of fragmentary information available. The paper will deal with various causes of irregular migration, and argue that the non-availability of adequate labour migration windows is a primary cause for the emergence of irregular flows. Other contributory factors such as bureaucratic procedures, high costs of migration, role of transnational criminal syndicates and fraudulent recruitment agencies will also be discussed. The next section will analyze the consequences and impact of irregular migration. This discussion will bring out high vulnerability of migrant workers in an irregular situation to exploitation in receiving countries with special focus on gender dimensions. The paper will highlight popular responses by Asian countries to deal with the situation and their limitations, drawing upon the experience of the Republic of Korea, Malaysia and Thailand. The final section will review international norms and good practice in dealing with irregular migration and their applicability to the Asian situation.

The key messages conveyed in the paper are the following.

- Irregular migration and regular migration are closely interrelated.
- Irregular migration should be treated as part of a broader labour market issue and not as only a legal issue and security matter. There is a structural demand for migrant workers in several Asian economies which must be recognised.
- All migrant workers – both in regular and irregular status – contribute to host economies.
- Yet irregular migration is undesirable and should be minimized.
- Workers found to be in irregular status should enjoy basic human rights in line with international instruments, and safe return in conditions of dignity where they cannot be regularized.
- All stakeholders including governments, social partners, civil society and migrants themselves in both sending countries and receiving countries need to cooperate in reducing irregular migration.

Migration is sometimes referred to a clandestine, illegal, unauthorized, undocumented and irregular. The paper argues that a preferred term which can accommodate various diverse situations is irregular migration or employment and migrant worker/s in irregular status. Irregularities in migration can occur at every stage of the process – pre-departure, transit, destination and return. There is a broad spectrum of irregularities extending from simple unauthorized border crossings to more sinister forms of trafficking and smuggling of human beings. The term ‘illegal’ seems to put the blame squarely on the migrant worker whereas in a number of cases, the migrant

may simply be a victim only. The paper will also review definitions used in international instruments. Broadly a migrant worker in irregular status can be defined as a person who: (a) has not been granted an authorization of the State on whose territory he or she is present that is required by law in respect of entry, stay or employment, or (b) who has failed to comply with the conditions to which his or her entry, stay or employment is subject. Typical examples of migrant workers in irregular status in Asia are: workers who have overstayed their visas and continue working; tourists who are working without authorization; trainees who leave their assigned enterprises and work elsewhere; students working without authorization; persons who run away from the assigned employer violating their contracts; regularly admitted workers who have lost their employment during the contract period; and victims of trafficking and smuggling.

The very nature of irregular migration means that one cannot estimate the number of migrant workers in irregular status with any precision. What is often available are “guesstimates”. These are based on information about apprehensions, overstaying, deportation and amnesties together with special surveys and population censuses. Estimates of irregular migration are often inflated by policy makers, media sources and security agencies. They also fluctuate with the business cycle. Normally, researchers rely on press reports and data relating to overstayers, apprehensions and regularization exercises. The paper will piece together different estimates from a number of studies. The problem is much more acute for ASEAN countries than for East Asia given the larger share of foreign labour in the workforce of the former group. Malaysia and Thailand are the countries facing the largest numbers of irregular workers.

What are the causes of irregular migration? These originate in both receiving and sending countries. The conclusions of the ILO Asian Regional Meeting, July 2003 highlighted the divergence between a country’s labour market needs and immigration policies as a primary cause. Another factor is the growth of informal and undeclared work in receiving countries. In some cases cumbersome bureaucratic approval procedures in sending countries (Indonesia) and high levies on enterprises using foreign workers in receiving countries (Malaysia and Singapore) may encourage resort to irregular channels. Other causes are strict labour laws that link employment with residence in receiving countries.

High local unemployment and poverty in several sending countries can lead to high migration pressures. There are also governance issues linked to lack of transparency in government administration and malpractices of recruitment agencies who charge exorbitant fees, send workers abroad without proper documents or authorization or for non-existent jobs. Lack of information about legal channels for labour migration is another contributing factor. Transnational criminal groups play a major role in irregular migration through trafficking and smuggling of human beings across borders. Armed conflict and political factors also contribute as seen in the repression and persecution of ethnic minorities in Myanmar.

The paper then raises the issue, “why is irregular migration a problem?”, particularly in the Asian context. A major regional meeting on Irregular/Undocumented Migration concluded in 1999: “...international migration, particularly irregular migration, has increasingly become a major economic, social, humanitarian, political

and security concern for a number of countries in the Asia-Pacific region”. First, it is a *protection problem*. The situation is a prime ground for perpetration of various abuses against migrant workers. It exposes them to extreme risks and exploitation. Employers can afford to pay the lowest possible wages and deny them all rights. Workers cannot avail of even available services because of the fear of detection and deportation. According to the United Nations Commission on Human Rights, “*migrant workers face the gravest risks to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law*”. Second, it is a *migration management problem* for both sending countries. Third receiving countries perceive irregular migration increasingly as a *security problem*, particularly in the wake of 11 September events. Irregular migration is also an issue of *unfair competition* with some enterprises using workers at cheap wages to maintain their competitiveness and boost profits. Finally, it is a *political problem* that creates tensions between source countries and host countries.

The paper then reviews policy responses to irregular migration in Asia. These basically range from controls to positive measures such as regularization. Some measures may be preventive while others pertain to controlling and curbing irregular employment through returns, deportations, readmission, sanctions and penalties on employers and workers, regularization and amnesties, and bilateral and regional cooperation. The Bangkok Declaration and the Bali Process represent initiatives for regional cooperation.

Preventive action includes incentives to hire legal workers through taxes and subsidies, information campaigns for employers and workers to highlight attendant risks. ILO Convention 143 states that countries are free to regularize workers in irregular status as a first option. In the early 1990s Taiwan (China) introduced a legal admission scheme for low skilled workers to deal with growing labour shortages. Malaysia and the Republic of Korea have carried out several amnesties and introduced limited admission schemes. Thailand has been experimenting with registration and regularization exercises since 2000 with varying success. More recently it has signed MOUs with neighbouring labour-supplying countries for legal admission of workers. The general feeling in the region is that more liberal admission and regularisation schemes will encourage more irregular migration.

There is a tendency on the part of some countries to resort to more stern measures to control irregular migration. Malaysia for instance, has introduced tougher legislation, and resorted to mass deportation of workers from Indonesia, the Philippines and Bangladesh. The Republic of Korea also is cracking down on workers in irregular status before introducing a legal admission scheme. Japan is continuing its policy of non-admission of low skilled workers and periodic deportation exercises.

These measures have had limited effectiveness as in other regions. This is partly due to the ad hoc nature of some measures.. Responses are also not always consistent with international norms with detentions and deportations violating international norms and basic human rights of workers. Many policies do not address the root causes of irregular migration – labour market imbalances in receiving countries and poverty and unemployment leading to migration pressures in source countries. Others are plagued by poor governance. There is sometimes collusion between employers and administration at the expense of workers. A common problem is “punishing the

victim” that criminalizes victims of irregular migration. A recent study of unauthorised migration in Asia concludes that “...*experience shows that this approach [keeping our border tightly guarded] has not succeeded in keeping all unwanted persons out. It does succeed in rendering many unauthorized persons – who form the backbone in some sectors – without protection from insecurity and abuse*”.

In the final section, the paper argues for a comprehensive approach to irregular migration based on international good practice. The paper highlights good practice contained in international instruments and experience . It will also discuss the concept of ‘earned adjustment’ which is becoming popular.

- Protection of basic human rights of migrant workers as specified in both ILO migrant-worker Conventions and the UN Convention.
- Inter-country cooperation (origin and host countries) in curbing irregular migration. The Bangkok Declaration of 1999.
- Adoption of regulated and transparent admission policies to meet persistent long term labour market needs
- The safe return of migrant workers in irregular status in conditions of dignity should be ensured in case they cannot be regularised.
- Introduce transparent regularisation programmes to deal with continuing demand for migrant workers, and make provisions for earned adjustment of those already present in the country (regularisation option for migrant workers with proven record).
- Use a tripartite plus framework to address migration issues including cooperation between government and industries and involvement by trade unions and civil society
- Countries of origin should try to reduce emigration pressures by local development strategies.
- Provide appropriate information on migration under irregular conditions and employment of workers in irregular status to both employers and workers.