

Managing the Flow of Migration : Regional Approaches



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Managing the Flow of Migration :
**Managing the Flow of Migration :
Regional Approaches**

by

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**Discussion paper prepared for the International Symposium on Migration :
'Towards Regional Cooperation on Irregular/ Undocumented Migration'
Organized by the Ministry of Foreign Affairs of the Kingdom of Thailand
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Forward

The Institute for Population and Social Research (IPSR) at Mahidol University has been a leader in research on international migration. From 1995 to 1997, IPSR coordinated a large project examining all forms of population movement into Thailand. The results of this project have been influential in informing migration policy in Thailand. In 1998, IPSR broadened its scope of work to include regional aspects of international migration. Activities in this area are reflected in publications and in a regional policy workshop held in Thailand in May 1998.

The issues discussed in this report can be considered an extension of the previous activities on international migration undertaken by IPSR. The report draws heavily upon the experience of Thailand, as a sending, receiving and transit country for international migrants. Two consultation seminars were conducted in the process of preparing the report. Participants at these seminars included migrants, policy makers, representatives from NGOs, and academics. The discussions in the seminars contributed greatly to the content of the report. In addition to input from Thailand, the report also draws upon the views expressed in the regional workshop organized by IPSR in 1998, and hence reflects the concerns expressed by other countries in the region.

International migration is a process that has major impacts on Thailand and other countries in the region. Research is required to understand the dynamics of this process. Mahidol University is committed to undertaking research that is relevant to policy development and which has the potential to improve the quality of life of individuals. I feel that this report contributes to both of these aims.



*Professor Athasit Vejjajiva, President
Mahidol University*

Preface

The world is witnessing an era of regionalization. Governments have come to the realization that it is not possible to address economic, social and political issues solely within national frameworks. The causes and effects of many pressing national issues derive from relationships between countries. It is now recognized that regional collaboration and planning is required to fully address a whole range of problems. In the Asian region this realization has led to the formation of new regional organizations, and the expansion and strengthening of existing regional organizations.

Migration, particularly undocumented migration, is one process that is increasingly capturing the attention of governments in the Asian regions. The very large population movements that occur among countries of Asia has substantial impacts in both origin and destination countries. Economic contractions, such as that which is now being experienced in Asia, magnify the problems associated with migration. At the individual level, the population in sending areas comes under more economic pressure to migrate, while the population in receiving areas is less likely to accept the migrants. Receiving governments also come under pressure to strictly enforce regulations regarding undocumented migrants. Such enforcement, in the past, has often given rise to human rights abuses of migrants.

Up to now, most countries have acted unilaterally in dealing with undocumented migrants. However, because migration involves at least two countries, regional approaches to managing undocumented migration have a great deal of promise. This study identifies those areas where a regional approach might be beneficial in dealing with undocumented migration. The study also proposes strategies that might be used in managing flows of undocumented migrants. The development of comprehensive policy approaches to migration is only just beginning. We hope that this study will provide points for discussion that will allow policy makers, NGOs and academics to cooperate to produce migration policy that is both humane and effective.

Bencha Yoddumnern-Attig

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and Social Research*

Acknowledgements

Migration has always been a part of human history. Since migration laws and related regulations were developed and enforced across nations that migration has become an issue of concern and sometimes a problem for countries involved. In particular, irregular/undocumented migration is on the rise within Asian region. Among the migrants, the majorities have been found to be economic refugees, trafficked persons, and political asylum seekers. It is expected that, with the economic crisis in Asia, the number of undocumented migrants will increase. The challenge, in which countries involved with irregular migration such as countries of origin, countries of destination, and transit states must confront with and pragmatically act on is the issue of managing the flow of the undocumented migration. To an extent, Asian countries share similar problems of irregular migration and have demonstrated bilateral cooperation with one another to combat the situation. The countries have also developed rather deep concern, knowledge and understanding of the problem over the past decades.

This paper intends to provide information for discussions among country participants at the International Symposium on Migration entitled '*Towards Regional Cooperation on Irregular/ Undocumented Migration*' organized by the Ministry of Foreign Affairs of Thailand and the International Organization for Migration (IOM) during April 21-23, 1999. Further agreements and collaboration among the countries resulted from the discussion will indeed lead the countries to a greater and more applicable collaboration and will be a strong foundation for regional collaborative work regarding irregular/undocumented migration. The countries, however, need to observe with extreme recognition that the hardship of burdens and responsibilities could be tremendous and is always expected of.

To arrive at this final paper, the authors began the information search with their previously written papers and literatures on migration, and with their former research teams and colleagues. For the need to update the information and to seek new knowledge of the situation, the authors organized two professional meetings among agencies working on issues of undocumented migration in Thailand. Suggestions from the first meeting were incorporated in the draft paper, which was presented for further information, comments and feedback at the second meeting. At last, the authors assembled all knowledge and information from previous work to comments from the second meeting and revised the paper accordingly.

It is our hope that the results of this study will be used to initiate changes that will improve the lives of both migrants and non-migrants in Asia. But for these changes to occur there must be continued support from all sectors of society. That support was forthcoming for the preparation of this report, and we urge all those involved continuing to provide their support as we continue the process.

The authors, on behalf of the Institute for Population Social Research (IPSR), would like to express our deep appreciation to the Ministry of Foreign Affairs of Thailand, and IOM for their support and mentor of this work. In addition, the Ministry provided the authors with complete freedom to pursue their ideas without any attempt to limit the scope of inquiry. We are greatly honored to have such significantly important opportunity.

*Kritaya Archavanitkul
Phillip Guest
March 1999*

Abstracts

Movement among Asian countries is increasing in volume and complexity. Many of those who move do so without proper documentation, while others may move into undocumented status, either through violating entry conditions or working without appropriate documents after arriving in destination countries. Many governments in the region are attempting to manage flows of undocumented migrants. Most management strategies have involved temporary relaxation of regulations followed by tightening of rules and stricter enforcement of these new rules. However, existing management strategies have failed to meet their objectives. This paper argues that a comprehensive regionally based policy is required to deal with undocumented migrants. This policy must respect the human rights of migrants, while at the same time protecting the sovereignty and security of receiving countries. Areas where policy adjustments are required are identified and possible policy responses are proposed. Among the short-term strategies identified include those related to strengthening regional approaches to combat trafficking of children and women, and regional solutions for dealing with the stateless. A long-term strategy suggested in the paper be setting up a regional migration office to deal with issues related to migration, particularly undocumented migration. The authors also propose that strategies that work towards the free flow of labor in the ASEAN region should be developed.

Abbreviations

AIDS	Acquired Immune Deficiency Syndromes
ASEAN	Association of Southeast Asian Nations
ECPAT	End Child Prostitution in Asian Tourism
EU	European Union
GAATW	Global Alliance Against Traffic in Women
GOs	Governmental Organizations
HIV	Human Immune Virus
ILO	International Labor Organization
IOM	International Organization for Migration
IPSR	Institute for Population and Social Research of Mahidol University, Thailand
MN	Migration News
MLSW	Ministry of Labor and Social Welfare of Thailand
NAFTA	North American Free Trade Area
NGOs	Non-governmental Organizations
STDs	Sexual Transmission Diseases
UNHCR	United Nations High Commission on Refugees

1. Introduction

Migration, especially undocumented migration, is on the rise within the region. Governments of receiving countries view such movement negatively, while sending countries tend to encourage the out-movement of contract labor while ignoring the out-migration of undocumented migrants (see Martin, 1996a). All countries in the region attempt to manage the numbers of migrants and composition of flows entering their countries. The failure of existing policies to effectively manage migration flows, especially undocumented migrants, has resulted in a call for new policy approaches to deal with migration

The goals of this paper are to: (1) review approaches to migration management, (2) examine the parties involved in dealing with managing migration, (3) identify the current approaches related to migration policy in the ASEAN countries, (4) and, suggest areas where regional approaches to migration management might be useful.

Our paper focuses almost exclusively on undocumented migration. We acknowledge that there are linkages between documented and undocumented migration, but limit our discussions to undocumented migration because of the need to limit the scope of the paper and because of the concerns that governments in the region express over this particular form of movement.

We also employ the term undocumented migrants rather than one of the many other terms that are similar, although often not exactly the same, as our definition of undocumented migrants. Some of these other terms are illegal migrants, irregular migrants, and clandestine migrants. By undocumented migrants we include both those persons who have entered a country without passing through normal immigration procedures and those who entered into a country legally but has violated the conditions of entry. For example, they may have overstayed their visa.¹ Alternatively, the immigrants may have a valid visa but are working without permission. In our sense, undocumented refers to both immigration and labor laws.²

In the past, and even sometimes now, undocumented migration has usually been referred to as 'illegal' by the host country/government because of the lack of 'legal' papers on entry, and stay or work permits given/allowed

¹ In Japan, overstayers are not classified as illegal migration (Iguchi, 1999).

² This use of the term undocumented migrants is consistent with that used in the 1990 Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (see Penna, 1993).

to or possessed by the migrant working in the host country. The term 'illegal' therefore gives reference to the 'act of violation' of the immigration and labor laws. Thus, undocumented migrant workers have been generally classed or categorized as 'illegal' or 'illegal migrants'.

It is, however, argued by migrants' rights proponents that the 'illegal act' is not the choice of the migrant worker. No migrant worker wants to become 'illegal' in the host country where they want to work or where they see employment opportunities. Policy analysis indicates that some policies dealing with migrant workers in Asia are not consistent with practice, and this results in the problem of undocumented migration. For instance, there is a policy that allows foreign workers to work in the construction industry but refuses to grant them working permits for being construction workers. As construction work is the type of work that many migrant workers do, most migrant workers are therefore naturally categorized as undocumented workers. Furthermore, a 'trainee system,' practiced in some Asian countries, engages migrant 'trainees' in doing the same work as regular workers but receiving allowances or are being remunerated far below the minimum standards and yet working very long working hours.

1.1 Managing migration

Managing migration implies having control over the migration process. In terms of undocumented migration the long-term stated management goal for most governments is to eliminate undocumented migration.³ The internal means that governments have to achieve this goal is typically related to enforcement measures. Stricter border controls, more vigorous attempts to locate undocumented migrants, and harsher action against those undocumented migrants who are located are all potential measures that can be applied. However, against this pressure to close borders against the entry of migrants and to expel undocumented migrants living in the country, are opposing pressures. Usually these pressures relate to the perceived need for labor that cannot be met from existing sources. Therefore, the short-term management of migration often revolves around various forms of regularization of the status of undocumented migrants within a country in conjunction with stricter border control and, in some instances, provisions for expanding the in-flows of documented migration. These strategies have been adopted in a variety of countries in the Asian region, and in other parts of the world, with varying degrees of failure.

³ It should be noted that the elimination of undocumented migration is not the goal of all groups in society. Flows of undocumented migrants are often considered positively by employer groups.

In managing migration, Asian countries seem to be making the same mistakes that were made earlier in North America and Europe. One of such is that the countries seem to share a common practice of having some specific work sectors open for migrant workers and change it quite readily in a short period of time. It is rather a practice of domestic power of 'let them in' and 'keep them out' than a thorough long-term migrant policy (MN, September 1994).

1.2 Approaches to undocumented migration

Undocumented migration is a product of regulation of migration. Without laws restricting entry to countries or employment of foreign nationals there would be no undocumented migration. Miller and Martin (1996) argue that much of the movement that takes place between Western European countries has not created problems because it has been part of regional agreements. Furthermore, cooperation on immigration control among members states of the European Union (EU) was to have helped control undocumented migrants entering from outside the EU. However, the goals of free movement of labor within the EU and a unified policy on immigration among EU members are far from reality. Huntoon (1998) shows how different economic and social structures in Spain compared to Germany, both EU members, makes co-ordination on migration difficult. Migrants from North Africa fill a labor need in Spain, but among other EU members elicit fears of them using Spain as a transit to their countries. However, there is ongoing commitment to come to a common agreement on immigration policy and to limit flows of undocumented migration into the EU.

Miller and Martin (1996) show that there have been attempts to integrate international migration into Arab, Latin American and African regional integration schemes. However, they note that these efforts have been much less successful than the European efforts. A major problem has been that agreements have often been broken based on political considerations.

Many countries have gone the way of attempting to manage migration by strengthening enforcement against undocumented migrants, while at the same time allowing for some relaxation in immigration. These strategies usually also involve some form of amnesty or regularization before enforcement.⁴ For example, in Japan the revised Immigration Act of 1989,

⁴ There is a great deal of confusion in the uses of the words regularization and amnesty as they relate to undocumented migration. Amnesty can range from situations where eligible undocumented migrants become eligible for citizenship (e.g. US in late 1980s), to provision of work permits (e.g. Malaysia at several points in the 1990s), to issue of temporary work permission (e.g. Thailand in the late 1990s).

which came in force in 1990, provided for several new categories of residence that increased the number of documented legal migrants. It also increased enforcement and punitive measures against undocumented migrants (Mori, 1995). However, as Mori points out, the number of undocumented migrants continue to increase⁵ and he estimates that there are over 300,000 illegal foreign workers from Asian countries in Japan.

The United States has adopted a similar policy of regularization and stricter enforcement of laws in order to limit undocumented migration. For example, an amnesty program in the late 1980s resulted in approximately 3 million undocumented migrants becoming regularized. However, this did not result in a halt to undocumented migration. By 1996 it was estimated that there were 5 million undocumented migrants in the US (Johnson, Farrell and Guinn, 1997). In late 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This act, which concentrated on increased enforcement efforts to restrict the entry of undocumented migrants,⁶ increased penalties against undocumented migrants – including stricter deportation and exclusion criteria, and reduced access to services (Fragomen, 1997). Singer and Massey (1998) note that although US legislation designed to increase enforcement of border control is popular in the US, it has little effect on reducing undocumented migration. Stricter enforcement and rapid deportation (within 24 hours) suits both the US border control and the undocumented migrants – arrests rapidly increase yet at the same time rapid repatriation allows the undocumented migrants to try again, and to keep trying until they are successful.

If unilateral enforcement policies have not been successful in stemming flows of undocumented migrants what strategies are available? A theme of some conflict in the literature is the extent to which policies that promote development in origin areas will contribute to reductions in levels of undocumented migration. As migration among countries is clearly linked to differences in income levels (and opportunities for employment), increased levels of development in origin areas should result in decreased pressure for out-migration.

This is one argument that has been used in the North American case to promote the North American Free Trade Area (NAFTA). There is evidence to suggest that increased development will lead to reduced pressure for out-migration. For example, the establishment of an export processing zone along the Mexican-United States Border where factories (*maquiladors*) produced goods for export that were exempt of most tariffs, was based on high levels of

⁵ Based on the numbers who overstay their visas.

⁶ Including funds for the construction of a 14 mile fence along part of the Mexican-US border and a doubling of border control guards.

US investment into these zones and some reductions in levels of undocumented migration from Mexico to the US (Davial and Saenz, 1990). However, this did not eliminate undocumented migration and, as witnessed throughout the 1990s levels of undocumented migration to the US remained high. Indeed, Sassen (1988) has argued that foreign investment in origin countries, especially where such investment is in export processing zones, is a factor that contributes to increased pressures for out-migration, in part because the jobs created usually are confined to one segment of the population (usually young females), but the investment raises aspirations for all. Skeldon (1997) also notes that increased integration among economies acts to increase levels of movement among those economies.

Martin (1996a) argues that in the long term trade between countries will reduce flows of migration by stimulating employment in the sending country. But he also cautions that in the initial stages of trade escalation there is likely to be an increase in migration – a migration hump – as economies move closer together and economic restructuring is associated with a surplus of workers.

1.3 Actors in policy approaches to undocumented migration

International agencies, national governments, and civil society (i.e. NGOs and the private sector) all have key roles to play in migration policy and regulation. The large and increasing attention of international agencies to international migration is a reflection both of the scale of migration, its importance for development, and the potential violations of human rights and dignity that can be suffered by migrants. The international legal instruments meant to protect the rights of migrants are well documented by Fonteneau (1992). He also describes the role of international agencies such as ILO and UNHCR in protecting the rights of certain groups of migrants. However, as noted by Fonteneau (1992), these laws and regulations have proven inadequate in attempts to eliminate discrimination against migrants. In part, this is because of lack of knowledge of migrants of their rights, but in the main it is the failure of Governments to recognize the rights of migrants. Fonteneau (1992) calls for providing international migrants with the same legal protection that non-migrants receive within the country they are residing. He calls for strict adherence to international laws, conventions, and treaties.

The problem remains, however, that many governments often do not perceive it to be in their best interests to apply international definitions or to become signatories to international conventions. For example, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families was adopted by the General Assembly of the United Nations on December 18, 1990. The Convention explicitly addresses

the unfavorable position of undocumented migrants and provides them with a subset of the rights enumerated in the convention (see Pena, 1993). Although the Convention has been criticized in the extent of protection that it provides for undocumented migrants, particularly with regard to their ability to exercise their rights when under threat of expulsion (Nanda, 1993), the Convention is an important step forward in seeking to protect rights of migrants. However, the convention has yet to be ratified. Twenty countries are required to ratify the Convention before it becomes a legal instrument. This number has not yet been reached and as of the end of 1997 only the Philippines in the ASEAN region had ratified the Convention (Philippine Migrants Rights Watch, 1997).

Apart from advocating for governments to ratify international agreements, NGOs can also play an important role in providing services to migrants that are not covered by international conventions or agreements. Because of their international networks and ability to work with Governments on an informal basis, NGOs are very effective at bringing attention to, and assisting in solving, problems related to trafficking and smuggling of migrants. Although Widgren (1996) argues that it is cooperation among international agencies that will do most to combat 'alien smuggling', involvement of NGOs would be more likely to bring results. Several international and regional based NGOs (e.g. International Migrant Rights Watch Committee, and Global Alliance Against Traffic in Women -GAATW) are working on these issues. Dias (1993) notes in the Asian context the need to promote and develop the capacity of NGOs in order that they can effectively monitor human rights.

2. Problems of managing flows of migration in Asia

Transnational migration in Asia has been well documented over the last three decades. While in the 1970s and 1980s much of the movement of labor was from Asia to other regions, recent and current trends of labor movement are to countries and areas within the Asian region itself (IPSR, 1998). This is primarily a result of widening wage differentials, either real or perceived, and differences in labor demand and supply among the countries within Asian region, and partly due to differences in political freedom. Most migrants leave home in search of work and are undocumented. At least 10 million undocumented migrants are found within the region, not including migrants from China (see Table 1). Countries, which have been actively involved in transnational migration in the region, can be conceptually divided into 3 groups: countries of origin, countries of destination, and countries that play both roles – sending and receiving migrants. Some countries fall into a special category of 'transit state', involved in the migration process as staging posts of workers proceeding to third countries. Thailand and Malaysia are clear examples, being transit centers of transnational migration in the region.

**Table 1: Major Countries/Economies of Origin and Destination
by Labor-Exporting and Labor-Importing Policy in Asia**

Type and Policy	Year	Documented Migrants	Year	Undocumented Migrants
Country of Origin				
<i>- with labor exporting policy</i>				
Philippines	1998	700,000 ¹	1998	63,679 ¹
Indonesia	1995	1,200,000 ²	1998	478,913 ¹
Bangladesh	1995	1,600,000 ²	1998	329,984 ⁴
Sri Lanka	1998	700,000 ³	1998	100,000 ³
Thailand	1998	700,000 ⁵	1998	54,719 ¹
Vietnam	1997	36,625 ⁶	1998	3,181 ¹
China	1995	270,000 ⁷	1998	94,844 ⁴
Pakistan		n.a.	1998	29,090 ⁴
<i>- without labor-exporting policy</i>				
Myanmar	1998	1,554 ⁸	1998	1,031,557 ⁹
Cambodia	1997	24,746 ¹⁰	1998	81,000 ¹
Laos	1997	11,086 ¹⁰		n.a.
Korea		n.a.	1998	52,854 ¹
Singapore	1998	5,000 ¹¹		n.a.
Malaysia	1995	250,000 ²		n.a.
Country/Economies of Destination				
<i>- with labor-importing policy</i>				
Singapore	1998	530,000 ¹	1997	7,600 ^{1a}
Singapore	1995	750,000 ⁷	1998	800,000 ¹
Malaysia	1995	239,000 ⁷	1995	100,000 ⁷
Taiwan	1995	170,000 ⁷	1995	130,000 ⁷
Hong Kong		n.a.	1997	920,000 ¹
Saudi Arabia	1996	112,770 ⁸		n.a.
Myanmar				
<i>- without labor-importing policy</i>				
Japan	1995	106,000 ⁷	1998	276,810 ¹²
Japan	1998	100,000 ¹	1997	140,000 ¹
South Korea	1997	173,629 ¹⁰	1998	970,903 ¹⁰
Thailand	1997	n.a.	1998	100,000 ¹³
Philippines	1998	n.a.	1998	10,000,000 ¹
India		n.a.	1997	3,000,000 ¹
Pakistan				

Sources :

1: Various sources cited in Battistella and Skeldon, 1999. **1a:** Based on arrested number of undocumented migrants in 1997 from Migration News, August 1998 cited in Battistella and Skeldon, 1999. **2:** Estimates of national working abroad from various sources cited in Martin and Widgren, 1996. **3:** Migration News, January 1999. **4:** Various sources cited in Battistella and Skeldon, 1999 plus a number of people from Bangladesh (or Pakistan or China) overstaying in Thailand measured by Archavanitkul et al. 1997a. **5:** Estimated number of workers remaining in countries of destinations. An official figure of exporting workers during 1993-1998 was 1,070,852, and the number in 1998 was 193,735 (MLSW 1999). **6:** Nguyen Dang Anh, 1998. **7:** Migration News various issues cited in Martin 1996a. **8:** Nyan Mint, 1998. **9:** Various sources cited in Battistella and Skeldon, 1999 plus an estimated number of people from Myanmar residing in Thailand estimated by Archavanitkul 1998b. **10:** Archavanitkul et al. 1997a. **11:** Chew 1998. **12:** A number of overstayers by January 1998 cited in Iguchi, 1999. **13:** Migration News, April 1994.
n.a.: Not available.

Most countries in East Asia are labor importers whereas many countries in Southeast Asia are labor exporters. Singapore and Brunei are, however, importers of labor. Thailand and Malaysia on the other hand, are both labor-exporting and labor-importing countries. Skeldon (1997) classified some sending countries as areas most likely to experience distress movement. These countries include Cambodia, Myanmar, Lao People's Democratic Republic and Vietnam. In addition, many small island countries have experienced intense out-migration.

Large-scale labor migration in Asia began in the early 1970s when Middle-East countries invested in huge infrastructure projects and imported skilled foreign labor from Western countries and semi-skilled workers from countries in Asia to work in construction jobs. Since then, labor-importing and labor-exporting policies have had a clear effect on labor migration in Asia. However, many countries in Asia have sent or received a large number of migrant workers without having open policies. For instance, Thailand has clear policy on exporting its workforce primarily through contract labor programmes but a closed-door policy of importing unskilled foreign workers. Presently Thailand has nearly one million undocumented unskilled workers, mainly from Myanmar and neighboring countries (Archavanitkul et al, 1997a). Myanmar, on the other hand, has no official programmes to send its labor supply to work abroad, but about 2 million persons from Myanmar are now working or living in Thailand, Pakistan, China, Bangladesh and India (Archavanitkul 1998a). Japan and South Korea have tough policies of labor immigration, both have used an indirect policy called 'close the door - open the window' by receiving semi-skilled foreign workers through trainee programs.

Table 1 presents countries/economies of origin and destination in the Asian region by their policy toward exporting or importing labor. During the 1970s, most of the migration flows towards the Middle East were managed by professional labor contractors. Their employment fees were usually paid by the foreign employers that built the construction projects in Middle East countries. In the 1980s, the recruitment fees increased and the migrants were more likely to pay the fees by themselves. During this time, more of the flows were of undocumented migrants. In the 1990s, the fees rose sharply constituting 25 percent of what the migrants expect to earn during a two-year working contract abroad. Consequently, more and more migrants have moved irregularly and more labor smugglers became involved (Martin and Widgren 1996). Undocumented migration has become one of the top socio-economic and political issues in many countries in Asia. Furthermore, the impacts of the current Asian economic crisis since 1997 have led to a marked increase of undocumented migrants workers in the region because foreign workers became the first target group of company layoffs. Many foreign

workers have chosen, out of necessity, to continue working without a valid work permit after being laid off (IOM, 1998). Deportation of undocumented migrants has also become an immediate response for economic resolutions chosen by some governments such as Thailand and Malaysia.

In Asia, a large number of undocumented migrants are victims of trafficking, or are asylum seekers, refugees or displaced people. Nevertheless, a considerable number were regular, contract or guest workers in the countries of destination before being placed in an irregular position. Undocumented movements in Asian region have commonly been considered to have strong impacts on 'security' or 'stability' of the countries involved. This is not only because of the size of irregular migration, but because of the difficulties in managing the flows which both countries of origin and countries of destination are facing.

The main objective of this section is to provide the foundation for a discussion on problems of managing flows of migration with special reference to undocumented migration. Specifically we examine labor in the context of long-standing policies between the countries of origin and the countries of destination in ASEAN.

2.1 Problems of managing the outflows: lessons from countries of origin

(a) Lack of measures to protect overseas workers: Whether with or without a clear policy of exporting labor, almost all sending countries do not have a mechanism to protect their overseas workers. The exploitation of an overseas worker may start from being taken advantage of by labor-recruiting companies onto being left in another country with no information on the country's people and culture, language, and the necessary knowledge of basic laws and regulations for migrants. There are numerous cases of employers or local authorities in destination countries sexually abusing women workers. Migrant workers, especially the undocumented, must struggle to survive difficult situations on their own.

(b) Unclear responsibilities among government agencies responsible for recruiting and exporting labor: The unclear responsibilities frequently result in unnecessary workload and the overlap of different agencies' work. In some sending countries, there are excessive forms to be completed and complicated procedures to be followed. As a result, workers are often placed in a position where they are prone to offers from corrupt officials to 'detour' around the procedures. This type of abuse of power is common in both sending and destination countries in the region.

(c) Practices of recruiting companies: It is widely accepted that professional labor recruiters have played an important role in transnational labor migration within Asia. Some labor-recruiting firms travel to countries in need of foreign labor and bid for a quota of workers allowed from their countries. The recruiting companies subsequently procure the numbers of workers and provide them to the receiving countries. During the process, recruiting brokers charge high fees from workers as a way to do business. Although paying high fees, workers are not provided full and accurate information about their job placements and destination.

(d) Reintegration after returning: There are generally no official programs to integrate returned workers into society. Most governments neither have clear policies regarding the matter nor value returned workers' experience. One of the impacts of the Asian economic crisis that started in 1997 is a sudden influx of overseas workers returning home resulting in exacerbation of the labor surplus in origin countries (IOM, 1998). Governments in some countries require deported migrants to stay at detention camps to be 're-educated' before they are allowed back to their communities instead of verifying what returned workers have gone through in foreign countries and using this information to provide to others attempting to migrate. These regulations unnecessarily increase social stigmatization for returned workers, especially women and girls who migrated or who were trafficked for sex work, and makes it more difficult for them to reintegrate into their communities.

(e) Use of remittances: Remittances are not used to achieve community sustainability, but rather are used for individuals' interests such as purchasing consumer goods. Remittances also become a motivation for people to illegally migrate for work in another country. Quick and easy money reflecting in expensive consumer goods is more easily seen by peers in communities than are the traumatized experiences that some migrant workers have suffered. Governments can assist by providing opportunities for productive investment of remittances, if desired by migrants, and providing communities with accurate information about migrant experiences.

In the ASEAN region, The Philippines provides an example of a country that has attempted to address these issues. The Philippines has a specific law dealing with its overseas workers, namely, the Migrant Workers and Overseas Filipino Act of 1995. The government of the Philippines has undertaken a strong stand fighting for the Filipino workers who are abused. The overseas employment program emphasizes providing 'informative', and a 'welfare-oriented' approach. Issues of how to assist and protect overseas workers have become one of the main policy issues used in for election at the national level (Gregorio, 1998). The Philippines has achieved a degree of

success in monitoring stocks and flows of its overseas migrant labor force (Tigno, 1998) and has developed programmes to enable their returning overseas workers to find work in other countries (IOM, 1998).

2.2 Problems of managing the inflows: lessons from countries of destination

The current enforcement policies toward undocumented migrants in countries of destination mostly emphasize controls and punishment. Migrants are seen as posing serious risks to health and social stability as well as to peace and order. If the numbers of undocumented migrants are not substantial or visible, when migrants are arrested they are typically fined or sentenced to jail and then deported to countries of origin. However, in most countries the number of undocumented migrant is large and they make significant contributions to economic development in terms of providing cheap labor and a willingness to accept jobs that are shunned by locals. The management of these migrant workers is usually to control them by making them visible through amnesty procedures. This type of registration approach has been used in many recipient countries, such as Malaysia, Middle Eastern countries and Thailand. Problems related to regularization and other measures are as follows:

(a) *No clear or practical guidelines for regularization:* The authorities involved do not clearly understand the regularization policies because such measures lack clarity. Consequently, officials are often not sure who qualifies for registration and who does not. In some countries, there is only one government agency, i.e. the Office of Immigration, that plays the major role in deciding who is eligible to register to work and there is no monitoring system. This allows for misuse of power to easily go unchecked. In some countries, there is the condition that does not allow migrant labor to work outside of permitted areas and this is often impractical in practice. For example, in work in the construction and fishing industries, labor must move from place to place, as it is the nature of these jobs. There is also the condition that migrants are not allowed to change jobs or employers or travel outside the areas they are registered to work. These conditions also open up possibilities for the misuse of power by the authorities involved. Furthermore, there is usually no effort to help the undocumented migrant population understand the regularization process, for example, the amnesty or regulations may not be written in the migrants language. This has also led to migrants rights being violated or cheated by their employers or the authorities.

(b) Lack of cooperation from the private sector: In some countries, many employers prefer not to register their workers due to the high cost involved and the bureaucratic procedures they have to deal with to obtain the necessary papers. These papers can include valid travel documents, work permits and medical reports. The impractical conditions mentioned above, also are factors that determine the employers decision not to register their workers. In some countries, there is no clear distinction in rights between those who register and those who do not. The employers or the migrants have to still pay 'facilitating fees' to the authorities as the migrants are easily arrested and their documents (if they have any) can be taken from as if they have been working without proper documents.

(c) Accelerating a greater influx of undocumented migration into the country: During the period of regularization, agents recruiting migrants and labor smugglers use the amnesty as a tool to convince people in their respective countries that there is work waiting for them in the destination countries, and that they will be registered upon arrival. Examples of this practice were found in the Malaysia and Thailand (Nair, 1998; Archavanitkul et al., 1997a).

(d) Loose enforcement vs. tight enforcement: Registration is usually complemented by preventive measure undertaken by the police or the immigration officials. However, since the regularization is short-term in nature, efforts undertaken by the police is also short-term and largely ineffective and insufficient (Nair, 1998; Chintayananda et al. 1997). In some countries, there is no clear system or monitoring of the enforcement of the rules and regulations. Under loose enforcement situations employers and migrants may not see any differences and benefits that they gain by registering. Harsh stands and tight control against undocumented migrants may lead to short-term successes but unwanted long term impacts. For instance, the media attention both at the national and international levels on the punishment of Thai workers sentenced to 3 months jail and 3 strokes of the rotan under Singapore's amended immigration law in 1989, resulted in a large number of Thai workers returning to their country, which adversely affecting the construction activities in Singapore. The case of a Filipino maid found guilty of murder and sentenced to death in 1995, caused the banning of Filipino women from working in Singapore by the government of Philippines (Chew 1998).

(e) No mechanisms to protect migrant rights: In many countries, regularization does not grant any rights except for the right to work. Migrants are still strictly controlled. The migrants may not be allowed to travel freely or gain access to public services. Moreover, it is commonly found that governments of the destination countries provide no mechanism for migrants

to ask for justice if they are treated badly by the authorities or cheated, exploited and tortured by the employers. Exceptions can be found, for example in Hong Kong, migrants are able to complain to a migrant worker's union. NGOs working with migrant workers are usually the agencies where most migrants turn to when they have problems as the NGOs' main mission is to fight against violations of human rights.

(f) Problems in detention camps: Detention centers in many countries have conditions worse than jails. This opens up opportunities for workers' human rights to be violated when waiting for deportation. Governments in receiving countries usually claim that there is not enough funding to adequately provide for the migrants because of their large numbers. In these instances there is a need to enlist the aid of international organizations (or regional cooperation).

(g) Problem in identifying nationality of some groups of undocumented migrants: There are some people that are not accepted by their countries of origin. There are over 10,000 such cases in Thailand. There are many persons in other countries, such as India, Pakistan and some Middle East, who share the same fate.

2.3 Other problems arising from undocumented migration

There are important and common problems that have been characterized as arising from the nature of undocumented migration in Asia as well as elsewhere. For example, the *lack of efficient online database of immigration and emigration at responsible government agencies*. Many countries in this region have not systematically collected and organized immigration data and have it made available and easily accessible by all government agencies responsible for migration and migrant workers. In general, data are not properly categorized and utilized, especially for the use of irregular migration management and for policy development. In some countries, there are no data available, if available, they are not accessible, and if available and accessible, they are not reliable.

Some problems have been recognized as a regional problem and all countries involved have agreed to cooperate in order to stop or minimize or prevent them. These include problems of trafficking, particularly trafficking in children and women, and transmission of communicable diseases. These two problems will be discussed in the following section. Other problems, also discussed in the following section, have received little or no attention. Some of these issues include migrant children, stateless persons, and integration of migrants into destination countries.

3. Needed policy measures

3.1 *Regulating undocumented migrants*

There is widespread international consensus that there is a need to address the issue of undocumented migrants. Hugo (1997) notes that undocumented migration in Asia increasingly involves criminal syndicates because of large amounts of money that people are willing to pay in situations where they voluntarily migrate and the large amounts of profit that can be obtained through trafficking. To a large extent the returns from migration, either to the migrant themselves and/or to the agents involved, are a direct result of governments attempting to limit movement in situation where there is a clear demand for labor.

Undocumented migration within the ASEAN region has the potential to cause serious security problems, both because of the involvement of criminal gangs, but also because of the potential for misunderstandings between sending and receiving countries over the treatment of their nationals (see following section). Miller and Martin (1996) note that these potential security effects will be a major factor that could contribute to establishing regional agreements in Asia relating to international migration.

In a discussion of political dimensions of various forms of international migration, Rogers (1992) argues that there must be increased multilateral and bilateral efforts to control flows of migration. In the East and Southeast Asian regions most bilateral negotiations have centered around exporters of labor negotiating with labor importing countries over the numbers and conditions of employment of workers allowed to enter a country. Labor importing countries/economies in Asia set limits to the numbers and country origins of contract migrants in accordance with strict economic criteria with regard to labor needs (e.g. Singapore) or result from an interaction between perceptions of labor needs and internal political pressures (Japan and Taiwan) (see Martin, 1996). Multilateral agreements are particularly attractive for countries that are experiencing large influxes of undocumented migrants. However, as part of any agreement to work together to restrict undocumented migration there would be a need to provide a mechanism for documented migration among participating states. It must also be noted that regional agreements would also benefit origin countries if they included provisions for orderly return of undocumented migrants. Ananta and others (1998) point out that the mass deportations of Indonesians from Malaysia because of the economic crisis put a great deal of pressure on the Indonesian government in terms of reintegrating the returnees.

Chalamawong (1998), in the context of the effect of the Asian economic crisis on dealing with undocumented migration in Thailand, stresses the need to enter into agreements with neighboring countries in order to ensure the orderly and safe repatriation of their nationals whose labor is no longer required (see also Archavanitkul 1998c). He also suggests that such agreements could help stem outflows from these countries. In the meantime, the policy of Thailand as in Malaysia, is to strengthen enforcement against undocumented migrants (Chalamawong, 1998; Pillai, 1998).

Another possible path that could be used to limit to some extent the flow of undocumented migrants is to focus enforcement efforts on those who benefit most from the movement: employers and agents. A normal component of strengthening immigration laws to restrict undocumented migration is to increase penalties against those employing undocumented migrants and those persons who assist in bringing in the migrants.⁷ However, what is usually not possible is to enforce penalties against agents who work from sending areas. Most undocumented migration involves a series of intermediaries in both sending and receiving countries. Regional agreements that allowed prosecution of agents in sending countries would help reduce some of the undocumented migration that occurs.

3.2 Migrant rights

Undocumented migrants have limited legal status in most of the countries of the region and are subject to deportation upon arrest. In fact in most situations the only rights that migrants have are internationally recognized 'human rights'.⁸ The fear of arrest and deportation is a major threat they can be used by employers in controlling migrants. Those faced with arrest appear to often fear the consequences of arrest more than the inhuman conditions in which they often live and work. In some cases these fears are well justified.

There is often considerable internal political pressure on governments to protect the rights of migrants who are working overseas. Sometimes events can occur that crystallize this pressure and even cause political friction among labor exporting and importing countries. For example, the hanging of a Filipina maid in Singapore in 1995 caused a major dispute between the Philippines and Singapore, galvanized public opinion towards the increased protection of their nationals living abroad, and made the government reconsider the policy of labor exporting. Even before the incidence in Singapore, however, the Philippines

⁷ For a discussion of these efforts in Malaysia, see Pillai (1998).

⁸ These are the rights that are codified in the 1990 Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, but they are also protected by other international conventions.

had been moving towards trying to stamp out some of practices, such as illegal recruitment, that it felt was resulting in migrants being put at risk. For example, 1994-1995 was proclaimed by the Philippines president to be 'National Anti-illegal Recruitment Consciousness Year'. Both the Philippines and Indonesia have tried to limit the export of labor of females, especially domestic workers, preferring to export skilled workers (Amjad, 1996). The Indonesian government has also expressed concern about the treatment of Indonesian undocumented migrants who have been repatriated from Malaysia (Ananta and others, 1998).

However, the economic benefits available to both the state and to individual migrants means that exporting labor, or not attempting to restrict undocumented out-migration, is an attractive policy. Governments also see out-migration as an opportunity to reduce domestic unemployment. Finally, there is acknowledgment that banning the legal export of labor would probably only result in increased out-migration of the undocumented (Amjad, 1996), with the result that the sending Governments would lose their ability to protect the migrants and it would also reduce the financial benefits that they receive through migration. It is not surprising that the recent economic downturn has led to increased government efforts in some ASEAN countries to increase the number of workers who are sent overseas while simultaneously attempting to restrict the number of migrants entering the country.

There are undocumented migrants in all countries. Most of these migrants contribute to the development of their host countries. For the sake of human rights, there needs to be integration of these migrants into their societies of present residence. Many are children born in their host country. Granting nationality and citizenship to these people is a way to promote integration and to obtain valuable human resources for the future development of the country.

3.3 Trafficking

Along with massive cross-border migration within Asian region, a thriving illegal smuggling industry exists. Trafficking, especially of women and children, is big business internationally and increasing in Asia. It is documented that the network of trade in drug and women trafficking has been closely associated and long established in the Asian region (IOM, 1995; Feingold, 1996). Moreover, the problem of trafficking in children for sexual purposes has become a global problem as stated in the first world congress against commercial sexual exploitation of children in 1996 (ECPAT, 1997). Consequently, more and more attention has now been paid to fight against trafficking in women and children at local, national, regional, and global levels.

Study after study confirms that the nature and extent of trafficking business makes this trade as one of the most serious crimes of the 20th century.

In Asia, with over joint infrastructural improvement projects supported by multilateral firms, the investment in the projects themselves and the completed infrastructure have indirectly turned to be lucrative underpinning of the trade in 'bads' (not goods) such as arms, ammunition, endangered species, drugs, and even human beings (Archavanitkul 1998a). In addition, with billions of dollars gained from the tourism industry in many countries each year, tourism has had unexpected and devastating impacts on the environment and on disadvantaged people, especially those living in the highlands of the region. Many development policies also seen as stimulating factors determining the expansion of the 'bad' trades, particularly trade in drugs and women (Feingold, 1996). Recent studies indicate that areas of procurement have expanded and reached small remote communities in many countries in the region, such as Thailand, Vietnam, Laos, Myanmar, and China (see for example Archavanitkul 1998a; Xe Zhixiong 1998; Nhum Tuyet 1998). Several well-defined routes have been identified – internally within Mekong basin countries⁹ and within South Asian countries¹⁰, from Mekong basin countries to other countries in Southeast Asian and East Asian regions, such as Malaysia, Singapore, Philippines, Taiwan, Hong Kong, and Japan, and from Asian countries to European countries, such as Germany, Netherlands, and England, and the United States (ILO 1996; Skrobanek et al. 1997; ECPAT 1997; Archavanitkul 1998a).

Various definitions are currently used to describe trafficking in women and children. There is some common dimension of the definitions employed by international organizations.¹¹ But none are clear or cover all forms of trafficking as documented by the UN Special Rapporteur on Violence against Women. There have been consistently calls for reformulation of international standards and straightforward definitions of women and children trafficking (Coomaraswamy, 1997; Caouette, 1998). Major differences in the definitions are found to be differences in terms of approaches, gender, age, sexual exploitation, and legal or illegal moves crossing national borders. It is recommended that in an effort to obtain inclusive definitions, it should not discriminate or exclude any trafficked person due to their age, gender, type of work the trafficked victims engaged in, location and means by which they were trafficked (Caouette, 1998:10-11).

⁹ Thailand, Myanmar, Laos, Cambodia, Vietnam and Yunnan, China.

¹⁰ Sri Lanka, Bangladesh, Nepal, India and Pakistan.

¹¹ See detailed definitions defined by various international organizations in Appendix A.

Trafficking for sexual exploitation is the major form of trafficking in women and children. Any person of any age, regardless of their sex, however, can be trafficked within a country or crossing border for different purposes which may or may not involve sexual exploitation. The trafficked victims are generally engaged in exploitative and hazardous working conditions and are subject to be physically, verbally and mentally abused. Young women victims are more prone to be sexually abused. Four main women and children trafficking patterns are found in 6 Mekong basin countries which can also be applied to other Southeast Asian countries (Archavanitkul, 1998a:14-15):

- (a) **Trafficking into prostitution:** Almost all countries in the region have experienced an increasing number of young women abducted into the sex industry. A greater number of trafficked victims are willing to join the sex work after they are trafficked softly and smoothly being deceived into the sex trade. The most serious circumstance is in Cambodia as the age of trafficked girls under 13 is not uncommon (Derks, 1997).
- (b) **Trafficking for other sexual purposes:** This pattern includes procurement of young women into false marriage and pornography. Little is known about trafficking of girls and boys into pornography business in this region.¹² The common pattern is to abduct poor rural girls and women to be a wife in rural areas in neighboring countries. It is a typical pattern for the case of Vietnam and Myanmar sharing their borders with China.
- (c) **Trafficking into begging and soliciting business:** This pattern is new compared to other types. The prominent route in the region is trafficking of children, the disabled and elderly of Cambodia into the begging and soliciting business in Thailand. To a lesser extent, there are a number of Indian Muslim Burmese trafficked by begging gangs in Bangkok, Thailand. A number of beggars from Myanmar are also found to be trafficked by begging business in Dehong of western Yunnan province of China (Xe Zhixiong, 1998).
- (d) **Trafficking into other extreme forms of manual labor:** Other types of work that trafficked persons, mostly women and children, are recruited for include – domestic work, construction work, small factories or business, such as garment factory, condenser factory, steel factory, load carrying business, restaurant and etc.

In Asia, commitment to stop the problem of trafficking in women and children among countries in the region varies. Some countries have a clear and concrete plan of action to combat the problem with collaboration at national,

¹² Current activities fighting against child pornography can be found at <http://www.ecpat.net>.

regional and international levels.¹³ Some countries, however, have not recognized and addressed the problem even at an official level. Some are in the early stage of studying the problem. Among the countries with strong intention to eradicate the trafficking business, some have successfully convicted a number of traffickers and disrupted their networks. The business, however, goes on and traffickers have made significant progress in their business development. In general, armed police along the region border checkpoints are instructed to put greatest priority to drug and weapon smuggling than to cross-border transportation of humans. The issue in comparison with drug and weapon smuggling is commonly considered a minor issue.

Trafficking networks are well organized and take advantage of lax legal enforcement, especially in transshipment countries, to organize their trade. While there is international condemnation of trafficking it continues to flourish, partly because of a lack of co-operation in targeting those involved. Co-operation and legislation that reaches across borders need to be undertaken in order to address the problems of trafficking. There are international conventions and covenants that address issues of trafficking. However, not all governments in the regions have ratified these instruments (see Skeldon, 1998). While ratification does not automatically lead to implementation, it does demonstrate the willingness of governments to address the problem. The ILO has also set up a comprehensive list of guidelines related to the migration of women that includes issues related to trafficking.¹⁴ Some of these guidelines require cooperation of sending and receiving countries.

For example, there are several recommendations related to providing accurate information to potential migrants in source countries about opportunities in destination countries. With reference to the rights of trafficked victims, NGOs, namely GAATW, Foundation for Women of Thailand, and the Foundation Against Trafficking in Women (STV), have proposed 'Standard Minimum Rules for the Treatment of Victims of Trafficking in Persons, Forced Labor and Slavery Practices' containing obligations of all countries involved: destinations, transit and origins (GAATW, 1997).

3.4 Access to services

The vast majority of workers imported to Asian is undocumented with less access to services than for non-migrants or documented migrants. A number of deterrents to settlement are employed against the immigrants such as

¹³ As can be measured from the country papers presented in the regional conference on *'Illegal Labor Movements: The Case of Trafficking in Women and Children'* organized by Mekong Regional Law Center, Thailand, November 25-28, 1997.

¹⁴ See Skeldon (1998) for the list of these guidelines.

prohibiting family migration, denying social services, or restricting movement. In Japan, illegal immigrants are ineligible for public health insurance, face unfair labor practices, and fail to claim worker's accident compensation for fear of deportation (Asahi Shinbun, July 29, 1994 cited in Risser, 1995). In Singapore, guest workers are subject to a foreign worker rotation, whereas workers can be sent home when they are no longer needed. Illegal migrants, if caught must serve three month prison sentences and suffer three strokes of the cane (Huguet, 1992). A series of articles on illegal workers in East and Southeast Asian countries (Wu and Inglis, 1992; Nagayam, 1992; Nagayama, 1992), point out the considerable problems faced by illegal workers in obtaining training, education for their children if they are with their families, and demanding fair treatment from employers.

Culture and language often set undocumented migrants apart from others in an area. Language differences obviously make communication difficult and can discourage people from obtaining services. Mass media messages about health care and other services may not reach or mean much to migrants whose language and culture differ from those of the surrounding population

The trend towards increasing punitive action against undocumented migrants also means that avenues of care previously available to them are no longer available. For example, Mori (1995) notes that illegal foreign workers in Japan are not eligible for the National Health Insurance system. Prior to 1990, when the revised immigration act came into affect, the government provided financial assistance to hospitals for treatment of undocumented migrants in emergencies. After 1990 this assistance was stopped, therefore Mori claims that hospitals are not willing to accept undocumented foreign workers and that some have died because they could not get medical attention. He notes that one hospital in Yokohama set up its own health insurance scheme for foreign workers and that in 1993 this scheme included approximately 2,500 workers from 52 countries. A central issue for policy makers is the extent to which access to services should be provided, and under what conditions, to undocumented migrants.

Host governments rightly view the issue of use of local services by undocumented migrants in terms of costs that have to be borne from domestic sources. This limits the budget available to provide services for their own population. In many areas along the Thai border the health budgets are under severe strain because of the costs of services provided to undocumented migrants (Archavanitkul et al. 1997b). For documented migrants, cost issues related to service use are also important, but there have been attempts to develop ASEAN region-wide systems of social security (Huguet, 1992). No such efforts have been made for undocumented migrants.

3.5. Migration and health

The public health and policy implications of migration-related disease have not been assessed in any depth but are often cited as a barrier to opening up borders to freer flows of migrants. Population movement of any type, including international migration, internal migration, and tourism, can result in the transmission and spread of communicable diseases. Factors contributing to increased communicable disease morbidity and mortality among migrants and the communities they enter are; (a) breakdown of individual access to the existing health infrastructure reduces diseases control and treatment capabilities, (b) movement of populations into zones with different microbial ecologies exposes those with low immunity to new agents, (c) crowding in relief and refugee camps leads to increased opportunities for disease transmission, and (d) high rates of malnutrition increase susceptibility to communicable diseases (Gellert, 1993).

Currently a major concern in Asia is the spread of sexually transmitted diseases (STDs), including HIV. Spatial differentials in HIV and AIDS prevalence can often be attributed to population mobility. Locations with large numbers of migrants, such as border towns, urban, and trade centers often experience higher HIV and AIDS prevalence rates than those areas with smaller migratory populations (Singhanetra-Renard, 1995). Seroprevalence data from Thailand, Cambodia and Myanmar indicate that populations in provinces with international border crossings have higher levels of HIV infection than populations further away from the borders. Among travelers, men greatly outnumber women in communities at or near border crossings. This gender disparity creates an unusually high demand for commercial sex. Moreover, women who live in cross-border locations are at significantly high risk of HIV because they are more likely to have sex partner who are mobile men who, in turn, are at high risk of carrying HIV because of the above mentioned points (AIDSCAP, 1996). Whether people on the move pose a potential threat for the spread of HIV depends upon their risk behavior and the environments that they encounter (Bennett, 1997).

The growing streams of trade and commerce along the corridor from Myanmar, Cambodia, Thailand, Laos, Vietnam to southern China has facilitated the rising transmission of AIDS that accompanies intravenous narcotic usage. It has become a concern in Yunnan Province of China as it becomes an integral part of the overland route from the poppy fields to coastal ports in the heroin trade. However, the spread of HIV by heterosexual contact associated with sex workers in all countries of the region is ominous (Kidson, 1993). As countries such as Cambodia, Laos, Myanmar and Vietnam increasingly become sources of sex workers to countries in other Southeast and East Asian countries, and given the problems of communication of health

information to these women when they migrate into cultures different from their own, the risk of the spread of HIV is magnified.

Migration can also be related to the transmission of diseases that are spread through non-sexual contact. In some parts of Southeast Asia and China, considerable success has been achieved in control of malaria over the past several decades, but in other parts, drug resistant falciparum malaria has increased dramatically. The underlying causes are not simply the complexity of parasite vectors, or limited drugs. It is also rapid economic growth. The corridor from Myanmar and Cambodia, through Thailand, Laos and Vietnam to southern China is a rapidly expanding belt of private trade involving growing population movement. The increased economic activity accelerates population movement. The risks of diseases carried or facilitated by these population movements have risen rapidly over the past few years. The total population inhabiting this corridor of nations is 300 million, with one-fifth of these being at risk of malaria infection.

For example, when gem mining in western Cambodia near the Thai border reopened in 1988, it attracted many miners from Thailand, Myanmar, and even from India and Bangladesh. Malaria transmission in this area is intensive. The daily movement of population is estimated to involve approximately 3,000 persons with low levels of immunity (Wernsdorfer et. al. 1994). Some estimates place malaria infection in the flow of persons crossing between Bo Rai, Thailand and Pailin, Cambodia through one crossing point at approximately 40 percent (Kidson, 1993). The same picture is seen at official crossing points on the borders of Yunnan with Myanmar, Laos and Vietnam, where an estimated 10 million persons per year make the crossing.

Issues of health cannot be addressed unilaterally. Cooperation among countries is required for health prevention efforts. Such cooperation could also include broadening access to services for undocumented migrants and perhaps even cross-border populations. While such cooperation does have budget implications in might be a cost-effective method of reducing disease transmission. Restricting access to health services will have little effect on stemming undocumented migration but may have negative effects on the health of local populations.

3.6 Migration and women

One of the criticisms of the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families is that it does not address the special context and vulnerability of female migrants (Nanda, 1993). This vulnerability is magnified where the migrants are undocumented. In part the vulnerability stems from the physical and social

isolation of many women migrants in their employment. While male migrants usually live and work with other migrants, women migrants often work in jobs, such as domestic service, where they have no contact with other migrant women.

Cox (1997) calls for a six point program to address the vulnerability of female migrants. While some of his points relate to the application of existing international conventions, he notes that governments at both origin and destination areas must exercise more control and supervision of migrant workers and this requires bilateral and multilateral agreements. This is supported by Shah and Menon (1997) who argue that these agreements should cover both short-term and long-term solutions. The short-term solutions should allow for the prompt repatriation of female migrants to their home countries where this is required to protect the female migrant from violence. Long-term solutions include those aimed at the sending countries in attempt to reduce the levels of undocumented migration of women, in particular those situations in which the migration is induced through misrepresentation.

3.7 Migrant Children

There are two types of migrant children: those who travel alone to destination countries and those who travel with their parents or other relatives. The latter are usually young children. Also, there are a number of newborn migrant babies in destination areas. In Thailand, a conservative estimate of 2,000 newborn babies from undocumented migrants annually has been made (Archavanitkul et al. 1997b). Most young migrant children living with their parents do not go to school as their parents status is illegal. They are not eligible to have access to public services in the destination countries. When the babies born of undocumented migrants grow up they are unlikely to be educated in any formal school. If the parents of migrant children remain in the destination countries for a long time, they will lose all contact with their homeland and become rooted in the culture and language of their country of destination. After they grow up they may feel alienated in both their parents home country (if they return) and in the country where they were raised (Archavanitkul 1998a). Migrant children are most likely to end up later in life in following the path of their parents and becoming undocumented migrant laborers. They are easily coerced and trafficked since they lack stability.

The following are suggestions about how to give support to migrant children: (a) Migrant children should be under protection of the Rights of Children. If a child migrant who live alone will be repatriated, while waiting for deportation, they should be kept in a shelter, not a detention camp. (b) If a child migrant has to have their case processed through the courts, there

should be a mechanism to treat them as children, not adults. (c) Develop mechanism locally, regionally and internationally among government organizations and NGOs to provide services as health, education, social service, entertainment, recreation etc., to improve the life conditions of child migrants. This will help migrant children adapt, integrate and assimilate to the destination they live. (d) Migrant children who are induced, deceived, or abducted by traffickers should receive emergency care as well as physical and mental rehabilitation. There should be a coordination to search for their families and return them back safely. (e) Re-integrate children back to their families with a supportive process in both origin and destination countries. This would guarantee that the children will be treated as humans and that their rights are protected.

3.8 *The stateless*

There is very little research on the stateless in Asian societies. Yet, the stateless are believed to consist of very large numbers. In addition, because they are not accepted by any state they are not protected by any country. Therefore they are at high risk of exploitation and their rights are often abused. Many of the stateless consist of ethnic minorities who live in border areas. For centuries, they have moved between countries, without knowledge of, or concern for, borders. Other persons who may in some circumstances be considered stateless include the children of undocumented migrants or undocumented migrants who, while clearly originating from a country, might not be accepted as a national for various reasons by that country.

The stateless, live in a legal limbo. Ideally, there would be mechanisms in place that clearly identified the nationality and assured acceptance of that person by the host country. In the short-term, in the absence of such mechanisms, there needs to be systems put in place that allow the stateless to obtain legal recognition and protection in their places of current residence. For instance, as proposed by GAATW (1997), if a person is not recognized as a citizen by the country of origin for any reason, the country of origin must consider on the balance of probabilities whether that person was born in and/or spent most of her/his life in the country of origin. If the country of origin will not accept that person, the country of destination must treat her/him as a national of that country under the Convention on the Status of the Stateless Persons (1960).

3.9 Promotion of development

It is well recognized that migration between countries of the region is fundamentally tied to differences in levels of development among the countries. As Massey and others (1994) note, international migration is a product of the interplay between individual aspirations for a better life and structural forces that lead to unequal development. Movement tends to be self-perpetuating as social networks developed through migration lower costs, and hence risks, of further migration. One of the main actions that can be undertaken by governments to reduce emigration pressure from poorer countries is the provision of aid and the encouragement of private investment in course countries.

One question that should be addressed by Governments in the region is the extent to which migration concerns should be taken into account in decisions related to bilateral and multilateral aid. As noted by Martin and Miller (1996), the relative ease with which the European Union has been able to address issues on movement between countries of the EU has been a result largely of the similarities of economic development among countries of the EU. Among ASEAN countries there are very large differences in economic and demographic structure¹⁵ that have produced and sustained large flows of undocumented migration. The structural imbalances will continue to generate movement as long as they remain. Martin (1996a) states that a combination of aid and cooperation and on trade and investment policy are essential to help deal with labor flows.

Development assistance, however, is a long-term solution. In the short-term such assistance can have an effect on migration that is opposite to that planned – promoting rather than deterring migration. This can occur because of increases in aspirations in the absence of widespread employment opportunities. Development aid or investment that does not generate employment will not stem the flow of migration. There needs to be regional cooperation that links issues of regional economic development to issues of migration.

¹⁵ Variation in demographic structure is often overlooked as a factor contributing to undocumented migration among countries of the region. However, as Hugo (1998) notes, differences in growth rates are an important factor underpinning migration in the region. As population structure can be accurately predicted, in the short-run, this provides an ideal opportunity for co-operation between countries of the region to project and plan for meeting labor needs on a cooperative basis.

4. Regional action for managing undocumented migration

The review of literature and country experience provided in the previous section, combined with policy recommendations from three workshops,¹⁶ results in a number of short and long-term strategies/issue for managing undocumented migration that we recommend be discussed at the regional level.

4.1 Short-term strategies/issues

Regional collaboration among countries involved:

- (a) Strengthening the commitment between origin and recipient countries for the protection of the social and economic rights of migrant workers in the country of destination. (both legal and undocumented).
- (b) They should be an agreement of countries not to criticize each other but to share burden and responsibilities. In practice, a 'focal point' should be established in every country and be in charge of issues of transnational in and out-migration and problems of undocumented migration. This system could serve as a mechanism for collaboration bilaterally or multilaterally and is strongly recommended.
- (c) There is a need to find strategies at the regional level to take care of people who are not accepted by any country. There should be a strategy to identify the nationality of a person. This could be undertaken at a bilateral level with help of international organization.
- (d) There should be a review and amendment of laws and trial procedures so that victims of trafficking, and/or forced labor and slavery-like practice can remain in the destination country during the period of their trial.
- (e) Regional measures for the prevention of human smuggling and trafficking are urgently needed. The most urgent issue is to create measures in origin countries to stop trafficking in children and women for any purposes.
- (f) Countries should cooperate in addressing basic research questions, such as the contribution of migrants to both sending and destination countries, labor force projections and plan to balance

¹⁶ The workshops consisted of a regional workshop on migration policy organized by IPSR in Bangkok and Hua Hin, Thailand in May, 1998 and Thailand workshops organized by IPSR on January 20 and February 22, 1999.

labor supply and demand on a cooperative basis among countries in the region, and linkages between labor policy and migration policies.

Strategies to deal with undocumented migration:

- (a) Undocumented migrants are not criminals. Human rights of the migrants need to be respected. Regional cooperation to ratify and apply existing international agreements on migrant rights is urgently needed.
- (b) Greater and more serious effort should be made in regularizing flows of undocumented migrants. In origin countries, this can be done by encouraging migrants to be documented such as granting them greater benefits and incentives to seek documentation and simplifying procedures for documentation. Monitoring and accountable mechanisms of procedures should be established in order to fight influential figures, official corruption and misuse of authorities' power.
- (c) Deportation of the undocumented migrants must be on voluntary basis. Repatriation has to be undertaken safely and quickly. Mechanisms to secure employment for migrants on their return should be identified.
- (d) In the case of undocumented migrants/trafficking victims travelling through transit countries and ending at any destination country, when being sent back, they should be sent from the destination country to the sending country directly without having to go through their transit country.
- (e) Greater efforts should be made to recognize the roles of NGOs and international organizations by strengthening cooperation between GOs, NGOs and international organizations in assisting undocumented migrants. Both NGOs and international organizations are usually willing to provide support to migrants who encounter various problems, such as difficulties of accessibility to public services. Their current activities provided to migrants in many countries include – necessary information for registration, basic health services and information (especially issues concerning HIV/AIDS and birth control methods), informal education for migrant children, rescuing trafficked victims or forced labor and providing a shelter for them, support before repatriation, coordinating with other NGOs and government agencies, and conducting research.

4.2 Long term strategies/issues

- (a) There should be a regional organization, that is established to coordinate issues related to migration, particularly undocumented migration. Any issues of concern regarding undocumented migration could be raised and discussed within the context of this body. The organization should gather information on undocumented migration and associated policies, and coordinate and integrate national approaches to migration. The organization should identify the specific responsibilities of sending, receiving countries and transit states in relation to undocumented irregular migration. It could provide a forum for discussions working towards the adoption of a common standard for monitoring migration flows in the region.
- (b) There should be discussion between governments about importing/exporting workers to eliminate brokers cheating workers, reduce the burden of costs on workers, and hence reduce the extent of undocumented migration. Where and whenever possible, recruitment of workers through government to government agreements is recommended.
- (c) There should be an agreement to study issues associated with the responsibilities of employers in employing migrant workers.
- (d) Strategies that work towards the free flow of labor in the ASEAN region should be developed.
- (e) Fostering increased socio-economic and political development for all in the country of origin by all mechanisms in order to slow out-migration. Efforts to reduce both demand-pull factors in countries of destination that encourage immigration as well as to reduce supply-push factors in countries of origin. Closer and sincere cooperation between sending and receiving countries could reverse the increasing trend of undocumented migration.
- (g) Strengthening the economic system and providing technical cooperation in the region is highly recommended.

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Appendix A. Definitions of Trafficking in Women and Children

Various definitions are currently in use to describe trafficking in children and women. The definitions are similar in general, but contain different focuses and/or approaches. However, the UN Special Rapporteur on Violence Against Women stated in her report (1997), after assessment of international standards and definitions on trafficking in women and children, the urgent need to reformulate international standards and to develop a clear definition covering all forms of trafficking in women and children. As the women's movement is deeply divided over this debate, straightforward definitions and answers are not yet at hand. The following are examples of definitions used by some international organizations.¹⁷

1. UN General Assembly:

The illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labor, false marriages, clandestine employment and false adoption.

2. GAATW (Global Alliance Against Traffic in Women)

Trafficking in women refers to *'all acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion'*.

GAATW distinguishes trafficking in women from forced labor and slavery-like practices, the latter being defined as *'the extraction of work or services from any woman or the appropriation of any woman by means of violence or threat of violence, abuse of authorities of dominant position, debt-bondage, deception or other forms of coercion'*.

¹⁷ Excerpt from unpublished document of ILO/IPEC prepared by Trafficking Programme Section 1, 1997.

3. IOM (International Organization for Migration)

Any illicit transporting of migrant women and/or trade in them for economic or other personal gain. This may include the following elements:

- Facilitating the illegal movement of migrant women to other countries, with or without their consent or knowledge;
- Deceiving migrant women about the purpose of the migration, legal or illegal;
- Physically or sexually abusing migrant women for the purpose of trafficking them;
- Selling women into, or trading in women for the purpose of , employment, marriage, prostitution or other forms of profit-making abuse.

4. Focus of ILO (International Labour Organization)

For the ILO, the issue of exploitation not only addresses those who profit from the sexual exploitation of girls and women but that it also includes *trafficking for the purpose of domestic labor, and other forms of work and service*. The focus of ILO/IPEC with regard to trafficking in children is on *children below 18 years of age*, as specified in ILO's Minimum Age Convention 138 (1973).

ILO's Approach: Many organizations have developed different strategies to combat trafficking in children. At least five different perspectives can be identified on the issue: (1) a moral problem; (2) a problem of organised crime; (3) a migration problem; (4) a labor problem; and (5) a human rights problem. From ILO's perspective, trafficking in children is seen in the context of exploitative forms of child labor, ILO approaches trafficking in children as a labor and human rights problem by applying respectively Conventions 29 and 138, and the Convention on the Rights of the Child (CRC).

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