



## 12th Asia Pacific Sociology Association (APSA) Conference



# PROCEEDINGS

## Volume 2

# TRANSFORMING SOCIETIES: CONTESTATIONS AND CONVERGENCES IN ASIA AND THE PACIFIC

**15-16 FEBRUARY 2014**  
Chiang Mai, Thailand

Celebrating the 50th Anniversary of the Faculty of Social Sciences, Chiang Mai University



**Asia-Pacific Sociological Association (APSA) Conference:  
“Transforming Societies: Contestations and  
Convergences in Asia and the Pacific”**

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In Conjunction with the 50th Anniversary of the Faculty of Social Sciences,  
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## Transborder Human Trafficking: Migration Challenges For ASEAN Countries

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### Introduction

At the 12th ASEAN Summit in January 2007 in Cebu, Philippines, the ASEAN Leaders committed to accelerate the establishment of an ASEAN Economic Community (AEC) by 2015 as envisioned in the ASEAN Vision 2020.<sup>42</sup> The ASEAN Vision 2020 clearly stipulates:

*We envision our rich human and natural resources contributing to our development and shared prosperity. ... We commit ourselves to moving towards closer cohesion and economic integration, narrowing the gap in the level of development among Member Countries, ensuring that the multilateral trading system remains fair and open, and achieving global competitiveness. ... We will create a stable, prosperous and highly competitive ASEAN Economic Region in which there is a free flow of goods, services and investments, a freer flow of capital, equitable economic development and reduced poverty and socioeconomic disparities.*

The AEC 2015 will establish ASEAN as a single market and production and transform ASEAN into a region with free movement of goods, services, investment, skilled labours, and freer flow of capital.<sup>43</sup> The free flow of skilled labours will raise a crucial challenge for ASEAN member states since each member state has different migration policies. To respond this challenge, all ASEAN member states should 'align their governance and management of labour migration with international and regional obligations, guidance, and best practice'.<sup>44</sup>

Diverse economic strengths among ASEAN member states intensify the movement of people to find a better life in other more developed ASEAN countries. The United Nations reported that there were 70.8 million international migrants in Asia.<sup>45</sup> There are approximately 100,000 migrant workers in Brunei.<sup>46</sup> The number of Indonesian migrants in Thailand (1,459), Malaysia (1,397,684), the

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<sup>42</sup> ASEAN Economic Community Blueprint, Jakarta, ASEAN Secretariat, January 2008, p.5, available from [www.asean.org/archive/5187-10.pdf](http://www.asean.org/archive/5187-10.pdf).

<sup>43</sup> Ibid.

<sup>44</sup> UN Women, *Managing Labour Migration in ASEAN: Concerns for Women Migrant Workers*, p.9, available from [www.unwomen.org](http://www.unwomen.org); <http://asiapacific.unwomen.org>.

<sup>45</sup> United Nations, *Trends in International Migrant Stock: The 2013 Revision*, available from <http://www.un.org/en/development/desa/population/>

<sup>46</sup> Department of State, the United States of America, *Trafficking In Persons Report June 2013*, p.106, available from [www.state.gov/documents/organization/210737.pdf](http://www.state.gov/documents/organization/210737.pdf).

Philippines (5,865), Cambodia (505).<sup>47</sup> 22.156 migrants from Vietnam live in Laos and 17.039 migrants from Myanmar live in Malaysia.<sup>48</sup> The flow of migrant workers in the ASEAN region in 2015 will increase and it will not limit to skilled labours and talents as stipulated by the ASEAN 2020. Unskilled migrant workers, particularly those who work at domestic spheres will also increase.

In 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers,<sup>49</sup> which determines the obligations of ASEAN member states to provide migrant workers with adequate access to the legal and judicial system, to facilitate the exercise of consular function by consular or diplomatic authorities of countries of origin when a migrant worker is arrested or committed to prison or custody or detained in any manner, to set up policies and procedures for facilitating recruitment, preparation for deployment overseas and protection of migrant workers as well as repatriation and reintegration to the countries of origin, and other aspects of worker migration, to establish and promote legal practices for regulating recruitment of migrant workers, to adopt mechanisms for eliminating recruitment malpractices.<sup>50</sup> In short, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers aims to promote fair treatment towards migrant workers. The Declaration basically focuses on legal or documented migrant workers, yet to the some extent, the obligations in the Declaration may also cover illegal or undocumented migrant workers. Although the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers imposes a number of obligations on ASEAN member states, many migrant workers in ASEAN countries still face difficulties, discrimination and even inhumane treatments. The condition is even worse for migrant workers who are qualified as victims of human trafficking.

Human trafficking is a type of slavery in the modern age since it deprives people of human rights and freedom. Therefore, the United Nations declares that human trafficking constitutes a serious crime against human rights. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which was adopted by the United Nations in 2000 defines that 'trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'.

Human trafficking occurs in the ring of migration. In other words, when migration takes on elements of coercion, force, abduction, fraud, deception or exploitation, it becomes 'human trafficking (Trafficking in Persons)'. Human trafficking incidents are rampant and may be more rampant in the ASEAN region due to the implementation of the AEC 2015. This is because when ASEAN moves towards full economic liberalization and consequently it will benefit the ASEAN people, more ASEAN people from less economic level wish to leave their country to seek better life. Some of those people

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<sup>47</sup> A complete data regarding migrants in the ASEAN region can be found in the International Organization for Migrants, available from <http://www.iom.int/cms/en/sites/iom/home/about-migration/world-migration.html>

<sup>48</sup> Ibid.

<sup>49</sup> ASEAN, Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted at the 12th ASEAN Summit, 13 January 2007, Cebu, Philippines, available from: <http://www.aseansec.org/19264.htm>

<sup>50</sup> Decent Work Country Programme (2006-2010), ILO 2007, p.158.



may not be lucky and trapped into trafficking ring. Within the ASEAN region today, 'Cambodian children are trafficked to Vietnam and Thailand to work as street beggars, Indonesian women are trafficked into Malaysian to work as domestic workers, Laotian men are trafficked onto Thai fishing boats, Vietnamese women are trafficked through false marriages into numerous commercial sex industries, Burmese women are trafficked into Thailand to work as domestic workers'.<sup>51</sup>

It is apparent that human trafficking remains a greater challenge in the ASEAN migration cycle. The questions is 'how and who will respond to this challenge'. This paper will mainly discuss the significance of collaborative actions between the ASEAN governments and ASEAN people in combatting human trafficking in the region. More specifically, this paper focuses on transborder (international) human trafficking rather than domestic trafficking in the ASEAN region. The paper suggests that the sharing model between the country of origin (sending country) and the destination country (receiving country) should be adopted by ASEAN countries in order to strengthen a comprehensive collaborative measure against human trafficking in the ASEAN region.

### **Linkage between Migration and Human Trafficking in the ASEAN Region**

Human movement or migration among ASEAN countries has occurred long before the establishment of ASEAN on 8 August 1967. The establishment of the AEC 2015 will attract more and more ASEAN people to migrate in the region in order to meet labour shortages in several ASEAN countries. The AEC 2015 will facilitate the free movement of people, particularly migrant workers with skills and talents. Yet, it should be noted that the free movement of people echoed in the AEC 2015 is referred to 'legal or documented migration'. Migration of ASEAN people is not always conducted through a legal and appropriate channel. 'Illegal or irregular' migration also occurs in the ASEAN region when people from one ASEAN member country enter another ASEAN country without having received legal authorisation. The IOM reported that 'around 30-40 percent of all migration flows in Asia are estimated to take place through irregular channels'.<sup>52</sup> In the ASEAN region, 'irregular migration constitutes a sensitive policy issue and irregular migrants are vulnerable to human rights abuses, discrimination, marginalisation and exclusion'.<sup>53</sup> Migrant workers, irregular migrants are among the most vulnerable people and they often perform the "three Ds"- dirty, dangerous and difficult work. In Malaysia, for example, Indonesian irregular migrant workers suffer from a number of exploitation. They often suffer severe restrictions on their freedom of movement; psychological and physical abuse, including sexual abuse in the case of female migrants. Pervasive labor rights abuses in the workplace include extremely long hours of work without overtime pay, no rest days, and incomplete and irregular payment of wages.

A number of ASEAN people have also been smuggled to enter another ASEAN country. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the UN Migrant Smuggling Protocol) defines 'migrant smuggling as: the procurement, in order to obtain, directly or indirectly, a financial or other

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<sup>51</sup> International on Social Welfare, *Trafficking and Related Labour Exploitation in the ASEAN Region*, November 2007 p.22, available from <http://www.icsw.org/>

<sup>52</sup> International Organization for Migrants (IOM), available from [www.iom-seasia.org](http://www.iom-seasia.org).

<sup>53</sup> International Council on Human Rights Policy, *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, Geneva, Switzerland, 2010, p.vi, available from [www.ichrp.org](http://www.ichrp.org).

material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.’ Based on this definition smuggled migrants refers only to the illegal movement of persons across international borders. It is often questioned whether smuggled migrants are automatically human trafficking victims. Human trafficking is legally different to migrant smuggling since in order to qualify as ‘human trafficking’, there are key elements that must be fulfilled, namely ‘the element of action’ which consists of recruitment, transportation, transfer, harbouring or receipt of persons; ‘the element of means’ which covers Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another; ‘the element of purpose’ which includes exploitation (including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs). These elements should not be fulfilled entirely to qualify a trafficking if a victim is a child. To qualify a trafficking in children is only necessary to show an ‘action’ such as recruitment, buying and selling, for the specific ‘purpose’ of exploitation.<sup>54</sup>

Based on the legal term, human trafficking is different from migrant smuggling, yet the operation of migrant smuggling may lead to human trafficking action if coercion or deception is used to facilitate the victim’s agreement and there is a purpose of exploitation involved in migrating the victim outside his/her country. It can be argued that migrant smuggling does not require an exploitative purpose or the elements of force, deception or fraud since the smuggled migrant has knowledge and a greater control of the situation, i.e. choice of destination, negotiated fee, etc. Today, it is difficult to draw a clear distinction between human trafficking and migrant smuggling. Many trafficking victims were once migrated as smuggled migrants and then they would end up as trafficking victims when they could not pay the whole fee to the smuggler. In this situation the exploitative end-purposes of trafficking could come into play, especially when the smuggler started to exploit the smuggled migrants and placed them in a debt bondage situation. In the beginning, the status of victims was smuggled migrants and eventually their status could turn to be internal trafficking victims when they were exploited by the smuggler. However, it is still debatable whether the purpose of exploitation is sufficient to qualify smuggled migrants as trafficking victims.

Human trafficking is closely connected to migration and it is an unintended consequence of migration. Human trafficking is a serious phenomenon in the ASEAN region. Most of ASEAN countries are the source, transit and destination countries for men, women, and children trafficked internally and internationally, mostly for the purposes of sexual exploitation and forced labor. Human trafficking in the ASEAN region is driven by the pushing and pulling factors. The pushing factors can be divided into economic, socio-cultural and political factors. Economic factors consist of poverty, lack of job opportunities, imbalanced urban-rural development and insufficient income. Socio-cultural factors are comprised of gender bias, consumerization, dysfunctional family, low education and peer pressure. The pulling factors are the demands of skilled and unskilled jobs in the formal and informal sectors, booming recruitment agencies in many ASEAN countries, mushrooming clubs, and peer influences. Common modus operandi for transborder (international) trafficking are fraudulent

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<sup>54</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the 2000 UN TIP Protocol), art. 3(c).

documentation, tourist arrangements, Overseas Performing Artists (OPAs), escort services, false marriages, training scheme, blind advertisements, contract substitution, Artist Record Book (ARB), and Au Pair System.<sup>55</sup>

*Modus operandi* of human trafficking in all ASEAN countries is almost similar. Recruiters target the vulnerable groups by giving the potential victims all kinds of nice and false promises. They frequently use fraud, deception, threats, abuses of authority, debt bondage, marriage or relationships, abduction, confinement, or rape. Recruiters usually seek for potential recruits in local communities, aided by headhunters who know the community and its residents well enough. The headhunters help recruiters convince potential recruits or their parents to allow their children to leave. The recruiters often give cash to the parents. To facilitate transit, a recruit's personal documents, such as his or her birth certificate, are faked. Once in transit, the recruits are not allowed to talk to anyone outside the group and to handle their legal or travel papers. When the recruits reached their destination, they are told that their transportation expenses, along with other incurred expenses, would be deducted from their salary. Having huge debts to pay, they have no choice, but to work as ordered by their recruiters. Most of the recruits finally end up as prostitutes or laborers in bondage.<sup>56</sup>

### The Approaches of ASEAN and its Member States to Human Trafficking

All ASEAN member states provide national legal instruments to curb human trafficking. Cambodia, Indonesia and the Philippines have ratified the 2000 UN TIP Protocol as it is shown by the following table.

**Table 1: Anti-Trafficking Legal Instruments**

Name of State	National Law	The 2000 UN TIP Protocol
Brunei	The Trafficking and Smuggling of Persons Order of 2004	-
Cambodia	Law on the Suppression of Human trafficking and Sexual Exploitation of 2007	2 July 2005 (r)
Indonesia	Law No. 21 of 2007 concerning the Elimination of Trafficking in Persons	28 September 2009 (r)
Laos	The Lao Penal Law of 2005 (Articles 24 and 27)	26 September 2003 (a)
Malaysia	The Anti-Trafficking in Persons Act of 2007 (Act 670) – as Amended in 2010	26 February 2009 (a)
Myanmar	The Anti-Trafficking in Persons Law of 2005	30 March 2004 (a)
Philippines	The Anti-Trafficking Act of 2003	28 May 2002 (r)
Singapore	Women's Charter of 1966 (as amended in 1996) and the Penal Code	-
Thailand	The Anti-Trafficking in Persons Act of 2008 (BE 2551/2008)	18 December 2001 (s)
Viet Nam	Viet Nam Penal Code of 1999 (Articles 119 – 120)	-

Among ASEAN countries, Laos, Singapore and Viet Nam have not enacted a special law to regulate human trafficking. It is frequently debated whether it is necessary for all ASEAN member states to a

<sup>55</sup> Rina Shahriyani Shahrullah, 'A Comprehensive Study on the Philippines' Legal Approaches to Combat Human Trafficking: Suggestions for Indonesia', *Asian Alternatives For A Sustainable World: Transborder Engagements in Knowledge Formation*, The Work of the 2007/2008 API Fellows, p.70, available from [http://www.api-fellowships.org/body/international\\_ws\\_proceedings/year7.pdf](http://www.api-fellowships.org/body/international_ws_proceedings/year7.pdf)

<sup>56</sup> Ibid.

national anti-trafficking law. It is also often asked if a national anti-trafficking law can guarantee the elimination of human trafficking in each ASEAN member state. These questions are not easy to answer because the progress of each ASEAN member states in combating human trafficking does not merely rely upon whether it has a special national trafficking law or not.<sup>57</sup> Brunei in 2004 issued the Trafficking and Smuggling of Persons Order, yet based on the TIPs Report 2013 in 2010 and 2011 Brunei is placed on Tier 2 Watch List and in 2012 and 2013 this state is placed on Tier 2 which is similar to its ranking in 2009.<sup>58</sup> Cambodia has enacted Law on the Suppression of Human Trafficking and Sexual Exploitation in 2007 and ratified the 2000 UN TIP Protocol on 2 July 2005. However, Cambodia is placed on Tier 2 Watch List in 2013 due to the failure of the Cambodian government to demonstrate progress in its anti-trafficking law enforcement efforts.<sup>59</sup> Indonesia passed its anti-trafficking law under Law No. 21 of 2007 concerning the Elimination of Trafficking in Persons. This state has also ratified the 2000 UN TIP Protocol on 28 September 2009. Based on the TIPs Report 2013, this state is placed on Tier 2 since the enactment of anti-trafficking law in 2007.<sup>60</sup> Laos does not have a specific anti-trafficking law, but Articles 24 and 27 of The Lao Penal Law of 2005 provide provisions relevant to human trafficking. Based on the TIPs report 2013, Laos is placed on Tier 2 from 2011 to 2013.<sup>61</sup> In 2007 Malaysia enacted the Anti-Trafficking in Persons Act of 2007 and it was amended in 2010, yet Malaysia remains on the Tier 2 Watch List.<sup>62</sup> This progress of this state in combatting human trafficking used to drop to Tier 3 in 2009. Myanmar (Burma) enacted its Anti-Trafficking in Persons Law in 2005, yet since 2005 until 2011 Myanmar was placed on Tier 3. This position of this state from 2012 to 2013 is on Tier 2 Watch List.<sup>63</sup> The Philippines enacted its Anti-Trafficking Act in 2003 and ratified the 2000 UN TIP Protocol on 28 May 2002. From 2011 to 2013 the Philippines is placed on Tier 2 and this state used to be placed on Tier 2 Watch List in 2009 and 2010.<sup>64</sup> Singapore has not enacted an anti-trafficking law or ratified the 2000 UN TIP Protocol. A number of provisions relevant to human trafficking is provided by the Women's Charter of 1966 (as amended in 1996) and the Penal Code. Similar to the Philippines, from 2011 to 2013 Singapore is

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<sup>57</sup> Tier 1: Countries whose governments fully comply with the TVPA's minimum standards for the elimination of trafficking. Tier 2: Countries whose governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Tier 2 Watch List: Countries where governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and

- a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
- b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and a decreasing evidence of complicity in severe forms of trafficking by government officials; or
- c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.

Tier 3: Countries whose governments do not fully comply with the TVPA's minimum standards and are not making significant efforts to do so. Department of State, the United States of America, *Op.Cit.*, p.44-45.

<sup>58</sup> *Id.* at p.106.

<sup>59</sup> *Id.* at p.117.

<sup>60</sup> *Id.* at p.199.

<sup>61</sup> *Id.* at p.229.

<sup>62</sup> *Id.* at p.250.

<sup>63</sup> *Id.* at p.112.

<sup>64</sup> *Id.* at p.301.

placed on Tier 2 and used to be placed on Tier 2 Watch List in 2010.<sup>65</sup> Thailand enacted the Anti-Trafficking in Persons Act in 2008, yet since 2010 to 2013 this state is placed on Tier 2 Watch List.<sup>66</sup> It is interesting that prior to the enactment of its anti-trafficking act, Thailand from 2006 to 2008 was placed on Tier 2. Viet Nam does not enact an anti-trafficking law, yet the Viet Nam Penal Code of 1999 provides relevant provisions governing human trafficking under Articles 119 – 12. This state does not ratify the 2000 UN TIP Protocol, but it is placed on Tier 2 from 2012 to 2013.<sup>67</sup>

The ranking of most ASEAN countries based on the TIP Report 2013 is Tier 2 which means most ASEAN governments do not fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards but are making significant efforts to bring themselves into compliance with those standards. It is arguable whether the USA TVPA is the appropriate indicator to measure the progress of ASEAN countries in curbing human trafficking in the region. Since there is still no perfect tool for this purpose, the TVPA minimum standards may be used to examine and measure the efforts of ASEAN countries in combatting human trafficking. Apart from the ranking of each ASEAN member state under the TIPS Report 2013, all ASEAN member states has increased their efforts to combat human trafficking either by improving anti human trafficking mechanisms and systems of prevention, protection, prosecution, rehabilitation and collaboration at bilateral and multilateral level. A multilateral MoU has been signed by ASEAN member states in the greater Mekong region in 2004. Myanmar signed a bilateral MoU with Thailand in 2003. Cambodia signed MoU with Vietnam on bilateral cooperation to eliminate trafficking in Children and Women in 2005. Cambodia has MOUs with Thailand which facilitate the return and repatriation of trafficking victims.<sup>68</sup>

Human trafficking is also a complex issue in the ASEAN region; therefore the responsibilities to combat human trafficking should not only be imposed on the ASEAN member states which are categorized as the country of origin (sending countries). The host countries (receiving countries) in the ASEAN region should also perform serious and concrete actions to combat human trafficking. In other words, a collaborative measure among ASEAN member states are required to combat human trafficking comprehensively. Accordingly at the regional level, all ASEAN member states are committed to preventing trafficking in persons, punishing offenders, and protecting victims of trafficking. These commitments are expressed in the ASEAN Declaration against Trafficking in Persons, especially Women and Children<sup>69</sup> which was adopted by the Heads of State/Government of ASEAN Member Countries on 29 November 2004 in Vientiane, Lao People's Democratic Republic. The Declaration consists of the following measures:

1. To establish a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region;
2. To adopt measures to protect the integrity of their respective passports, official travel documents, identity and other official travel documents from fraud;

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<sup>65</sup> Id. at p.327.

<sup>66</sup> Id. at p.359.

<sup>67</sup> Id. at p.393.

<sup>68</sup> International Organization for Migrants, ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons, p.16. available from <http://www.iom.int>.

<sup>69</sup> Ibid.

3. To undertake regular exchange of views, information sharing on relevant migratory flows, trends and pattern, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary legislations;
4. To intensify cooperation among our respective immigration and other laws enforcement authorities;
5. To distinguish victims of trafficking in persons from the perpetrators, and identify the countries of origin and nationalities of such victims and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate by the respective receiving/ recipient country, including prompt repatriation to their respective countries of origin;
6. To undertake actions to respect and safeguard the dignity and human rights of genuine victims of trafficking in persons;
7. To undertake coercive actions/measures against individual and/or syndicate engaged in trafficking in persons and shall offer one another the widest possible assistance to punish such activities; and
8. To take measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

All ASEAN member states reaffirm their commitment to accomplish the elements of the Declaration and put their maximum efforts to realise these commitments into action. In order to optimize the implementation of the ASEAN Declaration against Trafficking in Persons, especially Women and Children, in 2006 the Inter-agency Ad-Hoc Working Group on Trafficking in Persons was created. The main task of the Inter-agency Ad-Hoc Working Group to establish the 2007-2009 Work Plan to Implement the Declaration. The Work Plan primarily focused on developing common standards and strengthening criminal justice responses. On 27 June 2007 the 7th ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) in Vientiane, Lao PDR endorsed the ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons. The overall objective of these Practitioner Guidelines is to assist the criminal justice agencies of ASEAN Member Countries in their goal of securing justice for victims and ending the impunity of traffickers.<sup>70</sup> The Guidelines which consists of two parts namely: Part One covers evidential matters which consists of strengthening of the legal framework, specialisation and co-operation, management of the victim as a witness, special measures for child victims, witness protection issues, and trial Issues. Part Two covers international operational and legal/ judicial co-operation which consists of international operational co-operation, international legal/judicial co-operation in general, international legal/judicial co-operation which specifically governs on extradition, international legal/judicial co-operation dealing with mutual legal assistance in criminal matters and networking particularly between specialist investigators, prosecutors and Central Authority legal officers.

In addition to the Guidelines, the ASEAN's Senior Officials Meeting on Transnational Crime (SOMTC) also endorsed a Handbook on International Legal Cooperation on Trafficking in Persons Cases in 2008. The Handbook can be used by judicial officials, prosecutors and other criminal justice officials

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<sup>70</sup> As finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons, 25 June 2007, Vientiane, Lao PDR; and endorsed by the 7th ASEAN Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 27 June 2007.

who deal with human trafficking cases. The Handbook consists of five chapters and 'it provides basic information on cooperation tools including mutual legal assistance and extradition as well as guidance on how these tools can be used most effectively in the specific context of regional and international cooperation in TIP cases'.<sup>71</sup>

### **Transforming Law in Book into Law in Action by Public Intellectuals**

It is obvious that all ASEAN member states have been provided with a complete set of legal instruments, guidelines and handbook on how to implement the ASEAN legal instruments. Yet, a question remains whether human trafficking incidents can be minimized after the issuance of the instruments, guidelines and handbook. The answer to this particular question should be best approached by a legal theory which is developed by Mochtar Kusumaatmadja and Satjipto Raharjo.

Mochtar Kusumaatmadja developed a theory of law which is called 'Teori Hukum Pembangunan' (Law-Development Theory). This theory is derived from the theory of Roscoe Pound that points out the end of law as follows:

*It [the legal order] may well be thought of as a task or as a great series of tasks of social engineering; as an elimination of friction and precluding of waste, so far as possible, in the satisfaction of infinite human desires out of relatively finite store of the material goods of existence'.<sup>72</sup>*

In the opinion of Roscoe Pound, 'law as a tool of social engineering is more concerned with actual operation of law rather than its abstract content'.<sup>73</sup> Different from Roscoe Pound, Mochtar Kusumaatmadja was in the opinion that law should not be used as 'a tool', but it should be used as 'a means'. According to Mochtar Kusumaatmadja, 'law is a means to maintain order in society'. The role of law is 'to ensure the dynamic changes occur in regular manner'. Law is 'a society's renewal media which means that law should serve as a director for society's actions to support the development'.<sup>74</sup> Satjipto Raharjo<sup>75</sup> established 'Teori Hukum Progressif' (Progressive Legal Theory). This theory emphasises that 'human interests, namely human welfare and happiness should be the ultimate aim of law'. The theory regards that law is merely as a process<sup>76</sup> to achieve the happiness of human; consequently law should be progressive and responsive to meet such objective.

Based on the approaches of Law-Development Theory and Progressive Legal Theory, all abstract contents of ASEAN Declaration, Guidelines, and Handbook should be transformed into concrete actions in order to achieve the goals of ASEAN. All ASEAN governments and their people should play

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<sup>71</sup> Surin Pitsuwan, 'Foreword by the Secretary-General of ASEAN', *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, the ASEAN Secretariat, August 2010, p.iii, available from <http://www.aseansec.org>.

<sup>72</sup> Roscoe Pound, *Interpretation of Legal History*, Harvard University Press, 1946, p.160.

<sup>73</sup> Dhyani, S.N., *Fundamentals of Jurisprudence*, Central Law Agency, Allahabad, p.331.

<sup>74</sup> Mochtar Kusumaatmadja, *Hukum Masyarakat, dan Pembinaan Hukum Nasional*, Binacipta, Bandung, 1976, p. 4.

<sup>75</sup> Satjipto Rahardjo, "Indonesia Butuhkan Penegakan Hukum Progressif", *Harian Kompas*, 15 Juni 2002.

<sup>76</sup> Satjipto Rahardjo, "Hukum Progressif: Hukum yang Membebaskan", *Jurnal Hukum Progressif*, Program Doktor Ilmu Hukum Univ. Diponegoro, Vol. 1, No. 1, April 2005, p.16.

active and concrete roles in combatting human trafficking. Human trafficking should be treated as a latent problem of ASEAN people, thus it needs actual and concrete actions from all ASEAN people to tackle the problem comprehensively. It may be argued that the involvement of all ASEAN people to combat human trafficking is impossible since the understanding of all ASEAN on human trafficking issues is still lacking. This is true that most of ASEAN people are still not aware of human trafficking issues, therefore the first step is to communicate the issues to all member societies in ASEAN countries. The task of communicating the human trafficking issues can be well conducted by Public Intellectuals in ASEAN countries.

Public Intellectuals are those—academics, researchers, media professionals, artists, creative writers, NGO activists, social workers, public servants and others with moral authority—who are committed to working for the betterment of society by applying their professional knowledge, wisdom and experience.<sup>77</sup> Public intellectuals who consist of academics, researchers, media professionals, artists, creative writers, NGO activists, social workers, public servants and others with moral authority should become frontliners to communicate and combat human trafficking in their own societies. Their commitment to working for the betterment of society by applying their professional knowledge, wisdom and experience can be used as a means to curb transborder trafficking as well. Public intellectuals can work individually or together with other ASEAN public intellectuals based on their field of work/interests and competencies. The following table shows concrete actions which can be done by public intellectuals.

**Table 2: Responses of Public Intellectuals to Combat Human Trafficking**

Type of Public Intellectuals	Concrete Actions against Human Trafficking
Academics	-Teaching students and integrating human trafficking in the courses or curriculum -Conducting research -Publishing research findings -Presenting papers, etc.
Researchers	-Conducting research -Publishing research findings, etc.
Media Professionals	-Publishing articles on newspapers/magazines including e-publications -Broadcasting talk shows or dialogues on TV, etc.
Artists	-Producing artistic works containing messages to combat human trafficking -Write songs and poems on human trafficking -Performing musical concert, theater/acts, movies for human trafficking victims -Conducting exhibitions with human trafficking themes, etc.
Creative Writers	-Writing scripts, novels, comics including e-books with human trafficking themes, etc.
NGO Activists	-Establishing programs/activities relating human trafficking for communities -Assisting and outreaching human trafficking victims, etc.
Social Workers	-Assisting human trafficking victims -Becoming volunteers including pro bono legal consultations (pro bono lawyers), etc.
Public Servants	-Implementing good governance -Providing reliable public services and transparent information -Being honest and fair in performing their tasks, especially for law enforcers, etc.

<sup>77</sup> API Newsletter, available from <http://www.api-fellowships.org/body/archives.php#newsletters>



In addition to conduct concrete actions in their own country, it is suggested that public intellectuals also establish a collaborative engagement with other public intellectuals in other ASEAN countries. They should be transparent and open in sharing information, knowledge, roles, responsibilities, resources and services relevant to human trafficking. The sharing model<sup>78</sup> below can be used by all public intellectuals in ASEAN countries in their efforts to combat human trafficking in the ASEAN region. The implementation of the sharing model is a challenge not only for public intellectuals in the ASEAN region, but it is also a challenge for public intellectuals in the global world.

**Figure 1: Public Intellectuals Sharing Model**



## Conclusions

The AEC 2015 will transform ASEAN into a region with free movement of goods, services, investment, skilled labours, and freer flow of capital. The free flow of skilled labours and talents may be followed by the flow of unskilled labours who wish to find a better life in other ASEAN countries. Up to now, many migrant workers in ASEAN countries still face difficulties, discrimination and even inhumane treatments. The worst conditions for migrant workers remain unsolved, particularly migrant workers who are qualified as human trafficking victims. When migration takes on elements of coercion, force, abduction, fraud, deception or exploitation, it becomes 'human trafficking (Trafficking in Persons)'. Human trafficking incidents are rampant and may be more rampant in the ASEAN region due to the implementation of the AEC 2015 because when ASEAN moves towards full economic liberalization, more ASEAN people from less economic level wish to leave their country to seek better life.

<sup>78</sup> The Sharing model was firstly presented by Rina Shahriyani Shahrullah at the seventh Asian Public Intellectuals Workshop on the theme "Asian Alternatives for a Sustainable World: Trans-border Engagements in Knowledge Formation". Yogyakarta, Indonesia, November 22-26, 2008.

Human trafficking is as a latent problem of the ASEAN governments and ASEAN people, thus actual and concrete actions from all ASEAN stakeholders are required to tackle the problem. All ASEAN member states are committed to preventing trafficking in persons, punishing offenders, and protecting victims of trafficking. These commitments are expressed in the ASEAN Declaration against Trafficking in Persons, especially Women and Children. To realise the commitments, all ASEAN governments and ASEAN people should play active and concrete roles in combatting human trafficking. It becomes imperative to raise awareness on human trafficking to all ASEAN people. All stakeholders should actively participate to deliver this task. Public intellectuals which consist of academics, researchers, media professionals, artists, creative writers, NGO activists, social workers, public servants and others with moral authority should become frontliners to communicate and combat human trafficking in their own societies. Their commitment to working for the betterment of society by applying their professional knowledge, wisdom and experience can be used as a means to curb transborder trafficking as well. Public intellectuals can work individually or together with other ASEAN public intellectuals based on their field of work/interests and competencies.

Since the AEC is approaching, all ASEAN governments and ASEAN people should be ready with all positive and negative impacts of the AEC 2015. Many challenges will be faced by ASEAN in the area of migration when the AEC 2015 is in place. Yet, all challenges in migration including human trafficking issues should be wisely resolved by involving all ASEAN people. People-to-people contact in the ASEAN region should be started from the grassroots, so ASEAN people will consider the problems in migration and human trafficking as their own problems. The active roles of ASEAN people through their concrete actions can provide sustainable solutions for human trafficking.

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