

**3Dr. Alfredo J. Ganapin Advocacy
Forum 1, Series 2007
(Year 3)**

**The ASEAN Declaration
For the Protection and Promotion of the
Rights of Migrant Workers:
What's Next?**



Center for Migrant Advocacy

**February 22, 2007
Balay Kalinaw, UP Campus
Quezon City**

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Executive Summary

Last February 22, the Center for Migrant Advocacy (CMA), in partnership with the Migrant Forum in Asia (MFA) and Friedrich Ebert Stiftung (FES) held a forum on **“The ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers: What Next?”**

The Forum held at Balay Kalinaw, UP Diliman, Quezon City was the first installment of CMA's 2007 series for the Dr. Alfredo J. Ganapin Advocacy Forum.

It drew the participation of ? high-level representatives of Government agencies, as well as leaders and members of migrant groups and advocates.

In his welcome remarks, CMA Board Chair Mr. Noel Esquela hailed the ASEAN Declaration as a positive statement of intent by ASEAN countries on migrant workers because it:

1. recognizes migrants' contributions to the societies and economies of ASEAN countries;
2. affirms the ASEAN countries' commitments to human rights;
3. affirms the ASEAN countries' need to address abuse and violence committed against migrant workers, and;
4. commits to promote decent, humane, productive, dignified and remunerative employment for migrant workers.

Mr. Esquela, however, cautioned that we must recognize that the Declaration is a non-binding document. He explained that its provisions are subject to existing national laws and policies on migrant workers in each of the ASEAN member states. It also limits its scope to only documented migrants and their families who are already residing within their respective jurisdictions.

Still, the Declaration is a push forward, according to him, because it introduces a useful instrument with which we can

further advocate and sustain vigilance in monitoring state legislations and practices.

He said the Declaration raises fresh questions and challenges, notably:

1. How we should view it, given the ratification by ASEAN countries of UN instruments on the protection of migrants;
2. What challenges this view poses, given the ASEAN countries' record in promoting and protecting human rights, particularly those of migrants;
3. How to make the Declaration relevant to our advocacy work for migrants, and;
4. How to use the Declaration in our lobby for national legislation that will promote and protect the rights and welfare of migrant workers.

Mr. Esquela asked participants to address these questions in the hope that the ASEAN Declaration may become a truly responsive and potent regional, state and civil society instrument of reform and hope.

CMA Executive Director Ms. Ellene Sana presented a forum backgrounder where she explained the state of affairs in the ASEAN on migration, human rights and migrants' rights.

Ms. Sana also cited other ASEAN initiatives to address the issue of migrant workers: Transnational Crimes, Declaration on Illegal Migration, Trafficking; ASEAN Vision; the Bali Concord, Vientiane Action Program Plans; and ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

She also explained how ASEAN member countries fared in terms of their commitment to UN Human Rights and Migrants Rights Conventions such as the Migrant Workers' Convention, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and various ILO Conventions to protect migrant workers.

Hon. Ambassador Rosario Manalo, Chairperson of the High Level Task Force on the ASEAN, welcomed the declaration as a positive initial step, despite its minimal objectives and non-binding arrangement. She added that the declaration shows a desire to address certain aspirations. Ambassador Manalo, however, stressed the need to go beyond platitudes.

Ambassador Manalo cited one weakness of the declaration: it does not address undocumented migrants and the rights of unskilled migrant workers. She said that freedom of movement of people is a basic issue in the ASEAN region. One of the major push factors for mass labor migration is poverty, according to her. She also lamented that governments failed to comply with their commitments to the Millennium Development Goals; masses of people remain poor.

As a next step after the Declaration, she proposed that ASEAN work for a regional treaty or convention on migrant workers. She also proposed the creation of a regional judicial settlement mechanism to go with the regional convention or treaty.

Finally, she mentioned that during her term as CEDAW chair, the CEDAW Committee drafted General Recommendation 27 (GR 27), a comprehensive provision to address protection of all women migrant workers. While the GR27 was supposed to be incorporated in the CEDAW, the Committee has yet to adopt the draft GR. She stressed, however, that all 10 countries of ASEAN have already ratified CEDAW.

As Ambassador Manalo's had to leave for another appointment, a short open forum immediately followed her presentation.

Department of Foreign Affairs Assistant Secretary Luis T. Cruz, Director General for ASEAN Affairs, began by saying that forging the declaration was a very difficult process.

As a general statement, he said that migration is not a policy of the Philippine government. He added that:

1. Tripartite efforts are needed to create economic opportunities in the Philippines;

2. Government efforts should be directed in protecting and promoting the rights of migrant workers through bilateral, regional and multilateral negotiations, and;
3. NGO advocacies should complement government efforts in this area.

Assistant Secretary Cruz then made a brief presentation on the Declaration itself, citing its legal basis, its acknowledgements, general principles, the obligations of sending and receiving states, as well as the commitments by the ASEAN.

He ended his presentation with the following recommendations on how NGOs can maximize the ASEAN Declaration:

1. General Principles
 - a. Propose measures to implement program areas dealing with migrant workers under the Vientiane Action Plan
 - b. Conduct specific area studies on migrants
 - c. Organize or participate in conferences on migrant issues
2. Receiving States
 - a. Lobby parliaments to enact laws to protect rights of foreign workers
 - b. Conduct training programs to upgrade migrant workers' skills (including language);
 - c. Encourage formation of, or membership in, migrant workers savers clubs
 - d. Empower migrants through seminars on local laws (immigration, police, family laws) in coordination with lawyers' associations
 - e. Engage local human rights commissions to cover the plight of migrant workers in their advocacies
 - f. Involve embassies or consulates in their advocacies
3. Sending States
 - a. Conduct seminars on business opportunities for returning migrants and/or their families

- b. Advocate the judicious use of migrants' remittances among families left behind
- c. Encourage governments to generate local employment
- d. Encourage governments to streamline laws, guidelines and procedures on the deployment of overseas workers
- e. Report the illegal activities of recruiters and traffickers

4. Commitments by ASEAN

- a. Take active interest in the work of ASEAN bodies dealing with the promotion and protection of human rights
- b. Share research findings or information on migrants with appropriate ASEAN bodies
- c. Seek the support of international bodies in advancing the cause of migrants

Mr. William Gois, Regional Coordinator, Migrant Forum in Asia, argued that the ASEAN declaration was an instrument to reinstate old issues and concerns on migration in the region. He noted that even after the declaration, Malaysia continues with its massive deportation and crackdown against undocumented migrants, even having gone to the extent of questioning the presence of the office of the United Nations High Commissioner for Refugees (UNHCR) in that country.

He said the same situation prevails in Thailand, where authorities routinely launch repressive actions against people crossing the Thai-Burma border.

Mr. Gois said that the Declaration overlooks the issue of family reunification. It is also silent on the issue of migrants' right to health and access to medical services, he added. While the Declaration spoke of rights, he said the right to organize and form unions was also absent. The Declaration was also unclear, he said, in terms of who it referred to as "migrant workers". He queries whether it refers to migrants of ASEAN nationalities or to all migrants in the ASEAN territories.

As challenges at the regional level, William offered the following approaches:

1. Create a position of Special Rapporteur on migrant workers rights that, for one, can receive reports on cases of migrant workers;
2. For NGOs to submit "shadow reports" to the Special Rapporteur and to the ASEAN Secretary General;
3. Strengthen and take to task the ASEAN Council of Trade Unions in terms of addressing the migrant workers' agenda;
4. As a strategy, for civil society groups and migrant rights advocates to work outside the Declaration, even outside the ASEAN working group, and look instead into the ASEAN Charter itself.

Another open forum followed after the presentation of the two other resource persons.

In his closing remarks, FES Resident Representative Mirko Herberg said that the issue of migrant workers is a test case for ASEAN. He challenged the ASEAN to take the rhetoric of community-building seriously.

Mr. Herberg further observed that the issue of migrant workers will now force ASEAN to look at itself as an entity in order to find win-win situations for the people of the region.

On the Declaration itself, he agreed that it is only the beginning of a process. It states rights and obligations, but it needs to go on.

For the integration process, he said it is natural to start with sectors and skilled workers because of the interest of both sending and receiving countries.

Mr. Herberg ended by saying that there is still a lot to do and a long way to go. This, he said, is a gradual approach; it will not satisfy the urge to improve the situation of migrant workers immediately.

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Welcome Message Noel Esquela Chairperson, CMA Board of Directors



Hon. Ambassador Rosario Manalo, Chair, High Level Task Force on the ASEAN

Assistant Secretary Luis T. Cruz, Director General for ASEAN Affairs, Department of Foreign Affairs

Mr. William Gois, Regional Coordinator, Migrant Forum in Asia

Representatives from the Philippine government agencies on migration, from the Congressional committees, from the ASEAN advocacy and civil society organizations, the media and the academe:

Good morning and Welcome to the first of the 2007 series of the *Dr. Alfredo J. Ganapin Advocacy Forum (Year 3): "ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. What's Next?"*

Dire causes, painful questions, sustained advocacies, remedial measures and legislations, no matter how inadequate, is a cyclic process that never ends, for so long as it is humans who must suffer the inadequacies and for so long as states have the

means to address them. It is also a hopeful process, for so long as commitment remains alive and response and action are forthcoming.

The heads of state and governments of the Association of Southeast Asian Nations (ASEAN), at its 12th Summit on January 13, 2007 in Cebu City, adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Declaration).

On one hand, we welcome the Declaration as:

- a positive statement of intent by ASEAN countries on migrant workers;
- it recognizes migrants' contributions to the societies and economies of ASEAN countries;
- it affirms the ASEAN countries' commitments to human rights;
- it affirms the ASEAN countries' need to address cases of abuse and violence against migrant workers, and;
- it commits to promote decent, humane, productive, dignified and remunerative employment for migrant workers.

On the other hand, we must recognize that the Declaration:

- is a non-binding document;
- whose provisions are subject to existing national laws and policies on migrant workers in each of the ASEAN member states, and;
- limits its scope to only documented migrants and their families who are already residing within their respective jurisdictions.

However, the Declaration is a push forward. It introduces for us a useful instrument with which we may further advocate and sustain vigilance in monitoring state legislations and practices.

As well, it raises fresh questions and challenges.

- In what context may we view the Declaration in light of the ASEAN countries' ratification of the various UN Conventions on the Protection of Migrant Workers and the ILO Conventions on Migrant Workers?
- What challenges does that view pose for all of us in terms of the various states' commitment to and record on the promotion and protection of human rights, both as a general proposition and as an endeavor specific to migrant workers and their dependents, documented or otherwise?

Keeping in mind that the CEDAW and the Convention on the Rights of the Child are two instruments most ratified by ASEAN member nations, might we now, for example, take this Declaration as an imprimatur on a concerted ASEAN push for the for CEDAW Committee's adoption of the General Recommendation 27 that reaffirms and reinforces all the rights of women migrants?

- How do we make the Declaration relevant to our advocacy for the rights and welfare of the migrant workers?
- How do we utilize the Declaration in our lobby for national legislations that promote and protect the human rights of migrant workers?

We ask you to address these questions in the hope that the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers may become a truly responsive and potent regional, state and civil society instrument of reform and hope.

The **Center for Migrant Advocacy**, the **Migrant Forum in Asia** and the **Friedrich Ebert Stiftung** welcome you to this forum.

Background and Introduction
Ms. Ellene Sana
CMA Executive Director



Let us look at the migrant stock¹.

According to the United Nations data of 2005, the ASEAN countries are both receiving and sending countries of migrant workers. So, the red one here is Singapore, a recipient of many migrant workers. You can also see Malaysia as the other ASEAN country that hosts the most number of migrant workers. The yellow one is Thailand. The Philippines is also host to a few migrant workers (like William here, and the others) but very small compared to the migrant stock in the other more developed Southeast Asian countries.

Next, in terms of the percentage of population, it affirms the same figures: Singapore is reaching almost 45% of the population. The green one is Vietnam, and Brunei, I think is the other one. Burma also has a significant stock.

In terms of remittances, and this is of course for many of the states in Southeast Asia, the more important question is how much of the remittances go to their respective countries. In the Philippines, of course, we all know that in fact that it was US\$12 billion in 2005; but, as of last year, it was already US\$14 billion, coming from the formal channels. If we factor in

¹ Please refer to Ms. Sana's PowerPoint presentation (Sana PPT), Slide Nos. 2-3, pp. ? - ?

those that were not sent through the banking channels, then we expect to have a lot more than just the US\$14 billion.

In terms of percentage of GDP, there is a proportional increase, that is, as high as 10% of the GDP is attributed to the remittances of overseas migrant workers.

In terms of ASEAN initiatives, the Declaration wasn't the first one for the ASEAN to address the issue of migrant workers. We have all these other initiatives by the ASEAN: the ASEAN Declaration, Transnational Crimes, Declaration on Illegal Migration, Trafficking and the like. This is by way of contextualization because it's not a sudden thing that we have a Declaration on Migrant Workers. We also have the Bali Concord, the Vientiane Action Program Plan and, finally, early this year we had the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Now, let's see how they fare in terms of the commitment to international human rights instruments.

This is the record of the ASEAN member countries in terms of the ratification of UN Human Rights Conventions, Migrants Rights Conventions. As affirmed by the Declaration, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are two UN conventions ratified the most by the ASEAN countries. Except for Brunei that did not ratify yet the CEDAW, all 10 countries of ASEAN ratified the CRC and CEDAW.

On the Migrant Workers' Convention, it was only the Philippines that ratified it in 1995. Indonesia already signed in 2004, and Cambodia as well. The rest haven't signed the Migrant Workers' Convention.²

In terms of the ILO ratification, this is the status of the ASEAN countries: again, the one that is relevant especially to the receiving countries – ILO Conventions 97 and 143 – these are the Migrant Workers' Conventions that promote equal treatment of migrant workers in the other countries. Only the Philippines ratified the two conventions (97 and 143), and it

² List of Conventions: See Sana PPT, Slide No. 13, p. ?

was only last year in the beginning of 2006. Then, note that there are two countries that ratified and then later renounced their ratification: Malaysia, which ratified ILO convention 105 and later renounced it, and Singapore that also ratified Convention 105 but later renounced it. The one that they ratified and then renounced later on was the Convention to Eliminate Forced Labor.

Very briefly, that's the ASEAN state of affairs on migration and human rights and migrants' rights.

Now we are very happy to have short inputs from our resource persons and we thank them for having been able to make time for our forum this morning. We will change the presentation sequence because Ambassador Manalo has to leave early for her class. We will have Amb. Manalo first, followed by Assistant Secretary Luis Cruz; then we'll hear the migrant workers' perspective from the MFA.

Ambassador Rosario Manalo is now a member of the High Level Task Force on the ASEAN. Our relationship with the Ambassador Rosario Manalo, as far as migrants rights are concerned, dates back to three years ago. Before she was involved with the ASEAN, she was the chair of the CEDAW. It was under her term that there was a proposal for a general recommendation in CEDAW to address comprehensively the issue of protection for women migrant workers. It was she and Oyie Javate and her colleagues who inspired us, the migrants' rights advocates, to look closely at how we can use in our migrants' rights advocacy the CEDAW Convention, ratified mostly by nation-states, instead of relying primarily, for example, on the UN Migrant Workers Convention, otherwise ratified by sending countries only.

So with that, we'd like to request the Ambassador to give her thoughts on the post-summit Declaration and how we can be inspired, as civil society organizations, into further engaging the ASEAN in our advocacy for the promotion of human and migrants' rights.

Ambassador Rosario Manalo
Chairperson, High Level Task Force on the ASEAN



Thank you very much, everybody. Thank you, Ellene, for your kind introduction. I was very interested in the statement made by Mr. Noel Esquela, which is really very substantive -- brief, but straight to the point.

First and foremost, let me say that it's the story of my life that I am always called into seminars like this at the last minute. And I'm sorry, but I have not come prepared. What I will tell you is stock knowledge of what I have with respect to the fight I've been doing for migrant workers, particularly women migrant workers.

Secondly, the little experience I can share with you now with respect to what we're doing with respect to the ASEAN charter. Perhaps with some insights given to you on what we're doing on the Charter, you could come up with some stronger recommendations over and above what I could suggest to you.

First, of course, a declaration is a statement of intent. It is an aspiration, and it stays there. It's a lot of what they call "platitudes", "good dreams". But there has certainly got to be more than a declaration. It's good to start with because, in effect, there is recognition of whatever they state there, and a desire to address whatever the aspirations and the problems.

But, certainly, to be able to protect the migrant worker even more so in concrete terms, we have to go beyond the declaration.

In fact, the declaration I have seen in just this brief look-see, prepared in fact by Assistant Secretary Cruz, who is going to make a presentation, I can already see some weaknesses; the declaration does not address the issue even with respect to regularization of undocumented workers. But this shows one thing: the movement of our migrants, particularly the perspective given to us by the receiving states, is that we will only take care of skilled regular workers; the rest can disappear.

That is the message I can read here. They don't want to address what the issue really is. The most fundamental issue: if we are going to have freedom of movement of people in what they perceive in the future as an ASEAN community, particularly the so-called "caring and sharing community", where is the caring and where is the sharing? I would like to know that in concrete terms, not in the bla-bla-bla caring. Sure, everybody cares and shares, but show me in concrete terms what you will do in the caring and the sharing.

The other point I'd like to say is that this is one of those ways of failing on the part of the receiving states in the ASEAN to comply with their commitment to the Millennium Development Goal of the United Nations which addresses, number one, to fight poverty. The Millennium Development Goal states, by 2015 we must see that we can cut into half (an admirable ambition,) to halve poverty in the whole world.

Where do you really find poverty? It's these people who come and migrate, unskilled and illegal, yet the receiving state does not want to address that issue. If you're not, as a receiving state, going to address that issue, where is your commitment to eradicate poverty by one-half? They are the real ones in poverty.

So, between the receiving state and the sending state, the two must discuss the issue. Let's forget those already being taken care of in some way. The ones that are not being taken care of – unskilled totally and illegal – what are we going to do about them if you keep ignoring the situation they are in, or if you

keep on? I will ask the receiving state saying, "we don't bother with the illegals; we will not accept them".

Then, we're not addressing the issue. That's evasive, you know. So, again, this Declaration, the Declaration as it is, is even one step backward because it is not addressing the most fundamental issue: the poorest of the poor, as I would say, those who are really hopeless. And we don't address it, so poverty is still there.

In the eradication of poverty, amongst many other things that can be done by states is to see that they have freedom of movement. They can find jobs wherever in that space we've created in the 10 ASEAN member states, particularly in that space where they have the capacity to receive, but they do not want to do it.

As is always the case, the receiving state will invoke the prerogative of the state to exercise its sovereignty, but that's exactly the point, you're begging the question. It's your prerogative to exercise it, but truly, why will you not exercise it toward seeing how to alleviate the situation of the poor? I mean, you throw it back to them. This is what I've seen of this Declaration so far.

The other point I'd like to say is that you are coming to look at steps to move forward with respect to the Declaration. You must have a vision. Your ultimate objective is to have what? I would think you should be having eventually a treaty or a convention on the movement of migrant workers in the region, because a declaration is non-binding.

A treaty or a convention will be binding, which means definitely obligations have to be carried out nationally, with laws and policies that will be implemented. It may be a difficult step forward; this was very difficult to get negotiated. One state, I understand, was Malaysia. It was very reluctant, and I'm not surprised, because when I went to SCAP and we had discussions with them, Singapore had opened a door; it was prepared to do so. But Malaysia has constantly been saying no, particularly to Indonesian migrant workers. So that is one suggestion I would have: take this for what it is; it's a mere declaration. It's not even a declaration that is maximum; it's a declaration that is minimal.

The next step is, it's not addressing the poor, the really poor. What are you going to do about it? You should be using that in all of your arguments. I will not look into those who are being taken care of here; it's up to you. I will not touch on that. It's here, you will have to enhance it. What I want you to look into are the ones who are not here: why are they not included?

This should be addressed because, again, we will still have people who are left out and these are the poorest and the biggest section/sector. The biggest quantity of illegal, unskilled people, migrants at that, are not being addressed by the convention. The second step, ultimate vision, has a regional convention.

Now, in the process that we are developing the ASEAN charter, (and the charter will be a convention, a treaty,) we have the third community which is the caring and the sharing community.

Eventually, we envision the setting up (hopefully, if we can,) of a court of arbitration or a regional judicial court to address in the ultimate way all issues concerning whether it be the state or the individual accepted by the state for a final settlement. If you have a convention on migrant workers, and those conventions are eventually adopted by the 10 members, (which will be a long process, but you will have to do it,) and then a case arises, (and *[assuming]* we have eventually set up an arbitration settlement mechanism or a judicial settlement mechanism,) that could even be another way of enhancing the situation of migrant workers. It is a long process, it's a vision, but it's got to get there. Otherwise, we're just playing a game; we're just going around in circles.

There must be a definitive settlement mechanism to protect the rights of all individuals, in this instance, the migrant workers. If we have that, we will be enhancing the security, safety, and the rights of the migrant worker.

The third is that, in my participation as the chairperson of the CEDAW, (I have completed my term,) I served in the Committee on the Elimination of Discrimination Against Women, the human rights of women, for eight years. I served

for two years as vice-president of that Committee in Asia-Pacific, and two years as president of the Committee.

During my incumbency, unfortunately, the process inside the UN for the adoption of the recommendations could take more than two years, as it is the general recommendation concerning the rights of women within the Convention. I have not been in touch yet with the committee, (I've been so busy in the region,) but that general recommendation, so flawed as it is, is still a law. It calls for all state-parties for the convention,... and by the way, the 10 member countries have ratified the Convention, CEDAW... The 10 *[ASEAN state-parties]* have called for protecting migrant women workers within the Convention itself. And there are specific provisions there that will protect the women migrant workers. The provisions with respect to women migrant workers are there. The provisions with respect to employment are there. It is as specific as you would wish it to be, and is uplifted by the ILO Conventions you have enumerated.

Then, there is the protection of the health of migrant women, the protection of the right of women to assemble, to exercise their political rights as migrant workers. She may be able to exercise and have the freedom to express her views and protest the way she is being treated.

There is also the right to be educated, to receive training, the right to associate and to bring about non-government organizations to help pressure the host government. That is sanctioned by the Convention, our convention on women.

[There are] rights that she enjoys - civil rights, family and personal rights - under the laws of her country which she could invoke and say, "I'm sure the host government has similar laws and, perhaps, those laws could be evaluated and they could be equally applied to me."

"My civil rights," (meaning the rights as a wife, the rights as a mother,) could help call for the joining of the spouse, the joining of the children. The host government may also be having laws on how to protect the family that is *[equally]* applicable to them. Why can they not look into the situation of migrant women who equally are human beings like their *[own]* women, and who need their spouses and their children with them?

That could be invoked, you know. There are many ways that the CEDAW Convention protects the woman. I'm sorry, it's the woman, it's not the male. But considering that there are a greater number of migrant workers who are women and who are the most abused more than the men, I think the priority should really be looked into. We should look into the situation of the woman, first and foremost.

I think that is all I can give for the moment. I don't like to go into details here. Honestly, I have not scrutinized the Convention³. Perhaps the little I have said could help you. I will be disposed to help you a little further next time.

You can come and call me and we can sit one afternoon, find a mutually convenient time to discuss some more things, so we can concretize the declaration into a more tangible and manageable *[one]*. This one is all platitudes; honestly, it's platitudes, but it's already a step forward. It's good we have it now. It almost wasn't passed. Remember, in Cebu I heard so many complaints from our negotiators. The Philippines kept pushing, and Indonesia and was that Malaysia?...

You have a declaration; it's already a step forward. So, thank you very much for listening to me and for inviting me this morning.

Thank you.

³ *[ASEAN Declaration]*

Open Forum 1

Rick Casco, International Organization for Migration (IOM):

Of course, I am a fan of Ambassador Manalo. Last year I was with The International Labor Organization (ILO), if you remember. Now I'd just like to take this chance that the Ambassador is here because, certainly, I share all her views.

One of the concrete challenges now when it comes to the Philippines is the aspect of domestic workers.

Everybody knows the Secretary of Labor has been introducing some reforms, particularly on training, on wages. In the recent days, I have heard from the recruitment industry that Saudi Arabia is now again imposing that SANARCOM, the recruitment agencies of Saudis, must have to be the one taking the contracts of the recruiters of sending countries like the Philippines. Those recruiters cannot anymore go directly to the foreign employer.

Why is this to me significant? I have worked with the Philippine Employment Agency (POEA) for 20 years. I have seen the Department of Labor and Employment (DOLE) attempting to do these kinds of intervention several times, and every time that there is this intervention, I would certainly notice receiving countries, the major recipients of domestic workers, retaliating, in a sense, by making it hard for the other types of workers to be facilitated in their movement for employment. Now, the legitimate recruitment agencies in the Philippines are certainly affected, and our workers who are not domestic workers are threatened.

Now, given that there is this instrument, I wonder how this⁴ can be useful, because it says in one of the provisions here that even concerns of their workers outside the ASEAN will have to be worked on by the sending countries.

I certainly am aware that Indonesia is very much in line with the way the Philippines is doing some lobbying with receiving countries, but how do you think this instrument

⁴ *[ASEAN Declaration]*

can be used by the Philippines to have allies with at least the sending countries in the ASEAN?

To assert that some effort of the country like the Philippines is really being done to show that we also have certain positions of strength, but all the time that we assert this, the bigger countries will push us to a situation where we could lose this position of strength that we are asserting.

I don't know your opinion, Ambassador, about this situation.

Ambassador Manalo: First, let me say that when I try to look at the ASEAN set-up, I think there are three countries that are truly sending countries, and those are the Philippines, Indonesia, and Cambodia.

I do not look at Vietnam as a sending country; they may have migrants, but not to the extent that we have. Because it's now really surging up, improving on her economy, and it could be. Take a good look, I'm not a sociologist; I don't study these movements as it should be done professionally, but I would think, by just some common sense, that if there is improvement in the economy in Vietnam, and there is, and there are more and more jobs, then perhaps there will be lesser moves outward of the people.

If you look at Thailand, it's also a state that is beginning to boom economically. This does not mean though when I say these things that there are no migrants; there are. But I'm trying to put a comparison of the extent of migration which in the case of Indonesia, the Philippines and Cambodia could be an exodus. Theirs⁵ is just a movement of some, speaking on a relative term.

So, if you say, what do we do to not lose the edge in the fight towards getting more concrete things, more effective accords, or more effective reactions from the receiving states of the region, there are only three of us. I think in the case of Malaysia, *[if]* Malaysia comes to that stage where it

⁵ [Thailand]

has finally put in place whatever it is trying to put in place the way Singapore has, they will be more open to receiving our migrants.

The whole issue there is it's not a question of losing the edge or what; it's a question of fighting together and being able to convince the receiving states in the region of the necessity to freely allow the movement of people of the region, throughout the region. Because we are working towards an economic space that will be open amongst the 10.

Amongst them will be people who are out to seek not only the exercise of their professions, (these are the skilled, the professionals,) but people who can do work with the limited skills which can be further enhanced as they move about.

Who would at one time ever think that domestic workers could now come forward and be turned into, what, the profession of a domestic worker in Europe. Profession. They have difficulty with European women workers because their fees are so high because they're now considered professionals. If I were a domestic worker in Europe, and I'm a European, I would demand things, etc. That's what they're trying to avoid.

So, a domestic worker should be given the proper training and demand the proper pay for the value of what she's doing, because she's a professional in her field. Convert manual labor into a profession, providing the individual with the capacity and the empowerment to say, "Oh, I may do manual labor, but what I can do, you cannot do! This is my profession."

That is one of the things I think should be inherent in the sending states, to see that we need education, and this is where the Philippines and Indonesia perhaps, and Cambodia are failing. You start with the education of the people. You give the education then they go to vocational training: that's what they want, that's what they can do, that's what their interest is. Why take it away from them? If that's what they want, give it to them. But where is it that the government is ready to give it to them? There's none! They're on their own!

Now, what you want is the edge? Forget it! We just join and do our fight. Try to find the commonalities amongst the three of us which we will constantly harp on and not give up until we get it. Perhaps that's one of those approaches: identify the areas and the sending states, we are complying with our responsibilities.

We have to demand and put pressure on the government to comply with its accountabilities to its people; that's a big thing. But it's got to be done. It's got to be done. But look at the state of education in the Philippines. Maybe family planning should really be effective; it's not effective. I'm one of those major advocates of family planning, in more ways than just the natural family planning. That's why the hierarchy doesn't like me...

Anyway, just find commonalities where you can, and be, what I would say, focused and consistent; stay focused until you attain it. It's a long, long process. It requires endurance, but we've got to do it! Don't give up. Go on fighting, fighting and fighting...That's the approach, I think.

It's not a question of having an edge. Maybe the edge could be that – I don't even call it an edge: the facility of the Filipino to identify areas where the problems are. Maybe that's an edge.

I will not try to diminish the capacities of the Cambodian people and of the Indonesian people; they are human beings who have intelligence and care. But, perhaps, we're skillful in trying to find out those things where we can fight together. That's one thing.

The other is, of course, I think our heads of state meet often enough now. Maybe it should also come from up, further up. If you can, as NGOs, address the heads of state, and the heads of state could talk amongst themselves, sometimes with the bureaucrats away, they are more at ease to open up. There are many things that are accomplished in the retreats, out of the view of everybody after listening to the NGOs.

Well, give and take does take place and if it's denied by any head of state against another state, they don't lose face, because nobody sees.

Maybe the other instrument is to go with a dialogue between heads of states, which is happening now at the ASEAN, which is very, very good. This is very, very good. I wish you to know that Cambodia has recently adopted a National Commission on Human Rights.

I also have to let you know that I think we did adopt the ASEAN Human Rights Commission. It's in the Charter, and we are fighting for it when we write it out now. *[It was]* among the concepts accepted by the heads of state, I was myself surprised, because I had gone to Cebu, when the discussions had already started and they were already closed. Then, when I finally sit down to preside in my first meeting of ASEAN Charter, I see there somebody who raised the issue: why is that character here? The ASEAN Human Rights Commission?

By the way, I would like you to know that it was the Philippines who insisted on that. How I played to get that forward. I thought it was dead; they killed it in Brunei. Finally, I told former President Ramos, "Sir, tell Madam to elevate the issue and open it at the higher level." So they opened it and closed by adopting it.

You see, that is an example. There were two or three countries opposed to it (I won't mention which). They really didn't want it. Surprisingly, President Ramos' Indonesian counterpart didn't like it. I was surprised. I thought, why would he oppose it when just 2 weeks ago, when we were negotiating, 24 human rights instruments were signed and ratified, according to Foreign Minister Wirayuda.

You have an Indonesian Commission on Human Rights, why are you opposing this? What's happening to you? So, we raised it again, those countries with CHRs worked together and talked to the others. It was a closed discussion, I don't really know what happened there, but it was adopted! See?

So, a dialogue with the heads of states would always be good. It's always good. That's another approach, aside from commonalities, no? I think for the moment that's all I could suggest. Don't call it an edge; they might not like the term. You can say, the skills, etc. Diplomacy is tricky; it's a sensitive thing. Any other questions? One more please, because I have to go, if you will forgive me.

Ding Bagasao, Economic Resource Center for Overseas Filipinos (ERCOF): We are trying to find the framework for trying to advance the human rights agenda of migrant workers, but we know also fully well that ASEAN is also focused on trade, the movement of goods, and trying to find, sometime in the future, a common currency.

My sense is that – I don't know, correct me if I'm wrong – perhaps, the question of moving the agenda of human rights might better be clarified if we also consider how we're moving on the level of the goods and services. Because we all know that migrant workers don't just go there to be tourists, you know. They are also used to prop up the economies of countries like Singapore, Hong Kong, and so forth.

Well, Hong Kong is not an ASEAN member country, but I mean, maybe when the requirements, as well as when the trade negotiators already see where they're going, it might be clearer: How do we deal with the status of the workers? What sort of migrant workers do we need for the different host countries, leading towards probably the identification of skills, more orderly movement of workers, and so forth?

Ambassador Manalo: Yes, indeed, of course. In fact, as everything progresses in ASEAN, even the treatment of workers will progress. You were saying about trade. The most that I can see at the way the ministers of trade have been talking and the economic ministers at ASEAN have been talking, actually the movement towards what we would call an eventual union is very far off.

It's just a vision because, when the debt really comes, you don't know, it may be already two generations ten feet under ground. We don't know. And who are the people, our people who will see what is best for them when that

time comes. In the meantime, the most direct approach on economics envisioned by the economic ministers in the ASEAN is to set up the economic community.

We asked them, "What do you mean by that?" At least, they said, up to 2015. We would like to set up and be an efficient free trade area amongst ourselves, meaning, the freedom of movement of people, goods and services among them, with no formal barriers, tariff and non-tariff, among the ten. Since I had this dialogue with them when I was assistant to President Ramos as the EPG, I haven't had a dialogue yet. Now, it's still coming.

I asked them, "All right, after 2015, what then? What do you have in mind after 2015? What do you have in mind?" They said, "We can only give you the answer when we see the results in 2015." In my studies of the European Union - and we are not modeling our set-up on the European Union; we use the European Union only as a reference - it depends on the history and the cultural set-up, and so many factors.

We cannot just copy the EU. In fact, the EU wants to learn good practices from ASEAN already. I said, "So, after that, what happens? Don't you envision an economic union, which means there'll be integration, supra-nationalism to a relative degree? And eventually, because it's only if you have an economic union, you will have a monetary union; you will not be able to adopt a common money like the European Union has, unless you have an economic union. Have you looked forward to that? Do you think it's in the interest of the ASEAN to do that? Are they willing?"

And their answer is correct: we'll know that when we reach the bridge. They cannot foretell; not yet. So, what they want to do is just a free trade area and a single market. How do you define a single market? It's a space of the ten where they can freely produce and invest and trade amongst themselves as one single space. That's all.

Now whether there will be intrusions from outside, (like you know the European Community economic community has set up a common tariff against the entry of outside products if they compete internally,) I could well raise the

issue: how will you do that with the GATT-WTO regime already on us? Will you be able to do it? That's why they said, we cannot answer that. We will see as we go in 2015. We have accelerated the establishment of the economic community from 2020 to 2015, because it seems that what we're doing seems to be moving quite fast.

When we reach that point, we don't know what else to do. But we do know that we have to do something. What that is, we cannot define it for the moment. Because also, the ambitions of the other two communities, diplomatic security and the caring-sharing community, they must all converge eventually to have what is envisioned, in quotes, the "ASEAN Union", the entire Southeast Asian community.

So, actually it's true, I will not argue with you that if we have further development of the economic community, there could be a better and improved treatment of our workers. It's true, because then there will be more empowerment of everybody. Everybody will be greatly empowered because there will be, perhaps hopefully, ideally, better ways of finding jobs, better professions, better sharing of opportunities, elevation of standard of living of the people, etc. But in the meantime, from the process here to there, we cannot neglect the workers we're focusing more on. Thank you.

William Gois, Migrant Forum in Asia: One of the issues that I was going to raise was the question of, within the ASEAN community now, this so-called question of stateless children. I have heard that the opposition to this is that there is no such thing as "stateless children", and I am talking about this in the context of unskilled migrant workers who are in the traditional flows, children born out of mixed marriages of host and sending countries.

In cases where there is no documentation of birth or registration of birth because of being undocumented or in remote areas, *[there is]* this whole question of which state recognizes them as citizens of that state. This is a big issue that is currently being researched now by many in the academe, so I'd like to know your position on that.

Ambassador Manalo: It's very simple: I would not like to have stateless children. They should be provided with all protection. The Philippine approach in its laws, if I remember my conflicts of laws cases, never should a Filipino be without a state. That's why our laws ensure that they should always be Filipinos, until and unless the other side is ready to receive them and give them citizenship.

If that goes for the adult, then *[all the]* more reason for the child. But even without the laws, my own views, my own conscience dictates to me: how can you have a child stateless? How? That child must have a citizenship. I have not studied this issue in depth; I don't know how to go about it as yet but, certainly, if we will have to study that, I'd like this to be a part of that study: How did the child become stateless and what do we do so that such child is protected? That child must be protected with a state and its citizenship. It cannot float like that forever.

**Assistant Secretary Luis T. Cruz
Director General for ASEAN Affairs
Department of Foreign Affairs**



Good morning to everyone. Thank you for inviting me. I'm glad to be here and, like Ellene said, I'm new to this forum, but the issue of migrant workers is not entirely new to me. I have lived and breathed this issue ever since I joined the Department of Foreign Affairs (DFA) in 1983. I was posted in London for four years; in Beijing for three years; in Guangzhou for three years; and finally in Malaysia for five years. The things that I'll be sharing with you are mostly based on my experiences. But, offhand, I would like to take my hat off to the various civil society groups for their advocacy for migrant workers.

A very critical period that brought about significant policy changes on the issue of migration was when the Migrant Workers' Act was adopted in 1995. Various advocacy groups played a very large part in this, principally because of one event that triggered it, which is the Flor Contemplacion story.

I say it's very significant because we in the Foreign Service are the direct beneficiaries of it. Before the enactment of the law, we had already been attending to various issues on migrant workers under our program, which we call Assistance to Nationals. And one of our main problems at that time was funding, especially when it comes to repatriating people. Since

no budget was allocated to this, we had to solicit funds from Filipino community organizations.

By way of introduction to this seminar, let me clear one thing first: migration is not a policy of government. But due to the economic downturn in the '70s, we had come up with innovative ways to keep people employed, including finding opportunities abroad. However, the social cost of physical separation of family members has become a serious challenge to migration.

We address the issue concerning migrant workers on three levels: international, regional, and bilateral. We advocate the promotion and protection of rights of migrant workers through the adoption of international instruments such as ILO declarations, CEDAW, the UN Convention on the Rights of the Child, and so on.

On the regional level, we address migrant workers issues through ASEAN, the latest of which is the signing of the ASEAN Declaration on the Protection and the Promotion of the Rights of Migrant Workers at the 12th ASEAN Summit in Cebu in January 2007.

On the bilateral level, we conduct negotiations with governments hosting Filipino workers, or otherwise enter into bilateral agreements that address their working conditions. For example, officials of the Philippine and Malaysian governments meet twice a year to address common issues that pertain to migrant workers. And I'm glad that William has mentioned a very fundamental issue when it comes to our relations with migrant workers. And he's referring to undocumented children.

In finalizing the ASEAN Declaration on the Protection and the Promotion of the Rights of Migrant Workers, we had to go the arduous process of negotiating the texts one phrase at a time. It was a difficult process, as ASEAN is composed of labor-sending and -receiving States.

As many of you have rightly observed, it does not encompass all issues pertaining to migrant workers, such as the plight of undocumented ones. Nevertheless, it was a good start, as the Declaration provides for programs and activities to be undertaken in the future by the Association to implement its

provisions. It was, however, a fulfillment of one of the program areas under the Vientiane Action Plan which was signed by ASEAN Leaders in 2004 to realize the objective of the Association to build an ASEAN community.

Under the Declaration's preamble – and this one I find significant – contributions of migrants to the society and the economy of both receiving and sending states were duly recognized.

The operative paragraphs, on the other hand, were divided into four: general principles, obligations of receiving states, obligations of sending states, and commitments of ASEAN.

As to the obligations of the sending states, the Philippines has substantially complied with these provisions. As a matter of fact, I think the responsibility of the Philippines is to share our best practices when it comes to these obligations.

Finally, these are the commitments of ASEAN under the declaration⁶:

1. Curb trafficking in persons – We have to put this in because this is a prevalent issue in ASEAN.
2. Promote institutional capacity-building – This refers to various government agencies that deal with the migration issue and we believe that the Philippines can do a lot when it comes to sharing its best practices with other ASEAN member countries.
3. Extend assistance to ASEAN nationals in crisis situations outside the region, such as the Lebanon crisis of 2006.
4. Seek support from international organizations and dialogue partners - like what you are doing right now. Your major sponsor here is Friedrich Ebert Stiftung. I'd say that you are in the right direction. Last year, ASEAN was granted observer status in the UN. The Philippines, as Chair of ASEAN, intends to further

⁶ Following are Asec Cruz' comments as he goes through various points in the ASEAN Declaration.

expand its relationship with the UN through collaborative work with its specialized agencies such as UNDP, WHO, UNAIDS, UNICEF and UNHCR.

5. I've jotted down some of my thoughts on where various NGOs dealing with the advocacy of migrants can help.

On the area of general principles, I strongly suggest that you go over the list of program areas under the Vientiane Action Plan (VAP). That is where you will find the program area on migrant workers. And that is precisely one of the things that we have identified when we were planning for the outcome documents for the Cebu summit.

Under the political security pillar of the VAP, there is a provision on human rights, and one of the issues there is on the protection and promotion of migrant workers. The VAP also advocates for the welfare and protection of women and children, which was translated into another outcome document during the 12th ASEAN Summit in Cebu through the Declaration on One Sharing and Caring Community. Principally, the declaration addresses Millenium Development Goals, as previously mentioned by Ambassador Rosario Manalo.

6. Conduct specific area studies on migrants – Actually, many NGOs have done this, including activities such as organizing and participating in conferences dealing with migrant issues. We also find your publications useful because these are helpful in the advocacy that we are also doing, especially when we talk to receiving states, and in the government's policy and decision-making process.
7. For receiving states - Lobby parliaments to enact laws to protect the rights of foreign workers. This is important because we believe that many governments, including those in ASEAN, still lack enabling laws that address the welfare and promotion of the rights of migrant workers. This is one area where you can help.
8. Conduct training programs/upgrade skills of migrant

workers - A lot of NGOs abroad have been doing this already. Why is this important? Because eventually these migrant workers will be coming back to the Philippines, and they will eventually be rejoining the local workforce.

I can recall the study done by BalikaBayani Foundation saying that about 70% of investments done by OFWs failed. Why? According to that study, the OFWs concerned did not possess the management / managerial skills to carry them out.

Another concern was the high incidence of requests from relatives to borrow money from the returning workers which are never repaid. But the remaining 30%, why were they successful? Because they have the training, they have the capability, they have the managerial skills. And since their families are supposedly well off, they don't bother their balikbayan relatives for loans anymore.

You can also encourage the formation of, or membership in, Migrant Workers' Savers Club. This was my experience in Kuala Lumpur which I found very useful, not just because they became aware about the importance of saving for the future. We were able to use this Savers' Club to inculcate in them other Filipino family values.

9. Empower migrants through seminars on local laws - In Kuala Lumpur, the Embassy has periodically invited Malaysian lawyers to provide seminars to Filipino workers on Malaysian immigration, police and family laws to foster awareness about their rights as guest workers.
10. Involve other embassies and consulates in your advocacies - Again this is very helpful, because they are the ones dealing directly with the host government when it comes to addressing the issues of migrant workers.
11. Advocate judicious use of migrants' remittances - NGOs can inculcate proper values not only in migrants but also in their families here back home.

Recommendations/Commitments by ASEAN:

Take active interest in the work of ASEAN bodies dealing with the promotion and the protection of human rights. A good example is the work of the ASEAN Working Group on Human Rights Mechanism where the promotion and protection of the rights of migrant workers are discussed.

Of course there are other ASEAN bodies that are working, in one way or another, towards addressing the issue of migrants, for example, the ASEAN Subcommittee on Labor Affairs, the Senior Labor Officials' Meeting, the ASEAN Labor Ministers' Meeting, the ASEAN Committee on Women, ASEAN Business Advisory Council, the ASEAN Health Ministers Meeting (for issues affecting migrant workers, like HIV/AIDS, bird flu, and the like) and ASEAN Ministers on Rural Development and Poverty Eradication.

Ambassador Manalo mentioned a while ago that the issues under the MDGs were not tackled in the Declaration on the Promotion and Protection of the Rights of Migrant Workers. She has rightly mentioned that, indeed, this Declaration does not address the issues of undocumented workers. But that one can be looked into in future meetings of ASEAN. Perhaps, that is also one issue that you can pursue. I believe that there are many things that NGOs can do to complement the efforts being done by the governments.

So, with that note, perhaps I can leave you some thoughts on your theme for this seminar on the topic, "What next?" Otherwise stated, what is the future for our migrant workers?

Allow me to cite to you the case of the Chinese diaspora. In 2004, China registered FDI flows at US\$153 billion. Some 80% of that foreign direct investment, however, came from overseas Chinese.

Of course we cannot compare our OFWs with the overseas Chinese because the latter started migrating to other countries centuries ago. But 80% of them chose to go back to China and invest whatever earnings they were able to raise in the second country they have adopted. I learned, too, during my posting in China that local governments were openly courting the Chinese

diaspora to come back home to help improve the economy of their locality.

Perhaps that is one more advocacy that you can do. Talk to our local government officials. Ask them to come up with programs to entice their successful *kababayans*⁷ abroad to invest in their hometowns and provinces. When that happens, they will eventually earn the new title of OFIs, or Overseas Filipino Investors.

*Marami pong salamat.*⁸

⁷ Compatriots

⁸ Thank you very much.

Mr. William Gois
Regional Coordinator, Migrant Forum in Asia



Good morning.

I'm just going to raise some of the issues that we've been looking at, those who have been involved in the region. Migrant Forum Asia (MFA) covers the whole region of Asia, but we have Southeast Asian members of MFA that have been looking at the process of the ASEAN Declaration and the need for an instrument that calls for the protection of migrant workers.

In your handouts, you have something, a handout of the Task Force to which MFA belongs as well. So, some insights from there and some of the issues and challenges before us. Ellene already pointed out in the first demonstration slide the configuration of ASEAN. So, if you look at ASEAN, it's a configuration of sending and receiving countries. You have two major receiving countries like Singapore and Malaysia. Then you have the receiving country of Thailand, which receives from the Mekong region.

And then you have Brunei, of which nobody really knows what's happening. Interestingly also, I noticed that there's no Filipino group that actually works on migrant workers and

OFWs in Brunei. This is something we need to be able to explore - what's happening in Brunei in terms of migrant workers - if you're going to come up with a declaration, an instrument that will have teeth in all countries of ASEAN.

On the other hand, you have major sending countries: Philippines, Indonesia, Cambodia, Laos, Thailand, Burma and Vietnam.

A question of approaches

The question, I think - and this is from a regional perspective, or a sub-regional perspective - is so far the Philippines' approach. And you have heard also that the Philippines has been highlighting some of the issues and has been developing a more bilateral, rather than a regional or sub-regional, approach. So, its expertise is in the bilateral approach.

How, then, can we leverage that for a regional kind of approach? That is what we need to be thinking of when we are thinking of, or implementing, an ASEAN Declaration, because that bilateral approach can very easily backfire. There are concerns. For example, with the Philippine bilateral approach, there is this working group that the Philippines has with Malaysia, but Malaysia has not set up a similar approach with Indonesia.

And with Indonesia now, (recently, last week,) the Malaysian and Indonesian governments met and they are using the Islamic angle. Malaysia is, I think, chair of the Organization of Islamic Countries and they are using that discourse to see into the issue of migrant workers.

This kind of divide-and-rule factor is something that we know of in Asia which will prevent multilateral approach-forming. That's why it would be to the advantage of the Philippines to look, not so much at bilateral approach, but at how it can link up with other sending countries and push for a more regional, multilateral approach for the protection of migrant workers.

This would be something that we need to look at:

1. Should this bilateral mechanism be the only one given preference?

2. Should it be used to actually leverage for a multilateral approach?
3. What are the pros and cons then?
4. How should we develop our strategies around that?

On the celebration of the Declaration

Yes, we came out with a statement celebrating the Declaration, that we are happy that there is a declaration.

But, on hindsight, we need to look at it critically and ask ourselves: Was the Declaration worth it? Did it bring anything new?

In terms of bringing anything new, personally, I'm from a critical perspective. There is nothing new, in the sense that the Vientiane Plan of Action already indicated the need for an instrument for the protection of migrant workers. The Vientiane Plan of Action was drawn up in 2004.

So, if we were going to look at something, should we have been looking at some kind of draft in 2006? Or should we be again calling for an instrument to protect?

So, that means that between 2004 and 2006, either nothing was actually done in terms of coming up with something, or something was done then that we could now look at and say, "yes, so much progress has been made and this Declaration, based on this progress, are the steps now needed to be taken?" Should that have been the approach?

Or, should the heads of state have been looking at this committee working on this? And should that committee actually be putting out something saying that this has been done so far? What are your views on this; what are the opinions on this? Should have we been looking at that?

So, in hindsight, the Declaration is nothing new because it only restates that an instrument needs to be put in place. And it's only repeating basically what it said in 2004. And it's repeating,

where at least in 2004 it was a plan of action under the Political Security pillar calling for an instrument. There was indication over there of a binding instrument. With the Declaration now, (you heard from Ambassador Manalo, as well,) you have a non-binding declaration. Is that moving the discourse forward, or is that regression in terms of discourse? This is something also that we need to look at as civil society within ASEAN.

What has happened post-Declaration?

Between the time this Declaration was announced and now, February 22, what has happened within the ASEAN region?

Malaysia last month had a massive crackdown on domestic workers, and the international community has come out in protest against the operations of this real armed force which has been very abusive in its operation of rounding up undocumented workers.

Amnesty International has spoken out against it. MFA, Human Rights Watch, Migrant Rights International and a number of NGO groups have clearly stated that what is happening in Malaysia at the moment is against all human rights standards. Even UNHCR has come out very strongly *[against it]*. And because UNHCR has been trying to support some kind of work on refugees, migrant workers and undocumented migrant workers in Malaysia, the Malaysian government has even questioned the presence and threatened to close down the UNHCR office in Malaysia. So that is in Malaysia.

In Thailand, we again have a crackdown on Burmese migrant workers.

So when you look at it, post-Declaration, in terms of delivering, at least in substance, there is some move towards understanding and implementing, towards some kind of agreement on the Declaration. *[On the other hand,]* we have seen very regressive and abusive human rights behavior on the part of governments.

Reinforcing, then, what Ambassador Manalo said earlier, the Declaration is basically good language and nothing else. This, then, is something that, and should, *[prod]* countries to develop a more aggressive *[approach]*. I'm not sure if you saw

something that was in the international press recently, sometime during the last two weeks, (it's caught the international press, but I'm not sure if it caught the Philippine press): there was a sizeable deportation of Filipino migrant workers from Malaysia.

This is something that we need to look at: Whether this ASEAN is really delivering, or it is just another round of bluff talk these member states have among themselves.

On issues that the declaration has not touched upon

Given that the Philippines did try to push very hard for a declaration, and understanding that there's at least something on the table - given that positive note - there are still very serious challenges within the ASEAN in terms of protection of migrant workers which can be highlighted and looked into, particularly the issues that the Declaration does not touch upon.

For example, **family reunification**: The Declaration does not talk about family reunification. It speaks of family reunification or protection of rights of family members of those existing in the host country, but it does not speak of reunification.

Again, I'm calling for the concept of reunification here because, at least in another region, for example, in the European Union which talks of migration and migrant workers within that region, reunification is a very powerful concept; they understand that. And considering that they were thinking of the socio-cultural pillar and the protection of migrant workers, family reunification should have been part of this discourse. It would have fit very well under socio-cultural pillar. But the declaration does not touch upon that. It talks about undocumented workers in the sense of humane practice. What is "humane practice"?

So far, in ASEAN, **humane practice**, for example, in Singapore, is caning, whipping. In Thailand, the humane practice that we have seen in relation to undocumented

workers is bringing them to the borders of Burma and leaving them there. In Malaysia, we have seen massive deportations which have resulted in deaths of children and women.

So, if this is humane treatment, so far that we have seen in the ASEAN countries, then it is questionable what kind of practice this Declaration is going to establish.

A third issue that they have not talked about is **migrants' right to health and access to health services**. This comes again in the context of, for example, Singapore, Malaysia, where they have mandatory testing. If a woman is found to be pregnant, she is deported immediately. Where a migrant worker is found to be carrying HIV/AIDS, or has been tested positive for HIV/AIDS and is immediately deported, what kind of access could one have had in terms of one's right to health or access to health services?

At least Thailand allows those who have been tested positive to have access to health services while they are in the country. But when you deport, the deportee may have an HIV/AIDS strain for which her/his country may be unprepared to deal with, or the medicines may not be available in the home country. So, this is an issue that the declaration does not touch upon.

The Declaration has not spoken about **deportations and crackdowns**. Although the UN Convention speaks of deportation and crackdowns on consultation, when these things are happening, the Declaration does speak in ambiguous language that there should be "consultations".

If that is the case, then we need to find out what kind of consultations happened in the last deportations between the Philippine government and Malaysian government. What kind of consultation actually took place which resulted in these massive deportations of Indonesians and Filipinos from Malaysia?

The question of **regulating recruitment agencies**. It's a good thing that the Philippines has finally taken this step after how many years of advocacy. The RA 8042 has Sections 29 and 30, which have been repealed. But this took how many years of advocacy? Four. But while we have this now, *[we need]* to

make sure it is implemented and enforced and unscrupulous recruitment agencies are punished, or some action taken against them. But then, you also have this whole issue in Indonesia and Malaysia that needs to be looked at.

The question of a **minimum wage within the region**. This is not difficult to come by. Other regions have shown that it is possible in a sectoral kind of work to come up with a minimum wage.

In terms of disparity, yes, there is disparity in terms of income and wealth between countries, between, say, Singapore and Laos. But at the sectoral level - for example, domestic workers working in Malaysia and/or Singapore - maybe, there is not much disparity in wealth.

Maybe we can look at it from a sectoral point of view. For example, a minimum wage for domestic workers working within the ASEAN region - would that be possible? Would that be an angle that we can work at?

The **recognition of domestic workers' work within the region** - I understand that currently there is a bill in the Philippines that is close to being passed, recognizing domestic work as work. This could be a powerful thing to take at the regional level. We could use the ILO expertise in this regard: looking for the recognition, how to move towards this. The ILO would be interested in giving the support for this kind of technical assistance. And this could be a regional agenda taken up.

The **right of migrant workers to organize and form unions** was not touched upon in the Declaration, as well. Yet, it was a Declaration on migrant workers. Ambiguous. No clear indicator whether this right will be recognized.

The **civil rights** which the ASEAN countries have ratified and which we could experiment with, for example, in some of the estates in Singapore. In Singapore, you have local councils, the estate councils. A lot of the migrant workers live in these kinds of estate councils.

In other countries in other regions of the world, migrant workers at that level can engage in so-called local politics, meaning,

who is going to be on the board of the estate council, and things like that, because the government then provides facilities and services and things like that.

So, can the recognition of those kinds of civil rights be called for, aside from, of course, absentee voting and things like that? These are the at micro-level. But in terms of trying to develop a socio-cultural identity, that would be something that we could actually work at, but not at the state level, not in engagement in politics at the state level, but at local urban housing level and stuff like that. Can their civil rights be recognized? Because they are residents in that local estate and things like that. Can we have something like that – civil rights?

Lastly, **ambiguity in the Declaration** – is it a declaration that protects ASEAN migrant workers only from the ASEAN region? And, would it? For example, the second largest population of migrant workers in Malaysia is Nepalese; does this Declaration protect Nepalese workers in Malaysia, as well? And is the Declaration binding for workers within the ASEAN region itself? Will it, eventually? Again, that would then be detrimental from a global human rights protection mechanism standard perspective.

Challenges

Okay, what are some of the challenges or good practices that can be pushed at the regional level?

Well, there are some very good examples pending the fact that the Declaration will actually come up with an instrument; pending the fact that the Human Rights Working Group will actually come up with a framework. So pending those, what are immediate things that could actually be taken up?

One of the things is a practice that exists at the moment in the Inter-American Commission on Human Rights.

The Organization of American States, through the Inter-American Commission on Human Rights in 1997, established what is called a Special Rapporteurship for Migrant Workers within the American States. So this is something that we could already set up like, you know, at the ASEAN Secretariat level kind of thing.

A **Special Rapporteur**... and why a Special Rapporteur? Simply because this is something in the Declaration which is solid and which we need to work on and lobby with. At the end of the Declaration, there is a call for a report to the Secretary General. Now, if we work on monitoring that report, just as the human rights organizations do with the Human Rights Council - prepare a shadow report - every civil society within ASEAN can prepare one, even if the states do not. The ASEAN Secretary General is mandated to receive reports from the member states.

We could actually start preparing a report and give it to the Secretary General. For the first time ASEAN has given the Secretary General the role more of a general and less of a secretary. So, if we actually make and give these kinds of report, that will give the Secretary General at least more and give meaning to his mandate in terms of trying to push something forward. So, maybe this is something that we need to look at.

There is a body in terms of protection for migrants' rights that we need to strengthen, and that is the **ASEAN Trade Union Council**. This is, at the moment, existing on paper probably, but defunct in operations. How can the labor ministries and everybody else using this body be more involved in trying to push forward the Declaration, or in bringing the Declaration into some kind of a binding document? This is something that we need to look at.

In terms of strategy, at this stage, I think that it would not be wise for us to actually work with the Declaration anymore. And this is a personal opinion; it's open for debate. Not work with the Declaration anymore, and also not focus a lot of energy on the human rights working mechanism because, so far, there has been no delivery point that we have been able to identify in both these bodies.

But, taking the cue from the fact that a lot of energy is being put into the charter, that from 2005, within one year they came up with a framework for an ASEAN Charter and by August or November 2007, when the ASEAN summit happens in Singapore this year, it seems that the charter will be ready.

I would go with the proposal to push, within the charter, for a protection of migrant workers...mention of that within the charter. Because again, the Declaration, like we heard from Ambassador Manalo, is going to be a different process; the ASEAN has still not identified which bodies within ASEAN will work on forming or translating this Declaration into some kind of mechanism or mandate, or whatever.

And the Declaration itself did not recognize the work, if there was any, of the Human Rights Working Group. It only said, "call for a protection according to the Vientiane Plan of Action". But if nothing came out from there that they could look at, then you have these two defunct kinds of bodies that are there but not there. Should we be putting our energies into this?

On the lobbying with these two bodies: should we *[lobby]*? There is already a big civil society process mobilizing for the charter. On the 5th of March, Ambassador Manalo will be meeting with civil society groups to discuss NGO inputs to the charter. Maybe we should use that as our angle, as the most strategic kind. For the long-term, we can save the Declaration, we still continue to push the declaration under the Declaration and the Working Group.

So those are basically some thoughts that I had in mind from an NGO and the MFA perspective.

OPEN FORUM 2

Hans Cacdac, POEA Deputy Administrator for Licensing and Adjudication - There's a lot of emphasis on what the Declaration is not, and I'd like just to support ASec Cruz's statement, which emphasizes what the Declaration is. And that is an important step towards getting into the details, getting into the more pressing issues on migrant workers in the ASEAN or in the ASEAN region.

Let us not forget that the core of human rights standards, the Universal Declaration of Human Rights, started out as a declaration and evolved into international customary law. And the same could be said of this current ASEAN Declaration. So the key, as Mr. Gois has stressed, is to push for more implementation details, more mandate as a first step, and we see this as something that will lead to further discussions.

Second, what the Declaration is is that it emphasizes documented workers. That is true. And while there is an importance, there is a need to emphasize the rights of undocumented workers elsewhere within the ASEAN. The best we could do for now is to transform this signal of emphasizing protection of documented workers into more stringent measures to protect victims of illegal recruitment here in the Philippines, which is a main task of the POEA.

So, if the signal from the ASEAN so far is a note of uncertainty, ambiguity, vagueness, or outright disapproval of protection of undocumented workers, we could convert that signal here in terms of heightened measures to make sure that none of our people get duped or get into illegal migrant situations or into illegal immigration arrangements.

Let me just share some possibilities, foremost of which is strong civil society cooperation in terms of illegal recruitment.

One of the stumbling blocks that we have encountered in the POEA in terms of curtailing illegal recruitment here is the very, very high propensity for complainants to withdraw their cases, their complaints, as Ellene would know. But, we also notice, at the same time, that when the

complainants are ably supported by NGOs or civil society groups, there is a sense of firmness on the part of the complainant; there is a stronger resolve to seek justice and to punish the illegal recruiter.

One classic case I can point out would be one case this time involving a licensed recruitment agency. As you all know, illegal recruitment in our jurisdiction is not just committed by unlicensed entities, but by licensed agencies as well, if they commit certain acts; for instance, charging excessive fees. We had a case where there were about 20 complainants against an agency for charging excessive fees; 19 of those complainants withdrew. But there was one complainant who was assisted by a civil society group and stood her ground and, therefore, the case continued. We were able to hold the licensed agency accountable and cancelled its license. Now, imagine if that agency continued to exist and committed further acts of illegal recruitment or charging excessive fees. So, we were very thankful at that time for the great help that civil society contributed.

My final point is also something that looks towards the receiving states. Yes, we need to press on; we need to emphasize the rights of migrant workers in the receiving states.

Singapore was mentioned a while back, and in Singapore, there are many Filipino domestic workers. The matter of excessive charging of fees is very prevalent in Singapore and, therefore, we should also look into how exactly we are doing in terms of dealing with the Singaporean government, for instance. Singapore, based on their Employment Act, exempts domestic workers from the coverage of their Employment Act. Therefore, Singapore, in general, refuses to undertake any bilateral agreement with the Philippine government in so far as rights of domestic workers or migrant workers are concerned.

So, this provision on the ASEAN Declaration on receiving states promoting fair wages, fair employment practices is a welcome development.

As mentioned by Mr. Gois, the matter on Brunei also needs to be looked into. Based on our records, there's a lot of contract substitution that goes on in Brunei. Philippine OFWs have their contracts firmed up here, but when they get to Brunei, some entities there, some employers, are able to substitute their contracts with ones with less favorable terms and conditions of employment. That's based on our records at the POEA, in terms of cases filed by OFWs.

So once again, it's looking at what we already have, finding the strengths, the positives of the Declaration, and soliciting continued civil society support.

Rose Trajano, Executive Director, Kanlungan - We really appreciate the Declaration. I think all of us from the NGO sector really appreciated this effort of the ASEAN to have this statement to promote the rights of our migrant workers. I also appreciate all the recommendations of ASec Luis Cruz to NGOs like us.

However, I would also like to say that I think almost all the recommendations are already being implemented by the NGOs; we have good practices and we have had bad experiences. Maybe there should be a time to share this with our government partners.

What I would really like to see or learn is what are the government's concrete actions after this Declaration? Is there no plan, ASec, for concerned government agencies to present a government action plan with regard to this declaration? We need of course to know what the concrete plans of the Philippine government are and what it plans to do, especially because there are already specific actions for intervention being done in respect of illegal recruitment, for example.

Very recently, we in Kanlungan had a very bad experience where we joined a raid with the NBI. Our help was actually requested by a television network and POEA was with us.

The NBI raided a training center with 450 women. They were recruited as domestic workers for the Middle East, but all their documents were being withheld. And if they

wished to back out, they had to pay sums of money – 300 dollars or 60,000 pesos, depending on the level of processing their papers had reached. Some had been there for seven months and they had not been deployed yet.

There was also an agreement signed by the women that they had to be injected with Depo-Provera after their pregnancy tests. And they were actually prohibited...there was a prohibition on mobility. As much as possible, they were not allowed to leave the training center after the pregnancy test because the women might get pregnant. So, these were the violations.

Unfortunately, the NBI did not immediately file the case against the illegal recruiter, that's why we had to follow it up. If there was an inquest, (and there were 8 complainants,) it could have been a case of large-scale illegal recruitment. But NBI did not file the case; we do not know what happened.

We do not want to think that something *[suspicious happened]* in the process, but what we are trying to say is, these are the specific, concrete actions we would like to hear from the government. It shouldn't be just the DFA, POEA, or OWWA working; this is a big responsibility for all agencies, especially those in law enforcement.

If you really would like to protect the rights of our OFWs, especially prospective OFWs, we really have to do it now. Also, we noted that those who are now being victimized by illegal recruitment are not only the new or the prospective recruits; there are several who have been OFWs who are still duped by these recruiters! We have several cases of illegal recruitment, and I think that is one area that concerned agencies should really address.

Regarding bilateral agreements, let me share this very briefly: We were invited by the DFA to give our comments – some of the NGOs - on the implementation of the new policies of Japan on overseas performing artists, on the stricter laws that Japan has imposed for overseas performing artists. DFA said then that, by March 13-14, there would be a bilateral agreement, a bilateral

consultation between Japan and the Philippines. Of course, Japan is not within the ASEAN, we know, but this is only an example.

Our question to the DFA is simple. We ask: Is there a monitoring mechanism between the Philippines and Japan? (Just for info: visas granted for overseas performing artists went down from 70,000, as of last report, to 50,000 in 2006. However, we don't have a monitoring of, or Japan is not giving us a report on how many are now going to Japan through different visas - how many now are marriage visas, how many are visas for visiting relatives.) If we really like bilateral agreements to be effective, I think we should also be very efficient in establishing redress and monitoring mechanisms.

We also agree that we should implement more multilateral-level strategies so we would be ensured that all our migrants and all our OFWs within or outside the ASEAN region would really benefit from what we are doing. That is all.

Bernice Roldan, Advocacy Officer, Unlad Kabayan - I'd like to direct this question or comment to ASec Cruz.

You mentioned that 76% of migrant worker-initiated investments fail, right, from the research of BalikaBayani. In Unlad Kabayan, we've also been doing similar work. We meet with migrant workers on-site, to work on the financial literacy trainings and give trainings on savings and investments; we've been doing this since 1996. We started as a project of the Asian Migrant Center in Hong Kong; it's an NGO. After two years, in 1996, we were established in the Philippines.

In the course of our work of giving these seminars and promoting migrant savings and investments, we faced difficulties because we're a local NGO with limited resources. We rely a lot on partnerships with other NGOs or agencies abroad. But we have some good examples.

I agree with you that there are a lot of barriers in our work, like Filipinos not being very well-known for financially literacy or for having an employee mentality. It's slow work;

building up savings consciousness is actually culture-building.

So, for instance, we've been in partnership with a church-based NGO partner in Taiwan since 1996 and we now have a few models of migrant-initiated investments. But it's slow work, so we've been thinking of going to immigrant countries, not just to countries with contractual workers, to invite them for local community development initiatives, as if saying, "This is what migrant workers in Taiwan have been doing in terms of community development. Would you like to contribute to their efforts?" So, we need a lot of institutional partnerships, not just with NGOs overseas, but also with the posts of our government overseas.

So I'd like to ask: Is the DFA, or other government offices, open to working with NGOs who do this kind of work? We would need contacts overseas. Do you have contacts with hometown associations or other Filipino organizations that would like to work with NGOs in this field? That's all.

Atty. Teresita Lora, Labor Arbiter, National Labor Relations Commission (NLRC) - Although it would seem that, because we're from the government, we will be sharing common views of the government, I can't help being amused when I hear stories about how negotiations are done, because in our work as labor arbiter...oh, I'm sorry. I'm Labor Arbiter Lora of the National Labor Relations Commission. I used to hold the NLRC Migrant Workers Desk, and I have two books, and I appreciate your invitation because I'm going to use the inputs of these books here.

Okay, I'm amused because one of our mandates is always to have conciliation, and when there is conciliation, we have at least two parties with very, very opposite interests and desires. And in this Declaration, it is like assimilating a feeling of, Wow! We have found a similarity because sending and receiving states have very different interests.

I have to congratulate ASec Cruz because the fact that we can get a Declaration from people with so many different interests is good enough. If we get one when we conciliate, that's like Oh! A light shining through the darkness already!

Hearing him say what happened, I get that same feeling when we negotiate and we get, gradually, gradually, 1,2,3,4 and so on, agreements.

The Declaration you say is – correct - is nothing! What is a declaration, you say, and you may forget. But to be able to get one (because there are many, many conventions already, except only that ASEAN countries themselves cannot seem to agree among themselves)... and now, finally, we have a common view on what these differences are and how these differences can now be reckoned from a common agreement.

And I take note of the 22nd paragraph of the Declaration for the ASEAN to follow up and to develop an ASEAN instrument.

Now, with this Declaration, there can be an ASEAN instrument which may be a harmonization of all the conventions we have and a step forward to how we can protect the migrant workers. I'm especially happy with the allowed obligation of receiving states to access the legal and judicial system.

For about 10 years now I have been advocating on data on how migrant workers in the receiving states can make the judicial system work for them also. The first issue is, can they have access, and here this declaration is saying yes, they can have access to the legal and judicial system. What will follow next, and I hope that the Department of Foreign Affairs will look into this. I think I even asked this group to help me on this: if there is this sending country allowing access, how can it be done? Where?

It's like a very, very simple way of saying, "okay, migrant workers, you were raped, you were so and so, you were maligned. Go to this office in this street, enter. When you're in the lobby, you turn left, or you get into the elevator, you turn right." As simple as that, because it has to be very simple for them. This access really is something I said, "Wow, thank you so much for this."

And execution of judgment is not a problem. In Saudi Arabia, you won't, because in Saudi Arabia we are also

allowed access to their legal system. A migrant worker is able to get a decision in her/his favor and she/he has to come home. There is a mode of having this judgment executed here. Of course there is a process with the Regional Trial Court; the NLRC cannot immediately do that. The RTC has a system for us to later execute the judgment on the labor thing.

But there is one thing I want many of you to focus on. The UN Convention on Migrant Workers, before we had it ratified, was already absorbed, incorporated, adopted in our Magna Carta for Migrant Workers. It is a fact. But there is something that always confuses a lot - even the labor arbiters, even the lawyers of OFWs - because the definition of migrant workers, both in the Magna Carta and in the UN Convention, includes mere applicants who are promised employment. Mere applicants promised an employment is already a migrant worker. According to our Magna Carta for OFWs, they are already Filipino overseas workers in that aspect.

In my book, I clearly and repeatedly said that when one is done to a migrant worker like excess placement fee, there are three courses of action that a migrant worker can act on.

In my book, I clearly and repeatedly said that when a violation is committed against a migrant worker, e.g., excessive placement fee, the migrant worker has three courses of action:

1. file a claim with the NLRC
2. file an action with the POEA (that is clearly a recruitment violation because POEA says you cannot go beyond one month)
3. file a case for illegal recruitment.

Why? Because according to the definition of illegal recruitment, excess placement fee is an act of illegal recruitment. Then there goes the worker to three offices, and three offices should entertain this worker. But here

comes the RTC Fiscal having a lot of confusion on this matter.

In fact, I'm wondering how the DFA is looking into this definition of migrant workers. If we strictly apply this, that means Filipino applicants, promised employment are now migrant workers and are also within DFA's concern. You will not be looking into the welfare of the migrant workers abroad only, but also into the welfare of those defined OFWs in the Philippines. Consequently, victims of illegal recruitment can also be DFA's concern.

Well, I have talked a lot already. I see very good, very good reasons to appreciate the Declaration. But, of course, what is important is what comes after because, if we just say it's nothing, then it will remain nothing. But if you go on and make use of what is good in there, we can attain a lot because we now have the agreements.

Second, let us please look into some definitions that have to be cleared up because it is so defeating. Pity the worker whom we advise this and that way, while our own system does not understand what we are explaining to the worker.

Thank you very much.

ASec Luis Cruz - I ran out of paper writing down these issues, but, you know, this is a welcome break from the work that I've been doing in ASEAN, because at least I'm able to get inputs from people who are directly attending to the issues of migrant workers.

My experience in the Department covers bilateral, multilateral and regional. The work that I'm doing now is on a regional level, but I have a lot of experience also on the bilateral front. Although I have said a lot earlier that we can do a lot more on the bilateral front, this does not mean I am excluding the other approaches in addressing migrant workers' issues on the regional and multilateral levels. I'd say that these are all complementary. It's all complementary.

For example, I'll cite one agreement that we were able to agree on in 2002; that was the year after 9/11. And this

agreement – well, this is among three countries of ASEAN – was based on the trilateral approach on addressing this terrorism issue in the region. Although initially there were three countries, eventually it expanded to six, at the moment. However, it doesn't matter anymore because we now have this ASEAN Convention on Counter-Terrorism.

One value that I have attached to that agreement was whenever we (I was still at the Philippine Embassy in Kuala Lumpur,) negotiate with the host government, say, in repatriating a criminal or a terrorist who is facing charges back here in the Philippines, we would always cite that agreement. And, of course, the host government has taken note of the fact that they did sign that agreement and I would say that, in that sense, that agreement was helpful.

In the same manner that in future issues dealing on migrant workers, well, William here has mentioned one recent case in Malaysia. Again there is this crackdown on migrant workers.

Definitely, when our people at the Embassy would discuss this crackdown issue, definitely this is one declaration that we could cite when we negotiate with the Malaysian government on issues like humane treatment of deportees, and so on. So, it's like an added instrument whenever we deal with the host government.

In addressing the collective points that you have raised, I think I'd say that the points that were earlier raised by Noel during his introductory remarks would sum up most of your concerns on, for example, how this declaration would help efforts in both the multilateral level of negotiations on declarations or agreements dealing with migrant workers. And I would hasten to add bilateral issues on that one.

Now, how we can address the record of commitment of member countries on the human rights issue and how NGOs can use the Declaration in furthering their advocacies on migrant workers. I'd say that there are some deficiencies, admittedly; it's not a perfect document. It's not a perfect declaration. But as our colleague from NLRC has just pointed out, it's not easy to negotiate an international instrument or a regional instrument. As a

matter of fact, we were only in first base when I nearly walked out the room. That should not go into the record. Anyway, the point raised by one member country was actually just raised by William here. He was saying, why should we come up with this declaration when it was already there in the Vientiane Action Plan? That's the same point that he raised.

But the reason why we thought of coming up with this outcome document at the 12th ASEAN Summit is that we feel that this issue should really be highlighted in the region. It is because this is a perceived problem by many of us here. Even receiving countries are having difficulties in addressing the issue of migrant workers, precisely because they do not have sufficient laws that will deal with this.

As a matter of fact, the best proof of this is that they are reluctant to sign into these international conventions, especially the one on the convention on migrant workers.

So, our advocacy should really be focused on this, and on that point, again William is right in saying that, if ever there is one thing that you should really focus on on the regional level, it's the one on the drafting of the ASEAN Charter.

Too bad Mrs. Manalo has left, but you know she is the chairperson of the ASEAN HLTF, the High Level Task Force on the drafting of the ASEAN Charter. She is the chairman of that task force, and she has already mentioned to you some insights. As a matter of fact, she was just too glad to note that the issue of human rights will already be incorporated in the Charter. How extensive the provision will be, I really wouldn't know, but she can tell you.

So, if there is any person that you should lobby on when it comes to advocacies, it should be Mrs. Manalo, because she is chairing that ASEAN task force that is drafting the Charter. And I think some of you here already received invitations for this consultative meeting that we will be hosting at the Department of Foreign Affairs on March 5. That is a prelude to the regional consultative meeting of NGOs that will tentatively be on March 28. That will be for

the regional NGOs, their engagement with the HLTF members, but we will limit the participants there. So, perhaps, during the March 5 meeting, you can choose among yourselves who will be participating in that March 28 meeting.

So I'd say that there are many things that are already happening in the region, in the form of bilateral, regional, multilateral discussions. While it may be true that some countries, especially the receiving countries, might favor the bilateral approach, I'd say that this issue is already addressed in Paragraphs 18 and 19 of the Declaration.

When it comes to sharing of information, sharing of best practices, and that is already being done, actually – being done at post and being done here - because we have this consultative mechanism among receiving countries for example. I know this for a fact because when I was still in Kuala Lumpur, we had several meetings, mostly with Indonesia, on how to approach collectively the new immigration policies of the Malaysian government. We do share information and develop common approaches to this. And Indonesia is aware of our moves, of our positions, when it comes to this bilateral working group with Malaysia on migrant workers.

So, these are the positive things being done in the region which are being supported by the Declaration. And I'm glad that our colleague from NLRC has mentioned Paragraph 22, because this will also address other questions on future actions, future mechanisms, or future direction of ASEAN as a regional organization in addressing this Declaration.

Of course, our colleague from POEA has also mentioned that a declaration is an initial step, that's why it's really not a perfect document. But out of that declaration will come specific arrangements, specific laws, both on the national and on the regional levels. So, to address the issue of what's going to happen next in ASEAN, it's right there on Para. 22: The leaders, in signing this document, have tasked various ASEAN bodies to follow up on the Declaration and to develop this ASEAN instrument on the protection and promotion of migrant workers.

Principally, the main organ here will be the ASEAN committees on Labor, the ASEAN Committee on Women, the Working Group on Human Rights Mechanism, even the one dealing with the economic sector. Because, you see, one reason why the Philippine side also decided to come up with this Declaration on Migrant Workers is another Declaration that was signed during the Cebu Summit - the acceleration of the creation of the ASEAN Community from 2020 to 2015.

Mrs. Manalo has explained that the idea of having a community which is, in effect, building a borderless territory wherein there is a free movement of goods, capital and labor.

In ASEAN, the arrangements for economic integration are so far advanced to the point that we, the Philippine side, felt that the two other pillars are left behind. So, too, with the political community. And one of the strategies there in the socio-cultural community is on managing the social impact of economic integration. Here, we're addressing issues of social safety nets, and so on. We believe that, in a sense, we were able to contribute to that objective in accelerating community integration in such a way that this socio-cultural community is not lagging far behind economic integration.

Why are we in a hurry in creating this regional community? Because there is another, bigger community that we are trying to build in this region. I'm referring to the East Asian Community.

Right now, we don't know who the members are going to be. There are questions like, should it be limited to ASEAN plus three (meaning Japan, South Korea and China,) or do we include the other participants of the East Asian Summit, like Australia, New Zealand and India. You know, we could easily be gobbled up or marginalized in this bigger East Asian Community that we are also trying to build. That's why at this early point in time, we are trying to strengthen our cooperation in ASEAN in building this ASEAN community so that, when it comes to the point that we are ready to discuss this issue of an East Asian Community, we are prepared. We can say that we are strong enough,

our workers are strong enough to face a bigger competition in an even bigger East Asian Community.

So these are the things that are happening in the region, and this is why we believe that NGOs can do a lot more in addressing these regional issues because we cannot afford to lag behind in these developments in the region.

There was a discussion a while ago about the free trade area. Would you believe, even in this arrangement of the free trade area we are lagging behind? We are lagging behind because inter-ASEAN trade is about 22%, but EU is about 50% already, and NAFTA is even bigger; about 72%. That is why we really feel that we should accelerate this building of an Asian community, a South East Asian Community, because this is the wave of the future.

You know, in the past, before the Fall of the Berlin Wall, it was easy to pinpoint what the world order looked like. At that time, it was either you're a communist, or you're a capitalist. But after the collapse of the Berlin Wall, what the new international world order is has become a question so difficult to answer.

Of course, Huntington said that there is this Clash of Civilizations, and so on. Others are saying different things, like globalization, for example. But what is certain is that we should be prepared to address these new developments in the new world order. And the issue of migrant workers should not be left behind because of this phenomenon of greater movement of people, not only in the region, but also in other parts of the world.

And if only for this, I'm taking my hats off to the advocacy that you've been doing, because in a big way, you are contributing to the work of this community-building exercise, not only in the Southeast Asian region, not only in the East Asian community, but most especially in this new trend of globalization. Thank you very much.

Rick Casco, International Organization for Migration (IOM)

- I just have two points to share. First is a personal sharing. I'd just like to say that the most provocative statement today is to say that overseas employment and labor

migration is not a policy of government. But I will not debate with ASec Cruz about it.

I'd just like to say that, you see, from my career history in migration, I see that many people are looking at the Philippines as a model; that we indeed are signatory to many conventions recognizing the rights of migrants, because one of the basic rights is mobility, access to employment, access to information, and the true meaning of empowerment.

I see in one poster of the IOM, for example, that migration is independence, an ideal state. I see that government has a very vivid marketing plan on overseas employment, and the marketing discipline is a very proactive business discipline. I see that there is recognition for achievers in overseas employment, we have all the laws we can speak of, we have sensitized all our sectors doing their own part of the business.

So, maybe, we should not forget these things that are very obvious, and I think, personally, from my point of view, I could be proudly saying that migration is a development strategy.

My second point, not a personal one, but as IOM. We just had a conference on Asian Recruiters two weeks ago, and, of course, this will be of interest particularly to MFA. One of the striking points that the Asian recruiters say is that if the governments of sending countries and the recruiters of sending countries have exhausted all that they can do to protect migrants, there still remain problems despite their efforts. Most often, the blame is put on the recruiters of the sending countries, forgetting interventions that must be made on recruiters of receiving countries, the brokers.

Of course, in the ASEAN, maybe we only talk about Singapore; it's very unclear. Maybe Malaysia. But there are other receiving countries outside the ASEAN; we have Taiwan, Korea. So, I hope that the efforts for action planning could also focus on certain interventions for them. Thank you.

Jeremiah Opiniano, OFW Journalism Consortium - Your recent statements just affirmed my hypothesis that this –

well, personally, a surprising declaration from the ASEAN - is not done in isolation and is somewhat linked to other economic processes.

My questions to Assistant Secretary Cruz:

1. Is there any specific ASEAN trade arrangements that are linked to this declaration on migrant workers?
2. Does this declaration also offer provisions that countries in the region also need skilled and unskilled labor? And is there any sort of numbers involved, like what professions are needed? Singapore and Malaysia, for example, have been pirating software experts.
3. Has ASEAN also looked at remittances? An ADB study last year said that ASEAN workers in four countries - Singapore, Malaysia, Hong Kong and Japan - have remitted an estimated US\$3.3 billion. Is there any relation to that? Thank you.⁹

Al Obre, Resource Center for People's Development (RCPD) -- Actually, we are really not engaging on the issues of labor migration but on labor in general. But we look at labor migration as part of the concern and problems of labor here in the Philippines.

Actually, my question is about the statement that migration is not a policy of the government. I'd like to have this clarified, because this is not what it looks like at the moment, considering that, at least according to statistics, thousands of Filipino workers are leave on a daily basis. At the same time, when President GMA goes on trips abroad, she comes back with news, not only of how much investment the government was able to get, but even of what job opportunities abroad are open to our people.

Also, our country responds to the demands of the international and regional markets. For example, when there was a demand for entertainers in Japan, many

schools for entertainers opened here. When caregivers were the fashion, schools opened courses for this.

Now, I am a bit confused and I would like a clarification to Assistant Secretary Cruz's statement that labor migration is not a policy of government. I would like to know where that statement came from.

ASec Cruz - Thank you. I'll probably have to address this point to Noel. Perhaps you should come up with another seminar on this issue on whether it should or should not be a policy of government. You know, I started with that premise because I know it's a controversial one.

Many of you may or may not agree with me, but the bottom line here is the issue of family reunification. We know for a fact that many of you know the social cost of migration. The ideal condition really is that families should be together, but there are many extraneous issues that are related to this.

The population issue, for example. How does this contribute to this issue? You know, on the average we produce about a million graduates a year, but how many new jobs can we provide? I think the statistics that I've read from one of your publications here says it is only about three-quarters of that.

So, where do you bring the other one quarter of these new graduates? So definitely, you'll have to come up with some stopgap measure. Fortunately, we have many talented graduates, many talented workers, and there are other opportunities in other countries.

If our problem here in the Philippines is population growth, other countries like Japan and other European countries have the problem of population under-growth. So, these are opportunities. It may be a challenge for us, but there are opportunities in other countries. But I'd say that the bottom line really is still the social cost of migration. And I'm glad that there are many new investments coming in, labor-intensive new industries, for example.

⁹ ASec Cruz did not answer Jeremiah Opiniano's questions.

You're right in the sense that many of the trips that the President has been making, or one of the things that she's addressing here, has been to generate investments. Even in ASEAN alone, the things that we are doing are on the economic front, and this will also address the question on the specific trade arrangements to address migrant workers.

For example, AFTA, the ASEAN Free Trade Area, is an incentive for investors to come in here. Because if we are able to lower the trade from 0-5%, that is a big incentive for investors to come and relocate here because, instead of having a market of 84 million Filipinos, they now have a market of about 360 million ASEAN people.

I was reminded of this news article that I read, I think it was last year. There was this Chinese investor in Subic. He's into this glass manufacturing; his investment is worth around US\$300 million. He was asked why he decided to relocate to Subic when in fact he could very well put up the same industry in China.

The main reason that he gave is that he wanted to avail himself of the AFTA. While his real target are the ASEAN member countries, in the process, we are generating new employment for our workers here. You can multiply that several times over. As I've mentioned earlier, we were able to generate US\$2 billion worth of direct foreign investments last year. But according to analysts, we can go as high as US\$8.5 billion if we are able to develop our other industries and open it up to investors. It's just a matter of accelerating or increasing our investment promotion on this one.

Now, other agreements on the trade side done by ASEAN when it comes to migrant workers, especially the skilled ones: You know the economic sector of ASEAN has already signed two important documents – I think one of them is included in your documentation: (1) the Mutual Recognition Arrangement on Engineering Services, signed in 2005, and (2) the Mutual Recognition Arrangement on Nursing Services, signed in Cebu.

In effect, what the second agreement says is that Filipino nurses' certificates will be recognized in other ASEAN

member countries. They do not necessarily have to take examinations to qualify as nurses in any of the ASEAN countries. Of course, there are some requirements there, such as three years experience, and so on.

For the skilled workers, there are already these arrangements agreed upon in ASEAN. And I understand our economic ministers are already discussing other professions like architects, accountants, and so on. So these are the next ones that will be liberalized because, again, as I've said earlier, the main objective of ASEAN is to come up with this ASEAN Community, and this is just around the corner. Mind you, it's only eight years down the road.

I welcome this invitation that you gave to me, because actually I've been on the road. Two weeks ago I was before some Political Science students of UP, discussing with them about ASEAN; our office has a program called ASEAN Campus Tour Series because we are developing an awareness of ASEAN. We are afraid that when we already have the charter and it is submitted for ratification, it might not be ratified here. They might say, we know next to nothing about ASEAN.

So again, this is another area where you can help – increase the awareness about the region, especially the ASEAN region, because this is actually the wave of the future for the region. It's a pity because outside the region, they recognize the capability of ASEAN as a regional leader.

There is such a thing which we call the centrality of ASEAN. We are offering the good offices of ASEAN as an organization to our neighbors in the region, because we have shown them that we do not even have to run to the United Nations, for it to mediate in regional problems, because we can easily address them here.

Of course there are some things that we hope to address in the future, but there is this recognition outside the region of the potential, of the capability of our regional organization. For example, can we say that there is a similar organization in Northeast Asia? Do China and

Japan see eye to eye on many issues? Unlike Filipinos, who are a very forgiving people, these countries, especially the Chinese, have a very long memory; they have yet to forget what happened, what the Japanese did to the Chinese during the Japanese war. This is one obstacle that prevents them from addressing issues that can very well put them ahead of other regions.

As of now, they rely on ASEAN to mediate. As a matter of fact, that's one of the things we did in Cebu: We hosted this trilateral summit of Japan, China and South Korea, because we believed that this was one confidence-building measure that ASEAN can offer to our neighbors in the region.

In one of the seminars that I have attended on ASEAN, one speaker said that ASEAN is just like – have you seen the movie *Lord of the Rings*? That speaker said, “ASEAN is just like the hobbits in the movie *Lord of the Rings* because, like the hobbits, they are weak militarily, they are small, a collection of small countries. But like the hobbits, they have an important role to play in the movie, because they are the ‘keepers of the ring’.”

In the same manner, ASEAN is the keeper of peace and stability in the region. It's not really nice to compare us to hobbits, but, short of any other analogy, that is the important role that ASEAN can play. And when I say ASEAN, I'm not just referring to this criticism that I often hear that “ASEAN is a club of bureaucrats.” I don't think it is so.

ASEAN derives its strength from its people and I'd say that civil society groups are the driving force of the ASEAN peoples. I hope that you will continue with your advocacies, not only among migrant workers. There are a lot of issues in the region that we can push and, hopefully, we can keep the role of ASEAN as a leading force in the region. Thank you very much.

**Closing Remarks
Mirko Herberg
Resident Representative
Friedrich Ebert Stiftung (FES)**



Now I'm having the most difficult task. What is there to say after the hobbits? Maybe I share with you my perspective on this issue. I'll be brief.

I see the issue of migrant workers as a test case for ASEAN. With the migrant workers, ASEAN will have to prove if it is taking the rhetoric of community-building seriously. If it is serious in building a community that is based on people and not on commodity, how is ASEAN going to treat its people?

I think the issue of migrant workers also poses a challenge on the traditional concepts of sovereignty that the ASEAN member countries have espoused and because it shows that internal affairs aren't entirely internal anymore.

And it also poses a challenge to the - as I see it in the economic field, at least - competitive framework of ASEAN.

The issue of migrant workers will force ASEAN to look at itself differently. It will look at itself as an entity and how it can create win-win situations, because I believe it really can.

Now, there was a lot of discussion this morning about the Declaration: whether the glass is half-full or whether it's half-empty. I've spotted a consensus that the glass is too small, that it needs to be bigger. I think there is also a consensus that this is only the beginning of a process. It states rights and obligations, but it needs to go on.

What I found interesting, and it has just been mentioned by ASec Cruz, that apart from this declaration, an agreement has been made on the nurses. And from an historical perspective, also as one coming from Europe, I think that it is interesting to look at the sectors.

I think for this integration processes, it's natural to start with sectors and with skilled workers because here you have a strong interest on both sides: both sending and receiving countries. And this is the field or the area where you can get the receiving countries on board in establishing certain standards, as well as in establishing standards in terms of rights of those workers. And I think this will have to prove itself, and it's already proving beneficial to both sending and receiving countries. Building upon those experiences, we can expand it to other sectors.

Of course this is a gradual approach and it will not satisfy our urge that the situation immediately improve for the many migrant workers that live under deplorable conditions. Often, in the European experience, I think one important aspect is non-discrimination, meaning that rights extended to workers in one country are also extended to those workers coming in from other countries. I think if this can be achieved, it's already a significant step.

I think we all agree that there's a lot to do and that we have a long way to go. Some of the areas that need to be addressed have been raised this morning, like, for instance, that national laws will have to be improved. You can talk or think about some of the receiving countries where the legal framework is not satisfactory or incomplete.

There's also an agreement, I think, that some of the governance aspects within the sending countries need to be improved in terms of information dissemination, education quality and the regulation of the recruitment processes.

And then we have to go on the regional level, look at regional instruments, the mutual agreements that have been raised, and very importantly that we have courts that will enforce the rights that are, at the moment, on paper only.

Also, my belief is that here in the Philippines, the interest of the government and the civil society organizations converge to a great extent. And I actually believe that the Philippines will have to take the lead in the region on this issue. We heard that there are a few tough nuts to crack in the regional countries and there is a need for people, organizations and countries to push it. From my perspective, it will have to be the Philippines. Of course, the Philippines will need allies, which there are already.

So, I think that's sort of my main messages. I think that you all have a long way to go, and I think there's a lot of value in this set up, this forum, where I feel that there is a good spirit of cooperation between government agencies and civil society.

This is the spirit of the AJGs. And this is the kind of constructive dialogue that we as Friedrich Ebert Stiftung, a German political foundation, will want to promote and contribute to.

I'm very happy that we had the presence of Ambassador Manalo here this morning, and of ASec Cruz. And of course it's always a pleasure to hear the sharp analysis of William.

And I thank all of you for continuing your presence in our forum. I'm looking forward to the next one which we will hold in the second quarter of this year.

Thank you for coming, and I hope to see you again.

Goodbye.







