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## Assessing Potential Impact of ASEAN Integration to Philippine Labor Force: A Call for Review of Labor Laws on Pre-Employment and Human Resource Development

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**Abstract:** The ASEAN integration is set to bring significant changes in the labor landscape of the Southeast Asia region. With the creation of the ASEAN Economic Community (AEC) that primarily aimed to make the region an alternative capable player in the global market by creating a single production base; the skilled labor mobility and its effect to the labor force of ASEAN state members is becoming a top concern<sup>1</sup>. This is particularly relevant for a third world country like the Philippines, which has bigger compromise and risks to assume in the integration compared to the more economically progressive members. This paper explores one potential measure to address and manage the impact of ASEAN integration to the Philippine labor force – the initiatives on strengthening and aligning its domestic laws on overseas and migrant workers. Using descriptive research method, this paper examines existing labor laws of the Philippines; and compares them to other ASEAN members. The comparison affirms the inherent differences in domestic labor laws among its members which poses a threat to the success rate of AEC. The question of how the states are willing to compromise its sovereignty to achieve the concept of a borderless community of nations comes in. However, this paper upholds that the Philippine government must first review, and amend if its sees fit its domestic labor laws on overseas and migrant employment to ensure the protection and welfare of its workers in the ASEAN integration.

**Key Words:** ASEAN Integration; Overseas Worker; Migrant Worker; Labor Laws; Employment

### 1. Introduction

The recent changes in the global market, characterized by easier availability and exchange of goods and services, interconnectedness of people, and wider access to knowledge and information, moved countries around the world to capitalize on their labor force to maximize the economic benefits of globalization. The concept of a borderless community influenced the strengthening of regional integrations such as the Association of Southeast Nation or “ASEAN”. The ASEAN’s structure as a regional integration is founded in the creation of three communities representing the association’s goals and visions, which are 1) the ASEAN Political-Security Community (ASPC), 2) the ASEAN Socio-Cultural community (ASC) and 3) the ASEAN Economic Community (AEC). The AEC, which is said to be the

heart of the integration, embodies ASEAN’s goal to improve the economic conditions of its member-states and be strong force in the competitive global market. Through the creation of a single market and production base, the AEC envisions ASEAN to be “more dynamic and competitive with new mechanisms and measures to strengthen the implementation of its existing economic initiatives”.

This vision is embodied in the blueprint of AEC, outlining the five core elements of an ASEAN single market and production goods: the 1.) free flow of goods, 2.) free flow of services, 3.) free flow of investment, and 4.) the free flow of skilled labor. The free flow of skilled labor is one of the major machineries of ASEAN to promote a wider scale of economic advancement in its member-states. To allow better mobility of workers across the region, ASEAN is working on better facilitation of issuance



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of visas and employment passes for ASEAN professionals and skilled workers, and among others, develop their core competencies and qualifications as required by the service sectors. In long-term perspective, ASEAN is also set to strengthen the research capabilities of each ASEAN state-member in terms of promoting skills, job placements, and developing labor market information networks among the state-members.

Despite the promising future that ASEAN integration holds, several criticisms are arising concerning its adverse effects in the labor force of some of the member-states. The worsening of inequalities among the member-states, which translates to the persistent job insecurity and worker's right violations present mostly in developing countries, is becoming a top concern. This manifests in reported cases of racial discrimination, abuse, and substandard work conditions being offered to workers in some of the employing ASEAN countries. The Philippines and other developing countries that are part of ASEAN, which labor force are generally less equipped to exploit the opportunities offered by economic integration and are more prone to job insecurity and violation compared to their developed counterparts. This begs the question on how a country should prepare before embracing the concept of the free flow of labor.

## 2. METHODOLOGY

This paper explored what could be a viable measure for the Philippines to prepare for the envisioned mobility of its labor force with the ASEAN integration – a sound law on pre-employment and human resource development that are aligned and on par with the other ASEAN members. This paper specifically looked into two (2) key areas of the labor laws under the said books, examined the applicable provisions, and compared them with the applicable laws in selected other ASEAN member-states. This is to conduct a simple benchmarking and even at surface level immediately identify what areas of the said Philippine laws must be aligned with the other member-states, and what are pointers that the country can take to improve its domestic labor laws and be at par the former.

The key areas which will be the focus of this paper are as follows: (1) Protection of Migrant Workers, (2) Job competency, training, and skills development

A qualitative method of research using meta-analysis technique was used to determine the relationship of the difference in labor laws of the

Philippines and select ASEAN member-states, which herein served as the sample, to the potential impact of the ASEAN integration to its member-states as established by several studies. In this paper, meta-analysis was performed by analysing and integrating together the findings on select scholarly materials and publications that tackled the potential impact, both beneficial and adverse, of the ASEAN integration to the member-states of the organization. The integrated findings were then examined vis-à-vis the differences in labor laws in the said key areas of the sampled states.

## 3. RESULTS AND DISCUSSION

The countries used for comparison with the Philippines are Singapore, Indonesia and Thailand. These three countries, together with the Philippines, are the first founding members of the ASEAN back in its establishment in 1967. The selected member-states are good reference for the comparison, as all of them are the original proponents of goals of the association. It would be interesting and meaningful to review how these countries have so far been committed to the principles of the association in terms of their legislations. In addition, the current economic statures of the selected states, with Singapore termed as one of the fastest growing countries in the global scene, would provide a good contrast to the developing countries like the Philippines and the other two states. The comparison were limited to labor laws on pre-employment and human resource development, particularly on three above mentioned key areas, and does not cover the other areas of laws and legislation that could be potentially needed to be reviewed.

### *3.1 Philippine Labor Laws vis-à-vis Other ASEAN Members*

As mentioned, the comparison will be limited to the two (2) key areas of labor laws on pre-employment and human resource development. This paper acknowledges the differences in legislation system of the member-states and the varying legal philosophies behind the respective labor laws that will be covered. Hence, the findings and analysis of this paper were drawn in general context.

#### *3.1.1 Protection of Migrant Workers*

The examination of the labor laws of the Philippines vis-à-vis Singapore, Thailand, and Indonesia's suggests that the Philippines has the most comprehensive provisions on law when it comes to protection of migrant workers. The Philippine Labor Code (1974) (as amended by Department of



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Labor and Employment's (DOLE) Department Orders) and the subsequent R.A. No. 8042 or Migrant Workers and Overseas Filipinos Act (1995) provided extensive provisions of laws and policies for overseas employment, and among others, establishment of higher standard of protection and promotion of welfare of migrant workers.

The Chapter II of the The Book 1 "Pre-employment" of the Philippine Labor Code provides the laws for regulations on recruitment and placement activities for private recruitment agencies. It includes the requirements for license for private agencies, grounds for revocation of the same, and list of practices in relation to recruitment that any entity are prohibited to conduct in terms of recruitment including overseas workers. In comparison, the three member-states also have their own extensive provisions on their laws covering requirements for private recruitment. For example, Thailand's Employment and Job-Seeker Protection Act (1985) provides the obligations of private recruiters for engaging overseas employment, the technical requirements for acquiring license to recruit, and other procedural matters pertaining recruitment. Chapter VII of the said act also provides the penalties and sanctions of the private recruiters for violations of laws on recruitment. Singapore also have similar provisions, which includes list of prohibited acts for the private recruiters, such as engagement of unlicensed persons, furnishing false information, and directly and indirectly charging and receiving fees above the government prescribed .

However, one area that the Philippine labor law seems to be ahead among the other member-states is the inclusion of provisions on illegal recruitment. The Philippine Labor Code defines illegal recruitment as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under the Labor Code of the Philippines". In addition to this definition, the prohibited practices for private recruitment agencies as enumerated by the Labor Code were further consolidated in DOLE's Department Order No. 141-14 as the acts constituting illegal recruitment. The acts are expressly enumerated, and are attached with corresponding penalties that vary depending on gravity of the committed act. In comparison, the three member-states in their labor laws do not have

an exact definition of illegal recruitment and a strict list of acts that would constitute the same. Their existing labor laws, instead, provide penalties for violations on the laws governing private recruitment, which penalties, similar to the Philippines, include revocation of license to recruit, imprisonment, and fines that also vary depending on different factors. While it can be said that both the labor laws of the Philippines and the other three member-states are anchored on the same principles of regulating the placement of their respective workers, the Philippines' provisions on illegal recruitment is a manifestation of strong commitment of the country to protect its workers. This is particularly evident in inclusion of the prohibition of "recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines" as part of the acts constituting illegal recruitment. In effect, the provision criminalizes the serious disregard of any individual or entity, whether licensed to recruit or not, to the security and welfare of Filipino workers when working overseas. The D.O. 141-14 further enumerated anti-illegal recruitment programs that DOLE shall adopt and implement to support the country's migrant workers.

It can be observed with the comparison, however, that laws of the member-states are preventive by nature on the part of a sending member-state, making its enforceability in the receiving member-states questionable. The varying labor laws, particularly covering foreign workers, might be an issue as to the question whether the migrant workers will be truly protected as intended by their state of origin. This is the reason why the Philippines included in its R.A. No. 8042 provisions that serve as requisites on receiving states for private recruitment agencies in placing Filipino workers.

In relation to this, Thailand's local laws protecting the rights of foreign workers from other countries are rather lacking. Thailand's Working of Alien Act (2008) mainly provides procedural rules for private recruitment bodies and government agencies in engaging foreign workers. The act provides the regulation in engagement of aliens as to working area, period, and type or nature of work, the requirements for the aliens to obtain work permit, and the obligations of employers in engaging the aliens for employment. However, it can be observed that the current labor laws of the state are more geared towards restrictions on the entry and deployment of foreign workers from other countries,



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and less on protection of the latter to be aided by the country as a receiving state. Similarly, Singapore's Employment of Foreign Manpower Act (2009) focuses on requirement of work pass for foreign workers (or the employers intending to engage them), grounds for termination of work pass, and offences, with and corresponding penalties, that foreign workers may commit during their employment. While it is understandable that the member-states will at all time priority the protection of interest of its own workers, the lack of provisions on protection of foreign workers from the receiving states are evident and is worth of thorough assessment by ASEAN.

### *3.1.2 Protection of Migrant Workers*

Despite ASEAN member-states' resemblances in culture and tradition, each has peculiarities and differences in traits that may pose certain concerns, especially in the work place. The said differences could directly affect the behavior of the members of an organization, hence potentially causing tensions among employees of different races. For example, Filipinos are known for its inclination to put a premium on peace: they tend to avoid conflict whenever possible and settle issues in a non-confrontational manner. This trait, when taken to workplace world does not always yield positive impact, especially considering that a big portion of the modern workforce in the Philippines is already racially diverse. This is already apparent with the growing BPO industry in the Philippines, where most of the top management of the companies is comprised of foreigners. Since most BPO companies are based on western business setting, BPO employees are required to adapt a more diverse work culture. This cultural diversity is expected to grow more with the labor mobility of ASEAN integration.

Language and communication are considered crucial in resolution of conflicts, and barriers on the same may produce issues once the labor force of the member-states becomes more racially diverse due to the integration. To date, the Philippines remain to be the top English speaker in Asia. While this might sound as a huge advantage in the international market, this does not necessarily true in the ASEAN region, due to the fact that ASEAN countries in dominant market position, like Singapore, are more likely not inclined in adopting English as the primary language for day-to-day work operations. The possibilities of these phenomena are not new as the European Union (EU), often touted as the model for regional integrations of the ASEAN, experienced the same set of issues with its concept of

creating a Single European Labor Market. Academics and policy makers hold that EU has not achieved its goal of free labor across Europe due to, among other reasons, inherent barriers on language and culture.

In conjunction with the insufficiency of labor laws protecting the rights of foreign workers on the part of receiving states, the issue on employment related discrimination may continue to increase with the materialization of the ASEAN integration. According to Deputy Administrator for POEA Carmelita Dimzon, Filipino migrant workers experience higher rate of employment-related violations and discriminations, and below-standard labor conditions which usually involve "confiscation of passports and other travel and employment documents by the employers, non-payment, partial payment, or withholding of salaries, unilateral reduction of wages, illegal deductions from pay slips, substandard living and working conditions, denied access to compatriots and friends, denied access to medical and health services, and many others". This may partly be due to the negative stigma on Filipino workers to be only suited for blue-collar works such as being household keepers, domestic helpers, and other manual laborers. This form of discrimination can be attributed to the persistent trait of colonial mentality, particularly in third-world countries such as the Philippines, that is existent even in workplace. Defined as "the perception of ethnic and cultural inferiority and a form of internalized racial oppression", colonial mentality is a trait deemed born out of the oppressed countries' history of colonialism. This mentality has its tendency to affect employment, as employers in receiving states might develop a preference over foreign applicants from more developed countries due to the perceived notion that they are superior as to qualification and skills compared to their counter-parts. It might affect not only recruitment, but may also influence post-employment aspects, such as safety and motivation in the workplace.

Job-related discriminations may also arise when member-states demonstrates an overtly strong preference for its local constituents over foreign workers. It is understandable, however, that states would innately prioritize the welfare of its own people, more than any international commitment. This manifests in the state policies of some countries, including the three member-states being compared, which set quotas in employing foreign workers to protect its locals from the influx of foreign workers



who can take a big portion of employment opportunities in their labor market.

Table 1. Foreign Worker Quota in Select ASEAN Member-states

Philippines	Indonesia	Singapore	Thailand
n/a	10:1 Long term work permits =1:1	S Pass Holder = 10:1 PRC Permit Holders= 22:1 Malaysian/NAS Work Permit holders= 1:1	4:1

In the case of Indonesia, its government set a ratio of 10:1, where employers are required to hire 10 local workers for every one (1) foreign worker hired. In 2015, however, by the virtue of its Amendment Foreign Worker Regulation 16, Indonesia already revoked the said quota, and now imposes 1:1 ratio, at least for long term work permits. Thailand similarly provides a foreign employment quota of four (4) local workers for every 1 foreigner employed.

On the other hand, Singapore imposes more extensive quota requirements, which are based on the qualification and certification of foreign workers desired to be employed. This regulation is based on continuing problem of the country due to the rapid influx of foreign and non-resident workers who are composing a major portion of its labor force. In 2015, the number of foreign workers in Singapore is at 1,378,300, which makes up the 38% of the country's total labor force. Such ratio is reportedly putting strain on jobs, housing infrastructure, and even causing racial tensions due to fear among the residents on continuous dilution of the Singaporean national identity. Meanwhile, the Philippines to date, does not impose a local-per-foreign worker employment ratio. Its labor code, instead, provides a requirement that employment permit for a non-resident alien or to the applicant employer may be issued after determining that there is no available person in the country who is competent, able and willing at the time of application to perform the services for which the alien is desired.

The concept of foreign employment quota should be thoroughly reviewed by the member-states of ASEAN, especially with their commitment for the integration. While, as mentioned, it is understandable that the member-states will prioritize the security and welfare of their own labor force, these kinds of restrictions might go against the concept of free-flow of labor envisioned by AEC,

which intends to loosen the regulations in entry and movement of skilled workers of ASEAN across the region. Moreover, there is an apparent insufficiency when it comes to labor laws concerning race-related discrimination in the four member-states. For example, the Philippines, to date, do not have an explicit labor law that prohibits discrimination on the account of race and ethnicity. While the Philippine Labor Code provides in the state policy that the State shall ensure equal work opportunities regardless of sex, race or creed, no implementing rule and regulation has been enacted that specifically tackles prohibitions and corresponding violations on racial discrimination as to workplace, and that the said state policy is understood to cover Filipinos and does not extend to foreign workers. To date, the anti-discrimination laws that are enforced are DOLE's Department Order No. 170, otherwise known as the "Anti-Age Discrimination in Employment Act", and in some respect, the Republic Act No. 9710, otherwise known as the "Magna Carta of Women". The Senate Bill No. 2814 entitled "Anti-Ethnic or Racial Profiling Act of 2011" however is pending in the Philippine congress that seeks, among others, to prohibit discrimination on employment against a person on the ground of ethnicity, race or religious beliefs, which covers recruitment, terms and conditions of employment, and dismissal. Unfortunately, similar to other domestic laws, the laws, including the said pending bill, were not structured to cover foreign workers. This similar in the case of the other member-states which have incorporated in their respective state policies equal job opportunities for all of its citizens, but are elusive as to protection of foreign workers from potential race-related discrimination in their jurisdictions as receiving states.

### 3.1.3 Training and Skill Development

Another area in Philippine labor laws that should be revisited in relation to the ASEAN integration are the provisions on the training and skills development that the government provides to its workers, especially to those that are gearing to capitalize on the labor movement in the region. The Book 2 of the Philippine Labor Code entitled "Human Resource Development" provides the objective of the state to develop its human resources by establishing training centres, and formulate plans and programs to utilize the country's manpower, and promote employment and accelerate economic and social growth. This includes the formulation of long term national manpower plan and the establishment of



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skill standards specific to the different industries. The law also provides, to support its national manpower plan, the administration of training programs, assistance to employers in designing training schemes for their employees, and regulation of other training and skill development programs to ensure the conformity of the same with national development programs.

Born out from the said national manpower plan is the establishment of Technical Education and Skills Development Authority (TESDA) to support the training and skill development of Filipino workers and make them competitive both in the local and international market. Significantly, TESDA's priorities are anchored on a bigger social responsibility which is to be a partner for combatting poverty especially in the provincial regions of the Philippines. In similar respect, Thailand's Skill Development Promotion Act (2002) focuses on "pre-employment training", which is aimed to ready workers in the work they are to assume, and "skill upgrading training" which is aimed to enable workers to further knowledge and skills as they continue with their employment. Both may be administered by the government, employers, or a "training provider" who is an authorized person or entity who arranges training activities in accordance with the curriculum and regulating rules by the country's minister-in-charge. Some of the strong points of the act are the comprehensive rights and benefits of training providers as incentive to their contribution to national skill development. Similar with the Philippines, Thailand's government provides income tax exemption on the percentage of training expenses, assistance and consultations in providing training, skill standard testing, and curriculum development, plus additional premiums such as exemptions on VAT and import duty for tools and machinery bought for training purposes, deductions on utility charges in the amount of two times of the training costs, and other privileges prescribed by their ministry. This is a good scheme to entice private entities to engage to contribute to the skill development in the country's labor force. In addition, the act also provides the setting of skill standards across various trades, where in which any person who desires to have his/her skills be certified may just simply apply to a regulating committee. The technical procedures in the certification of skill standard and issuance of the certificate shall be administered by the said regulating committee.

Also similar to the policy of the Philippines, Indonesia's labor law provides for the establishment of manpower policy and development of manpower planning. This manpower planning shall be in macro and micro-scale, and shall be used in formulating policies, strategies and implementation of sustainable manpower development plan. Indonesian labor law focuses on job training that is directed to instil, enhance, and develop job competence of its citizens. To further operationalize its objectives, Indonesia launched the Technological and Professional Skills Development Sector Project in 1996 that run until 2005. It was based on the rationale that in order to make the workforce strong and competitive by strengthening the role of higher technical education in augmenting their skills. The program was referred to be successful with actions, which among others, have improved the teaching and learning environment of several educational institutions by upgrading physical capacities, reforming accreditation system, strengthening staff development, and raising quality of study programs. One of key learnings with the project is the positive impact is "institutionalizing linkages between educational entities and industries nationally and at the higher education institution", which was incorporated to the renewed government's commitment to strengthen and reform the education sector as reflected in the sector's increasing share in budget allocation.

Singapore also has one of the most comprehensive programs when it comes to training and skills development. Its program called SkillsFuture is "a national movement to provide Singaporeans with the opportunities to develop their fullest potential throughout life, regardless of their starting points. Through this movement, the skills, passion and contributions of every individual will drive Singapore's next phase of development towards an advanced economy and inclusive society". Spearheaded by Singapore's Ministry of Manpower, SkillsFuture vision is to help all components of the labor market, regardless of age, attain skill mastery to help them achieve or advance with their careers in a long-term perspective. This vision is anchored in four key thrusts, which are to 1.) Help individuals make well-informed choices in education, training and careers, 2.) Develop an integrated high-quality system of education and training that responds to constantly evolving needs, 3.) Promote employer recognition and career development based on skills



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and mastery, and 4.) Foster a culture that supports and celebrates lifelong learning.

### *3.2 Job Insecurity and Stiffer Employment Competition with ASEAN Integration*

Despite what seems to be abundance in law, policies and programs of the ASEAN member-states, unemployment and underemployment remains to be two of the biggest problems in developing countries like the Philippines. According to the Labor Force Survey conducted by Philippines' National Statistics Office (NSO), as of April 2015, almost 50% of the unemployed population in the country is in age group of 15 to 24 or the "young workers". Furthermore, 22% of the said unemployed population are college graduates, 13% are college undergraduates and 33% are high-school graduates. Underemployment is also high at 17.8%. One of the cited causes of the said employment and underemployment is the skill-mismatch among the young workers and new graduates. Skills mismatch refers to various types of imbalances between skills offered and skills needed in the world of work. Skill mismatch has a direct relation to the rate of employment, as the labor market functions to provide the signals and the mechanisms by which workers seeking to maximize their utility can be matched to employers trying to maximize profits. If the labor force cannot provide the demands of the employers to as to skills and qualifications to carry out their business, then employment rate would suffer, which would create an impact to the economy in a macro-level. Skill mismatch, however, is not a problem exclusive to third-world countries like the Philippines, but even countries with most developed economies experience the same, mainly due to the changing landscape of the global and local labor market. Underemployment in Singapore, while not rampant compared to other Asian countries, nonetheless still exists. As of 2015, 3.4% of the country's labor force is underemployed. The existence of underemployment are said to be caused by the country's economy demanding specialized roles that require work experience and set of skills that are not necessarily taught in school, making it harder for entry-level graduates to find work. In effect, some workers resort to low-skilled positions or part-time jobs.

What is alarming, however, is level of preparedness of the Philippines in allowing its workers to be mobilized across ASEAN given the current internal state of its labor force which suffers from employment issues due to skill mismatch. This

skill mismatch has the tendency to worsen job insecurity among the workers of the developing countries. Skilled workers from developing countries such as the Philippines are likely to be less equipped to exploit or maximize the opportunities offered by the economic integration. They can also be more prone to job insecurity and violation of their rights as workers. This is due to the fact that the trainings and skill enhancements offered by the government in developed countries such as Singapore are significantly more advanced compared to the likes of the Philippines, Thailand, and Indonesia.

The difference in economic status apparently influences the focus on quality and implementation of the above mentioned government initiatives to prepare for the looming phase of globalization. It would be logical to assume that first-world countries have the edge in facilities and budget to fully operationalize their programs and machineries. As a result, upon the realization of the free-flow of labor in ASEAN, it would be difficult for skilled workers from developing countries, especially in the low and semi-skilled category, to compete with those from developed ones.

IBON International, an international NGO that cooperates with social movements all over the world, in their paper entitled ASEAN Community 2015: Integration for Whom raised an important question as to who is the true beneficiary of the ASEAN integration. According to the research, "the regional integration, as long as it follows the same old logic of the neoliberal model of development, is likely to worsen problems brought by the uneven and inequitable economic growth in Asia and will more likely create new problems, especially for the poor and marginalized". It upholds that putting states of different economic status in equilibrium through integration will merely reinforce unequal relationships, as countries with higher levels of economic development and thus higher levels of technology and infrastructure will be able to maintain their upper-hand position; that those countries with systems, infrastructures, and industries already in place will reap the benefits of the economic integration. Analysts have already inquired the position of the first world countries in the ASEAN which are said to be the real beneficiaries in the economic aspect of the integration. The tendency is for the more powerful countries to possess the greater influence in decision makings and policy/program developments.



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### *3.3 The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*

In the light of the discussed potential issues of ASEAN integration, ASEAN has already taken the first major step in ensuring the protection and welfare of the migrant workers that are set to be mobilized across the region. During the 12th ASEAN Summit conducted on January 13, 2007 in Cebu, Philippines, the member-states of ASEAN ratified the convention otherwise known as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers which aims to “strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN member-states”. The convention is anchored in the principle of cooperation between the receiving and sending states to take into account the fundamental rights and dignity of migrant workers and their family members, and closely cooperate to resolve the cases of migrant workers. However, this is provided that the application by the receiving states of their laws, regulations and policies will not be undermined.

The convention further enumerates the obligations of the receiving states which, among others, covers promotion of human rights and upholding the welfare and dignity of foreign workers, access to resources such as through trainings and education, and adequate access to legal and judicial system of receiving states for those who may be victims of abuse and discrimination. It also provides the obligations of the sending states such as, among others, the establishment of system, policies, and mechanisms to ensure the protection of their people, particularly against recruitment malpractices.

## 4. CONCLUSIONS

Even an immediate review of the labor laws of the Philippines and the selected member-states, particularly in areas of protection of migrant workers and the training and skill development of the same, would show that there are significant differences that need to be reconciled. Given the inexorable changes brought by globalization, scholars have posited that standardization of domestic laws is not only a way to promote sound economies across the globe but also serves as “the vehicle for building legal

architecture for global markets”. In the looming face of globalization, it is but just wise for a state, more a member of an international association such as ASEAN, to revisit its laws to align with other members and ensure conformity to the goals of the organization.

The comparison of the labor laws of the selected member states in the key areas namely protection of migrant workers and training and skills development enabled this paper to arrive with the following main findings:

#### 1. Protection of Migrant Workers.

There is an existing difference in the domestic laws of the ASEAN member-states that need to be harmonized with each other. The following are significant observations of this study in this respect:

- a. The lack of legal provisions of some of the member-states, and/or lack of a convention that universally defines the act of illegal recruitment and the corresponding penalties would make it difficult for the state-members to frame their internal policies to strengthen their measures in protecting their people when intending to work overseas.
- b. The lack of legal provisions on the domestic laws of the member-states pertaining racial discrimination as to employment would produce myriad of issues when the workforce of the member-states begins to become more diversified.
- c. In relation to the above, foreign employment quotas could also be in conflict with the concept of labor mobility as envisioned by AEC. However, this aspect cannot be loosely interfered by the ASEAN as the exercise of sovereignty of the member-states over their internal affairs is concerned.
- d. In general, there is an apparent insufficiency of laws covering the rights of foreign workers on the part of receiving states. However, ASEAN’s Declaration on the Protection and Promotion of the Rights of Migrant Workers in some extent already addressed this concern.

#### 2. Training and Skill Development

As to legislation, not much of substantial differences are observed; the main differences however, may lie on implementing rules and regulations, and implementation of the laws through programs. Nevertheless, some of the take away from this study concerning this area are:

- a. There is a potential worsening of job insecurity





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among workers once the free flow of labor begins to fully materialize, mainly due to the different capacity of the member-states to equip its workforce with necessary qualifications and skills. The issue of unemployment and underemployment is still persistent in the Philippines and most-likely in other member-states of ASEAN which may be attributed to skill mismatch.

- b. All of the member-states in comparison have provisions on setting of skill standard in their respective domestic laws. However, the lack of standard skill standards recognized across ASEAN might be a concern and might contribute the said worsening job insecurity among the workers.

With the foregoing, this paper provides the following recommendations for the Philippines, which might also be considered as reference by ASEAN and other concerned bodies:

1. For the Philippines to create a special unit attached under its DOLE, or task its existing DOLE Coordinating Committee for ASEAN Matters (DCCAM) to particularly review the labor laws on pre-employment and human resource development pertinent to the free flow of skilled labor of ASEAN integration.
2. In connection, the Philippine government should initiate the harmonization of the domestic laws of the ASEAN member-states, initially focusing on standardizing the definition of illegal recruitment, the parameters in identifying such, and the applicable penalties. In this way, the degree of diligence that the member-states would observe in the performance of their obligations as sending states would be the same across the region.
3. The Philippines must strengthen its domestic laws covering employment-related discrimination especially in account to race and ethnicity, which shall also cover foreign workers. It must also initiate the proposal for conventions that would impose region-wide prohibitions on employment-related discrimination upon receiving states.
4. The Philippines must further strengthen its trainings and skill development programs and make them at par with other ASEAN member-states. To address the existing skill mismatch in its labor-force, it must strengthen the participation of the education sectors in addressing the said skill mismatch by producing graduates that are equipped with skills that are in line with the demand of the international labor market. This is similar to the program of

Indonesia which focused on strengthening the link between academe and industries.

5. The Philippines and the whole ASEAN, in conjunction to their obligations to promote the welfare of the migrant workers, must work on developing a common skill accreditation system where the qualifications of workers will be credited across the region, regardless of their state of origin.

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