Facilitating Legal Labour Migration: The Role of Destination Countries

Andy Hall
Migrant Forum in Asia (MFA)
Mahidol Migration Center (MMC)

17th October 2011
Abuja, Nigeria
Where I am Coming From? East and South East Asia

Estimated 12 Million International Migrants in East and South East Asia (IOM, 2009)

- ‘Destination Countries’ include Thailand, Malaysia, Hong Kong, Korea and Taiwan
- ‘Home Countries’ include Myanmar, Cambodia, Vietnam, Indonesia and Philippines
International Legal Framework for Receiving Countries

- Basic Instruments of the United Nations (UDHR etc.)
- 1990 UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*
- International Labour Organisation
  - Preamble of ILO Constitution states that the ILO shall have the task of protection ‘the interests of workers when employed in countries other than their own.’
  - 1998: ILO adopted *Declaration on Fundamental Principles and Rights at Work* which made specific reference to the protection/promotion of the rights of migrants as of pressing importance and interest
  - 2004: *Resolution concerning a fair deal for migrant workers in a global economy*
  - *Migration for Employment Convention (Revised) 1949* (ILO C-97)
  - *Migrant Workers (Supplementary Provisions) Convention 1975* (ILO C-143)
  - 2007: ILO *Multilateral Framework on Labour Migration*
  - ILO recommendations 86 and 151
Fundamental Issues for Destination Countries (I)

• Clear role for ‘migration’ in national economic, social and development plans
  ◦ Migration policy developed taking into account national, economic and human security
  ◦ Labour market need ‘analysis’ crucial (n.b. informal sector challenges)
  ◦ Flexibility but realism in jobs migrants ‘can’ do
  ◦ Acknowledge benefit of migration

• Inclusive policy development
  ◦ Avoid conflict, develop understanding
  ◦ All relevant actors and stakeholders involved
  ◦ Citizenship vs. temporary migration debate and issues of children/education/healthcare
Fundamental Issues for Destination Countries (II)

- **Migration Management Authority**
  - Migrant cross cutting issue (labour, industry, gender, development, security, interior, welfare, public health)
  - Need a policy led from the center
  - Resourced for research and strategy planning – *crucial role of reliable data and statistics*
  - Inclusive and participatory all stakeholders

- **Prioritising Regional/International Agreements**
  - Migration and borders less complex when regional understanding and agreements brokered
  - Can balance benefits and burdens
  - Central role of regional protection mechanisms/standards for migrants – *ASEAN Framework on Migrant Workers*
  - Need clear import/deportation standards and processes, utilising amnesties where policy becomes imbalanced
Fundamental Issues for Destination Countries (III)

- Combating abuse of power and acknowledging migrant ‘risk’ group
  - **Law enforcement** (police/immigration) officials - involved in smuggling, trafficking, unlawful arrest and detention, violence (including sexual violence), intimidation
  - **Labour officials** involved in assisting brokers to make excessive profit, demanding bribes from migrants and employers for registration processes and failing to enforce labour laws for bribes
  - **Brokers** who continue to work without a governing legal framework and, together with officials and employers, continue to overcharge and exploit migrants
  - **Employers** involved in breach of labour protection law, trafficking and forced labour
  - **Migration officials** (interior/labour) often key beneficiaries in unlawful migration practices and abuse of power/corruption
**Fundamental Issues for Destination Countries (IV)**

- **Migrant Rights Protection**
  - ALL migrants human/social beings
  - Prioritisation of ‘human rights’ over ‘illegality’
  - Flexibility on employer change to prevent forced labour and migrant registration as ‘individual’
  - Regularisation of ‘brokers’/document confiscation
  - Non-discrimination and right to organise
  - Migrant social protection
    - Wider definition from basic human/health/labour rights to social security/welfare/housing
    - Regional and bilateral agreements important
    - Responsible welfare agency
  - Realisation of ‘child/dependents’ reality
  - Gender sensitive policies
  - Rights awareness
    - National NGO not substitute for migrant communities
    - Raising awareness of migrants as ‘independent’ human beings crucial