

Undocumented Migrant Workers in Asia with Particular Reference to Japan: Issues & Challenges

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日本を中心としたアジアにおける不法移民労働者：その課題と挑戦

不法移民労働者の問題は主に国家間、国内間の不平等な富の分配によって引き起こされる地球規模の現象である。アジアにおいても不法移民労働者の問題は(特に先進国にとって)国の社会経済、政治、社会福祉に大きな影響を与える問題である。本論文では日本を中心として、アジアの不法移民労働者問題の課題、今後の展望を考察する。

本論文は(1)単純労働者、セックスワーカーを中心とした、アジアにおける不法移民労働者の労働形態とその現状。(2)日本やNIEs諸国へと不法移民労働者が流入してくる要因。(3)不法移民労働者に対する政府の法律と政策。(4)不法移民労働者の劣悪な労働状況や、雇用主による搾取。(5)アジア諸国の政府の対応。(6)この問題に対する国際社会とNGOの取り組みを論じ、続いて日本における不法移民労働者の現状と課題を考察する。

不法移民労働者の問題に対しては柔軟な対応が必要となる。政府は不法移民労働者を斡旋するシンジケート、並びに不法移民を雇う雇用主に対する監督を強める必要がある。また、移民の労働形態や人権に関する多国間同士の協定を結ぶことも、不法移民を緩和するための有効な政策である。

不法移民を軽減するために、もっとも重要なことは政府の政治的意思である。

しかし、現時点ではそれは不十分なものであり、その結果この問題を助長させてしまっている。アジア各国の政府は不法移民の問題を真正面から捉え、取り組む必要がある。

Introduction

Migration including undocumented migration has become a major feature of the international scenario especially since the Second World War.

The world's population at 6.4 billion (with more than half living in Asia alone) has recorded dramatic increases in the last 5 decades. This population boom has also been characterized by major changes in terms of life expectancy, fertility, ageing, poverty, growing economic and social inequalities and major political upheavals e.g. civil unrest, anarchy, repressive regimes etc. thus impacting global migration which reached 190 million in the 21st century. More significantly the lack of manpower resources in the developed nations which parallels poverty and surplus labor in developing nations will significantly lead to further exodus of migrants from the developing to the developed nations. In addition family, cultural, and religious ties among migrants who have already established their roots in receiving countries will also be a 'pull factor' for other documented and undocumented migrant workers to move to these countries. Thus documented and irregular migration has and will be a major global phenomenon.

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Undocumented Migration in Asia

Currently more than 50 million documented and undocumented migrant workers from Asia move within the continent and elsewhere for work, education, family or simply to eke out a living for survival.

Undocumented migrant workers¹ in Asia totaling 3-4 million has also become a major issue given the fact that these workers who contribute economically to both sending and receiving countries are largely subjected to harsh working and living conditions apart from being robbed of their rights and dignity.

Malaysia, Japan, India, South Korea, Thailand and Taiwan etc are major recipients of undocumented workers. Malaysia for example is also a transit country for undocumented workers whose destinations include Japan, South Korea, and Taiwan etc. The Philippines, Indonesia, China, Sri Lanka, Bangladesh, and Pakistan are major sending countries while Thailand and India also feature prominently as major suppliers of irregular workers to other Asian countries. Malaysia which has been a major sending country has seen a decline since the mid-1990's given its rapid development.

Undocumented workers number about 700,000-800,000 in Malaysia (mostly Indonesians, Filipinos, Bangladeshis), 400,000 in Japan (mainly Chinese, Koreans, Filipinos, Thais etc), 500,000-600,000 in Thailand (largely from Myanmar), and 100,000-200,000 in India etc. More than two thirds of South Korea's migrant workers (350,000) are undocumented while the figure for Taiwan and Singapore are 10% and 5% respectively.

Undocumented workers are mostly found in 3 D jobs i.e. dirty, dangerous and difficult occupations covering construction, domestic help, entertainment and sex trade, sweat shops as well as in labor intensive industries, and even in agricultural and fishing sectors. In the case of Malaysia, irregular migrants are also engaged in the informal sector as tens of thousand of undocumented migrants set up small business in direct competition with Malaysian petty traders.

Trafficking of women has almost become synonymous with irregular women migrant workers in Asia. In this instance, Japan's billion dollar sex industry is a classic example (to be discussed later)

Similarly migrant sex workers are also found in India (which has about 50,000-100,000) Nepali sex workers. Thailand (a sending country) has a flourishing 'flesh industry' utilizing domestic sex workers as well as from the golden triangle while Korea, Hongkong, Taiwan and Malaysia are also havens for modern sex slaves from Asia.

In Japan the sex industry is fuelled by Asian sex workers from Philippines, Thailand, and Vietnam. Cambodia, China, Korea, Russia, and even from Uzbekistan, Kazakhstan, Ukraine etc. The situation is similar in Malaysia, Hong Kong, Korea etc. Most of the trafficked women are lured prostitution.

The mail bride system has also been abused to lure foreign women into prostitution.

¹The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MMC) defined undocumented migrant workers as those who are unauthorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to the international agreement to which that State is a party. See text of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Women are also trafficked for domestic labor especially in Malaysia which already has about 300,000 regular domestic helpers. Irregular domestic helpers are also found in Hong Kong, Singapore etc.

Reasons for Irregular Migration

Intra-Asian undocumented migration i.e. within the continent was fuelled by a number of 'pull and push' factors. These include:

(a) Continuing demand for cheap labor especially in 3 K jobs in the construction, transportation, agricultural and service sectors in many receiving countries

(b) Aging society particularly in Japan which has created an acute shortage of social helpers to provide services and care for the elderly and persons with disability especially with the implementation of Kaigo Hokken or Long Term Nursing Care for the Aged.

(c) Large scale entertainment and sex industries particularly in Japan, Hong Kong, and Taiwan which has drawn hundreds of thousand of sex workers from other Asian countries. About 250,000 people mainly women are trafficked in Asia each year.

(d) Proliferation of organized syndicates and triads in receiving countries is also a major factor in trafficking workers. In this respect I learnt from a Japanese syndicate that it rakes in about US20, 000 for each trafficked person. This illustrates how lucrative trafficking is in that nation.

(e) Massive deception and unethical practices by a large number of licensed and unlicensed recruitment agencies e.g. falsification of travel documents, misleading information etc has forced tens of thousands of migrant workers into prostitution and consequently undocumented migration.

(f) In addition there have been many cases where bogus as well as legitimate employers have confiscated or retained travel documents of migrant workers thus rendering these workers as illegals.

(g) Demand for domestic help in countries like Malaysia, Singapore and Hong Kong.

(h) Pervasive poverty, lack of economic opportunities and employment, over-dependence of some Asian countries e.g. Philippines on remittances by its migrant workers (including undocumented workers) has induced or forced many workers to look for employment and survival in receiving countries.

(i) Discrimination and exclusion of some segments of the population in sending countries include gender, caste, minorities etc has also contributed to the growing exodus of undocumented workers from these countries to other Asian recipient countries.

(j) The lack of governmental supervision and monitoring of local recruitment agencies in sending countries e.g. in Indonesia, Philippines, Thailand etc has further fuelled the exodus of undocumented workers to more developed nations in the continent.

(k) Improved transportation networks and greater access in terms of communication and IT has further assisted criminal syndicates and unscrupulous recruitment agencies in exacerbating the trafficking of undocumented workers.

(l) Bureaucratic red-tape, lack of transparency and accountability on the part of many receiving and sending countries has also contributed to the phenomena of irregular migrant workers in Asia.

Inhuman conditions and abuses of undocumented migrant workers

A significant number of irregular workers have been subjected to inhuman treatment, atrocities and abuses during recruitment, transit, employment and return bordering on modern day slavery and servitude.

Many undocumented workers particularly domestic workers have experienced abuses such as long working hours without any leave, unpaid wages, restrictions on freedom of movement, poor living conditions, physical, psychological and sexual abuse. By virtue of their status migrant workers without any documents were deprived of access to social, medical and legal recourse. Those in the sex industry were mercilessly exposed to criminal syndicates. Physical injuries were inflicted on tens of thousands of undocumented workers. A number of deaths have been reported by the local media in a number of Asian countries and also by Human Rights Watch, Tenaganita,² and other NGO's (working to safeguard the welfare and rights of documented as well as undocumented migrant workers).

The litany of woes and inhumanity suffered by many irregular migrant workers has been corroborated by personal interviews conducted by me in several destinations in Asia. Names and identifying information on these workers have been changed to protect their privacy.

Tina, a Filipino national recounted her ordeal after arriving in Japan five years ago. She was promised a job as a waitress in a karaoke bar by a recruiter who introduced her to an agent in Manila. "The agent organized all my traveling documents including passport, visa and tickets. I was confined in a small house with 11 girls in Manila for 1 month. I was taught some elementary Japanese words and phrases. I was escorted to Japan by a Filipina married to a Japanese national together with three other girls. Upon arrival in Japan the escort handed us to a broker who took all our travel documents. I was taken to a 2 bedroom apartment in Shinjuku which had a total of 8 Filipino girls. The broker sold me to a mamasan who operated a number of snack bars in Shinjuku. The mamasan informed me that I had a debt of 4 million Yen. I had to repay the debt mainly by providing sex to my clients and on an average day I had sex between 5 to 7 men. I was beaten severely for small mistakes and the accounts of my debts were all kept by the mamasan. I was also fined on many occasions e.g. if a client complained about my services I was fined 10,000 Yen. I was never shown any accounts related to my debt.

I had only one rest day in a month and even on this occasion I was only allowed to go out in the company of a yakuza. I was not allowed to contact my family in the Philippines for one year and during the second year I was given permission to write one letter in two months. The contents of the letters were scrutinized by the mamasan.

Finally after 3.5 years I was told by the mamasan that I had paid all the debts. It was then that I decided to continue to work as a sex worker through an agent who secured clients for me. In one year I had a net income of 2million Yen which I remitted home through my agent. I plan to stay here for another two years and my agent told me that he will get all the traveling documents for me when I decide to return home for 350,000 Yen."

Wati recounted this sad episode in Kuala Lumpur when I met her together with four undocumented migrant workers from Sumatra.

"I was introduced to an agent in Medan by my cousin. I was promised a job as a domestic helper in Malaysia. I was kept in a large house for three weeks together with 36 girls. We were literally locked up and guarded by two security guards.

I was then smuggled by boat to a location in Johore and then transported to Kuala Lumpur where

²Tenaganita is one of the best known NGOs in Asia which has championed the rights of migrant workers in Malaysia.

I worked for a family with a disabled child. I was forced to stay in a small room which was also used as a store room. I had to get up at 5am in the morning every day for seven days a week. I worked until 12 midnight and occasionally until 1am. I was never allowed to eat proper meals and most of the time I was given two slices of bread with black coffee for meals. Sometimes when there was no bread, I had to go hungry.

I was not allowed to leave the compound and prohibited from speaking to the maids in the neighboring houses. Whenever I made a mistake I was beaten by the madam of the house with a broomstick or a rattan. Once the madam of the house threw a glass of hot water on my hands.

I was not even given time to pray during the daytime. After working for a year I received only RM400 (about US100). It was then that I decided to run away".

When I met the group again the following year, I was told that Wati had arrived safely in Medan, Sumatra.

Xinping from China arrived in Japan 5 years ago. He was employed as a casual worker in Sendai for 6000 Yen per day and he worked every day with a break of one day in a month. He shared a one room apartment with five others. In the last two years he has changed apartments three times. The rent was paid to a member of a criminal syndicate. Most of the days the group cook their own food. They also prepare their own obento or box lunches. The only luxury for this group was a television set.

Xinping has been cheated of his wages by the agent several times. He has been harassed and abused verbally by the agent and his employers on numerous occasions.

He has never been to a hospital although he has fallen ill three times in the last two years.

His remedy was traditional medicine which was sold to him by a member of the Chinese community in Sendai.

He has been robbed once by one of his roommates who stole 145,000 Yen.

Xinping told me that he will return to China with forged documents for which he will pay Yen 250,000.

Illegal migrant workers have hardly any avenues for redress and their abuses are generally unreported by the mass media which is largely controlled by the state in most of the Asian countries. Moreover their cause hardly receives a sympathetic ear since they are largely ostracized and discriminated by host societies which perceive them as a source of security threat. The discrimination by the society at large has become more pronounced following the rash of terrorist incidents which has unleashed fears of terrorism among many receiving countries in Asia including Japan.

Responses of Asian States

On the issue of labor agencies, Malaysia and Philippines have an agreement on Migrant Domestic Workers concerning working conditions for domestic workers. Currently (June 2006) Malaysia is also negotiating a memorandum of understanding concerning Indonesian domestic workers in Malaysia. It is interesting to note that these negotiations are conducted behind closed doors without any consultation with civil society groups particularly NGO's e.g. Tenaganita which has much expertise on the area of migrant workers. Apart from these developments related to domestic workers all receiving and sending countries including Japan and Malaysia do not have any bilateral agreements on migrant workers.

More importantly monitoring and implementation mechanisms related to physical abuses and abuses

committed by employment agencies and criminal syndicates especially on undocumented workers are sorely lacking in most of the Asian nations. Even in Japan which is a developed nation, there are inadequate mechanisms to address abuses by employers, agents and criminal syndicates involved with undocumented migrant workers.

The next issue relates to the laws and regulation governing illegal migrant workers. Undocumented persons in Malaysia can face up to a five-year imprisonment, a RM10, 000 fine and six strokes of the cane under the Malaysian Immigration Act which was amended in 2002. Singapore, one of the most rigid nations in Asia also has a whipping provision for undocumented persons who are found guilty in a court of law.

More importantly employers and recruitment agencies flouting employment and migration laws in most Asian countries including Japan are largely unapprehended or literally go scot-free for perpetuating undocumented migration.³ In this regards a crackdown on employers and labor agencies that contravene work permits would go a long way in addressing the issue of undocumented migration.

Inhuman and deplorable conditions of detention centers for undocumented migrant workers have also been reported by human rights groups in many Asian countries. Detention centers are overcrowded with poor ventilation and unhygienic conditions. Physical punishments are the norm and deportees are often brutalized by wardens. Women in some detention centers are also sexually abused.

The unsatisfactory role of foreign diplomatic missions in the receiving countries on the issue of undocumented migrant workers has also been raised several times. The Thai, Filipino, Indonesian, Bangladesh, Indian and Pakistani diplomatic missions have often been insensitive and reluctant in providing adequate protection and assistance to their nationals who work without permits in receiving countries like Japan, South Korea, Malaysia etc. Diplomatic missions of these countries are reluctant to support and assist their nationals in protecting and facilitating the safe repatriation of their undocumented workers apprehended by the receiving countries. Lack of funds, manpower, and fear of jeopardizing cordial bilateral relations etc. are merely lame excuses given the fact that both receiving and sending countries derive immense economic gains from migrant workers.

The insensitive attitude of the diplomatic missions is reflected in the response of their countries which provide insufficient safeguards and protection for their workers abroad including undocumented workers. Countries like Indonesia have yet to enact legislation to protect its migrant workers. Sending countries like Bangladesh, Indonesia, and Thailand etc have failed to provide effective regulation and monitoring mechanism on recruitment policies. More importantly most of the sending countries have no programs or services for returning documented and undocumented workers who are afflicted by a range of woes

³In the case of Malaysia, any employer found guilty of employing more than 5 persons illegally face a jail term of up to 5 years and shall be liable to whipping of not more than six strokes. Employers in Korea will also be fined 20 million won or two years jail for employing workers without work permits. Similarly, Singapore also has stiff penalties for such employers. But this law is hardly enforced especially in Malaysia.

⁴The MWC has been ratified or acceded to by Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mexico, Morocco, the Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay.

like abuse, counseling and most significantly reintegration programs.

International treaties ratification

Most of the sending and more importantly receiving countries like Japan, Malaysia, and South Korea etc have not ratified or acceded the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) which came into force on July 1, 2003.⁴ In addition most of the Asian nations have yet to ratify important international instruments which will have some bearing on migrant workers (including undocumented workers). These are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), Protocol to Prevent, Suppress and Punish Trafficking Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol). Ratification and subsequent enforcement of these treaties will undoubtedly assist in the alleviation of the woes faced by both documented and undocumented migrant workers.

NGOs and undocumented workers

Apart from some UN and international agencies, a number of Asian NGOs have tirelessly worked for the protection and advocacy of the rights of migrant workers including irregular workers. These include Migrant Forum in Asia, Asian Migrant Center, Tenaganita, Women's Aid Organization, KOBUMI (a federation of migrant workers organization), and Women's Movement for the Protection of Migrant Workers (GPPBM), etc. The plight of undocumented workers will be worse without the intervention and assistance of these organizations (as well as many church groups) in Asia.

Japan

I would like to conclude this paper with a brief focus on the status and issues of undocumented migrant workers in Japan. The 'bubble economy' of the 1970's and 1980's saw Japan bringing in large number of cheap migrant labor in the guise of technical trainees mostly in the labor intensive industries and at the same time issuing 50,000-60,000 visas annually for entertainers ('an euphemism for sex workers') mainly from the Philippines.

Since 1980's Japan achieved notoriety as one of the largest whorehouses for Asian prostitutes apart from constituting the bulk of sex tourists in Asia. In this respect, the Coalition Against Trafficking in Women in Asia-Pacific (CATW-AP) stated that Japan is the largest sex industry market for Asian women (with about 150,000 non-Japanese prostitutes mainly from Thailand and Philippines). It also stressed that the sex industry in Japan accounts for 1 percent of GNP and that one 'sex zone' in Tokyo which is only 0.34 sq. km, has 3,500 sex facilities including strip theatres, peep shows, porno shops, sex telephone clubs, soap lands etc.⁵

The demand for commercial sex in Japan was abetted by several factors i.e.: (i) the large and varied sex industry which was fuelled by freewheeling Japanese businessmen (particularly during the bubble

⁵See Statistics on Trafficking and Prostitution in Asia and the Pacific by Coalition Against Trafficking in Women in Asia-Pacific (CATW-AP), Manila, Philippines.

⁶Although prostitution (defined as the sale of sexual intercourse on a repeated basis) was prohibited by this law, sexual arrangements could be made at most of the entertainment outlets while the actual acts could be performed at brothels.

economy), who entertained their business customers with women, wine and song at company expenses, (ii) organized syndicates particularly the yakuza who work closely with agents, brokers and owners of 'entertainment' outlets, (iii) loopholes in the Prostitution Prevention Law (1958),⁶ (iv) lax enforcement by relevant authorities and (v) slack compliance by sending countries e.g. Philippines which is heavily dependent on the reparations of earnings by its migrant workers etc.

Undocumented migrant workers also flowed into Japan mainly from Asia. The recession in the 1990's did not contribute to a significant reduction in undocumented migration given the ageing population and declining birth rates as well as the reluctance of the Japanese to work in '3D' jobs. Moreover labor intensive industries which were hit by the recession are also turning to undocumented migrant workers as a means of cheap and non-unionized labor to reduce costs in production and raise profitability. Meanwhile the recession has not overtly dampened the sex industry which is still booming in Japan — a major conduit for undocumented sex workers from Asia and elsewhere.

By 2025 Japan will need one million workers to provide care and services for the rapidly ageing population while several million migrant workers will also be needed to overcome labor shortfall in a rapidly shrinking society.

Japan is acutely aware that it needs foreign skilled and unskilled workers to overcome its manpower shortage. But the Government is not ready to open its doors to foreign workers particularly unskilled workers given the aversion towards unskilled migrant workers and the gaijin hysteria which has been widely publicized by the mass media in the wake of global terrorism and the sensationalization of gaijin hanzai or crimes committed by foreigners in the country. The issue has been further aggravated by some politicians who have capitalized on the rising sentiments against unskilled migrant workers.

Undocumented migration has also gained prominence in the light of the plight of several hundred thousand undocumented workers in the country and their accompanying problems related to poor living and working conditions, rights etc. The rights issues of undocumented workers have also been swept under the carpet given the fact that Japan is the only developed nation which does not have an independent rights commission. Moreover Japan has used its Immigration laws e.g. Anti-Prostitution Law Article 5 and related laws to deport illegal aliens from Japan. On the other hand, the authorities have been slack in punishing employers, agents, yakuzas, mamasans etc who are the worst perpetrators of undocumented migrant workers in Japan.

Deportation centers used for repatriating undocumented workers and visa 'overstayers' is yet another issue. Conditions inside detention centers, violations against foreign nationals in detention centers and alleged beatings and physical abuse have brought an ill-earned reputation for Japan. The issue was further compounded by the lack of transparency in penal and detention facilities, wide and discretionary powers given to administrators of such facilities, denial of access to independent monitors to such facilities as well as language and cultural barriers etc.

⁶ Among the few NGO's working for migrant workers are Asian People Together, Center for Health and Rights of Migrants (CHARM) etc. These organizations provide assistance to documented and undocumented workers but their resources are limited and more significantly there is a dearth of such organizations in Japan.

Unfortunately Japan which is known for its poor record of volunteerism and philanthropy does not have many dynamic NGO's like Tenaganita⁷ which could promote the rights and protection of migrant workers including irregular workers.

Japan will continue to be a magnet for Asian migrant workers as well as a major destination for irregular migrant workers in the near future. As such it is timely for Japan to establish definitive policies and procedures to regulate migrant workers and also to find solutions to the large number of irregular workers who are already in the country.

Undocumented migration could be curbed to some extent if Japan as well as sending countries like Philippines and Thailand could collaborate more effectively on: (i) regulate policies and procedures on recruiting and dispatching legal migrant workers (ii) re-evaluate immigration policies, (iii) impose stricter enforcement, (iv) establish appropriate monitoring mechanisms, (v) increase awareness raising activities on the issues of prostitution, (vi) assist women in escaping from the clutches of organized syndicates, agents and traffickers and (vii) work with NGO's in Japan and sending countries to ensure safe and humane repatriation of undocumented migrant workers.

Finally it is also essential for the Japanese Government and its powerful bureaucracy as well as the mass media to advocate concepts of global citizenship and multiculturalism to facilitate the inevitable increase of migrant workers in the near future and also to treat irregular migrant workers according to international standards.

Conclusion

Labor migration including undocumented migration (as mentioned earlier) will be a major phenomenon in many receiving and sending as well as transit countries within Asia and in the world. Deportation of undocumented migrant workers is not the final solution since many deported irregular workers return shortly with false documentation etc. In the case of Malaysia more than 80 percent of Indonesian deportees return shortly. Moreover the inflow of undocumented migrant workers usually exceeds the number of deported workers in many receiving countries.

Therefore comprehensive policies, programs, regulatory and monitoring mechanisms should be enforced more stringently to restrict undocumented migration. In this context governments should monitor recruitment agencies apart from imposing stiff penalties on employers who hire foreign workers without work permits. Clandestine network which trafficked irregular workers should be curbed with greater vigor. Bilateral agreements between sending and receiving countries that incorporate basic labor and human rights of migrant workers could also promote documented migration thereby alleviating irregular migration. Finally there is a need for Asian nations to accede to international human rights instruments apart from establishing independent National Human Rights institutions. Political will is undoubtedly the most important ingredient in curbing undocumented migration. But unfortunately this is in short supply and therefore the sad saga of undocumented migration will continue unabated in the near future.

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