

Fact Sheet: Fundamental Freedoms Series: Free Movement of People in ASEAN



Fundamental Freedom: Free Movement of People

Snapshot: The Association of South-East Asian Nations (“ASEAN”) intends to establish an “ASEAN Community” by 2015, including the ASEAN Economic Community (the “AEC”) that will aim to deepen and accelerate regional economic integration in priority sectors. One of the primary concerns as regards establishing a single market is the implications that it will have upon the free movement of people and labor within ASEAN. The AEC envisages the “free flow of skilled labor” and provides for its regulation; however, free movement of “unskilled labor” is not protected. Cambodia should use its position as ASEAN chair to advocate for the same standard of harmonization and protection for unskilled labor as for skilled labor and for the establishment of a human rights mechanism.

Introduction

This fact sheet highlights some key concerns as regards the proposed free movement of people and labor within ASEAN as of 2015, including the discrepancy between the treatment of unskilled (versus skilled) workers, and offers some recommendations. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Free movement of people

In accordance with Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights, which Cambodia ratified in 1992 and incorporated into domestic law by virtue of Article 31 of the Cambodian Constitution, all people have a fundamental and universal right to freedom of movement, which is stipulated to include the right to move around within one’s own country, and to leave and re-enter one’s own country. Some advocates of immigrants’ rights also extend this right to include the right to move between other countries. However, standard legal or political restrictions often apply – in line with internationally-accepted criteria – such as having to show passports and ID cards, and national and regional official minimum wage tariff barriers, which can serve as a barrier to entry of labor markets.

What is the AEC?

The AEC is the result of “Vision 2020” – an ASEAN initiative to deepen economic integration, make ASEAN more dynamic and competitive, and accelerate regional integration in priority sectors. The AEC will be established as an ASEAN single market, and will comprise five fundamental elements, namely the free flow of: (i) goods; (ii) services; (iii) investment; (iv) capital; and (v) skilled labor. The intention is to launch the single market in 2015. The AEC is part of a wider strategy and is intended to complement both the ASEAN Political Security Community and the ASEAN Socio-Cultural Community. While the AEC may share some similarities with the established European model – the European Union or “EU” – there is a clear distinction between the two: unlike the EU, ASEAN only provides for the free movement of *skilled* labor/workers as opposed to unskilled labor/workers.

ASEAN – 2015

According to the AEC blueprint, the free flow of skilled labor aims to facilitate the movement of natural persons engaged in trade in goods, services and investments. Furthermore, ASEAN is working to facilitate the issuance of visas and employment passes for ASEAN professionals and

skilled laborers engaged in cross-border trade and investment-related activities. ASEAN hopes to harmonize and standardize such movement by: (i) enhancing co-operation between ASEAN University Network members to increase mobility for both students and staff; (ii) developing core competencies, qualifications and skills required in priority services sectors; and (iii) strengthening the research capabilities of each ASEAN member country in terms of promoting skills and job placements and developing labor market information networks among ASEAN member countries. Many stand to benefit from these new regulations. However, unskilled laborers are left exposed.

Unskilled Laborers

More than almost any other country in ASEAN, Cambodia is familiar with the plight of unskilled migrant workers and should therefore be concerned by their lack of protection. While migrant workers in theory have the right to seek work wherever they wish – in accordance with the right to freedom of movement – the conditions faced by these workers in reality are often far from ideal, precisely because they are unprotected by existing ASEAN regulations. For example, tens of thousands of Cambodian women and girls who migrate to Malaysia enjoy minimal protection against exploitative working conditions and other serious human rights abuses. Stronger and more robust regulations to monitor recruitment agencies than the recent Sub-Decree on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (Sub-Decree 190) are evidently needed in Cambodia; however, more relevantly, so is an effective human rights or complaints mechanism accessible to people in all ASEAN countries. Only with such a mechanism in place can the current problems suffered by migrant workers be solved and their rights be protected. ASEAN's Declaration on the Protection and Promotion of the Rights of Migrant Workers creates positive obligations for receiving and sending states, but clearly lacks effective enforcement as yet.

Conclusion/Recommendations

The liberalization of movement within ASEAN is certainly a commendable objective. However, without the necessary safeguards in place for unskilled labor, migrant workers remain vulnerable and are unlikely to benefit from ASEAN's goal of integration. Cambodia in particular stands to fall behind other countries, both economically and socially. The Royal Government of Cambodia should use its leverage as the new chair of ASEAN to advocate both for the inclusion of unskilled labor in the AEC blueprint and the creation of an institutional ASEAN human rights mechanism to protect unskilled migrant workers across ASEAN, thereby protecting and promoting the universal right to freedom of movement. However, it is feared that Cambodia (as well as Burma and Laos) will struggle to match other ASEAN countries' development, with Prime Minister Hun Sen stating: *"the reduction of development gaps among ASEAN member states is the prerequisite condition in order to ensure competitiveness and to achieve regional integration"*. Cambodia should therefore also work to ensure that the AEC reduces the disparity of wealth between member states, in time for the opening of internal ASEAN borders in 2015. Otherwise, countries such as Cambodia will experience a drain of labor, both skilled and unskilled, as people exploit the new integration to emigrate to countries like Singapore, Malaysia and Thailand to seek a better wage. Cambodia must act now.

For more details please contact Ou Virak (tel: +855 (0) 1240 4051 or e-mail: ouvirak@cchrcambodia.org) or Robert Finch (tel: +855 (0) 7880 9960 or e-mail: robert.finch@cchrcambodia.org).