

**IS A SOCIAL CHARTER POSSIBLE
IN THE ASEAN?**

**EXPLORING THE CHANCES OF AN ASEAN
SOCIAL CHARTER IN
SIX ASEAN MEMBER STATES**

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Preface

In September 2002 the Singapore Office of Friedrich-Ebert-Stiftung organized a workshop entitled '*China's Membership in the WTO – Consequences for Labour Markets in ASEAN Economies*'. National, regional and global trade union leaders supported by academics, think-tanks and government representatives from the ASEAN region discussed possibilities to avoid a 'race to the bottom' as a result of the intense competition between China and countries in Southeast Asia for foreign direct investment. In this context the need of a social agenda as a counterweight to the economic, financial, and security architecture of ASEAN was raised.

The concept of an ASEAN Social Charter was then developed at the FES-Workshop '*Against a social 'Race to the bottom' – The Demand for an AFTA-Social Charter*', in Singapore in May/June 2003 and further discussed at a follow-up workshop '*An AFTA Social Charter – Shaping the Draft and Exploring its Chances*' in December 2003 in Petaling Jaya, Malaysia.

To explore the chances of an ASEAN Social Charter within the context of the ASEAN Community the Friedrich-Ebert-Stiftung requested the School of Labour and Industrial Relations of the University of the Philippines (UP-SOLAIR) to prepare a study entitled '*Is a Social Charter Possible in the ASEAN? – Exploring the Chances of an ASEAN Social Charter in six ASEAN Member States*'. From November 2003 to April 2004 the researchers of UP-SOLAIR visited six major ASEAN countries with the objective to gather insights and recommendations from all stakeholders of a proposed ASEAN Social Charter and to come up with suggestion on the content of such a Charter as well as with strategies to mobilize its acceptance.

The first draft of this study as well as written comments and suggestions to a first draft of the ASEAN Social Charter formed the basis for a fourth workshop in Singapore in April 2004, which had the task to agree on a final version of the ASEAN Social Charter.

The Friedrich-Ebert-Stiftung would like to thank the two researchers of UP-SOLAIR, Ms. Melisa R. Serrano and Ms. Mary C. Marasigan as well as the Dean of UP-SOLAIR, Mr. Juan Amor F. Palafox for undertaking this study and for providing a wealth of very valuable data, which will be most useful for present and future activities of Friedrich-Ebert-Stiftung in Southeast Asia.

Norbert von Hofmann
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IS A SOCIAL CHARTER POSSIBLE IN THE ASEAN? EXPLORING THE CHANCES OF AN ASEAN SOCIAL CHARTER IN SIX ASEAN MEMBER STATES¹

The current path of globalization must change. Too few share in its benefits. Too many have no voice in its design and no influence on its course.

...But we have come to an agreement on a common goal: a fair globalization which creates opportunities for all. We wish to make globalization a means to expand human well-being and freedom, and to bring democracy and development to local communities where people live. Our aim is to build a consensus for common action to realize this vision, and to foster a process of sustained engagement to this end by the actors themselves, including States, international organizations, business, labour and civil society.

We seek a process of globalization with a strong social dimension based on universally shared values, and respect for human rights and individual dignity; one that is fair, inclusive, democratically governed and provides opportunities and tangible benefits for all countries and people.

- World Commission on the Social Dimension of Globalization

On February 24, 2004, the World Commission on the Social Dimension of Globalization (WCSDG), established by the International Labor Organization (ILO) in February 2002, came out with its report after two years of broad-based consultation and dialogues with important actors in the globalization process in many parts of the world. The report highlights that the current process of globalization is unfair and exclusive, generating unbalanced outcomes both between and within countries. The report seeks a globalization with a social dimension, a globalization as seen through the eyes of women and men in terms of the opportunity it provides for decent work, among others.

The report stresses the urgency of nation states to strengthen regional and sub-regional cooperation as a major instrument or stepping stone for a stronger

¹ This study draws support from the Friedrich Ebert Stiftung Office for Regional Cooperation in Southeast Asia (FES-Singapore). The authors acknowledge the invaluable support provided by Dr. Norbert von Hofmann, FES-Singapore's Resident Director. Acknowledgment is also due to the FES Resident Representatives in the six study countries, Dr. Heinz Bongartz (FES-Philippines), Dr. Gerd Botterweck (FES-Indonesia), Dr. Stefan Chrobot (FES-Thailand), and Dr. Felix Schmidt (FES-Vietnam), for their hospitality and invaluable efforts in preparing and coordinating our country study visits. Our "thank you" too to all staff of the various FES offices, namely: Azman and Rina of FES-Indonesia; Belinda Wong of FES-Singapore; Sakdina Chatrakul Na Ayudhya of FES-Thailand; Mirko Herberg of FES-Vietnam; and Tos Anonuevo, Gus, Sherry, and Anamer of FES-Philippines. Finally, our special thanks to all the key informants we have interviewed in the six study countries for sharing their knowledge and insights on the subject of the study.

voice in the governance of globalization. Nation states are called upon to reinforce the social dimension of integration.

The WCDSG report thus culminates all international and regional engagements and initiatives that address the social dimension of globalization. The Association of Southeast Asian Nations (ASEAN), as the most dynamic regional grouping in East Asia, must heed this call. The ASEAN Social Charter proposition becomes now, more than ever, imperative.

But is a Social Charter possible in the ASEAN? What are its chances of landing on the discussion table in the ASEAN organization? Can it effectively address race-to-the-bottom (RTTB) issues resulting from increased economic integration and liberalization? These are the fundamental questions that this paper seeks to address.

Objectives of the Study

This study is an initial attempt to explore the chances of an ASEAN Social Charter (ASC) proposition by analyzing how certain variables could influence the level of receptiveness or opposition of member-states to the ASC proposition. In this regard, the study aimed to:

1. establish the landscape or context of recognition of workers' rights and adherence to international core labor standards (ICLS) in six select ASEAN member states, namely, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam, by looking into the Constitution, ILO conventions ratified, and labor laws and policies of the study countries;
2. find out the facilitating and constraining factors related to the ratification and/or non-ratification of core ILO conventions;
3. determine how the following variables affect the implementation of ICLS and the receptiveness or opposition of the member states to an ASC proposition:
 - a. ILO core conventions ratified;
 - b. level of development;
 - c. political landscape and state-labor relations
 - d. quality of public institutions in enforcement and compliance to ICLS; and
 - e. relative influence of trade unions
4. gather insights, suggestions and recommendations from all stakeholders on the potentials of an ASC; and

5. come up with recommendations on an ASC configuration as well as strategies in mobilizing support for its acceptance in the ASEAN region.

Methodology

The study involved secondary data gathering and review of literature in the six study countries. Interviews with key informants from trade unions and other labor organizations, labor-oriented NGOs, government offices (Ministries of Labor), research institutions, international organizations, the academe, and employers' groups were also conducted in the six study countries. These interviews were done from November to April 2004. The three-member research team prepared an open-ended interview schedule that was used in the interviews with key informants.

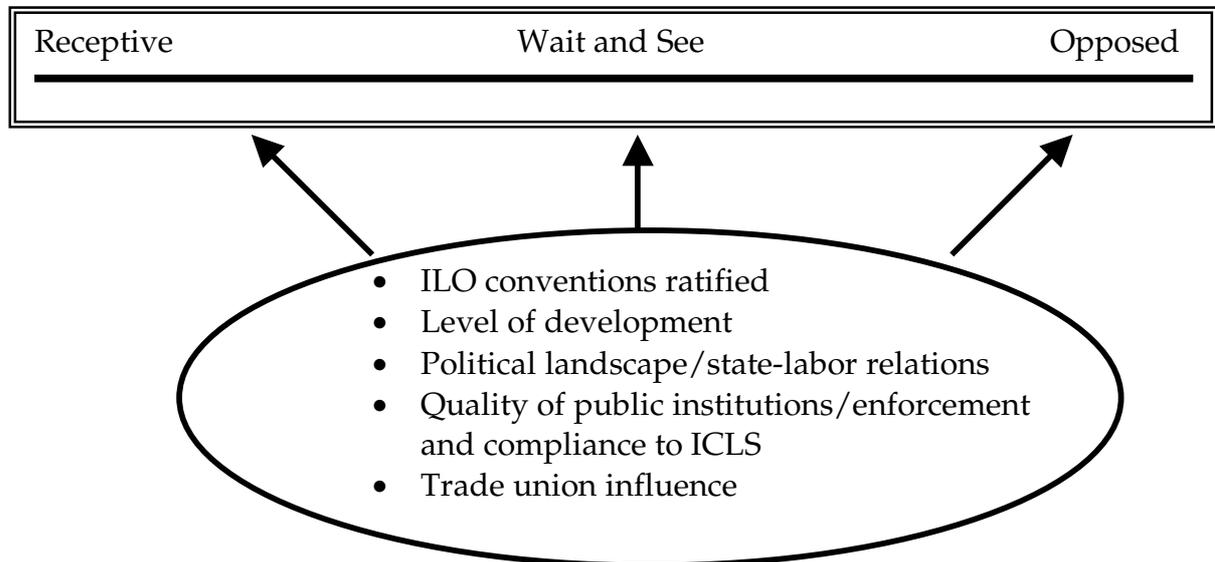
The Analytical Framework

The study posits that there are certain variables that may determine the receptiveness or opposition of the six study countries on the ASC proposition. These variables are the following:

- a. ILO core conventions ratified;
- b. level of development;
- c. political landscape and state-labor relations
- d. quality of public institutions in enforcement and compliance to ICLS;
and
- e. relative influence of trade unions

The span of receptiveness or opposition to the ASC proposition may be represented by a spectrum as shown in Figure 1, with "wait-and-see" as the middle ground. The interplay and impact of the above-cited variables may determine the relative location or inclination of the six study countries in the receptiveness-opposition spectrum (ROS).

Figure 1. The Analytical Framework



With the above analytical framework, the study posits the following hypotheses:

1. As pointed out by Flanagan (2003), the ILO core conventions ratification behavior is a symbolic act as countries are most likely to ratify standards that they have already attained. In this respect, the ratification behavior is not a strong indicator of a country's receptiveness or opposition to an ASC proposition.
2. Diversity in levels of development, political landscape, quality of state-labor relations, quality of public institutions in the ICLS enforcement and compliance regime, and the relative influence of unions, in the six study countries will largely shape the ASEAN member states posture on the ASC proposition. Singapore, Vietnam, and, to a lesser extent, Indonesia and the Philippines will most likely be receptive to the ASC proposition. Thailand may shuttle between a "wait-and-see" and "opposed" posturing, but more likely on the former. The strongest opposition may come from Malaysia, considering the country's past posture on ICLS issues in the WTO. However, to the extent that it was Malaysia which proposed the ASEAN Industrial Relations Program, as discussed below, indicates some measure of flexibility of the country in approaching the ASC proposition.
3. However, the so-called ASEAN Way (consensus, non-intervention, sensitivity to the needs of others, and minimal institutions), gradualism, and pragmatism can effectively address the diversity argument against the ASC proposition, especially if the ASC proposition would be shaped among the ASEAN members themselves.

4. Recent global and regional trends point to the weakening of arguments, i.e. level of development, recognition of natural and legitimate differences between countries, etc., against social dimensions of integration and globalization. Trade unions must seize these opportunities to strengthen their influence in drumming up support for the ASC proposition.

Part I - THE LEGAL LANDSCAPE OF WORKERS' RIGHTS AND LABOR RELATIONS IN ASEAN

The purpose of this section is to provide a comparative summary of labor laws in the six study countries with the aim of finding areas of commonality, if such exist, in the legal framework. The results would serve as inputs in discussions on the draft contents of the Social Charter.

First, we look at the Constitution and their provisions related to the fundamental rights and conditions at work as defined by international standards. This is to establish a similar level of understanding on the extent of recognition that said countries afford to labor rights and in general, human rights as reflected in their Constitution.

Constitution, Labor Rights and Human Rights

At the very basic level, there are human rights that establish a minimum standard of treatment for human beings. These are enshrined in the Universal Declaration of Human Rights, which are conceived as universal, equal and inalienable rights, deriving from the inherent dignity of human beings and necessary to the peace and friendly relations of nations.²

The Universal Declaration of Human Rights prohibits discrimination, and slavery, and upholds the rights to freedom of association and to form and join trade unions, the right to work, to free choice of employment, to just and favorable conditions of work and protection against unemployment, equal pay for equal work, just and favorable remuneration sufficient to ensure an existence worthy of human dignity, leisure, a reasonable limit on working hours, paid vacation, and a standard of living adequate for the health and well-being of the individuals and their families.³

Various international treaties and covenants such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child were forged from the Universal Declaration of Human Rights.

Based on the Universal Declaration and these international treaties, the ILO identified four widely recognized fundamental labor rights or labor standards. These are covered by eight Core ILO Conventions dealing with: freedom of

² Preamble of the Universal Declaration of Human Rights (1948), <http://www.un.org/overview/rights.html>

³ Universal Declaration of Human Rights

association and collective bargaining, prohibition against discrimination, prohibition against forced labor and prohibition against child labor. These fundamental labor rights protect freedom and well being of workers around the world.

In the countries studied, we found that their respective Constitutions provide a separate section on individual liberties, namely: *Indonesia*, Chapter XA - Human Rights; *Malaysia*, Part II - Fundamental Liberties; *Thailand*, Rights and Liberties of the Thai People; *Singapore*, Part IV – Fundamental Liberties; *Philippines*, Article III - Bill of Rights; and *Vietnam*, Chapter V - Fundamental Rights and Duties of the Citizen.

Table 1 compares the Constitutional provisions of all six countries on the four fundamental labor rights.

Table 1: Constitutional provisions related to fundamental labor rights: Indonesia, Malaysia, Thailand, Singapore, Philippines and Vietnam

	Indonesia	Malaysia	Thailand	Singapore	Philippines	Vietnam
Freedom of Association and Collective Bargaining	Art 28 E(3) – right to freedom of association, assembly, and expression Art 28C – ...Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.	Art10. Freedom of speech, peaceful assembly and association, though restrictions may be imposed in the interest of security. ⁴	Section 43. A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organization or any other group...	(Art. 14) All citizens of Singapore enjoy freedom of speech, assembly, and association.	Bill of Rights Sec 8. Guarantees rights of public and private workers to self-organization ⁵	Art 69- Freedom of speech, press, right to be informed, assemble, associate, hold demonstrations

⁴ Constitution of Malaysia (1957), http://confinder.richmond.edu/local_malaysia.html, April 8, 2004.

⁵ 1987 Constitution of the Republic of the Philippines, http://www.supremecourt.gov.ph/constitution/1987_constitution.htm

Table 1: Constitutional provisions related to fundamental labor rights: Indonesia, Malaysia, Thailand, Singapore, Philippines and Vietnam (Continued)

	Indonesia	Malaysia	Thailand	Singapore	Philippines	Vietnam
Equality	<p>Art28B (2)-right of every person to protection from violence and discrimination.⁶</p> <p>Art 28D(1) – right of every person to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.</p> <p>Art 28D (2) – right of every person to work and to receive fair and proper recompense and treatment in employment.</p> <p>Art28D (3) – right of citizen to obtain equal opportunities in government.</p> <p>Art28H(2) –right to ‘receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.’⁷</p> <p>Art28I(2) –right of every person to be free from discriminative treatment based upon any grounds whatsoever and the right to protection from such discriminative treatment.</p>	<p>Art (8) All persons are equal and entitled to equal protection under the law</p> <p>Art 8(2) No discrimination on the ground of religion, race, descent, place of birth and gender⁸ in respect of trade, business, profession and employment</p>	<p>Section 30 “All persons are equal by law and shall enjoy equal protection under the law.</p> <p>Men and women shall enjoy equal rights.</p> <p>Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted. Measures determined by the State in order to eliminate obstacle to, or to promote persons’ ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.⁹</p>	<p>(Art. 12) Guarantees that all persons are equal before the law and entitled to the equal protection of the law</p>	<p>State Policies Section 11. Values the dignity of every human person and full respect for human rights</p> <p>State Policies Section 14 Recognizes equality of Men and Women</p> <p>Bill of Rights Section 1. Equal protection of the laws.</p> <p>Bill of Rights Section 5. No religious discrimination</p>	<p>Art 52 – all citizens are equal before the law</p> <p>Art 63- Equal rights for male and female, equal pay for equal work</p> <p>Art 64. No discrimination against children.</p> <p>Art 70. All religions are equal before the law.</p>

⁶ The 1945 Constitution of the Republic of Indonesia: As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002. Unofficial Translation.

<http://www.ilo.org/public/english/employment/gems/eo/download/consi.pdf> accessed on 8 April 2004.

⁷ Ibid.

Table 1: Constitutional provisions related to fundamental labor rights: Indonesia, Malaysia, Thailand, Singapore, Philippines and Vietnam (Continued)

	Indonesia	Malaysia	Thailand	Singapore	Philippines	Vietnam
Abolition of forced labor	Art28I (1) – ... freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.	Art 6(1) Prohibits slavery and forced labor Art6(2) All forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes. Art6(3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour within the meaning of this Article.		Art6(1) -no person shall be held in slavery Art6(2) -All forms of forced labor are prohibited, but parliament may by law provide for compulsory service for national purposes Art6(3) –work incidental to serving the serving of a sentence of imprisonment shall not be taken as forced labor within the meaning of this article.	Section 18 (2) Prohibition of any form of involuntary servitude except as punishment for a crime after being duly convicted	
Elimination of child labor	Article 28B- Every child shall have the right to live, grow and develop with protection from violence and discrimination				Sec 12. State shall promote and protect the youth's physical, moral, spiritual, intellectual, and social well being.	Art 65. Children enjoy protection, care and education by the family, the State and society. ¹⁰ Provision for creating favorable conditions for young people to study, work, relax, develop bodies and minds...

Overall, the Constitutions of **all six countries** contain provisions related to the **right to freedom of association**, with the Philippines using the term 'self-organization' and specifically allowing for the exercise of this right by workers in the public sector. Thailand expressly enumerates examples of what types of groups may be formed in the exercise of this right, i.e. association, union,

⁸ Based on the August 2001 amendment of the Constitution of Malaysia. See ILO. *W.quality@Work: An Information Base on Equal Opportunity for Women and Men*. <http://www.ilo.org/public/english/employment/gems/eoo/law/malaysia/const.htm>, 8 April 2004.

⁹ Constitution of the Kingdom of Thailand (1997). http://www.kpi.ac.th/en/con_th3.asp, 9 April 2004.

¹⁰ The Constitutions of Vietnam:1946, 1959, 1980,1992 (2003). Gioi Publishers:Hanoi.

cooperative, farmer group, private organization or any other group. And in a number of the Constitutions reviewed, the right to associate is mentioned together with the right to freedom of assembly and expression, and in the case of *Vietnam*, this includes the right to hold demonstrations.

Although the right to freedom of association is allowed, the Constitutions of some of the study countries provide restrictions on the extent to which such freedom may be exercised. Parliament (*Singapore and Malaysia*) may make restrictions in the interest of security of the country, friendly relations with other countries, public order or morality. Related laws on labor or education may also impose restrictions on the right to form associations. In *Thailand*, this right shall not be restricted unless to protect the public interest, maintain peace or good moral or prevent an economic monopoly. In the *Philippines* and *Vietnam*, freedom of association shall not be restricted if exercised with purposes not contrary to law. *Indonesian* Constitution allows for restrictions in the exercise of all individual freedom in respect of the rights and freedoms of others and considerations for morality, religious values, security and public order.¹¹

All six countries also have provisions **prohibiting** various forms of **discrimination**. In general, each Constitution recognizes that all persons are equal and are entitled to equal protection of the law. Discrimination in two areas, namely: gender and religion are expressly prohibited by five Constitutions (*Indonesia, Malaysia, Thailand, Vietnam and Philippines*). Discrimination against children is expressly prohibited in the Constitutions of Indonesia and Vietnam.

Four of the study countries have provisions against **forced labor** (*Indonesia, Malaysia, Singapore, Philippines*) and slavery. However, in *Malaysia and Singapore* the Parliament may impose laws requiring compulsory service for national purposes. Work incidental to the serving of a sentence of imprisonment imposed by a court of law, according to the Constitutions of *Malaysia, Singapore, and the Philippines*, shall not be taken as forced labor within the meaning of the Articles.

The Constitutions of *Indonesia, Philippines* and *Vietnam* contain provisions on giving special care and protection to children and the youth.

¹¹ Section 28J, The 1945 Constitution of the Republic of Indonesia: As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002. Unofficial Translation.
<http://www.ilo.org/public/english/employment/gems/eo/download/consi.pdf> accessed on 8 April 2004.

Labor Laws and Regulations

The Constitution is considered the supreme law of many countries and lawmakers take pains to ensure that secondary laws are created in consonance with the Constitution. Unfortunately, as the experience of workers reveal, this is not always the case. Labor laws may be in conflict with each other or with the Constitution. Labor laws may also be interpreted in different ways by opposing sides to support each of their own positions. The judicial system is an important mechanism that facilitates the resolution of disputes arising from differences in the interpretation of the laws, though this same institution could also pose a major irritation in the process of dispute resolution. Likewise, the enactment of labor laws does not automatically translate into implementation. Indeed, in many instances, the law is good, but it is poorly implemented.

It is true that labor laws are not the only means of promoting fundamental principles and rights at work. Collective bargaining agreement (CBA) is a tool that can be used by workers to effect improvements in working conditions. International standards such as Social Accountability 8000 (SA 8000), if demanded by the market and consumers, may raise the quality of labor standards in an enterprise. And in a country like Singapore, tripartite agreements made by the National Trades Union Congress (NTUC), the Singapore National Employers' Federation (SNEF), and the government figure as much in the regulations as do the labor laws.

Unfortunately, not all countries have a strong tradition of collective bargaining or a strong trade union movement, for that matter. Nor do all enterprises benefit from a discriminating and socially oriented export market. Fewer perhaps are countries with an effective tripartite system. For these reasons, labor legislation is and remains to be important in ensuring that fundamental rights and principles at work are protected. As the ILO's Program on Social Dialogue, Labor Law and Labour Administration – Social Dialogue points out:

Labour legislation that is adapted to the economic and social challenges of the modern world fulfils three crucial roles:

- It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- By providing a framework within which employers, workers and their respective representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these

principles and rights can be implemented and enforced.

¹²[Underscoring the authors'.]

One of the limitations of labor legislation is that it only usually covers certain types of workers, specifically those in the formal sector. The mantle of protection of labor laws usually does not cover public sector employees, executives, domestic workers and those working in the informal sector.

In this section, we look at the six study countries and their labor legislation related to the four fundamental labor standards to determine if there are provisions in the laws that more or less support the implementation of the core standards.

In *Indonesia*, Law No. 21 of 2000 or the Trade Union Act provides the policy for the exercise of the **right to freedom of association and collective bargaining**. It states that every worker may form a trade union.¹³ Trade unions on the other hand may organize into a federation, and a federation of trade unions into a confederation. Trade unions may be formed according to type of industry/business sector, occupation/profession or expertise, or according to location.¹⁴ Even informal sector workers may form their own union. Trade unions in an enterprise must be open to all who want to be members, and discrimination based on political orientation, religion, race and sex is prohibited. Violations on the part of trade unions are punished by revocation of union record number, which is proof of its registration. Such revocation results in the loss of entitlement to collectively negotiate with management, represent workers in dispute settlement and in manpower/labor institutions. On the other hand, employers or other parties violating the Trade Union Act by terminating employment, withholding salary, intimidating or launching an anti-union campaign, could be punished with a jail sentence of one year to a maximum of five years and/or a fine of Rp100 million – 500 million (about US\$11,500 – 57,500).

Collective bargaining at the level of the enterprise is also allowed and in case more than one union exists in the enterprise, the union with a membership of more than 50 percent of the total workforce will negotiate with management. In all other cases, the various unions must decide, essentially by collaboration, the

¹² <http://www.ilo.org/public/english/dialogue/ifpdial/llg/intro/index.htm>. [Accessed on April 7, 2004.]

¹³ Trade unions in Indonesia require at least 10 workers who work in the same enterprise in order to be formed, while a federation needs at least five trade unions, and a confederation, three federations.

¹⁴ Simanjuntak, Payaman Dr. 2002. *New Labor Law on Trade Unions*. Indonesia: ILO/USA Declaration Project, p.18.

composition of the group that will represent the employees in collective bargaining.

Labor legislation provisions related to **prohibition against discrimination** are stipulated in Chapter 3 of Manpower Act No. 13/2003 on Equal Opportunity and Treatment, which contains two articles.

Article 5 Manpower shall have the same opportunity to get a job without being discriminated against

Article 6 Every worker/laborer has the right to receive equal treatment without discrimination from their employer

Unfortunately, the new Act does not specify how non-discrimination in recruiting and in treating employees will be regulated and implemented. Only administrative sanctions will be imposed, i.e. letter of rebuke, written warnings, restriction on business activities, freeze on business activities, cancellation of approvals, cancellation of registration, temporary suspension of operation, or revocation of operating permit, for violating these articles.¹⁵

In the area of **child labor**, Chapter Ten of Manpower Act 13 includes Protection for Workers, Children, Young People and Women. The minimum age of employment is 15 years, but there is no prohibition against employing children between the ages of 13-15 years to perform light work. Employers are prohibited from employing children under 18 years to work in a mine, in dangerous places, and at night. Similarly, children should not be employed to work in bad working conditions, i.e. slavery, prostitution, in the business of pornography, gambling, trafficking of spirits, alcohol, narcotics and psychotropic substances.¹⁶ Employment of children in extremely hazardous jobs may be punished with 2-5 years prison sentence and/or a fine of Rp 200 million – 500 million (US\$23,000-57,500).

Forced labor, except when it refers to employment of children, is not mentioned in Manpower Act 13. However, a more comprehensive law against trafficking is being prepared.¹⁷

In *Malaysia*, **freedom of association and collective bargaining** is regulated by the Trade Unions Act of 1959 and the Industrial Relations Act of 1967. By law, workers can engage in trade union activity both in the private and public sector.

¹⁵ Simanjuntak, Payaman Dr. 2003. *New Law on Manpower*. Indonesia : ILO/USA Declaration, pp. 54-55.

¹⁶ *Ibid*, p.32.

¹⁷ ICFTU (2003), Report for the WTO General Council Review of Trade Policies in Indonesia, at www.Icftu.org/displaydocument.asp?Index=991218291&language=EN&Printout=Yes, p. 8.

Within certain limitations, unions may organize workplaces, bargain collectively with employers and form federations.¹⁸

Trade union is defined as representing workers in a 'particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries'.¹⁹ Employees occupying managerial, executive, confidential or security-related tasks and positions must form or join a trade union that represents their own category of workers.²⁰

The IRA prohibits any interference from the side of management towards workers trying to form a union or participating in lawful union activities. Rules regarding organization of unions, recognition in the workplace, content of union constitutions, election of officers, and financial reporting are governed by the Trade Unions Act.²¹ The TU Act is administered by the Director-General of Trade Unions (DGTU). He has the power to refuse registration to a trade union and cancel union registration.

Collective bargaining is exercised by unionized organizations in the private sector.

There is no specific provision in the national law on **prohibition against discrimination** except that the Employment Act is applicable to all workers (including foreign workers) without discrimination.²²

Child Labor or employment of children under 15 years is prohibited under the Children and Young Persons Employment Act of 1966 except in light work in a family enterprise, work in public entertainment, work performed for the government in a school or training institution or work as an approved apprentice. Children are also not allowed to work more than six hours per day, more than six days per week, or at night.²³

There is no specific provision against **forced or compulsory labor** in the national legislation although such is prohibited under the Constitution, which says

¹⁸ Levine, Marvin. 1997. *Worker Rights and Labor Standards in Asia's Four New Tigers: A Comparative Perspective*. New York and London : Plenum Press, p.342.

¹⁹ Ibid.

²⁰ ICFTU. 2003. Report for the WTO General Council Review of Trade Policies of Malaysia, at www.icftu.org/displaydocument.asp?Index=991214373&language=EN&Printout=Yes, p. 3.

²¹ Ibid.

²² ILO. 2003. *Review of Annual Reports under the Follow-up to the ILO Declaration on fundamental Principles and Rights at Work: Freedom of Association and the Effective Recognition of the Right to Collective Bargaining*. Geneva: ILO.

²³ Levine, 1997, p. 355.

that forced or compulsory labor does not apply to rehabilitation work by prison inmates.²⁴

In *Thailand*, **freedom of association** may be exercised by workers in the private sector and those in state-owned enterprises. The Labor Relations Act of 1975 stipulates that at least 10 workers are required to form a union. The State Enterprise Labor Relations Act of 2000 requires that at least 10 percent of the total number of employees (excluding those in administration and casual, seasonal or contract workers) must signify interest to join the union.²⁵

Collective bargaining is allowed. However, we found no specific mention of it in the provisions of the law based on the literature gathered.

In **prohibition against discrimination**, the Labor Protection Act of 1998 states that employers are not permitted to discriminate between men and women employees with respect to employment and wages. Sexual harassment is also outlawed.

Prohibitions against **employment of children** below 15 years of age and restrictions in hiring those under 18 years of age are in the labor laws. Those hiring persons less than 18 years old must comply with a number of requirements, namely: provide notice of hiring a young person to the labor inspectorate 15 days from the start of employment, rest periods, prohibition regarding work between 10pm and 6am (except those employed as actors), prohibition regarding overtime work, work in hazardous conditions and work in certain kinds of establishments, i.e. abattoirs, gambling, dancing/singing venues, restaurants, hotels, massage parlors and others as specified in ministerial announcements.²⁶

Provisions against **forced labor** were not found in the labor laws.

Singapore laws allow the exercise of **freedom of association**. A union may be formed and registered by a minimum of seven members.²⁷ However, employers have the right to refuse recognition of a trade union on grounds that it does not represent the majority of workers, or if there is more than one trade union claiming to represent the same group of employees. The Commissioner for Labor conducts a secret ballot to settle the manner, in such case.

²⁴ ILO, 2003, p. 16.

²⁵ Brown, Andrew, et. al. 2002. "Labour Relations and Regulation in Thailand: Theory and Practice," Working Papers Series, No. 27, Southeast Asia Research Centre, City University of Hong Kong: Hong Kong, p. 24-25.

²⁶ Ibid.

²⁷ Ahmadu, Mohammed. 2003. *Workers' Rights for the New Century*. Hong Kong: Asia Monitor Resource Center (AMRC).

Employer action against employees who intend to be part of a union is prohibited and could be penalized with a maximum fine of S\$2,000 (US\$1, 200) and/or imprisonment for up to one year²⁸

Collective bargaining takes place between the union and the employers at the enterprise level, but within a framework that allows the government to set guidelines in setting wages and the issues that could be included in the agreement.

On **prohibition against discrimination**, Singapore does not have laws that prevent employers from discriminating on the basis of race. However, it has a number of provisions that either prevent discrimination in specific sectors or are discriminatory in their nature; namely in the areas of compensation, central provident fund contributions, retirement, and termination of employment. In addition, Section 80 of the IR Act provides that employers cannot discriminate against members of trade unions.²⁹

There is no specific provision in the national laws, aside from the Constitution, that prohibits **forced or compulsory labor**.

Employment of children is regulated under Part VIII of the Employment Act. It defines a child as a person below 14 years of age, and a young person above 14 years but below 16. No child under 12 can be employed.³⁰

Even though children may be employed, there are strict guidelines on the type of work they may engage. Employers may only employ children in light work suited to their capacity and not in any industrial undertaking or any vessel unless such undertaking or vessel is under the personal charge of a parent. On the other hand, young persons (14 years or above but under 16) may be employed in industrial undertaking, but employers are required to notify the Commissioner for Labor within 30 days of employing a young person. The employer must also provide a medical certificate certifying the young person's fitness for employment.

The Labor Code of the *Philippines* allows for the exercise of the **freedom of association** of employees in both the private and public sector. Contractual employees or those hired for a certain period of time may also form a trade union for their own category of workers. Under the Code, at least 20 percent of the

²⁸ Industrial Relations Act, Articles 82 (1) and 82 (2).

²⁹ Frost, Stephen and Catherine Chiu. 2003. *Workers' Rights for the New Century*. Hong Kong: Asia Monitor Resource Center (AMRC), p.304.

³⁰ Ibid.

employees in the bargaining unit must signify their intention to become members.³¹

Subject to certain procedures outlined in the Code³², the union and the management have the duty to convene for the purpose of negotiating a collective agreement with respect to wages, hours of work and all other terms and conditions including settlement of grievance or questions that may arise out of the agreement.

Prohibitions against discrimination are provided under Art. 135-137 of the Labor Code, which instructs that it is unlawful for an employer to discriminate against any female employee with respect to terms and conditions of employment solely on account of her sex. In the same manner, an employer is prohibited from discriminating on account of marriage and/or pregnancy. The Sexual Harassment Act of 1995 prohibits sexual harassment. Violators, if found guilty of discrimination and/or sexual harassment, will be penalized by fines and/or imprisonment.

Employment of children is regulated under Art. 139 of the Labor Code. It prescribes that the minimum employable age is 15 years and persons between 15-18 years of age may be employed for allowable hours and periods of the day as determined by the Secretary of Labor. Employment of persons below 18 years of age in hazardous or 'deleterious' undertakings is likewise not allowed.

Provision relating to the **prohibition of forced labor** is not found in any part of the Labor Code.

Finally, in *Vietnam*, Article 7 of the Labor Code states that workers have the right to establish and form trade unions and engage in trade union activities for the purpose of protecting their lawful rights and interests, and the right to collective welfare benefits as well as participation in the management of the enterprise.³³ The Code also requires that establishments with 10 or more employees to establish a trade union.

Collective bargaining procedures are stipulated in Chapter V of the Code. Collective labor accord or collective accord/agreement may be voluntarily entered into by labor and management. Any of the parties may file a request and proposals for a collective agreement. Negotiations start not later than 20 days upon receipt of said request by the other party. The main contents of the agreement

³¹Article 234, Philippine Labor Code in Azucena, CA. 1997. *Everyone's Labor Code*. Manila: Rex Printing Company.

³² *Ibid*, Article 250.

³³ *Labour Code and Ordinance on the Procedure of Settling Disputes on Labour*. 2001. Vietnam: National Political Publishing House: Vietnam.

include: hours of work and rest, wages, bonuses and subsidies, work rules, safety and health and social security for workers.³⁴

On **prohibition against discrimination**, Article 5 of the Code states that all persons have the right to work, freely choose a job or profession, learn a trade and improve themselves professionally without discrimination of sex, nationality, social background and religion.³⁵ In addition, Article 111 prohibits all acts by employers to discriminate against female workers or offend their dignity and honor. The employer must also observe the principle of sex equality in recruitment, utilization, pay rise and remuneration.³⁶ Unilaterally terminating a female employee for reasons of marriage, pregnancy, maternity leave, or nursing her infant under 12 months is likewise not allowed except in case of business closure.

Provisions prohibiting the **employment of children** are in Article 119-122 on Under-age Labour. The minimum employable age is 15 years, ³⁷ except in certain categories of occupations as determined by the Ministry of Labour, War Invalids and Social Welfare. Employment of children in heavy, dangerous or hazardous types of jobs, as enumerated in a list provided by the Ministry is also not allowed. There are provisions in the Code pertaining to hours of work, workweek, overtime and nightshift work for child workers.

Article 6 in the labor law states that maltreatment of laborer and **forcible labour** in any form is forbidden.

Table 2 below summarizes the labor laws and articles related to the fundamental labor standards in all the study countries.

³⁴ Qi, Li, et.al. 2003. "Labour Relations and Regulations in Vietnam: Theory and Practice," Southeast Asia Research Centre. Hong Kong: City University of Hong Kong.

³⁵ Ibid, p.11.

³⁶ Labour Code and Ordinance on the Procedure of Settling Disputes on Labour. 2001. Vietnam: National Political Publishing House, p. 52.

³⁷ Ibid.

Table 2: Labor Laws and Articles related to Fundamental Labor Standards: Indonesia, Malaysia, Singapore, Thailand, Philippines and Vietnam

	Freedom of association	Equality	Abolition of forced labor	Elimination of child labor
Indonesia	<ul style="list-style-type: none"> • Law No. 21/2000 	<ul style="list-style-type: none"> • Chapter Three Manpower Act/ 2003 	Law No. 19 Ordinance 1933	<ul style="list-style-type: none"> • Chapter Ten Manpower Act/2003
Malaysia	<ul style="list-style-type: none"> • Trade Union Act 1959 • Industrial Relations Act 1967 			<ul style="list-style-type: none"> • Children and Young Persons Employment Act of 1966
Thailand	<ul style="list-style-type: none"> • Labour Relations Act 1975 • State Enterprises Labor Relations Act 2000 	<ul style="list-style-type: none"> • Labor Protection Act 1998 		<ul style="list-style-type: none"> • Labor Protection Act 1998
Singapore	<ul style="list-style-type: none"> • Industrial Relations Act 1960 	<ul style="list-style-type: none"> • Various provisions • Section 80, Industrial Relations Act 1960 		<ul style="list-style-type: none"> • Part VIII Employment Act (1968)
Philippines	<ul style="list-style-type: none"> • Article 234 Labor Code 1974 	<ul style="list-style-type: none"> • Article 135-137 Labor Code 1974 		<ul style="list-style-type: none"> • Article 139 Labor Code 1974
Vietnam	<ul style="list-style-type: none"> • Article 7 Labor Code 	<ul style="list-style-type: none"> • Article 5 Labor Code 	<ul style="list-style-type: none"> • Article 6 Labor Code 	<ul style="list-style-type: none"> • Article 119-122 Labor Code

Based on Table 2 above and the preceding discussions on constitutional provisions, the following observations could be made for each country:

- *Indonesia's* Constitution provides for the protection of the principles of the four core standards. There are also enabling labor laws except on abolition of forced labor;
- *Malaysia* does not have enabling laws against discrimination, although the principle of non-discrimination is in the Constitution. Neither the labor laws nor the Constitution contain provision against abolition of forced labor;
- *Thailand's* labor laws prohibit the employment of children below 15 years of age and regulate employment of children under 18 years of age, although the Constitution is silent about protection of children. Neither the Constitution nor the labor laws mention abolition of forced labor;
- In the case of *Singapore*, employment or protection of children is not in the Constitution, but they have laws governing employment of children who are 12-13 years of age and young persons, 14-16 years old. The Constitution prohibits forced labor but there is no provision to this effect in the labor laws;
- *Philippine* Constitution enshrines the principles of the four core standards and provides enabling laws for all except against forced labor;

- *Vietnam* has enabling laws supporting the principle of the four fundamental labor rights although the country's Constitution is silent about forced labor.

As mentioned earlier, the articulation of core labor standards in either the Constitution or the legislation does not necessarily result in their effective implementation. However, the fact that there are provisions on some or all of the four standards in the national laws signify a country's recognition of these principles and thus, may provide some basis for demanding compliance to the core labor standards. Moreover, it should be noted that there may be other laws in a country, i.e. Penal Code, Civil Law, etc., that protect other labor rights such as abolition of forced labor.

ILO Conventions Ratified

The ILO identified four widely recognized human rights that protect the interests of workers that are enshrined in the following eight ILO Conventions:

Freedom of Association and Collective Bargaining

1. *Convention 87 – Freedom of Association and Protection of the Right to Organize (1948)*
2. *Convention 98 – Right to Organize and Collective Bargaining (1949)*

Equality

3. *Convention 100 – Equal Remuneration (1951)*
4. *Convention 111 – Discrimination (Employment and Occupation) (1958)*

Abolition of Forced Labor

5. *Convention 29 – Forced Labour (1929)*
6. *Convention 105 – Abolition of Forced Labour (1957)*

Elimination of Child Labor

7. *Convention 138 – Minimum Age of Employment (1973)*
8. *Convention 182 – Elimination of the Worst Forms of Child Labor (1999)*

In 1998, the ILO's member states adopted the Declaration on Fundamental Principles and Rights at Work – a testimony to the recognition of the members to the fundamental rights. In accordance with their membership to the ILO, and even if they have not ratified the ILO conventions, States have an obligation to:

... respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are subject of those Conventions [referring to the Four Core Conventions]...

In turn, the ILO also has an obligation to assist the member-states through technical cooperation and advisory services to promote the ratification of the Core Conventions, assist members who are not yet prepared to ratify some or all of the

Conventions in support of the countries' efforts to promote, respect and realize the principles of these fundamental rights, and lastly, help the members create a climate for economic and social development.

It should be noted that the only convention that all six study countries ratified is Convention 182 (Elimination of the Worst Forms of Child Labor), while Convention 87 (Freedom of Association and the Right to Organize) has the least number of ratifications (2). Table 3 shows the dates and conventions ratified/denounced by the six study countries.

Table 3. Core ILO Conventions ratified by Indonesia, Malaysia, Thailand, Singapore, Philippines and Vietnam³⁸

	Freedom of Association		Equality		Abolition of Forced Labor		Elimination of Child Labor	
	Con 87	Con 98	Con 100	Con 111	Con 29	Con 105	Con 138	Con 182
Indonesia	09/06/1998	15/07/1957	11/08/1958	07/06/1999	12/06/1950	07/06/1999	07/06/1999	28/03/2000
Malaysia		05/06/1961	09/09/1997		11/11/1957	Denounced 10/01/1990	09/09/1997	10/11/2000
Thailand			08/02/1999		26/02/1969	02/12/1969		16/02/2001
Singapore		25/10/1965	30/05/2002		25/10/1965	Denounced 19/04/1979		14/06/2001
Philippines	29/12/1953	29/12/1953	29/12/1953	17/11/1960		17/11/1960	04/06/1998	28/11/2000
Vietnam			07/10/1997	07/10/1997			24/06/2003	19/12/2000

In spite of provisions in the Constitution and enabling laws that allow for the exercise of the right to freedom of association, only two countries – Indonesia and the Philippines - have so far ratified Convention 87. On the other hand, provisions in the labor laws against forced labor of the study countries are least mentioned; but five out of six ratified Convention 105 and four out of six ratified Convention 29.

There are several theories on how countries decide to ratify or not (yet) ratify core Conventions. Should the ratification be initiated first or should the alignment of the legislation with the Conventions be made before even considering ratification?

According to a study by Flanagan (2003), countries are more likely to ratify standards that they have already attained.³⁹ This means that the national legislation and the socio-economic conditions must be in place first, before a country considers the ratification of a Convention. In this case, ratification is essentially a symbolic act on the part of the country to showcase what is already being practiced. Convention 182 was only adopted in 1999 and already four of the six study countries ratified it a year after. Thailand and Singapore followed in year

³⁸ International Labor Organization (2004) at <http://www.ilo.org/ilolex/english/newratframeE.htm>, April 8, 2004.

³⁹ Flanagan, Robert J. and William V. Gould IV. 2003. *International Labor Standards – Globalization, Trade, and Public Policy*. Stanford: Stanford Law and Politics, p.16.

2001. Ratification simply reiterated what was already in existence, which were essentially the national legislation and prevailing practices that are in line with the Convention.

Some countries may ratify a labor standard but fail to pass and enforce supportive national legislation.⁴⁰ Indonesia, for example, ratified Convention 87 in 1998 but only enacted supporting laws in year 2000 with the passage of Law No. 21. It should be recalled that in 1998, after the fall of Suharto, then President Habibie ratified Convention 87 by Presidential Decree. Since ratification of an international agreement must have the agreement of Parliament, said ratification was considered 'fake'.⁴¹ Subsequently, the ratification was formalized in 2000. Nonetheless, beginning 1998, plurality of unions was already observed in Indonesia.

Even countries with domestic policies that meet or exceed ILO conventions may not ratify them because of technical inconsistencies between domestic legislation and the Conventions.⁴² For example, the Annual Report of the ILO under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (2000)⁴³, Vietnam and the ILO have a 'different interpretation of forced labour and public work duties for the citizens of Vietnam.' This might explain why the country has not ratified both Conventions 29 and 105 despite a provision in the labor code that prohibits all types of forced labor.⁴⁴ Singapore did not ratify Convention 87 essentially because there is only one national union recognized by the state, whereas by ILO definitions, multiplicity of not only trade unions but of national unions or confederations must be allowed under the principle of freedom of organization. It is the position of the Government of Singapore that the national industrial relations system consultation and amicable resolution of disputes through conciliation has made possible the improvement of the living conditions of workers who enjoy the right to organize.⁴⁵ Membership in trade unions also increased. Like Malaysia, which also has reservations about the technical interpretation of Convention 87, Singapore does not see the need to modify its existing law and practice.

⁴⁰ Ibid.

⁴¹ Tambunan, Rita, et. al. 2003. "A Review of Indonesian Labour Law," Hong Kong: AMRC.

⁴² Ibid.

⁴³ ILO, 2000.

⁴⁴ Article 6, Labour Code and Ordinance on the Procedure of Settling Disputes on Labour. 2001. Vietnam: National Political Publishing House.

⁴⁵ General Survey of the Reports on the Freedom of Association and the Right to Organize Convention and the Right to Organize (1994), at <http://www.ilo.org/ilolex/english/surveyq.htm>

Summary

There are two basic sources of legislation in each country that may enshrine principles and provisions recognizing the protection of labor rights – the Constitution and the labor laws. In the Constitution, one finds the expression of general principles, including but not limited to individual liberties or freedoms and rights of citizens in a particular country. The labor laws give substance to provisions in the Constitution by defining these rights, persons who may invoke these rights, the extent of exercising these freedoms and penalties for non-compliance or subjugation of these rights.

The ILO Conventions ratified, in addition to a country’s labor laws bind the state to observe certain labor standards. Not all member-countries of the ILO are amenable to the ratification of all the four core labor standards, but as members of the ILO they are bound to observe the core labor rights, and report efforts taken to align their national laws with these standards. On the other hand, countries are not required to report on the status of Conventions they have ratified. Table 4 summarizes the record of ratification of the countries under study.

Table 4: Ratification of Core ILO Conventions by Indonesia, Malaysia, Thailand, Singapore and Philippines

	FREEDOM OF ASSOCIATION & CB		EQUALITY		ABOLITION OF FORCED LABOR		ELIMINATION OF CHILD LABOR	
	CON 87	CON 98	CON 100	CON 111	CON 29	CON 105	CON 138	CON 182
INDONESIA	✓	✓	✓	✓	✓	✓	✓	✓
MALAYSIA		✓	✓		✓		✓	✓
THAILAND			✓		✓	✓		✓
SINGAPORE		✓	✓		✓			✓
PHILIPPINES	✓	✓	✓	✓		✓	✓	✓
VIETNAM			✓	✓			✓	✓

According to Table 4, only Indonesia ratified all eight Core Conventions, followed by Philippines with seven ratifications. Thailand, Singapore and Vietnam ratified four Conventions each, while Malaysia ratified five.

Of the four core standards, Conventions under Freedom of Association and Collective Bargaining are the least ratified (6 ratifications), followed by Conventions on Abolition of Forced Labor (7 ratifications). Equality conventions have nine ratifications, while Elimination of Child Labor Conventions have 10.

It could be surmised that Convention 87 is the most sensitive convention among the eight since it is the convention least ratified by the study countries. On the other hand, all six countries consented to Conventions 100 and 182.

Table 5: Countries with provisions in their Constitution and Labor Laws dealing with Core Labor Standards and their Ratifications of Core ILO Conventions

	<i>Constitution</i>	Labor Laws	<i>Countries that ratified ILO Conventions</i>	
Freedom of Association and Collective Bargaining	Indonesia Thailand Malaysia Singapore Philippines Vietnam	Indonesia Thailand Malaysia Singapore Philippines Vietnam	Indonesia (87) Philippines	Indonesia (98) Malaysia Singapore Philippines
Equality	Indonesia Thailand Malaysia Singapore Philippines Vietnam	Indonesia Thailand Singapore Philippines Vietnam	Indonesia (100) Thailand Malaysia Singapore Philippines Vietnam	Indonesia (111) Philippines Vietnam
Abolition of Forced Labor	Thailand Vietnam	Indonesia Vietnam	Indonesia (29) Thailand Malaysia Singapore	Indonesia (105) Thailand Philippines
Elimination of Child Labor	Indonesia Philippines Vietnam	Indonesia Thailand Malaysia Singapore Philippines Vietnam	Indonesia (138) Malaysia Philippines Vietnam	Indonesia (182) Thailand Malaysia Singapore Philippines Vietnam

Based on Table 5, it is evident that there are other factors, aside from the existence of provisions in the national legislation that determine a country's ratification of ILO Conventions. Vietnam has related provisions both in its Constitution and labor laws dealing with all the four core labor standards, but it has only ratified four Conventions. Indonesia ratified all conventions and its labor laws also discuss the core standards. However, its labor laws are newly promulgated and therefore, most of the improvements that reflect the conventions happened only after the country's ratifications. Singapore, on the other hand, would rather have its legislation and enforcement mechanism in place first before considering the ratification of those conventions that it has yet to consent to. The conventions under Freedom of Association and Collective Bargaining have the least number of ratifications (see Table 4), but all Constitutions and labor laws allow for the exercise of these freedoms subject to restrictions. In these cases, non-

ratification may be attributed to differences on how the ILO and each country interpret the freedom of association and collective bargaining conventions.

Conclusion

Aside from the Constitution, the labor legislation is the most important piece of regulatory instrument that outlines what, how and when citizens of a country may exercise labor rights. Though it may not be the only instrument available to workers, labor legislation is perhaps the single most accessible instrument at hand, which can be used to demand that governments and employers comply with labor standards. What is not written in the labor laws cannot be demanded as an enforceable right.

The ILO Conventions and the Fundamental Rights at Work principles help workers protect their rights. But these are not ultimate guarantees. At the end of the day, the level of effective implementation of the labor laws that are guided by the conventions and other universal principles is the measurement of a country's adherence to the core standards.

For this reason, the participation of workers and their trade unions in monitoring compliance to labor laws and in the reforming labor legislation to reflect these rights is much desired. In addition, the assistance of the ILO especially in the efforts to reform labor laws should further ensure the inclusion of provisions protective of workers rights.

Part II – IS A SOCIAL CHARTER POSSIBLE IN THE ASEAN? EXPLORING THE POTENTIALS OF AN ASEAN SOCIAL CHARTER

On February 24, 2004, the World Commission on the Social Dimension of Globalization (WCSDG), established by the International Labor Organization (ILO) in February 2002, came out with its report after two years of broad-based consultation and dialogues with important actors in the globalization process in many parts of the world. The Commission, whose members represent a very wide diversity of opinion and interests⁴⁶, coming from countries in different parts of the world and at all stages of development, looked into the various facets of globalization, the diversity of public perceptions of the process, and its implications for economic and social progress. The establishment of the Commission is among the new initiatives of the ILO in recent years to enforce its promotion of workers' rights in an increasingly globalizing world. The establishment of the Commission, along with the convening of a Working Party on Social Aspects of Globalization and the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work, point to a renewed and more aggressive ILO in rallying global support for international labor standards and in promoting compliance. The 1998 Declaration differentiates from the traditional ILO convention approach in that said instrument does not require ratification; it is binding on all ILO member countries by virtue of their membership in the organization. These new initiatives may also be viewed as the ILO's response to decades of criticisms of relative inaction and ineffectiveness. The World Trade Organization's (WTO) posture pointing to labor standards as the ILO's province may have further empowered and legitimized the ILO as the main institution in the promotion and enforcement of workers' rights and international labor standards.

The WCSDG report recognizes the immensity of potential for good that globalization may bring; "wisely managed, it can deliver unprecedented material progress, generate more productive and better jobs for all, and contribute significantly to reducing world poverty."⁴⁷ However, globalization in its present form falls short from realizing this potential. Without doubt, world trade has expanded rapidly over the past two decades, but this trade expansion did not

⁴⁶ World Commission on the Social Dimension of Globalization (WCSDG). 2004. *A Fair Globalization – Creating Opportunities for All*. Geneva: International Labor Organization. <<http://www.ilo.org/public/english/wcsdg/globali/globali.htm>>. The Commission is co-chaired by two heads of states, H.E. Ms. Tarja Halonen of the Republic of Finland and H.E. Mr. Benjamin William Mkapa of the United Republic of Tanzania. There are 19 members and four ex-officio members. Please see report for a full listing of the members of the Commission.

⁴⁷ WCSDG, 2004, p. x.

occur uniformly across all countries, with the industrialized countries and a group of 12 developing countries accounting for the lion's share.⁴⁸ The report cites, among others, the following impact of globalization:⁴⁹

- Since 1990, global GDP growth has been slower than in previous decades, the period in which globalization has been most pronounced.
- Growth has also been unevenly distributed across countries, among both industrialized and developing countries. In terms of per capita income growth, only 16 developing countries grew more than 3 per cent per annum between 1985 and 2000. In contrast, 55 developing countries grew at less than 2 per cent per annum, and of these 23 suffered negative growth.
- The industrialized countries, with their strong economic base, abundance of capital and skill, and technological leadership, were well placed to gain substantial benefits from increasing globalization of the world economy.
- Expanding global markets, the emergence of global production systems and liberalized investment rules generated new opportunities for the multinational enterprises (MNEs) of industrial countries, increasing their global reach and market power.
- The other clear group that reaped significant benefits was the minority of developing countries that have been highly successful in increasing their exports and in attracting large inflows of FDI. Foremost among this group have been the original NIEs of East Asia that have now converged on industrialized country income levels and economic structures.
- ILO estimates that open unemployment worldwide has increased over the last decade to about 188 million in 2003. Within the developing world, unemployment rates have increased since 1990 in Latin America and the Caribbean and Southeast Asia, and since 1995 in East Asia. One factor behind the rise in unemployment in these countries was the financial crisis at the end of the 1990s.
- In industrialized countries, employment performance has also been mixed. Over the last decade, there was steady increase in unemployment in Japan, but a sharp decline in unemployment in some small open European economies, as well as in the United Kingdom. The United States also experienced declining unemployment until the recent economic downturn.

In the light of the above, the WCSDG seeks a strong social dimension in the globalization process, urgently calling for the following:

- *A focus on people.* The cornerstone of a fairer globalization lies in meeting the demands of all people for: respect for their rights, cultural identity and autonomy; decent work; and the empowerment of the local communities they live in. Gender equality is essential.

⁴⁸ Ibid, p. 25. The 12 developing countries with their corresponding share in world trade are: China, 13.2%; Korea, 11.7%, Taiwan, 11.2%, Singapore, 9.4%; Mexico, 7%; Malaysia, 5%; Thailand, 4%; China, Hong Kong SAR, 3%; Brazil, 2.8%; India, 2.5%; Indonesia, 2.4%; and Turkey, 1.8%. The combined share of these 12 countries and territories account for 74.76%. The remaining 176 developing countries and territories account for 25.3%.

⁴⁹ Ibid, pp. 35-42.

- *A democratic and effective State.* The State must have the capability to manage integration into the global economy, and provide social and economic opportunity and security.
- *Sustainable development.* The quest for a fair globalization must be underpinned by the interdependent and mutually reinforcing pillars of economic development, social development and environmental protection at the local, national, regional and global levels.
- *Productive and equitable markets.* This requires sound institutions to promote opportunity and enterprise in a well-functioning market economy.
- *Fair rules.* The rules of the global economy must offer equitable opportunity and access for all countries and recognize the diversity in national capacities and development needs.
- *Globalization with solidarity.* There is a shared responsibility to assist countries and people excluded from and disadvantaged by globalization. Globalization must help to overcome inequality both within and between countries and contribute to the elimination of poverty.
- *Greater accountability to people.* Public and private actors at all levels with power to influence the outcomes of globalization must be democratically accountable for the policies they pursue and the actions they take. They must deliver on their commitments and use their power with respect for others.
- *Deeper partnerships.* Many actors are engaged in the realization of global social and economic goals – international organizations, governments and parliaments, business, labour, civil society and many others. Dialogue and partnership among them is an essential democratic instrument to create a better world.
- *An effective United Nations.* A stronger and more efficient multilateral system is the key instrument to create a democratic, legitimate and coherent framework for globalization.⁵⁰ [Underscoring the authors’.]

Clearly, the WCSDG sees the urgency for the adoption of reforms at the global level and recommends, among others, the following:

Global rules and policies on trade must allow more space for policy autonomy in developing countries. This is essential for developing policies and institutional arrangements best suited to their level of development and specific circumstances...The policies of international organizations and donor countries must also shift more decisively away from external conditionality to national ownership of policies...

Fair rules for trade and capital flows need to be complemented by fair rules for the cross-border movement of people...Steps have to be taken to build a multilateral framework that provides uniform and transparent rules for the cross-border movement of people and balances interests of both migrants themselves and of countries of origin and destination...

...A balanced and development-friendly multilateral framework for FDI, negotiated in a generally accepted forum, will benefit all countries by promoting increased direct investment flows while limiting the problems of intensive competition which reduce the benefits from these flows...

⁵⁰ WCSDG, 2004, pp. ix-xx.

Core labour standards as defined by the ILO provide a minimum set of global rules for labour in the global economy and respect for them should be strengthened in all countries...

The multilateral system should substantially reduce unfair barriers to market access for goods in which developing countries have comparative advantage, especially textiles and garments and agricultural products. ..the interests of the Least Developed Countries (LDCs) should be safeguarded through special and differential treatment to nurture their export potential.

A minimum level of social protection for individuals and families needs to be accepted and undisputed as part of the socio-economic 'floor' of the global economy, including adjustment assistance to displaced workers. Donors and financial institutions should contribute to the strengthening of social protection systems in developing countries.

Decent Work for all should be made a global goal and be pursued through coherent policies within the multilateral system...

Developing countries should have increased representation in the decision-making bodies of the Bretton Woods Institutions, while working methods in the World Trade Organization (WTO) should provide for their full and effective participation in its negotiations.

Greater voice should be given to non-State actors, especially representative organizations of the poor.

The contributions of business, organized labour, Civil Society Organizations (CSOs), and of knowledge and advocacy networks to the social dimension of globalization should be strengthened.⁵¹

[Underscoring the authors'.]

Undoubtedly, the WCSDG report urgently calls for a deeper and more sustained global effort to address the social dimension of globalization – the impact of globalization on the life and work of people, on their families and their societies. Only when the social dimension is addressed would globalization be fairer and more inclusive. In this light, the WCSDG report provides strong justification for an ASEAN Social Charter proposition.

The North-South Divide on International Labor Standards

Recent discussions on the relationship between labor standards and trade indicate two contrasting views. One view sees the adoption of labor standards proposed by the ILO as an important mechanism for improving labor conditions. This group, i.e. the developed countries, argues that countries that fail to adopt certain labor standards acquire unfair international competitive advantage over countries that adopt the same. Meanwhile, the other view maintains that imposing labor standards is a form of disguised protectionism that robs developing countries of their comparative advantage. These two contrasting views are at the heart of protracted debates between the developed and developing member

⁵¹ WCSDG, 2004, pp. xii-xiv.

countries of the WTO. The following are the issues raised by both worlds about labor standards, and instruments upholding and protecting workers' rights, i.e. Social Charter.

Social Clauses: Protectionist Prescription or Social/Human Rights Instruments?

Labor conditionality clauses in unilateral trade agreements are not new. The U.S. trade law has for many years included these clauses in the country's trade agreements. These clauses include internationally recognized workers' rights, such as freedom of association, the right to organize and bargain collectively, prohibition of forced or compulsory labor, a minimum age for employment of children, and acceptable conditions of work (maximum hours of work per week, minimum wage, minimum workplace safety and health standards, elimination of employment discrimination). These labor clauses are attached in the U.S.'s Generalized System of Preferences (GSP) program, among others. The North American Agreement on Labor Cooperation (NAALC), the labor side agreement of the North American Free Trade Agreement involving the U.S., Canada and Mexico, obligates member states to enforce their own labor standards. In 1998, members of the Common Market of the South (MERCOSUR) adopted a declaration that commits member states to promote the ILO core labor standards, the rights of migrant workers, health and safety standards, and other workplace rights. The 14-member South African Development Community (SADC) is also taking steps to formulate a Social Charter of Fundamental Rights.⁵² There are also bilateral agreements that contain labor rights protection clauses, such as those between Canada and Chile, and the U.S. and Jordan and Cambodia. The U.S. has also forged unilateral free trade agreements (FTAs) with Singapore and Vietnam.

Meanwhile, the Social Charter of the European Union, approved by all member nations except Britain, includes a broader list of workers' rights, namely:

- Freedom of movement
- The right to employment and remuneration
- The improvement of living and working conditions
- The right to social protection
- The right to freedom of association and collective bargaining
- The right to vocational training
- The right of men and women to equal treatment
- The right of information, consultation, and participation
- The right to health and safety in the workplace
- The protection of children and adolescents in employment
- The protection of elderly persons
- The protection of persons with disabilities

⁵² Organization for Economic Co-operation and Development. 2000. *International Trade and Core Labour Standards*, p.9.

The EU has also its own GSP system. The EU system ties additional tariff reductions beyond the GSP baseline to developing countries that can demonstrate that they effectively implement the core ILO conventions.⁵³ Like the U.S., the EU GSP tariff benefits have been suspended in Burma in view of the country's practice of forced labor.

To the extent that the labor standards-trade link proposition has been strongly advocated by the developed world, including organized labor in those countries, the developing countries' view that the proposal is a smokescreen for protectionism of the former is understandable. The level-of-development argument is at the core of the disagreement. Many developing countries argue that their lower stage of economic development, the rapid economic transformations many are currently undergoing, and the high degree of informality in their labor markets, do not warrant the application of such aspects of labor rights as are found in Europe and other developed countries. The protectionist activity of the U.S. and other Western countries has also seriously impaired the credibility of efforts to build an international rights regime and promote global compliance.⁵⁴

DeMartino (2003) acknowledges natural differences between countries, which are natural and legitimate determinants of comparative advantage.⁵⁵ In this regard, he stresses that the campaign to write labor standards into trade agreements is unwise. Fields (2003) cites Malaysia's former Prime Minister Mahathir Mohamed's vivid articulation of opposition to labor standards and questionable altruism of the U.S. and other Western countries supporting labor-trade linkage:

Western governments openly propose to eliminate the competitive edge of East Asia. The recent proposal for a world-wide minimum wage is a blatant example. Westerners know that this is the sole comparative advantage of the developing countries. All other comparative advantages (technology, capital, rich domestic markets, legal frameworks, management and marketing networks) are with the developed states. It is obvious that professed concern about workers' welfare is motivated by selfish interest. Sanctimonious pronouncements on humanitarian, democratic and environmental issues are likely to be motivated by a similar selfish

⁵³ Cleveland, Sarah H. 2003. "Why International Labor Standards?," in Flanagan, Robert J. and William B. Gould IV (Eds.) *International Labor Standards – Globalisation, Trade, and Public Policy*. Stanford: Stanford University Press, p. 134.

⁵⁴ *Ibid.*, p. 150.

⁵⁵ De Martino, George. 2003. "Free trade or social tariffs," in Jonathan Michie (Ed.) *The Handbook of Globalisation*. Cheltenham, UK: Edward Elgar Publishing Ltd., pp. 402-412.

desire to put as many obstacles as possible in the way of anyone attempting to catch up and compete with the West.⁵⁶

In the 1999 WTO ministerial meeting in Seattle, developing countries formed the G-15, which came out strongly against linking core labor standards to global trade. The G-15 included Algeria, Argentina, Brazil, Chile, Egypt, India, Indonesia, Kenya, Jamaica, Malaysia, Mexico, Nigeria, Peru, Senegal, Sri Lanka, Venezuela, and Zimbabwe.

The foregoing issues raised against labor standards or any instrument that upholds these standards were also raised by a few key informants interviewed by the researchers. For example, the Social Charter is seen as an instrument that will further legitimize free trade that is unfair and exclusive.⁵⁷

The empirical study of Flanagan (2003) provides little justification that countries that fail to adopt key labor standards acquire international competitive advantage over countries that ratify the ILO standards. The findings of his study provide an empirical basis in clarifying issues surrounding the labor standards-international trade advantage debate as well as ratification of ILO core conventions.⁵⁸

- Since nonratification of ILO conventions is virtually costless, countries are most likely to ratify standards that they have already attained. Ratification is a purely symbolic act.
- There is little support for the proposition that effective labor standards improve labor conditions in a regime of voluntary ratification.
- Countries with superior labor conditions are more likely to ratify ILO conventions.
- Because ratifications are largely symbolic, reflecting previously attained labor conditions, the race-to-the-bottom (RTTB) view that ratifications raise labor costs is undermined.
- There is little evidence that the effective number of core and noncore standards ratified led to improvements in the condition of labor. On the other hand, there is strong evidence that countries with open trade policies have superior labor rights and health conditions and less child labor.
- Core or political labor standards do not influence labor costs.
- The RTTB hypothesis that ratification of ILO conventions puts countries at a competitive disadvantage in international trade is weak. There is scant

⁵⁶ Mahathir, Mohammed. 1994. "East Asia Will Find Its Own Roads to Democracy," *International Herald Tribune*, May 17. Cited in Fields, Gary S. 2003. "International Labor Standards and Decent Work: Perspectives from the Developing World," in Flanagan and Gould IV, 2003, pp. 68-69.

⁵⁷ Mr. Crispin Beltran, BAYANMUNA/ANAKPAWIS Party List Representative, Quezon City; interview on April 1, 2004; Ms. Dita Sari, FNBI, Jakarta, interview.

⁵⁸ Flanagan, 2003, pp. 15-59.

support for the RTTB arguments that countries that do not ratify ILO conventions enjoy better export performance.

- The RTTB hypothesis that countries that fail to ratify political labor standards may attract more foreign direct investments is weak as most FDI flows occur between industrialized countries, which most frequently have superior labor standards and conditions. Core labor standards are not significantly related to FDI share. Thus, there is no reliable evidence that high labor standards reduce a country's share of FDI.
- Poor labor conditions signal low skills as well as low wages, and not all investments thrive in a low-skill environment.
- In sum, the paper finds no evidence that countries with low labor standards gain competitive advantage in international markets.

Should developing countries have labor standards that are different from those in the Western or developed countries? The researchers agree with Fields (2003) that the answer is yes and no. The core labor standards are fundamental human rights in the workplace. These are universal human rights that serve as baseline, below which are unacceptable human exploitation.⁵⁹ These standards should be honored in all countries regardless of their natural and legitimate differences. As fundamental rights of workers, core labor standards cannot be considered primarily as a means to improve market efficiency. Cleveland (2003) argues that "the critical question for identifying core labor standards is not whether the standard has a neutral impact on labor costs, but whether the standard is sufficiently fundamental to the life and well being of employees to warrant status as a core labor standard."⁶⁰ She stresses that the objection to a labor rights regime may have more to do with avoiding enforcement and compliance with international obligations that member-states have already embraced.

On the other hand, there are certain labor standards that must be allowed to differ across countries. According to Fields, these are minimum wages, maximum hours of work, mandated fringe benefits, occupational safety and health, etc. He points out that the latter standards should be determined within countries and not by international mandate.⁶¹

Core labor standards as basic human rights, according to Gould IV (2003), are substantially procedural and thus do not directly affect the substance of the employment relationship.⁶² Accordingly, these standards establish a framework for other labor standards that may be either voluntarily negotiated by labor and

⁵⁹ Cleveland, 2003, p. 151.

⁶⁰ Ibid., p. 154.

⁶¹ Fields, 2003, p. 74.

⁶² Gould IV, William B. 2003. "Labor Law for a Global Economy: The Uneasy Case for International Labor Standards," in Flanagan and Gould IV (Eds.), pp. 90-91.

management or devised through government policy. As such, core labor standards will not necessarily affect comparative advantage negatively.

As discussed earlier, strong opposition of the developing world, including the ASEAN, to labor standards focus on non-core, i.e. global minimum wage, and not core international labor standards. Thus, Fields (2003) emphasizes that “the developing countries’ opposition to international labor standards comes from what *was* being proposed than from what *is now* on the table.”⁶³ In this light, an attempt to put international labor standards on the discussion table, especially on a regional basis such as the ASEAN, may stand a chance.

Promotional or With Sanctions?

However, how the Social Charter will be implemented will definitely affect a country’s receptiveness. As declared by most of the key informants, the Charter should be promotional in nature to increase its acceptance by ASEAN Governments. If it would bear sanctions or tied to trade, the Charter idea would meet strong opposition. A key informant from the ASEAN Secretariat strongly emphasized this point.⁶⁴ She reiterated that instead of sanctions, assistance to enhance compliance capacities should instead be resorted to.

The litmus test to a Social Charter would be its impact on improving labor conditions. Will the Charter improve compliance? What will distinguish it from other social instruments? These are the oft-repeated questions encountered by the research team in the conduct of interviews with key informants in the six study countries. Many argue that without teeth, the Social Charter may suffer the same criticisms of ineffectiveness leveled against ILO conventions. Again, we point to the importance of endogenous factors affecting labor conditions, i.e. state regulations, enforcement mechanisms, capacities of institutions, and relative influence of unions. Nonetheless, even if the Charter would be promotional or voluntary in nature (as are ILO conventions), so long as the “sunshine” factor is ensured, i.e. public nature of submission, investigation, review, report, recommendation, and consultation activities, it would have a preventive and corrective effect in view of public pressure. Moreover, considering that the mantle of protection of the ASEAN Social Charter covers a relatively smaller geographical area (unlike the ILO’s worldwide coverage), the public nature of processes - the sunshine factor - will increase the influence and effectiveness of public pressure. Bognanno and Lu (2003) describe the potentials of the sunshine hypothesis:

⁶³ Fields, 2003, p. 73.

⁶⁴ Ms. Moe Thuzar, Senior Officer, Bureau of Financial Cooperation, ASEAN Secretariat, Jakarta; interview on November 5, 2003.

In essence, the sunshine hypothesis asserts that governments and businesses respond to the risk of reputation loss and related political and economic costs. With increasing communication efficiencies brought on by satellite broadcasting and television technologies, the internationalization of newsprint, and the Internet, bad news receives instantaneous and worldwide coverage. Consequently, it is hypothesized, governments and business organizations not wishing to put their “political” and “physical” capital investments at risk are sensitive to adverse shifts in public opinion...⁶⁵

The sunshine hypothesis has been used by labor and human rights organizations in assessing the effectiveness of NAFTA’s labor side agreement or NAALC in the effective enforcement of labor law and compliance among MNEs. These organizations claim that “there is but a sliver of support for the argument that corrective influences have been brought on by the NAALC’s sunshine factor”⁶⁶, because of structural weaknesses (cumbersome rules) and limited sanctions.⁶⁷ Nonetheless, Bognanno and Lu (2003) argue that all is not lost from labor’s perspective. The authors point out that the NAALC is an important educational and research asset. It has given trade unions and labor advocates a stage on which to “flag” abuses for all to see, and it has brought on cross-border coalitions among unions and other NGOs that may not have otherwise formed.⁶⁸ These cross-border coalitions, for example, paved the way for the labor alliances that staged anti-WTO activities in Seattle in December 1999, and built a foundation to support coordinated cross-border bargaining strategies among unions doing business with the same multinational corporations.⁶⁹

The NAALC experience highlights the most significant variable in pushing for an international labor rights regime – the need for transnational partnerships and transnational strategies among unions, human rights organizations, and other NGOs. Unions can no longer continue living in “splendid isolation”. Strategic alliances and partnerships with other social movements within nation-states and across borders point to the emergence of a new form of global unionism, which is aptly referred to by Wells (1998) as *transnational coordinative unionism*.⁷⁰

⁶⁵ Bognanno, Mario F. and Jiangfeng Lu. 2003. “NAFTA’s Labor Side Agreement: Withering as an Effective Labor Law Enforcement and MNC Compliance Strategy?,” in William N. Cooke (Ed.). *Multinational Companies and Global Human Resource Strategies*. Westport, Connecticut: Quorum Books, p. 377.

⁶⁶ *Ibid.*, p. 393.

⁶⁷ For an assessment of NAFTA’s labor side agreement, see Human Rights Watch. 2001. *Trading Away Rights*. Vol. 13, No. 2(B), April.

⁶⁸ *Ibid.*, p. 392.

⁶⁹ *Ibid.*, p. 376-377.

⁷⁰ Wells, D. 1998. “Building Transnational Coordinative Unionism,” in Juarez, H. and S. Babson (eds.), *Confronting Change: Auto Labor and Lean Production in North America*. Puebla, Mexico: Benemerita Universidad Autonoma de Puebla, pp. 487-505.

Addressing Exclusion by Covering Migrant Workers

With the exception of Singapore, all study countries are labor-exporting countries (Malaysia and Thailand are both labor-sending and receiving). In the Philippines, for example, overseas Filipino workers (OFWs) deployed in labor-receiving ASEAN countries account for 10 percent of total deployment in 2002. According to Cleveland (2003), the establishment of international labor standards may be particularly important for migrant workers, “who are notoriously unprotected by countries in which they labor – through both lack of legal rights and under-enforcement.”⁷¹ Because locals in labor-receiving countries have an aversion to 3D jobs (dirty, dangerous and difficult), among other reasons, migrant workers are found in these sectors.

The core ILO conventions also accord to migrant workers. The EU Social Charter, the MERCOSUR Socio-Labor Declaration of 1998, and the NAALC have expressed provisions pertaining to protection of migrant workers. A social compact or social charter multilaterally engaged by ASEAN member states may afford protection to this vulnerable group of workers.

Why an ASEAN Social Charter?

Social Dimension of Regional Integration as a Stepping Stone

What is most important to the study that the WCSDG report highlights is the strengthening by nation-states of regional and sub-regional cooperation as a major instrument for the development of a stronger voice in the governance of globalization. Accordingly, “the logic of choosing a regional route is that difficulties of integration are greater at the global level, and so it makes sense to take the regional step first; and if there are strong policies and institutions at the regional level, it is easier to construct fair global policies.”⁷² The report strongly emphasizes that nation-states should reinforce the social dimension of regional integration. Regional integration in Asia tends to concentrate on trade and economic cooperation, and peace and security. The social goals of integration, i.e. employment, education, the environment, labor standards, human rights, gender equality, etc., tend to be secondary. The WCSDG points out that if regional integration is to be a steppingstone towards a fairer globalization, a strong social dimension is essential. To this end, the WCSDG raises the following issues that need to be taken account:

⁷¹ Cleveland, 2003, p. 6.

⁷² WCSDG, 2004, p. 74.

First, the principles of participation and democratic accountability are an essential foundation...regional integration should be advanced through social dialogue between representative organizations of workers and employers, and wider dialogue with other important social actors...The creation of tripartite or wider councils and forums at the regional level (such as the Consultative Economic and Social Forum of Mercosur or the European Economic and Social Committee) provides an important institutional framework for such dialogue...

Second, regional integration needs to incorporate social targets, backed by regular measurement and reporting of results. Such targets might cover respect for basic rights, the overall employment rate, poverty incidence, educational opportunities and the extent of social security coverage, all disaggregated by sex. Measurement is particularly useful at the regional level since progress, or lack of it, can create political pressures for coordinated action. A formal review process by regional organizations can help improve national policies.

Third, regional resource mobilization is required for both investment and adjustment. This is particularly important when integration involves countries at very different levels of development...Regional financial institutions are also vital in order to channel resources to regional investment...Donors and international organizations should also support countries' efforts to develop common regional strategies for promoting social and economic development. The social dimension of regional integration requires an integrated policy approach, based on a political commitment at the highest level. Only Heads of State and Government have the necessary authority, which is why most significant steps towards regional integration are made at that level.⁷³

In the light of the above, the idea of a Social Charter, or any similar instrument, in the ASEAN becomes imperative. As trends would indicate, regional discussions on dealing with globalization can no longer skirt the social dimension aspect of integration. A common agreement or regional framework on international labor standards for the ASEAN should now be broadly discussed and dialogued on. An ASEAN forum similar to that of the MERCOSUR may be the first major step.

Lessons of the 1997 Financial Crisis

The 1997 financial and economic crisis that shook the Asia was a wake up call to the ASEAN – that labor and employment issues need to be seriously integrated into the organization's agenda for regional cooperation. It acknowledged the profound social impact that the crisis has had on the labor and employment situation of member-states. Thus, in the 13th ASEAN Labour Ministers Meeting (ALMM) in Myanmar on May 14-15, 1999, the Labour Ministers "reaffirmed the ASEAN Leaders' commitment stated in the Sixth ASEAN Summit

⁷³ WCSGD, 2004, pp. 73-74.

to safeguard the interests of the poor”.⁷⁴ They also emphasized the importance of employment creation as a strategy for poverty alleviation.

In the 14th ALMM in Manila on 11-12 May 2000, the Labour Ministers adopted a Vision and Mission Statement renewing their commitment and determination to strengthen the social pillars of ASEAN by “promoting the full potential and dignity of workers” by “striving to ensure that people in Southeast Asia enjoy sustainable livelihood in a climate of freedom, equity and stability” and endeavoring to “work closely with workers, employers, civil society, and other organizations”.⁷⁵ To realize their Vision, the Ministers tasked the Senior Labor Officials to collaborate closely in firming up the framework and in operationalizing a five-year work program as agreed at the 13th ALMM in May 1999 in Yangon:

- a. sharing and exchange of experience and best practices in developing social protection and social security systems;
- b. promoting tripartite cooperation through increased consultations among the social partners, in relation to economic restructuring including strengthening the tripartite institutions and mediation/conciliation mechanisms; and
- c. enhancing capacity for designing programmes or policies on employment generation, focusing on active labour market policies and re-training.⁷⁶

The various projects under the ASEAN Labour Cooperation Program, as briefly discussed in a separate section below, constitute to date the ASEAN’s regional work program on labour and employment.

The ASEAN Free Trade Area (AFTA)

Prior to the establishment of AFTA, there were earlier initiatives in the ASEAN towards furthering economic cooperation (i.e., ASEAN Industrial Projects, 1976; Preferential Trading Arrangement, 1977; ASEAN Industrial Complementation, 1981). These early initiatives were considered ineffective. The 1990s saw the surge of regional trading blocs and regional and transregional economic cooperation fora.⁷⁷ ASEAN responded to this regime of increasing regionalism and uncertain multilateralism by creating the ASEAN Free Trade Area in 1992. The AFTA was originally conceived as a regional tariff reduction program to be carried out in phases through 2008 (later moved earlier to 2003). The

⁷⁴ Joint Communiqué The Thirteenth ASEAN Labour Ministers Meeting, 14-15 May 1999, Yangon, Myanmar. <http://www.aseansec.org/2290.htm> [Accessed on 30 October 2003.]

⁷⁵ ASEAN Labour Ministers Vision Statement, <http://www.aseansec.org/1106.htm> [Accessed on 30 October 2003].

⁷⁶ Joint Communiqué of the 14th ASEAN Labour Ministers Meeting, May 2000.

⁷⁷ Examples are the Asia-Pacific Economic Cooperations Free Trade Area (APEC-FTA), 1989; Southern Common Market (MERCOSUR), 1991; European Union (EU), 1995; North American Free Trade Area (NAFTA), 1994.

program was gradually broadened to include other activities such as harmonization of customs activities and standards, industrial cooperation scheme (AICO), a framework agreement for the intraregional liberalization of trade in services, and the endorsement in principle of an ASEAN Investment Area (AIA).⁷⁸ The AFTA agreement was originally signed by Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Vietnam joined in 1995, Lao PDR and Myanmar in 1997, and Cambodia in 1999.

The AFTA's framework is the Common Effective Preferential Tariff (CEPT), which originally stipulated that tariffs on all manufactured and processed agricultural products (that meet a 40 percent ASEAN content requirement) would be reduced to 0-5 percent within 15 years (later shortened to 10 years; thus AFTA goals were supposed to be achieved by 2003) for the ASEAN6, then later changed to 2002 for all but a few products. The deadline for Vietnam is 2006, for Lao PDR and Myanmar, 2008, and for Cambodia, 2010.

Products are categorized into four lists under the CEPT scheme: the Inclusion List (IL), the Temporary Exclusion List (TEL), the Sensitive List (SL), and the General Exceptions List (GEL). The IL includes two schedules – the normal track and the fast track. Tariffs for goods on the normal tracks must be reduced to 0-5 percent by 2002, or 2003 for a few products. Tariffs for fast track items were to have been reduced to the same level by 2000.

Items on the TEL will eventually be reduced to 0-5 percent but are temporarily protected by delaying the reduction. Unprocessed agricultural products, added to the CEPT in 1994, are due for tariff reduction by 2010. GEL items may be permanently excluded from tariff reductions for very specific reasons.

AFTA is considered a steppingstone to further liberalization. It is an articulation of ASEAN's growth strategy – regional integration within the global economic system. It was established to reduce tariffs to render the region borderless. Thus, it was not intended to increase intra-ASEAN trade.⁷⁹ This differentiates the AFTA from conventional FTA agreements.

ASEAN member-states concretized their commitment to an open trade regime with the establishment of AFTA. At the 4th Summit in Singapore in 1992,

⁷⁸ Sakakibara, Eisuke and Sharon Yamakawa. 2003. "Regional Integration in East Asia: Challenges and Opportunities," World Bank Working Paper No. 3078, June 5.
http://econ.worldbank.org/files/27541_wps3078.pdf [Accessed on 30 March 2004.]

⁷⁹ For an assessment of AFTA's impact on intra-ASEAN trade, see Sakakibara and Yamakawa (2004).

the ASEAN Economic Ministers (AEM) constituted the AFTA Council to supervise, coordinate and review the implementation of a free trade regime.

Unlike other free trade agreements, the AFTA does not include labor provisions, either as an integral part of the agreement or as a side agreement. To the extent that the ASEAN and the developing world strongly opposes any link of labor standards to trade (as disguised protectionism, as they strongly articulated in the 1999 Seattle WTO ministerial meeting), this comes as no surprise. In fact, the ALMM has emphasized repeatedly that the promotion of labor standards should not be linked to trade issues, stressing that labor standards could be used as a smokescreen for protectionism. In the May 1999 ALMM, the Labor Ministers welcomed the decision and assurances by the ILO Director-General that the *Declaration on Fundamental Principles and Rights at Work and Its Follow-Up* would be promotional in nature. The ALMM stresses that “a promotional approach would enable member States to work towards the objectives of the Declaration, and this would, in the long term, lead to the eventual ratification of more conventions based on their respective stage of economic and social development”.⁸⁰

However, a regional engagement on what constitutes “core labor standards” in the ASEAN context cannot be ignored. It is important to note that the labor standards being proposed by developed countries in the WTO fiasco that was Seattle, which ignited strong opposition by more than 100 countries, were not *core* labor standards, i.e. worldwide minimum wage.⁸¹ In this light, the ASEAN should now reconsider its “posturing” on the labor standards-trade linkage calculus.

The 1998 Hanoi Plan of Action

At the Informal Summit in Kuala Lumpur in 1997, the ASEAN Vision 2020 was adopted –

“A concert of Southeast Asia Nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development in a community of caring societies.”⁸²

The ASEAN Vision 2020 led to the framing and adoption in December 1998 of the Hanoi Plan of Action (HPA), the first medium-term plan of the ASEAN covering the period 1999 to 2004. To ensure progress, the plan was reviewed in the ASEAN Summit of 2001, and then again in 2004 when a new action plan will be

⁸⁰ Joint Communique of the 13th ASEAN Labour Ministers Meeting, May 1999.

⁸¹ Fields, Gary S. 2003. “International Standards and Decent Work: Perspectives from the Developing World,” in Robert J. Flanagan and William B. Gould IV (Eds.). *International Labor Standards – Globalization, Trade, and Public Policy*. Stanford: Stanford Law and Politics, pp. 68-70.

⁸² Flores, Jamil Maidan. 2000. *ASEAN: How It Works*. Jakarta: The ASEAN Secretary General, p. 48.

designed to achieve the same set of goals. The process of review will be repeated several times until the target year 2020.

The Hanoi Plan of Action renewed focus of priorities in labor and employment in the ASEAN. It provided the impetus for the ALMM's adoption of its vision statement and the ASEAN's work program on labor and employment.

ASEAN Program on Labor Cooperation

On August 15-16, 2002, the Initiative for ASEAN Integration Development Cooperation Forum (IAI-IDCF) was held involving ASEAN member countries' representatives, its dialogue partners (China, India, Japan, Korea, New Zealand, UNDP), and regional and international corporations and foundations, to obtain support for the implementation of activities under the IAI Work Plan.⁸³ The IAI Work Plan, which was adopted at the 35th ASEAN Ministerial Meeting in Bandar Seri Begawan in July 2002, embodies concrete short and long-term programs and projects. Projects on labor and employment are included in the IAI Work Plan. Among these projects are:

1. ASEAN Occupational Safety and Health Network (ASEAN-OSHNET)
2. Promotion of Self-Employment and Development in the Informal Sector
3. Conduct of ASEAN Skills Competition that promote mutual recognition of skills standards in the ASEAN to promote "regional mobility and mutual recognition of technical and professional credentials and skills standards"
4. ASEAN Project on Human Resource Development Planning
5. Human Resource Development Programmes for Officials of ASEAN Countries
6. Promoting Mutual Recognition of Skills as a Means to Enhance Employability and Regional Mobility
7. ASEAN Programme on Industrial Relations

The ASEAN Programme on Industrial Relations, which draws support from the Japan, commenced in June 2002. Initially, the project focuses on strengthening the framework for industrial relations and labor management, wages and productivity, and the impact of technological change on industrial relations. To the extent that the project seeks to address the possibility of a regional framework of industrial relations in the ASEAN is a strong indication of the "preparedness" of the organization to discuss common frameworks on social dimensions of integration.

In the 16th ALMM held on May 9-10, 2002 in Vientianne, Laos, the Ministers noted the development of a Technical Assistance Program for Cambodia, Laos,

⁸³ ASEAN IAI Development Cooperation Forum, Jakarta, 15-16 August 2002.
<http://www.aseansec.org/idcf/index.htm> [Accessed on 05 November 2003.]

Myanmar, and Viet Nam (CLMV) to assist these countries to integrate into ASEAN as a flagship project for implementation under the IAI Work Plan.⁸⁴

The Bali Concord II

The Bali Concord II adopted on October 7, 2003 reaffirmed ASEAN's Vision 2020. It envisages the establishment of an ASEAN Economic Community, with a single market and production base, as the end goal of economic integration. The Bali Concord II also envisions the establishment of an ASEAN Socio-Cultural Community (ASCC) that fosters cooperation in social development aimed at raising the standard of living of disadvantaged groups and the rural population. The Concord reaffirms the commitment of member-states to ensure that their workforce shall be prepared for, and benefit from, economic integration by investing more resources for basic and higher education, training, science and development, job creation, and social protection.

Other Areas of Labor Cooperation

Of course, there is the on-going ASEAN cooperation with the ILO on the promotion of core ILO conventions, particularly in the case of Myanmar. In the 17th ALMM in Mataran, Indonesia on May 8-9, 2003, the Labor Ministers acknowledged the efforts made by the Myanmar Government in eradicating the practice of forced labor, noting the country's willingness to cooperate with the ILO by developing a Plan of Action. The ASEAN Labor Ministers also called upon the ILO to consider removing measures taken by the latter against Myanmar.⁸⁵

Extending the Social Charter to the ASEAN+3

A number of key informants interviewed by the researchers expressed the importance of including the ASEAN+3 member states – China, Japan, and Korea – in the ambit of a possible ASEAN Social Charter. This is due to the fact that trade with these countries is substantially greater than intra-ASEAN trade. In the year 2000, for example, trade within ASEAN in terms of imports was 26.5 percent, and 23.1 percent for exports. On the other hand, trade between the ASEAN and the ASEAN+3 was twice the intra-ASEAN trade; 52.6 percent for imports and 43.7 for exports. In terms of FDI inflows, the ASEAN accounted for 1.8 percent of total global FDI, while the ASEAN+3 got 9.5 percent. Transnational enterprises of the +3 countries, particularly Japan and Korea, also operate in many of the ASEAN member states. As of the writing of this paper, the ASEAN is looking into entering free trade agreements with the +3 countries.

⁸⁴ Joint Communiqué of the 16th ALMM, May 9-10, 2002, Vientienne, Laos.
<http://www.aseansec.org/9968.htm>. [Accessed on 30 October 2003.]

⁸⁵ Joint Communiqué of the 17th ALMM, May 8-9, 2003, Mataram, Indonesia.
<http://www.aseansec.org/14782.htm>. [Accessed on 30 October 2003.]

With the possibility of forging FTAs with the ASEAN+3 countries, the need for a Social Charter becomes even more important. In the case of China, a Social Charter may avert an RTTB in terms of labor conditions of workers in said country and in the ASEAN member states as well. In Vietnam, for example, a key informant revealed that cases of physical abuse of workers by some East Asian foreign employers are among the biggest problems in the FDI sector.⁸⁶ During the research team's country study visit on March 1 to 4, 2004, the researchers were informed of the house arrest of two Korean women employers who beat their Vietnamese workers. Similar incidents happen in many East Asian transnational enterprises. In this regard, the whole supply chain of these enterprises should be included in the protective mantle of a Social Charter.

Exploring ASEAN Employers' Receptiveness

Within the ASEAN non-governmental organization (NGO) recognition structure is the ASEAN Confederation of Employers (ACE), which affiliated in the second meeting of the 14th ASEAN Standing Committee in Manila on November 24, 1980. The ACE is composed of the major or biggest employers' organizations of the original ASEAN member states, namely: the Employers Association of Indonesia (APINDO), the Malaysian Employers Federation (MEF), the Singapore National Employers Federation (SNEF), the Employers Confederation of the Philippines (ECOP), and the Employers Confederation of Thailand (ECOT). In the 8th Joint Study Workshop convened by the ACE and Nikkeiren International Cooperation Center (NICC) in Singapore on February 20-21, 2002, members of ACE shared their views on U.N. Secretary General Kofi Annan's *Global Compact Initiative* (GCI) and the case studies they conducted on "Promoting the Principles Contained in the Global Compact" on selected enterprises in their respective countries. The GCI calls on respect and promotion of human rights, core labor rights, and protection of environment. The following are the basic positions of the ACE members on the GCI:⁸⁷

1. APINDO has an obligation to participate in promoting the GCI principles through participation in tripartite bodies and in environmental management as well.
2. The MEF believes that the incorporation of the GCI remains a voluntary initiative of companies. The role of MEF is to create awareness of these principles through meetings and workshops.
3. SNEF endorses the GC and supports the position of the International Organization of Employers of encouraging members to take steps to promote the initiative. SNEF believes that the labor principles contained in the GC help

⁸⁶ Mrs. Nguyen Thi Kim Dung interview.

⁸⁷ Nikkeiren International Cooperation Center (NICC) and ASEAN Confederation of Employers (ACE). 2002. "Promoting the Principles Contained in the Global Compact by Employer Organizations," Proceedings of the 8th NICC-ACE Joint Study Workshop, The Fullerton Hotel, Singapore, February 20-21.

build constructive relations in the workplace and promote responsible corporate citizenship and a conducive investment climate, all of which can help improve the bottom line of enterprises.

4. The ECOP decided to lead the promotion of the GC principles within its membership. It has a firm belief that it would rather encourage its ranks to initiate on their own, within their respective capacities in making a difference in the sphere of labor, human and environmental principles.
5. The nine principles of the GC are in line with the objective of ECOT to promote good practices among employers in Thailand. The reception and promotion of the GC by ECOT is not only welcomed by the private sector employers, but also government and non-governmental agencies.

In the 2002 workshop, the ACE members expressed their commitment to take the initiative as lead organizations in promoting and sustaining the Global Compact in their respective business communities. However, the ACE members stressed that the GCI should remain voluntary; the pace and level should relate to the availability of organizational resources, the country's cultural context, and its stage of development.

Summary

The report of the WCSDG provides a background and a strong justification for a regional engagement to start discussing the ASC proposition. Thomas (2002) points to an identifiable and sustainable trend within the region towards the development of an East Asian community; ASEAN is the core element of this trend.⁸⁸ He further elaborates that this trend will result in "a community that will be operationalized along ASEAN norms of consensus and non-interference, but that these norms are changing to allow limited restrictions on member-states".

This observation along with the on-going engagements and projects on labor and employment in the ASEAN as well as the employers expressed commitment to promote the GCI, albeit voluntarily, provide strong support that the time is ripe to commence discussion and dialogues on a Social Charter or similar instruments that will embody the social pillars in the ASEAN.

Exploring the Possibilities of an ASEAN Social Charter

The adoption of a Social Charter embodying international core labor standards (ICLS) will require political engagements among Governments in the ASEAN. This engagement entails drawing up a common framework for labor standards in the region. This study posits that there are factors or variables that may determine the receptiveness or opposition to the idea of a Social Charter in the ASEAN. These are the following:

⁸⁸ Thomas, Nick. 2002. "From ASEAN to an East Asian Community? The Role of Functional Cooperation," SEARC Working Paper Series No. 28, City University of Hong Kong, July.

- ILO core conventions ratified
- Level of development
- Political climate/landscape and state-labor relations
- Quality of public institutions in the labor standards enforcement and compliance regime
- Relative strength of the trade union movement

How these variables impact on the receptiveness or opposition of the six study countries to the idea of an ASC are discussed below. It is important to note, however, that the receptiveness or opposition to the Social Charter proposition is also hinged on the nature and structure of the instrument, whether it would be promotional or with sanctions in case of “persistent pattern of non-compliance”, or tied to a trade agreement.

Ratification of ILO Core Conventions

Part I of this report provides a discussion of ILO core Conventions ratified by member-states of the ASEAN. To date, it is only Indonesia that has ratified all eight ILO core conventions.

There is a wide perception that a country’s ratification (of ILO conventions) behavior is indicative of its labor conditions and its commitment to ensure compliance to certain international labor standards. This is true. The study by Robert J. Flanagan (2003) provides the empirical basis for this assertion using a panel sample of about 100 countries at different stages of development for the period 1980 to 1999.⁸⁹ Except for Vietnam, all the study countries in this report were among the sample panel. [Six of the ASEAN countries were included; including Myanmar.] According to Flanagan, countries that ratify the “political” or core standards are likely to be the countries for which ratification is least costly in terms of adjusting national legislations and institutions.⁹⁰ Thus, owing to its voluntary nature, ratification is purely a symbolic act; countries ratify core labor standards that they have already attained. Flanagan’s empirical study points to the endogeneity of ratification activity; that existing labor conditions in a country, as well as the size of the trade sector, the prevailing legal system, and the dominant religion, influence the ratification of ILO core conventions.⁹¹ This study provides strong empirical support that ratification of core labor standards may be a weak strategy to improve labor conditions in a regime of voluntary ratification, as labor conditions that meet or exceed the conventions already exist prior to

⁸⁹ Flanagan, Robert J. 2003. “Labor Standards and International Competitive Advantage,” in Robert J. Flanagan and William B. Gould IV (Eds.), 2003, pp. 15-59.

⁹⁰ Ibid, p. 26.

⁹¹ Ibid, p. 25.

ratification. This finding may also give credence to the wide criticism over ILO's enforcement mechanism.

Of course, some countries may ratify a labor standard but fail to enact and enforce supportive national legislation, as in the case of some of the study countries. Other countries with labor legislations and policies that meet or exceed ILO conventions may not ratify or denounce what they have already ratified, as in the case of Malaysia and Singapore, because of technical inconsistencies between domestic legislation and the conventions. Nonetheless, because ratification signals existing levels of labor conditions, the postulate that ratification leads to better labor conditions leaves much to be desired. In this regard, the voluntary or promotional nature of the ratification of core labor standards requires serious rethinking if the intent of these conventions was to improve labor conditions. This dilemma may have prompted the ILO to come up with new initiatives in enforcing compliance such as the 1998 *ILO Declaration on Fundamental Principles and Rights at Work*.

Turning to the Social Charter, the foregoing discussions provide clues as to what core labor standards would most probably be considered outright or progressively. [Part III of this report is a proposed configuration of the Social Charter.] Off hand, all the ASEAN member-states ratified Convention 182 on the Elimination of Worst Forms of Child Labor. Conventions 111 and 138 on Equal Remuneration and Minimum Age for Employment are also widely accepted. The rest of the core Conventions may be ratified or subscribed to progressively, depending on the level of development and enhancement of national capacities of member-states to enforce these Conventions. What is important is that discussions on coming up with a common ground for labor standards should be pursued vigorously and continuously. A possible impasse on the debate may be avoided by constant dialogue and negotiations – essentially talk. As an ASEAN publication purportedly stresses:

...Talk that is orderly, purposeful and in a spirit of informality, cordiality and mutual respect. Talk that leads, probably faster this time because of the pressure of events, to cooperative action, to adjustments, to change.⁹²

In any negotiation, a key strategy is to start discussing issues that are least contentious or conflicted. In this way, some level of accomplishment may encourage continuous discussion or negotiation on other contentious issues. It is important to emphasize that these talks should be broad-based, involving as many stakeholders as possible. A venue for trade union consultation and participation within the ASEAN structure is fundamental to a more inclusive “talk process”.

⁹² Flores, 2000, p. 88.

Level of Development

In the interviews with key informants conducted by the research team in the six study countries, the level-of-development argument was often cited as a critical factor in addressing a Social Charter proposition in the ASEAN. Without doubt, the ASEAN member countries are much more heterogeneous than are countries of the EU or NAFTA in terms of ethnicity, religion, culture, and political systems, within the member-states themselves and between countries of the region. More importantly, there is diversity in economic development, with Singapore at the high end and the newer ASEAN members at a lesser-developed stage. Singapore, for example, takes the lead in high-technology industries, while the CLMV countries export mainly low-technology products. Table 6 presents some economic indicators in the ASEAN region.

Table 6. Macro-Economic Indicators in the ASEAN

Country	GDP growth (%) ^a (2002)	Per Capita GNI ^b (US\$, 2001)	Gross Domestic Saving (% of GDP, 2002)	FDI (US\$million) (2001)	Total External Debt (US\$ million, 2001)
Cambodia	5.5	270	12.1	206.7	2,704.3
Indonesia	3.7	690	21.1	-1,445.9	135,704.3
Lao PDR	5.9	300	16.1	83.3	2,494.9
Malaysia	4.2	3,330	41.8	3,548.8	43,351.0
Myanmar	---	---	11.3 ^c	330.0	5,670.1
Philippines	4.4	1,030	19.5	1,620.7	52,355.9
Singapore	2.2	21,500	44.7	8,608.8	----
Thailand	5.2	1,940	32.0 ^c	5,791.5	67,384.0
Vietnam	7.0	410	28.8	2,190.6	12,577.9
Total				20,934.5	322,242.4

Notes:

^a Figures are based on constant market prices; for Cambodia, real GDP is based on producers' prices.

^b Formerly per capita GNP.

^c For 2001.

Sources: ADB, *Asian Development Outlook 2003*; WB, *Global Development Finance 2003*.

A strong recognition of this diversity has led to the development of the "ASEAN Way" – emphasis on consensus, non-intervention and minimal institutionalization. Sakakibara and Yamakawa (2004) further describe this "ASEAN Way":

...As opposed to using treaties and binding obligations, ASEAN prefers non-binding plans and guidelines. Its secretariat has few powers and limited authority and is thus characterized as a "soft" secretariat. National interests, therefore, tend to make precedence. These characteristics make regional

decision-making difficult and slow...Whereas the EU is structured and treaty-based, ASEAN is flexible and ambiguous.⁹³

But as it is argued below, the level-of-development issue offers weak justification for opposing the Social Charter proposition or any similar instrument addressing ICLS. Nevertheless, as argued earlier in this report, a gradual or progressive approach to the issue is a workable strategy. Gradualism addresses ASEAN's strong notion of diversity. ASEAN's gradualism and pragmatism may be a workable framework in "talking" about international labor standards for ASEAN. Putting aside the human rights argument for the international core labor standards, it is significant that standards should reflect existing cultural and institutional diversity. A regional engagement on a Social Charter proposition, in lieu of the expressed "unreadiness" of developing countries to talk about labor standards at the global level, is one avenue in approaching the diversity or level-of-development argument. Similar to the CEPT scheme of AFTA, the Social Charter may also have initially some preferential treatment and exceptions (i.e. IL, TEL, SL, GEL) for the less developed ASEAN member-states. Recognizing the ASEAN Way, a pragmatic, rather than a purist approach, is worth considering in getting the discussion of a Social Charter on the table.

The idea of an ASEAN Social Charter is essentially a labor standards-production cost debate. Fields (2003) argues that political core labor standards, i.e. right to freedom of association and collective bargaining, abolition of discrimination, prohibition on forced labor and child labor, being human rights at the workplace, do not lead to higher labor costs.⁹⁴ Fields points to the stages-of-development argument put forward by developing countries – "that poor labor standards are more a symptom of their lower level of economic development than any deliberate intent or design on their part".⁹⁵ This argument however is hinged on labor standards that are not core, i.e. worldwide minimum wage, union representation on boards, etc. These non-core labor standards would of course raise the cost of labor and may erode the comparative advantage of developing countries.

Focusing on the human rights justification, Cleveland (2003) points out that "the critical question for identifying core labor standards should not be whether the standard has a neutral impact on labor costs, but whether the standard is

⁹³ Sakakibara, Eisuke and Sharon Yamakawa. 2004. "Regional Integration in East Asia: Challenges and Opportunities," WB Working Paper No. 3079, June 5.
http://econ.worldbank.org/files/27543_wps3079.pdf [Accessed on 30 March 2004.]

⁹⁴ Fields, Gary S. 2003. "International Labor Standards and Decent Work: Perspectives from the Developing World," in Flanagan and Gould IV (Eds.), 2003, p. 69.

⁹⁵ Ibid.

sufficiently fundamental to the life and well-being of employees.”⁹⁶ Accordingly, three of the ILO’s four core labor standards - freedom of association, nondiscrimination, and forced labor – are sufficiently fundamental regardless of a country’s level of development. These standards are sufficiently central to worker autonomy and dignity to be core human rights norms.⁹⁷

Nonetheless, this level-of-development argument against labor standards recurred in many of the interviews with key informants, including some trade union leaders, in the study countries conducted by the research team. Many have expressed apprehension that should the Social Charter push for observance of core labor standards that are not yet in place in their respective countries, the Charter will not see the light of day. Even key informants who are officials of Ministries of Labor in the study country are cautious about the topic.

The researchers anticipate that strong opposition to the ASC proposition will come from Malaysia considering the country’s posture on the idea of worldwide minimum labor standards. Dr. Mahathir Mohamed is one of the most outspoken critics of the idea. Social clauses or any instrument linking labor standards to trade are believed to put developing countries at a comparative disadvantage with developed countries. Thus, many developing countries see this “Western prescription” as disguised protectionism. In the 81st International Labor Conference in Geneva on June 8, 1994, Malaysia gained the support of ASEAN in objecting to the linking of the social clauses to trade proposed by developed countries led by the U.S.⁹⁸ The social clause-trade link proposition by the Group of Seven (G-7) centered on the need to have a global minimum wage for the developing countries’ workforces. Levine (1997) points to the ASEAN’s contention on social clauses:

...social clauses, particularly labor issues, or what Western nations termed as core labor standards, should be dealt with by the ILO, where these matters should be discussed to see how the ILO could play a more effective role to seek greater adherence consistent with its premise that persuasion, dialogue, and cooperation should be the means to assist developing countries to comply with ILO standards...⁹⁹

Though the Malaysian Trade Union Congress (MTUC), Malaysia’s sole trade union center, supported Mahathir’s stand against a global minimum wage, a separate MTUC statement stressed that what were needed instead are national

⁹⁶ Cleveland, Sarah H. 2003. “Why International Labor Standards,” in Flanagan and Gould IV, 2003, p. 154.

⁹⁷ Ibid, p. 154.

⁹⁸ Levine, Marvin J. 1997. *Worker Rights and Labor Standards in Asia’s Four New Tigers*. New York: Plenum Press, pp. 405-408.

⁹⁹ Levine, 1997, p. 408-409.

(country-specific) minimum wages and global regulations for social rights and the rights of unions to exist, organize and carry out collective bargaining.¹⁰⁰ In this regard, the MTUC is not opposed to the idea of a social clause.

Clearly, the Social Charter proposition may sail rough seas in Malaysia. But Malaysia's attacks on the social clause issue may also be hinged on Mahathir's and the developing world's accusations of "Western hypocrisy on labor issues". If the initiative of discussing a Social Charter was to come from the ASEAN region itself, some flexibility on the issue may be anticipated. Moreover, opposition may be addressed by not tying labor standards to trade. And as Malaysia gears up towards a more capital-intensive and high-value added economy, it would gain much from regional minimum labor standards setting that will protect it from being undercut by cheaper labor economies. Mahathir's 30-year strategic development plan known as Vision 2020, formulated in 1990, is aimed at transforming Malaysia into a fully developed society by the year 2020.

The posture from apprehension to strong opposition on the ASC proposition is understandable if the adoption of specific core labor standards would indeed entail considerable costs. Agreeing on a common ground for core labor standards (and with the least cost) would address this dilemma. Moreover, a progressive approach to core labor standards compliance may also address the ongoing conundrum of labor rights-production cost calculus. Again, gradualism and pragmatism should get into the overall framework of any engagement on a Social Charter or any similar instrument.

The core Convention on the abolition of worst forms of child labor deserves special attention. Despite the ratification of all the study countries of ILO Convention 182, worst forms of child labor remains a pressing problem in Indonesia, the Philippines, and Thailand, especially in the agricultural, domestic help and services sectors. Child prostitution is also prevalent in these countries. Though child labor exists in Malaysia and Singapore, this is not widespread. According to Cleveland (2003), the prohibition against child labor is widely acknowledged to be a relative and somewhat flexible standard that is contingent on a country's level of development.¹⁰¹

One argument put forward on child labor is that prohibition against such is not an effective strategy to put a stop to the practice. A more sustainable and effective alternative to curb the practice is to address the causes of child labor, that

¹⁰⁰ Ibid, p. 404.

¹⁰¹ Cleveland, Sarah H. 2003. "Why International Labor Standards," in Flanagan and Gould IV, 2003, p. 155.

is, poverty. Thus poverty-alleviation programs should be focused in areas where child labor is widely practiced.

The foregoing discussions point to a critical issue on the ASEAN Social Charter proposition – that the level-of-economic-development argument against core labor standards cannot be used by member-states of the ASEAN to put off discussions on this labor rights instrument. However, should this argument persist, gradualism and pragmatism in approaching the Social Charter proposition may keep the discussion going.

Political landscape and state-labor relations

Recent posturing of the developing world including the ASEAN on the international labor standards issue in the WTO indicates the reluctance (or even recalcitrance) of the member-states to enter into any political engagement such as a Social Charter. In this regard, to expect the ASEAN Governments to initiate a Social Charter discussion is far-fetched. In the final analysis, it would be the trade union movement strategically linked with other social movements that would push the discussion. The success (or failure) of the trade union movement to get the Social Charter proposition on the ASEAN discussion table will depend to a large extent on its relative influence in the individual member-states and in the region. An initial assessment of trade union influence in the study countries is provided in the latter part of this section.

In approaching the political landscape-Social Charter calculus, we could only provide some indicators of how certain political systems, policies and circumstances in the six study countries may affect the receptiveness or opposition of the said countries to a Social Charter proposition. Constitutional guarantees on recognition of the international core labor standards are present in the study countries. These, however, do not provide strong bases to claim that the countries will be receptive to a Social Charter. For one thing, the international core labor standards are internationally recognized human rights, thus the provisions in the Constitutions of the study countries. Nonetheless, the study posits that a country's political landscape is a significant factor in determining its possible posture on a Social Charter proposition.

Indonesia's "reformasi" program and its newly established democracy may provide a favorable climate to start discussions about a Social Charter proposition, as discussed below. *Vietnam*, owing to its socialist orientation, may also be receptive to the idea of a Social Charter. As a key informant cited, the elements of a Social Charter are already reflected in Vietnam's Constitution and labor law.¹⁰² Another key informant emphasized that Vietnam is strongly committed to

¹⁰² CIEM, Hanoi, Vietnam; interview on March 1, 2004.

integration, but keeping social and economic pillars together.¹⁰³ And to the extent that the Social Charter's intent would be to address the social dimension of integration and/or free trade, Vietnam has an open ear to the proposition. Finally, Li et al (2003) observe that in Vietnam, there is a state desire to strongly influence employment relations; "to regulate capital so that socialist principles have a chance to be perpetuated on into the market economy".¹⁰⁴ The authors concluded that the labor relations regulatory framework in Vietnam, on paper, is very advanced for a developing country, moving down a more European regulatory framework.

Apart from Vietnam, Indonesia offers an example of how a country's political climate can be rendered conducive to a Social Charter discussion.

Indonesia represents a unique case in the ASEAN as the only member-state that ratified to date all ILO core conventions. The country's *ratification behavior*, however, is neither a clear indicator that good labor conditions exist in the country nor labor compliance has improved. As pointed out by two key informants, the most important factor that facilitated ratification was the change in political regime in 1999 (alluded to as the establishment of democracy) after Soeharto was forced to step down in May 1998.¹⁰⁵ Many ILO conventions were ratified after 1999, including ILO Convention No. 98 (right to organize), as a result of pressures from within and outside Indonesia.¹⁰⁶ The election poll of June 1999 during the Habibie Presidency was hailed as the first meaningful free and open elections since 1955, which allowed direct election of the President and Vice President. Amendments were also introduced in the Constitution.¹⁰⁷

¹⁰³ ILO Director, Hanoi, Vietnam; interview on March 2, 2004.

¹⁰⁴ Li Qi, Bill Taylor and Stephen Frost. 2003. "Labour Relations and Regulation in Vietnam: Theory and Practice," SEARC Working Paper Series No. 53, City University of Hong Kong, September.

¹⁰⁵ Saepul Tavip, ASPEK, Indonesia, email transmittal; and interview with Mr. Carmelo Noriel, ILO-USA Declaration Project, Jakarta, November 7, 2003.

¹⁰⁶ An example of international pressure directed against Indonesian labor practices involves the Generalized System of Preferences (GSP) program of the U.S. The GSP aid program allows certain goods from developing countries to enter the U.S. with zero tariffs. The GSP may be withheld from any country deemed not to be taking steps to observe internationally recognized workers' rights. In 1993, Indonesia (and Thailand, where review was terminated in 2000) were placed in a 6-month continuing review status to determine whether substantial concrete programs addressing labor rights have been pursued. The U.S. has postponed indefinitely a decision extending GSP to Indonesia. Other international pressures related to labor rights were letters of concern and condemnation from the European Union and the ICFTU on the arrest and detention of trade union leaders of the independent Indonesia Labor Welfare Union (SBSI), and the ILO Committee on Freedom of Association complaint on the murder and arrest of union activists, and persistent and continuous violations of trade union rights in Indonesia. For further discussion on labor disputes and international pressures in Indonesia, see Levine, Marvin J. 1997. *Worker Rights and Labor Standards in Asia's Four New Tigers*. New York: Plenum Press, pp. 199-214.

¹⁰⁷ Bureau of Democracy, Human Rights, and Labor, Bureau of Public Affairs-U.S. Department of State. 2003. "Country Reports on Human Rights Practices – Indonesia," March 31. The People's

A recent reform program in Indonesia, the Regional Autonomy Act of 1998, will have far reaching implications to both employers and unions. Both are already experiencing problems and difficulties as a result of this law. To the unions, the decentralization program has rendered union organizing and consolidation more difficult, as national unions will now have to deal with numerous regional governments and authorities.¹⁰⁸ Most national unions are concentrated in big cities. Under the regional autonomy act, provincial governments can now legislate minimum wages in their jurisdiction. This again poses a problem to the trade unions to the extent that they will have to deal with many regional governments.

Another problem area is the localization of labor inspection. Many unions fear that this will further reduce compliance to labor standards as many local inspectors may be easily “bought out” by companies. As pointed out by most of the key informants, KKN (Indonesian acronym for corruption, collusion and nepotism) is still deeply entrenched in Indonesia. In fact, there are strong fears among progressive sectors in Indonesia that the decentralization program will usher in the emergence of decentralized networks of KKN.¹⁰⁹ A race-to-the-bottom (RTTB) scenario is also happening as a result of the law. Companies are moving out of municipalities or areas with higher labor costs, thus creating a race-to-the-bottom not only in the regions but the municipalities as well.¹¹⁰

For the employers, since the decentralization law also provides for fiscal autonomy, many employers are now complaining of higher local taxes.

Surprisingly, interviews with key informants from the trade union sector, Ministry of Manpower, ASEAN Secretariat, academe, labor research institutions, non-government organizations, and international organizations in Jakarta did not point to the level-of-development argument that may be raised against a Social Charter. The key informant from the employers’ group APINDO pointed to political climate and quality of public institutions as the most important variables.

Consultative Assembly (MPR), Indonesia’s supreme legislative body, introduced amendments to the Constitution in 1999, notably the creation of a new legislative body to be made up of regional representatives, and the abolition of all appointed seats in the legislature, including those for the military (TNI) and the police. Indonesia has also embarked on a major decentralization program (Law 22 and 25, 1999) meant to empower district governments.

¹⁰⁸ Mr. Suria Tchandra, Trade Union Rights Center (TURC), Jakarta; interview on November 5, 2003.

¹⁰⁹ For a discussion and critique of neo-liberal reforms in Indonesia, see Hadiz, Vedi R. and Richard Robison. 2003. “Neo-liberal Reforms and Illiberal Consolidations: The Indonesian Paradox,” Working Papers Series No. 52, Southeast Asian Research Institute, City University of Hong Kong, September.

¹¹⁰ Mr. Sabur Gayur, Divisional Director, Labour Policy, ICFTU-APRO, Singapore; interview on February 6, 2004.

Indonesia's ratification (of ILO conventions) behavior and the lessons of international pressure to address labor rights violations may explain this phenomenon. As succinctly put by a key informant, "Indonesia is always ready; always the first."¹¹¹ Indonesia is also among the first countries that signed up in the WTO.

Will the current political climate and landscape (democracy euphoria) in Indonesia be a positive factor in urging the Government to start "talking" with its counterparts in the ASEAN on a Social Charter proposition? The answer weighs heavily on the affirmative. There appears to be a strong sense of openness in the current political and social regime in Indonesia, which could be attributed to the sudden expansion of democratic space. It should be noted that many of the core ILO conventions were ratified in the post-Soeharto era. In short, receptiveness to the idea of an ASEAN Social Charter is strong in the case of Indonesia.

Malaysia is a federation, a democracy and a constitutional monarchy where power is strongly centralized. The system of government is parliamentary. Thirteen states make up the Malaysian federation. Multiparty elections are held periodically, though the ruling National Front coalition has held power since 1957. The United Malays National Organization (UMNO), the major player in the coalition, has remained the dominant party in government.¹¹²

The political economy of development espoused by the political leaderships in the study countries defines to a large extent their labor relations framework. The study posits that as a country pursues its industrialization process, labor control characterizes its labor relations framework. The drive to achieve competitiveness in an uncertain globalizing market also tends to impact on the labor rights regime. This development-labor control tradeoff hypothesis has been used to explain the repressive labor regimes in *Indonesia (Soeharto era)*, *Malaysia*, and *Thailand*. Repression of workers' rights is often cited as the "lesser evil tradeoff" to economic development and higher standards of living.

In this light, trade unions are not a potent force in Malaysian politics. As Levine (1997) points out, existing legislation tightly restricts union activities and it is estimated that only 15 percent of the total labor force is unionized. The Malaysian Trade Union Congress (MTUC) is the sole trade union center. The Congress of Unions of Employees in the Public and Civil Service (CUEPACS) is the federation of unions in the civil service.

¹¹¹ Mr. Saiful DP, Chairman, FSP.KEP-Indonesia Trade Union Congress (ITUC), interview on November 3, 2003.

¹¹² Levine, 1997, pp. 325-328.

The current President of the MTUC is an appointed Senator with a six-year term¹¹³. Relations between the Malaysian government and the MTUC have never been warm. This may be attributed to the MTUC's position on a number of labor issues, including the labor organization's stand on several U.S. GSP workers rights petitions since 1988 and the positions MTUC has taken on ILO issues.¹¹⁴ On January 19, 2004, the MTUC submitted a 70-page memorandum to Prime Minister Datuk Seri Abdullah Ahmad, seeking his assistance to resolve labor issues in the light of the "inability" of Human Resources Minister Datuk Dr. Fong Chan Onn to address the same.¹¹⁵ The memorandum calls for the restoration of death and disability benefits and a restriction on recruitment of foreign workers. The MTUC through the memorandum also accused employers of obstructing the formation of trade unions as well as the inaction of the Human Resources Ministry on the issue. Delays in the resolution of labor disputes and Industrial Court cases were also lamented in the memorandum. These developments are seen to further strain relations between the government and the MTUC.

There are however certain labor organizations in the Malaysia that claim that the present Minister of Labor is quite open to social issues and quite receptive to union demands. In fact, there had been instances when the Minister had to meet with union representatives to immediately act on their demands to avert industrial action.¹¹⁶

Like Malaysia, *Thailand* is a constitutional monarchy, since the overthrow of absolute monarchy in 1932. For significant periods, the military has played a significant political role. The country has had 16 constitutions, with the most recent in 1997. The 1997 Constitution is viewed as the most liberal of Thailand's constitutions. However, as the Constitution is recent, practice has yet to match social and political rights guaranteed. Many laws and legal procedures remain potentially in conflict with the Constitution. According to Brown et al (2002), since ministerial announcements (i.e., ministerial orders and regulations, office directives, department directives) are among the main sources of law in terms of

¹¹³ Malaysia's national legislature has two houses, the Senate which has 68 members, 42 of whom are appointed by the king, and the House of Representatives, with 219 directly elected members. The former has a six-year term of office and the latter, five years. See Levine, 1997, p. 326.

¹¹⁴ Levine, 1997, p.330.

¹¹⁵ "Gunning for Fong – MTUC to distribute 100,000 leaflets against the Minister," *The Malay Mail*, February 3, 2004, pp. 4-5.

¹¹⁶ Mr. Mohamed Shafie BP Mammal, President, National Union of Telecoms Employees Malaysia (NUTE) and Mr. Nadarajan Manickam, Executive Officer, NUTE, Kuala Lumpur, Malaysia; interview on February 4, 2004.

labor relations (the other source are the Acts of Parliament), this has disadvantaged labor.¹¹⁷

...For example, the 1998 Labour Protection Act contains provisions that give workers the right to paid leave for the purposes of education and skills training. However, the Ministerial Regulations...is framed in a way that allows employers to avoid the granting of leave to an employee if they can show that to do so would have a detrimental impact on their business...

Brown et al (2002) point out that prior to the establishment of the Ministry of Labour and Social Welfare in November 1993 (by a government led by Chuan Leekpai of the Democratic Party), a Department of Labour existed within the Ministry of Interior. Because this Ministry was responsible for police and local administration throughout the country, the function of the government was to control labor.¹¹⁸

Brown et al (2002) point out that trade unions have maintained a precarious relation with various governments of Thailand.¹¹⁹ Accordingly, for long periods, trade unions have not been legal. In recent decades, however, trade union repression has eased as parliamentary politics become more firmly established. Nonetheless, as Brown et al emphasize, trade unions have yet to establish significant relations with any political parties.

Labor law reforms were promised prior to the election of Thaksin Shinawatra to office in January 2001. Reforms have been undertaken, but many observers say that struggle and state repression continue to persist. Nevertheless, considering that "democracy" is newly-installed in Thailand, it is early to assess the posture of the government towards labor issues. What is evident is that the state in Thailand continues to play a significant role in regulating labor.

Singapore is a parliamentary democracy with a unicameral parliament of 84 members. It has been self-governing since 1959 and fully independent since the end of political merger with Malaysia in 1965. The People's Action Party (PAP), which has won every general election since 1959, has remained the dominant party in government.

Trade unions in Singapore played a significant role in the anti-colonial struggle waged by the PAP and its communist allies. In 1961, the Singapore Trades Union Congress (STUC), the trade union federation after independence,

¹¹⁷ Brown, Andrew and Bundit Thonachaisetavut and Kevin Hewison. 2002. "Labour Relations and Regulation in Thailand: Theory and Practice," SEARC Working Papers Series No. 27, July.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

split into the left wing Singapore Association of Trade Unions (SATU) and the noncommunist National Trades Union Congress (NTUC). The ruling PAP strongly supported the NTUC; but the SATU was banned in 1963 after leading a strike against the government.

State-labor relationship in Singapore is described as symbiotic. And as pointed out by one key informant, the industrial relations system in Singapore is deeply rooted in the political movement and a shared ideology of development between the government and the trade union movement.¹²⁰ This symbiotic relationship is rooted in the strong personal ties between PAP leaders and the NTUC. In 1980, NTUC Secretary General Lim Chee Onn was made a minister-without-portfolio, and an NTUC-PAP Liaison Committee comprising top leaders of both organizations was established. Following the 1984 election, Onn was named second deputy prime minister. In 1988, the NTUC expelled officers of NTUC-affiliated unions who had run for Parliament on opposition tickets.¹²¹ These circumstances clearly indicate that the PAP and NTUC share the same ideology. It is not surprising therefore that tripartism characterizes the core of industrial relations in Singapore. The NTUC is strongly represented and wields substantial influence in all tripartite bodies. The strong tradition of tripartism explains why labor laws and regulations do not feature prominently in the hierarchy of laws in Singapore.

The *Philippines* is a democratic republic. The political landscape in the Philippines has been dynamically changing in recent years, with political parties splitting and re-aligning in view of partisan politics. Like in Thailand, patronage politics is very much evident in the country's political regime, in the past and in the present.

State-labor relations in the Philippines have never been strong. The trade union movement, owing to its fragmented nature, has little influence in the legislative process. The Trade Union Congress of the Philippines (TUCP), the labor center that resulted from a government-directed merger in the late 1970s during the Marcos era, used to have more influence, compared to other labor centers, in the government's consultative processes, as leaders of the labor center were often appointed as labor sector representative in tripartite bodies, i.e. Social Security Commission, Government Service Insurance Commission, etc. Even today, leaders of TUCP and its affiliates occupy many of the appointed seats in tripartite bodies.

¹²⁰ Ms. Evelyn Wong, Director, International Affairs, National Trades Union Congress (NTUC), Singapore; interview on February 9, 2004.

¹²¹ <http://countrystudies.us/singapore/34.htm>.

Though some national union leaders are members of political parties both mainstream and opposition, no union center has a formal relationship with any ruling party. The introduction of an electoral reform on the party list system during the Ramos administration, however, provided an opportunity for trade unions, labor parties, non-government organizations and peoples' organizations to directly participate in legislative processes. The party list system is an articulation of the "people's legislative initiative" provision in the 1987 Philippine Constitution. Article 6, Section 5 of the Constitution provides the basis for the party list system. This provision states that of the 250 seats in the House of Representatives, 20 percent or 51 shall be elected through the party list system of voting. In effect, this electoral reform is a positive outcome of the "1986 People Power Revolution" (EDSA I) that catapulted the widow of slain Benigno Aquino Jr., Mrs. Corazon C. Aquino, to the presidency.

It was during the presidency of Fidel V. Ramos that the enabling law for the party list system was passed - Republic Act 7941 or the Party List System Act. Under the party-list system, qualified grassroots organizations should get two percent of all votes cast to get a party-list seat (equivalent to a representative or congressman) in the House of Representatives, the lower house of the country's legislature. A party list may get a maximum of three seats in the House. The term of a party list representative is three years, and could serve for three consecutive terms. It was in the 1998 elections that the party list system was first implemented.

With the party list system, many union leaders and activists (i.e. Crispin Beltran of the Kilusang Mayo Uno-Anak Pawis; Rene Magtubo, Partido ng Manggagawa [Workers' Party]; Satur Ocampo, National Democratic Front; Etta Rosales, AKBAYAN; etc.) from all ideological spectra were able to get seats in the House of Representatives, enabling them to directly participate in legislative processes. In the recent initiatives of amending the Philippine Labor Code, party list representatives from labor organizations introduced their versions of proposed amendments. The outcome of the amendment initiative will more or less indicate the extent of influence of party list representatives in labor legislation.

Vietnam, is a Communist Party-dominated Constitutional Republic. The country's Constitution was enacted by the National Assembly in 1992. Vietnam's legal reform process has been shaped by the transition from a centrally planned economy to a market economy with socialist orientation. Democratic centralism defines Vietnam's system of government. The Communist Party of Vietnam is at the helm of political power hierarchy. Below the Party is the National Assembly, the highest representative organ of the people and the highest organ of the state. The National Assembly elects members of the Central Committee. The National Assembly Standing Committee is a permanent organ tasked with supervision and control over implementation of the Constitution, laws, regulations, etc. This

Committee presides over activities of the government, the Supreme Court, and Supreme People's Procuracy.¹²²

Owing to the state's socialist roots, Vietnam is committed to socially inclusive development. Its Comprehensive Poverty Reduction and Growth Strategy (CPRGS) envisages a transition to a market economy with socialist orientation. According to the World Bank (2002), Vietnam's CPRGS –

...aims at full openness to the global economy over the coming decade, and the creation of a level playing field between the public and the private sectors. It emphasizes that the transition should be pro-poor, and notes that this will require heavier investment in rural and lagging regions, and a more gradual reform implementation than is often recommended by international advisors. It gives strong emphasis to poverty reduction and social equity, and to a more modern system of governance. The CPRGS is a product of the government of Vietnam, involving all of the relevant agencies and sectors in the preparation.¹²³

Since the introduction of *doi moi* (economic reforms) in 1986, Vietnam has been going quite strongly. The World Bank (2002) reports that new private businesses are currently being established at a rate of 1,600 per month. In early 2002, the Party Central Committee gave the strongest endorsement of the private sector ever. Owing to its remarkable long-term growth potential, the World Bank believes that Vietnam could be entering a phase of prosperity. Vietnam promises to be among the success stories in development.

In Vietnam, labor is considered the core of society. As pointed out in Part I, there is a specific provision in Vietnam's Constitution defining the role of trade union in society. Owing to its socialist orientation, there is a strong state-labor linkage in the country. The Vietnam General Confederation of Labor (VGCL), formed in 1946, is the official and only representative labor organization in Vietnam. It is estimated that 90 percent of public sector workers, 90 percent of state-owned enterprises workers, and 50 percent of private sector workers are members of the VGCL.¹²⁴

A socialist orientation and a strong state-labor partnership have led to labor legislations that are perceived to be pro-labor. [The ILO played a significant role in the drafting of Vietnam's Labor Code. Thus, the Code generally reflects

¹²² Li Qi, Bill Taylor and Stephen Frost. 2003. "Labour Relations and Regulation in Vietnam: Theory and Practice," SEARC Working Papers Series No. 53, City University of Hong Kong, September.

¹²³ World Bank. 2002. *Vietnam – Delivering on Its Promise*. Development Report 2003. The World Bank in collaboration with the Asian Development Bank, Vietnam Consultative Group Meeting, Hanoi, December 10-11, 2002, p. i.

¹²⁴ Li Qi et al, 2003.

international labor standards.] Even an official from VGCL acknowledged that the Labor Code enacted in 1995 is more pro-worker.¹²⁵ Ironically, it is the employers group that laments of unequal treatment in Vietnam (many laws are about workers' rights; laws covering employers only provide what employers must do).

The VGCL played a very important role in drafting the 1995 Labor Law and in the introduction of amendments to the Labor Code in 2002 as well. The amendments are deemed to better protect workers, i.e. short-term contracts may not be renewed twice, so that long-term contract should be tied; compensation for termination; non-requirement for state's registration for collective agreements to take effect.¹²⁶ Two other key informants interviewed by the research team echoed the VGCL view, stressing that the Labor Code is too progressive and silent on employers' rights; it is labor legislation meant for a developed country.¹²⁷ A discussion on the influence of trade unions in Vietnam is provided in the latter part of this section.

Vietnam's socialist orientation, its socially inclusive development framework, and strong trade union influence provide a favorable climate for a Social Charter proposition in the country. In fact, all key informants interviewed in Hanoi expressed strong belief that Vietnam will be receptive to a Social Charter proposition.

Quality of public institutions in the labor standards enforcement and compliance regime

State regulations, enforcement mechanisms, and the capacities of enforcement institutions greatly influence the rate of compliance of enterprises to labor standards. These factors have been pointed out by many key informants in the study countries as important determinants of the chances of a Social Charter. Undoubtedly, the extent of a country's compliance to the ILO core conventions may serve as a barometer of the potentials of a Social Charter.

In *Indonesia*, labor standards compliance remains a pressing problem despite the country's ratification of all core standards. This has been pointed out

¹²⁵ Mr. Chau Nhat Binh, Deputy Director, Department for International Affairs, VGCL, Hanoi, Vietnam; interview on 01 March 2004.

¹²⁶ *Ibid.*

¹²⁷ Mrs. Nguyen Thi Kim Dung, Deputy Director, Department for Structure Policy, Central Institute for Economic Management, Hanoi; and Mr. Phung Quang Huy, Director, Center of Employers, Vietnam Chamber of Commerce and Industry (VCCI), Hanoi, Vietnam; interviews on 01 and 02 March 2004 respectively.

by almost all of the key informants interviewed in Jakarta. Why the low level of compliance? Results of key informant interviews may shed light on this issue:¹²⁸

- Policies are in place but are not being enforced. Labor inspection office is weak. There are about 1,000 labor inspectors for a total of 163,000 companies.
- Owing to the geography of Indonesia, the cost of inspection is high particularly in the remote areas.
- Institutional capacities of industrial relations actors are lacking.
- Labor law reforms have reduced state's responsibility to protect workers.
- Labor enforcers/inspectors receive pay-offs. Corruption is tolerated and accepted.
- Non-compliance is high among small and medium enterprises. Many do not understand the current labor legislations. They are much dependent on legal consultants.
- Non-compliance is high among labor-intensive, low capital-intensive enterprises, i.e. textile, footwear and leather goods sector,
- Domestic enterprises tend to violate more labor standards.
- Payoffs and bribes are rampant in government. Cost of production is very high because 20% of the cost go to elites.
- Unions also receive payoffs and bribes. There are union leaders that receive payoffs, in exchange for termination of employees, usually 20-30% of the compensation of terminated employees.

Of course, this is not to say that the Indonesian government has reneged on its obligation to enforce compliance to labor standards. During the Soeharto regime for example, the Indonesian government took steps addressing the issue, as an indication of its seriousness to improve compliance. Levine (1997) describes below how Indonesia took steps to seriously enforce minimum wage regulations set during the Soeharto regime.¹²⁹ Recall that growing labor unrest and international pressure prompted the Indonesian government to adjust minimum wage levels upward in 1995 and improve enforcement of the minimum wage regulations by increasing penalties for non-compliance.

...employers who are not in compliance...are placed on a manpower blacklist, which is then distributed to ministries and provincial governors and monitored by the authorities. The ministry tells these agencies to consider denying services or loans to noncomplying firms. A company that violates regulations three times is put on the blacklist...

Workers have been urged to come forward and inform either the local manpower offices or their local representative of the All Indonesian Workers' Union (SPSI) if their employers were violating the law...

¹²⁸ Interviews with the following: Mr. Saiful DP, FSP.KEP; Mr. Suria Tchandra, TURC; Prof. Dr. Payaman Simanjuntak; Dr. Sutanto, Ministry of Manpower and Transmigration; Ms. Dita Sari, FPBI; Mr. Djimanto, APINDO; Mr. Rudy Porter, ACILS; and Mr. Carmelo Noriel, ILO-USA Declaration Project; on various occasions from November 3-7, 2003, Jakarta, Indonesia.

¹²⁹ Levine, 1997, p. 183.

...Jakarta has already urged the courts to impose jail terms on errant workers rather than fines, the maximum of which is a mere RP 100,000 (\$65).

...the government also formed an integrated team to enforce the laws and regulations in Jakarta and its surrounding areas. The team, whose members are from the ministries of manpower, industry, the attorney general's office, and the Jakarta military command, was formed in the region to enhance compliance efforts. The area, a home to approximately 65,000 companies, is quite prone to unrest sparked by labor disputes between management and workers. Most past labor conflict occurred in labor-intensive companies and those which has relocated to Indonesia from South Korea, Japan and Taiwan...

As an indication of its seriousness of purpose in enforcement efforts, the Ministry of Manpower released figures showing that it took 202 companies to court for their labor law violations during the 1994-95 fiscal year. Of the offenders, 48 had already been punished by local courts. The types of violations included noncompliance with the regional minimum wage, workers' social security benefits, overtime, occupational safety and health, and hours of work...

The foregoing discussion shows the potential of outside pressure in enforcing labor standards in a country, the threat of being castigated and chastised in the court of international public opinion. This is also the sunshine factor of a Social Charter.

How does the compliance issue in Indonesia impact on the Social Charter proposition? If it would be viewed as an instrument that could enhance compliance, unions would surely rally behind its acceptance. If the Charter would be considered a political instrument to leverage against exploitative capital, unions would fight for it. If it would avert an impending RTTB in the regions as a result of decentralization, unions would push for it. If it could address KKN in government and business, employers would welcome it. But does the trade union movement Indonesia possess relative power to influence government decisions? These issues are discussed in a separate section below.

Malaysia has not yet ratified ILO Convention No. 87 on freedom of association, as pointed out in Part I of this report, though it has ratified Convention No. 98 on the right to collective bargaining. Relative to the hypothesis that ratification is symbolic, reflecting actual conditions already in place in a country, one cannot expect that the right of association is exercised freely in Malaysia. It could be recalled that economic development has been the primary factor influencing the government's policies towards labor. Former Prime Minister Mahathir attributes Malaysia's economic success and its upper-income developing nation status to sustained economic growth, political stability, prudent spending and inflation policies, harmonious industrial relations, and the ability of the government to attract foreign investments, and not because of any assistance from

the developed countries or trade union attempts to ensure that Malaysia ratifies international labor standards.¹³⁰

By law, Malaysian workers have the right to engage in trade union activities. The Trade Unions Act's definition of trade union, however, is quite restrictive as only enterprise-based unions are allowed to organize. In effect, the formation of national unions is discouraged. In the electronics industry, only "in-house unions" are permitted. Moreover, for a union to be registered, it should represent at least 50 percent of the total number of workers in the same trade and occupation in a firm. The authority of the Director-General of Trade Unions to refuse registration or de-register unions is viewed as another source of constraint in union organizing activities. Nationwide congresses of trade unions from different industries are required by law to register as societies under the Societies Act rather than as trade unions under the Trade Unions Act.¹³¹ These restrictive regulations have led one key informant to note that it takes about two to three years to register a union in Malaysia.¹³²

The case of Malaysia shows the strong and active involvement of the state in regulating labor relations. The country's present statutory framework serves to limit the sphere of trade union influence in Malaysian society. The government's discretion to register or de-register unions, five-year union free operations for "pioneer industries", limitations on bargaining scope in these "pioneer industries" (promotion, hiring, dismissal, and other personnel policies are not bargainable issues), and preference for enterprise or in-house unions, are all seen as restrictions to unionization in Malaysia.

Malaysia has not ratified ILO Convention 111 on non-discrimination, the reasons for such have been cited in Part I of this report. The employment of foreign workers, particularly Indonesians, in Malaysia's plantation, electronics and garments industries is part of the country's labor market policies to address labor shortages as a result of overseas migration of locals disenchanted by job prospects in the plantation sector. These foreign workers are willing to accept lower wages and 3D jobs – dirty, dangerous, and difficult. Existing laws in Malaysia provide for equal pay for both domestic and foreign labor yet this has not been consistently enforced. This may be one problem area why Malaysia refuses to date to ratify Convention 111.

¹³⁰ Levine, 1997, p. 406.

¹³¹ Ibid, p. 342.

¹³² Mr. Charles Santiago, Monitoring the Sustainability of Globalisation, Kuala Lumpur, Malaysia; interview on February 2, 2004.

As regard other core labor standards, i.e. equal remuneration, and abolition of forced labor and child labor, there is no strong evidence that these standards are not complied with.

Singapore, like Malaysia, has not yet ratified Conventions 87 and 111, as well as Conventions 100 and 138 (minimum age of employment). It even renounced Convention 105 (abolition of forced labor) in 1979. Reasons for non-ratification and the renunciation of the latter have been provided in Part I. However, this is not to say that enforcement is weak and compliance to the core labor standards is low in Singapore. Despite the Constitutional provisions restricting the right to form associations “in the interest of national security, friendly relations with other countries, public order, or morality”, these restrictions have never been applied.¹³³

No strikes have occurred in Singapore since 1986. Most disagreements are resolved through informal consultations with the Ministry of Manpower.

Overall, compliance to labor standards that Singapore has ratified, i.e. abolition of forced labor and worst forms of child labor, right to organize and bargain collectively, and equal remuneration, is fairly high in Singapore. The strong influence of the trade union movement, a strong tradition of tripartism, and the symbiotic state-labor relationship in Singapore account for this high rate of compliance. These factors may be considered as favorable indicators of receptiveness of Singapore to a Social Charter proposition.

Thailand, like Indonesia, was also placed in a six-month continuing review process under the U.S. GSP program to determine whether substantial concrete programs toward addressing labor rights have been pursued. The Thailand review terminated in the year 2000.

The U.S. GSP review was a result of criticisms of a repressive labor regime in Thailand. Like Malaysia’s trade union movement, Thailand’s labor movement faces some of the same difficulties as regard union organizing. Restrictive labor regulations, weak implementation of laws and regulations, and systematic violations of workers’ rights have also been hurled against Thailand. As pointed out earlier in this report, labor regulations in the country take its roots from a regime of labor control (recall that prior to the establishment of a Ministry of Labour in 1993, a Department of Labor existed in the Ministry of Interior responsible for police and local administration).

¹³³ U.S. Department of Labor.
<http://www.dol.gov/ilab/media/reports/usfta/HR2739SingaporeLaborRights.pdf>. [Accessed on 23 March 2004.]

Thailand, to date, has not ratified Conventions 87, 98, 111 and 138. During the last election campaign, the Thai Rak Thai Party, the majority party in the present coalition government, asserted that it will “create labor standards that are equal to international standards by signing the ILO convention on freedom of association and the right to collective bargaining”.¹³⁴ To date, these Conventions are waiting ratification by Thailand.

The non-ratification of the above-cited ILO conventions, among others, may explain the low level of compliance on these labor standards. Brown et al (2002) briefly describe compliance trends in Thailand –

Actual number of workplaces inspections tends to vary from year to year. In 2000, some 33,617 firms covering a total of just over two million workers were inspected. Of the over 12,000 firms found to have breached various labour laws, only 14 cases were subject to court proceedings. Even so, ...the percentage of inspected firms breaching various legal provisions has remained high, averaging over 50 percent until the economic crisis hit in 1997. The decline since then could reflect a number of factors. It could be that the inspectors were encouraged to turn a blind eye to breaches in order to support economic recovery. Alternatively, the decline might reflect the fact that many small firms, where breaches were common, closed during the crisis.¹³⁵

The low level of compliance may also be attributed to limited enforcement mechanisms, particularly the number of labor inspectors. According to Brown et al (2002), each general labor inspector in Thailand is responsible for about 1,000 establishments; each health and safety inspector is responsible for about 1,680, while labor relation officials are each responsible for about 1,840 establishments. Another factor may be the much confusion about labor standards, which many entrepreneurs equate with developing labor skills.¹³⁶

There are, however, initiatives in Thailand to address the labor standards compliance issue. In February 2002, the Thai government launched a 5-year Thai Labor Standards Project that aims to promote codes of conduct in order to promote trade. Under the project, the Ministry of Labor encourages Thai factories and companies to adopt an internationally renowned code of conduct and assists companies in terms of capacity building in complying with provisions in the code. The project also includes the development by the Ministry of Labor of its own ‘Thai Labor Standards’ (TLS 8001) code of conduct similar to Social Accountability 8000 (SA8000). According to an official of the Ministry of Labor, the TLS basic

¹³⁴ Friedrich Ebert Stiftung Thailand, Labour Diary 2003 – Labor Standards and Globalization, p. 39.

¹³⁵ Brown et al, 2002, p. 30.

¹³⁶ FES Thailand, 2003, p. 40.

certification (compliance with Thai Labor Law) will be started this year covering about 250 enterprises.¹³⁷ About 300 enterprises are targeted next year.

The Thai Labor Standards Project, which targets exporting enterprises and their contractors and subcontractors, and other interested enterprises, draws considerable funding (about 301.86 million Baht). The project is expected to “increase the quality of life of labor to equal international standards, strengthen export producers’ ability to compete, and improve Thailand’s image as a country taking responsibility for labor standards.”¹³⁸ Prompted by criticisms of lack of consultation from labor organizations in the early stages of the project, the government has encouraged broader participation by giving due consideration and funding arrangements to proposals from labor organizations and NGOs to organize their own training projects.

Thailand is also in the process of signing a free trade agreement (FTA) with the United States. Like the U.S.-Singapore FTA, a labor chapter, focusing on the core labor standards and other acceptable conditions of work, is also included in this agreement.

These developments in Thailand may provide strong argument against observations that Thailand may strongly oppose a Social Charter proposition. Two key informants noted that the government’s Labor Standards Project suggests an inclination to social instruments as competitiveness tools.¹³⁹ There are strong indications that Thailand may adopt a “wait-and-see” posture on a Social Charter proposition.

The *Philippines* has also a spotty record on labor standards compliance. With only 183 inspectors covering 80,000 enterprises, the institutional capacity of the inspectorate is rendered weak. According to Dean Juan Amor F. Palafox of the U.P. School of Labor and Industrial Relations, each year nearly half of these enterprises are cited for violations, most often relating to wages.¹⁴⁰ Preliminary data for the period January to June 2003 from the Bureau of Working Conditions of the Philippine Department of Labor and Employment, for example, indicate that of the 13,846 establishments inspected, 5,487 or nearly 40 percent were found to have

¹³⁷ Dr. Chaiyuth Chavalitnitikul, Deputy Director General, Department of Labour Protection and Welfare, Bangkok, Thailand; roundtable discussion on 10 March 2004.

¹³⁸ FES Thailand, 2003, p. 159.

¹³⁹ Mr. Sakool Zuesongtham, President, Arom Pongpa-ngan Foundation Research Institute, and Dr. Voravidh, University of Chulalongkorn, Bangkok, Thailand; interviews on 09 March 2004.

¹⁴⁰ Rigby, Crispin (Ed.). 2003. *National Legal Frameworks – Monitoring International Labor Standards*. Washington, DC: The National Academies Press, p. 19.

violated general labor standards. Of the total number of establishments found with violations, 28.5 percent were corrected on field.

The ICFTU sums up below the overall trend of core labor standards compliance in the Philippines:¹⁴¹

- Inadequate labor inspection and non-enforcement of the law restrict and discourage trade union activities. The situation is particularly grave in the country's export processing zones where violation on the right to organize, depriving workers of trade union protection, is correlated with poor working conditions and non-compliance with labor and social protection legislation, including minimum wages.
- Despite adequate legal provisions, women are discriminated against in employment and face significantly lower wages and higher unemployment than men.
- Despite legislation banning child labor, there are nearly four million child workers in the Philippines, including in important export sectors such as sugar, bananas, and mining. Many are engaged in hazardous working environments.
- Although forced labor is in general prohibited, many children in domestic employment and in the rural sector are working in conditions amounting to bonded labor. [The Philippines has not yet ratified Convention No. 29 on forced labor.]

The foregoing compliance issues point to the need to increase the capacity of institutions to better the enforcement of core labor standards.

In *Vietnam*, the VGCL is very much involved in the preparation and verification of labor standards. The Labor Code specifies the preparation of annual plans or measures by employers for occupational safety and hygiene as well as improving labor conditions, though more focus is given to the former.

The VGCL, through its local union offices, teams up with the Ministry of Labor, Invalids and Social Affairs (MOLISA), in conducting annual inspections. This is not surprising because the VGCL, as part of the Communist Party structure, has been serving as an administrative arm of the Party on labor issues. However, as in the case of the other study countries, inspection and monitoring is rendered difficult due to the limited number of inspectors.

A key informant noted that the Labor Law in Vietnam is not strictly implemented.¹⁴² This view is supported by a remark from a VGCL official that

¹⁴¹ ICFTU
<http://www.icftu.org/displaydocument.asp?Index=990916236&Language=EN&Printout=Yes>.
[Accessed on March 23, 2004.]

¹⁴² Interview with Mrs. Nguyen Thi Kim Dung, CIEM.

gradual or progressive compliance is more or less tolerated; with sanctions more moderate at present but towards stricter enforcement in the future.¹⁴³ These conditions may have prompted another key informant to stress that the rate of compliance to labor standards is very low in Vietnam, with labor inspection almost nil in previous years due to very few labor inspectors.¹⁴⁴

Overall, compliance to labor standards in the six study countries is significantly determined by the institutional capacity of governments to monitor and enforce regulations. Ratification of core labor standards conventions is not a guarantee of improved compliance. In the end, the enforcement and compliance issue relies so much on the regulatory strength of the state, the resource allocation for enforcement, and the relative influence of unions on labor legislation and policy-making.

Trade Union Influence

This study posits that trade union influence is the most important variable in putting the Social Charter proposition on the discussion table in the ASEAN structure. Previous discussions on state-labor relations provide an overview of the relative influence of trade unions in the six study countries.

The study agrees with Rasiah and Chua (1998) that influence of trade unions is a complex issue and thus rather difficult to measure.¹⁴⁵ In assessing trade union influence, the said authors focused on several aspects, namely, trade unions' influence in legislation, government, ruling party, and the management. In Table 7, the two authors provide indicators of influence of trade unions in the six study countries.

¹⁴³ Interview with Mr. Chau Nhat Binh, VGCL.

¹⁴⁴ Interview with Mr. Pung Quang Huy, VCCI.

¹⁴⁵ Rasiah, Rajah and Chua Tian Chang. 1998. "Strength of Trade Unions in Southeast Asia," in Rajah Rasiah and Norbert von Hofmann (Eds.) *Workers on the Brink: Unions, Exclusion and Crisis in Southeast Asia*. Singapore: Friedrich Ebert Stiftung.

Table 7. Trade Unions' Influence

Country	Legislation	Government Policies	Relations with Ruling Party	Management
Indonesia	<p>Many unionists are co-opted into the People Assembly (parliament), they are supposed to be consulted on laws and policies related to labor. However their influence has eroded over the years.</p>	<p>Increasingly, unions are marginalized, although unions are represented in most tripartite bodies and government consultation.</p>	<p>KFSPSI is part of the state corporatist structure. It is formally recognized by the ruling party Golkar as the sole union centre in the country. Golkar has considerable influence over the policies and leadership of KFSPSI. Many of the union leaders are members of Golkar. However the relationship with Golkar has weakened in recent years. There are moves especially in the industrial federations to keep a distance with unpopular policies of Golkar.</p>	<p>Unions have very little influence over management. Local plant units are usually too weak to assert pressure on the management. Many employers even refuse to follow basic legal conditions.</p>
Malaysia	<p>Unions have no input in the legislative process. The labor movement can only exert pressure from outside by mobilizing media and public opinion. The legislative processes are not transparent and unions often were not able to intervene before laws being passed.</p>	<p>Compared to the private sector, the policies of public sector unions have more impact on government. However, generally unions have limited influence over government policies.</p>	<p>Some individual union leaders are members of ruling parties and others in the opposition. But there is no formal link between ruling parties and the unions. Under the Trade Union Act, unionists are not allowed to hold important post in political parties.</p>	<p>Unions can influence the management through collective bargaining and regular bipartite meetings. However, many aspects of management are considered employers' prerogative hence not answerable to unions.</p>

Table 7. Trade Unions' Influence (Continued)

Country	Legislation	Government Policies	Relations with Ruling Party	Management
Philippines	Union movement is fragmented. Intervention into legislative processes is done through public mobilization and lobby. Temporary coalition is forged to campaign on certain legislative change.	Compared to others, TUCP used to have more influence in government's consultative processes. However the union's ability to sway the current government is not high.	No union centre has a formal relationship with ruling party, or any mainstream political parties, though a number of unionists especially from TUCP and FFW are members of political parties. However, militant KMU and its splinter groups, frequently openly display their allegiance with radical political parties.	Unions influence the management through bipartite negotiation. Frequently need to resort to public mobilization or industrial actions.
Singapore	The sole national centre is represented in parliament and the cabinet through its MPs. The NTUC is involved in the drafting of labor laws.	The close link with the PAP provides the unions with direct access to government. Unions do extensive policies research independently (or cooperating with government and employers) to back up lobbying efforts.	The NTUC is allied with ruling PAP in a so-called symbiotic relationship.	Unions work closely with management. Although unionists are not involved in the board of director, they are frequently consulted on personnel matters.

Table 7. Trade Unions' Influence (Continued)

Country	Legislation	Government Policies	Relations with Ruling Party	Management
Thailand	Although several labor leaders are appointed senators in the upper house, unions have very weak inputs into legislative process. Apart from being outnumbered, the allegiance of most appointed unionists lay with their political patrons.	Unions have very little influence over government policies. Unions normally assert their demand through public march and petition the government for change.	Informal relationship and personal connections between politicians, unionists and military factions are widespread. Political parties and politicians often depend on labor leaders to mobilize votes.	Very limited. In order to dialogue with employers, unions often have to resort to industrial action. It is also common that unions appeal to government to mediate when disputes break out.
Vietnam	Unions have a prominent role in legislative processes. VGCL was actively involved in the drafting of the new Labor Code passed in 1995.	Unions have considerable influence in government. However, under the pressure of market economy, unions are forced to compromise in government policies.	VGCL is part of the communist party and accepts its leadership. Most union leaders are party members.	In state enterprises, union leaders are part of the management and participate in the board of directors. Government attempts to impose the same condition in non-state enterprises but receive a lot of resistance.

Source: Rasiah and Chua, 1998, pp. 36-39.

The foregoing table clearly indicates previous discussions on the quality of state-labor relations in the six study countries. State-labor relations define the relative influence of trade unions in policy-making and areas of union action. As Rasiah and Chua (1998) point out, Singapore's NTUC and Vietnam's VGCL appear to be the only national labor centers in Southeast Asia that enjoy the capacity to participate in legislation and national development planning. A long tradition of social tripartism has enabled them to wield considerable influence on labor issues and policies affecting workers.

In *Indonesia*, a state-labor partnership is evidently strong in the case of the All Indonesian Workers' Union (KSPSI), the oldest and largest confederation of trade unions formed by a government-directed merger of labor organizations in 1973. The head of the KSPSI concurrently serves as the Minister of Manpower. This arrangement affords the KSPSI a very influential role in labor relations

matters. Because KSPSI is seen as part of the Soeharto regime state machinery, legitimacy issues have hounded the labor confederation for many years. Thus, only six percent of the total workforce are members of KSPSI.

The KSPSI is among the founding members of the ASEAN Trade Union Council (ATUC). The ATUC is now seeking recognition in the ASEAN Labour Ministers Meeting (ALMM) through the Indonesian Labor Minister (who is also the head of KSPSI).

Outside the KSPSI are other labor federations that emerged, especially after the end of the Soeharto era in 1998. Many of these federations were once affiliated with the KSPSI. The Indonesian Prosperity Trade Union (SBSI), the Indonesian Workers Union Congress (KSPI)/the Indonesian Trade Union Congress (ITUC), and the ASPEK are among the relatively new actors in the trade union movement. The end of the Soeharto regime and the repeal of repressive labor legislation saw the mushrooming of national unions (including those in state-owned enterprises) and enterprise-level unions. To date, there are 72 national federations and 16,000 enterprise-based unions with 15 million members.¹⁴⁶ About 20 percent of the more than 40 million employed workers are members. Every federation claims that they are the largest. The Ministry of Manpower has yet to come up with an effective verification mechanism on membership claims by enterprise unions and their affiliation. Nevertheless, many observers see more promise of genuine trade unionism among the emerging enterprise level unions.

As regard the tradition of tripartism, this is weak in Indonesia's industrial relations system. This could be accounted to the fact that the industrial relations system that existed in Indonesia during the Soeharto regime lacked mechanisms to develop an effective tripartite system. During the 32-year dictatorial regime of Soeharto, only the government-backed SPSI was allowed to represent workers, and most industrial disputes were settled with the help of military authorities.

To date, owing to the low level of unionization in the country, Jacob Nuwa Wea, Indonesia's Minister of Manpower and Transmigration, and also chairman of KSPSI, acknowledged the difficulty of appointing workers' representatives in tripartite bodies, i.e. National Tripartite Institution, the National (Tripartite) Wage Body.¹⁴⁷ The three major labor unions- KSPSI, KSBSI, and KSPI – have been given by the government "proportional" seats in the

¹⁴⁶ Dr. Sutanto, Ministry of Manpower and Transmigration, Jakarta; interview on November 5, 2003.

¹⁴⁷ Ridwan Max Sijabat. 2003. "Most workers unrepresented by unions," *The Jakarta Post*, December 7.

tripartite bodies, though the size of the membership of these major labor organizations has not yet been effectively ascertained.

Overall, outside the KSPSI, there appears to be a weak state-labor partnership in Indonesia. This could be attributed in part to structural and functional weaknesses in the trade union movement.

Thirty years of repression has stifled the development of genuine unionism in *Indonesia*. Politicians, for many years, were also into organizing unions (and still are) or link with unions to win support.¹⁴⁸ As such, unions lack the capacity to undertake union activities such as organizing, networking, union administration, and education and training, strategic planning, among others. During the Soeharto regime, small informal strategic groups functioned as “unions” in workplaces as venues to discuss issues and plan and implement collective actions.¹⁴⁹ Many of these small groups transformed into unions after 1999. As workers were used to the previous strategic group’s processes, collection of union dues becomes difficult.

In the light of the above, unions in Indonesia, though they have mushroomed after 1998, see the need for capacity-building and organizational development to render them as effective actors in industrial relations. Though the emerging enterprise-based unions hold more promise of “real” or genuine unionism in Indonesia, the multiplicity of unions is also reflective of a fragmented trade union movement. Fragmentation undermines the capacity of unions to defend workers’ rights.

Excessive fragmentation also characterizes the trade union movement in *Thailand*. In fact, the multiplicity of unions has greatly undermined the development of genuine tripartism in the country as unions, regardless of the number of members, get one vote in the tripartite bodies.¹⁵⁰ [For union formation in the private sector, at least 10 percent of workers in a workplace should be members. In this regard, there could be more than one union in an enterprise.] Moreover, only the “conservative” unions are invited to attend tripartite elections.¹⁵¹ The labor law of Thailand also requires union leaders to be employed on full-time basis, without which he or she cannot hold leadership in any union. This regulation has disabled union leaders to perform full-time union

¹⁴⁸ Mr. Hari Nugroho, Department of Sociology, University of Indonesia, Jakarta; interview on November 5, 2003.

¹⁴⁹ Mr. Fauzi Abdullah, Sedane Labor Information Center, Jakarta, Indonesia; interview on November 6, 2003.

¹⁵⁰ Dr. Stefan Chrobot, Resident Director, FES Thailand, Bangkok; interview on March 9, 2004.

¹⁵¹ Dr. Voravidh interview.

work. Thus, in many enterprises, supervisors initiate, dominate and control enterprise unions.¹⁵²

The Ministry of Labor's practice of verifying with the employers the names of union members of a union applying for registration is also seen by union leaders and advocates as an obstacle to union organizing.¹⁵³ Workers fear that they may be fired or laid off by their employers once the latter get to see their names in the registration papers.

By and large, the low level of unionization in Thailand, the fragmentation of the trade union movement, the tripartism voting system, and restrictive labor laws seek to reduce the relative influence of unions in the country.

Nonetheless, the emerging grassroots unions, alternative modes of organizing, and involvement of non-government organizations in workers' rights advocacy are seen as positive developments in Thailand's labor movement. An example is the establishment of the Network of Laid-off Women Workers composed of about 70,000 members, which hopes to establish a union of laid-off workers in the future. Women workers in Thailand dominate in the export-oriented and foreign investment sectors. This Network petitioned the government for the continuation of social security contributions of laid-off workers less the employer's counterpart. Its mobilization and lobbying efforts led to the approval of its proposal by the Social Security Fund.¹⁵⁴ The Network also advocates equal wages for migrant workers (Burmese) and has urged the government to monitor the employment conditions of these workers. Migrant workers in Thailand get less than half of what the Thai workers earn.

Like in Thailand, the trade union movement in the *Philippines* is also fragmented. Shifting loyalties, realignments, segmentations, and coalitions continue to characterize the trade union sector. It is in this context that the trade union movement in the country is generally weak.

The continued fragmentation and rivalry among trade unions in the *Philippines* could be attributed to several factors. Ideological differences, a highly legalistic industrial relations system (that is why union leadership is dominated by lawyers), "dynastic" union leadership, and labor authoritarianism are deeply entrenched in the trade union tradition.

¹⁵² Dr. Chrobot interview.

¹⁵³ Dr. Voravidh interview.

¹⁵⁴ Ms. Arunee Srito, President, Network of Laid Off Women Workers, Bangkok, Thailand; interview on March 8, 2004.

The Philippine labor movement marked its centennial (100 years) in 2002. Its roots could be traced to the socialist and nationalist ideologies espoused by Crisanto Evangelista and Isabelo de los Reyes, who linked the movement with the struggle for national independence and social emancipation. Over the years, as the country grappled through various political regimes (colonial and otherwise), the trade union movement had seesawed between economic and political unionism.¹⁵⁵

Based on preliminary data (as of third quarter of 2003) from Bureau of Labor Relations of the Department of Labor and Employment, there were 181 federations and labor centers, 10,362 private sector unions, and 1,253 public sector unions that existed. Total membership of private sector unions stood at 3.7 million and that of public sector unions was 249,000, as of the third quarter of 2003. The combined membership of private and public sector unions accounted for about 13 percent of all employed workers (30.45 million), or 11 percent of the total labor force, in July 2003. Workers covered by existing collective bargaining agreements totaled 552,000, a measly two percent of all employed.

The major labor centers in the private sector, i.e. TUCP, KMU, Federation of Free Workers (FFW), Lakas Manggagawa Labor Center (LMLC), Pambansang Diwa ng Manggagawang Pilipino (PDMP), Trade Unions of the Philippines and Allied Services (TUPAS), National Association of Trade Unions (NATU), and Pambansang Katipunan ng mga Manggagawa (KATIPUNAN), are constantly wracked by divisions, segmentations and shifting loyalties. This multiplicity of unions has undermined the trade unions' capacity to defend workers' rights and has further diluted the waning influence of trade unions in Philippine industrial relations. As Ofreneo (1993) points out, "the trade union movement today is highly divided, and to a great extent, confused about its future and its role in society."¹⁵⁶ He adds that "organizing the already organized" or union raiding is an endemic disease in the labor movement that has led to the rise of enterprise level unions that choose to remain independent from any federation.

There are, however, emerging new actors in the labor movement. These are labor federations, like the Alliance of Progressive Labor (APL), that espouse social movement unionism. The party list entry point in legislation participation, as discussed earlier in this report, also provides opportunities for the labor movement to directly participate in legislative processes. As pointed out by a

¹⁵⁵ Ofreneo, Rene E. 1993. "Struggle of Filipino Workers and Trade Unions for Social Emancipation and Advancement: A Historical Overview," in Mario I. Galman *The Challenges of Labor and Social Development: The Philippine Experience*. Manila: International Labor Organization, pp. 111-123.

¹⁵⁶ Ofreneo, 1993, p. 18.

party list representative, the party list system provides a venue for workers to participate in local governance, eventually strengthening the trade union movement.¹⁵⁷

Vietnam's VGCL wields strong influence in Vietnam politics being an organ of the Communist Party. It was very much involved in the preparation of the country's Labor Code. Article 153 of the Code provides for automatic trade union formation within six months from date of commencement of operations of enterprises. Article 157 requires employers to formally recognize trade unions upon their establishment.

The VGCL claims a unionization rate of 85 percent in state-owned enterprises (SOEs) and 30 percent in the private sector.¹⁵⁸ The relatively small size of enterprises, most have less than 250 workers, makes organizing difficult in the foreign direct investment (FDI) sector. The FDI sector is concentrated in the labor-intensive manufacturing of garments, textile, footwear, and marine products.

The VGCL head, though not formally a part of the Cabinet, enjoys a socially recognized "ministerial" rank. Once a year, the VGCL head meets with the Prime Minister to present trade union demands and put out a yearly plan. The same is true with the head of the Vietnam Chamber of Commerce and Industry (VCCI), Vietnam's employers' organization.

As Vietnam shifts from a centrally planned economy to a market economy, so is trade union movement's role – from administrative to protective. In fact, the Labor Code of Vietnam has redefined the concept of "job" to the Vietnamese people as they were used to be "part owners" of state-owned enterprises (SOEs).¹⁵⁹

The independence of the union from the state is thus an issue in Vietnam today. The low level of unionization in the FDI sector could be attributed to the lack of skills of unions in organizing and collective bargaining, the shop steward system, and other union processes. Tripartism is also an issue in Vietnam as the VGCL is the only labor organization recognized by government. This is the reason why Vietnam has not yet ratified Conventions 87 and 98. However, the

¹⁵⁷ Mr. Rene Magtubo, Partido ng Manggagawa (Workers' Party) Party List Representative, Quezon City; interview on April 2, 2004.

¹⁵⁸ Mr. Chau Nhat Binh interview.

¹⁵⁹ Mrs. Nguyen Thi Kim Dung interview.

ILO in Vietnam has been instrumental in putting the said Conventions on the discussion table.¹⁶⁰

Summary

Overall, our interviews with most of the key informants from trade unions and labor organizations in the six study countries indicate a high level of receptiveness to an ASC proposition. They hold the view that a Social Charter could avert a race-to-the-bottom (RTTB) in terms of wages and working conditions in this era of rapid globalization. But do trade unions in the ASEAN member states wield considerable influence to urge or encourage their governments to consider discussing an ASEAN Social Charter? Without doubt, Singapore's NTUC and Vietnam's VGCL may be able to do so. Indonesia's KSPSI head who is concurrently the Labor Minister may raise the Social Charter proposition in the ASEAN Labor Ministers Meeting (ALMM). Other strategies to raise awareness and receptiveness about the proposition are discussed in Part IV of this report.

¹⁶⁰ Mrs. Rosemarie Greve, ILO Representative, Hanoi; interview on March 2, 2004.

Part III - CONSTRUCTING THE CHARTER A PROPOSED CONFIGURATION

The Charter should start with a Preamble stating the purpose, context and basic principles behind the instrument. Example:

The Governments of the member states of the Association of Southeast Asian Nations (ASEAN),

Considering that the ASEAN represents *the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation in the economic, socio-cultural, technical, educational and other fields;*

Reaffirming their joint aspiration to *secure for their peoples and for posterity the blessings of peace, freedom and prosperity;*

Aspiring to bring about a better quality of life and productive employment for their peoples through sustainable economic growth and social progress,

Committing to strengthen the social pillars of the ASEAN by promoting the full potential and dignity of their peoples in the light of regional economic integration, trade liberalization and globalization, as called for in the 1998 Hanoi Plan of Action; and

Resolving to make every effort to pursue the ASEAN Vision 2020, that is, *a concert of Southeast Asian Nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies;*

Have agreed as follows:

Part I

The Governments signatory hereto reaffirm their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up. The signatory Governments shall strive to ensure that such labor principles and the internationally recognized core labor rights set forth hereinbelow are recognized and protected by domestic law.

The Governments signatory hereto recognize the right of member-states of the ASEAN to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations. In this regard, each signatory Government shall strive to pursue the attainment of conditions in which the following rights may be effectively realized:

1. Freedom of association and the right to organize;
2. Right to bargain collectively;
3. Prohibition of forced labor;
4. Elimination of employment discrimination;
5. Equal pay for women and men;
6. Minimum age for working children;
7. Abolition of all worst forms of child labor; and
8. Protection of migrant workers.

The signatory Governments hereto recognize that cooperation between them provides enhanced opportunities to improve labor standards.

Part II – Undertakings

Part III – Implementation and Enforcement

Part IV – Amendments

Part V – Denunciation

For *Part II – Undertakings*, following issues may have to be considered:

- Considering that not all ASEAN countries are members of the ILO and even a number of ASEAN members have not ratified many of the core ILO Conventions, the eight rights/principles may be grouped according to the degree of acceptance in the ASEAN. A three-tier recognition system with corresponding period of attainment (or working towards the attainment) per tier or level is also proposed. All ASEAN members have expressly condoned worst forms of child labor (C182). Conventions on Minimum age (C138), abolition of forced labor (C105) and equal remuneration (C111) are also widely accepted. All three core Conventions may be considered as Group/Level I that are required to be enforced or being implemented (whether through ratification or national legislation/regulations) upon signing of the Charter by Governments. Group II may include Conventions on freedom of association (C87) and right to collective bargaining (C98). Protection of migrant workers may be included in Level 2 or it may be the last level/group. For rights included in Group II, these should be realized (through Convention ratification or relevant national legislation) within five-years from date of signing of Charter. Group III, if protection of migrant workers was to be a separate group, should be realized (through national legislation specific for migrant labor, ratification of U.N. Convention on the Rights of Migrant Workers and Their Families, MOUs between labor-receiving and sending countries, etc.) within 10 years from date of signing of the Charter.

- We may also distinguish between the ASEAN 6 and the CLMV group in terms of grouping the rights/principles. We may consider providing a separate time frame for the latter's "compliance".

For *Part III – Implementation and Enforcement*, it is important that we address the following:

- Will the Charter be voluntary/promotional or will there be some form of sanctions for "persistent pattern/practice of non-compliance"?
- If the Charter was voluntary/promotional in nature, reporting by member countries and monitoring by an independent committee organized for the purpose may form the core of implementation procedure. The ILO should be part of the implementation strategy. Similar structures of the North American Agreement on Labor Cooperation (the labor side agreement of NAFTA) where the following options exist for addressing issues relating to Charter "obligations" and labor principles:

- i. Setting up a National Administrative Office within the Ministry of Labor of ASEAN countries that acts as the main bridge between states for addressing issues arising under the Charter. These NAOs exchange information on labor law and adjudication, receive complaints about violations of rights, initiate investigations, publish reports on their findings, and develop and implement cooperative activities.
- ii. The next level could be Ministerial consultations (may be the ASEAN Labor Ministers Meeting or ALMM) for high-level intervention to address a problem involving the countries, particularly if the migrant labor issue were to be included in the Charter. The Labor Minister of a country requiring a high-level intervention on an issue can call for formal consultations with one or several counterpart ministers in other countries.
- iii. If issues remain unresolved at the level of the labor ministers (ALMM), a state may request an Evaluation Committee of Experts (ECE) to be formed. The members of the ECE may hold tenure or a separate ECE may be convened for every specific dispute. ECEs are to be composed of experts in labor matters from outside the Charter machinery. [The ECE may be composed of three members chosen by the ALMM.] The ECE members are to analyze "patterns of practice" by each state party in enforcing their labor law, and present non-binding recommendations for resolving the issue in question. The Labor

Ministers concerned are to review the recommendations and jointly come up with an Action Plan and other strategies (e.g. capability-building, technical assistance, forum, etc.) to enhance compliance and/or remedy the issue. The implementation of the Action Plan is to be monitored regularly with annual reporting.

- If the Charter would bare sanctions, another level would have to be added – an Arbitral Panel convened by the labor ministers. The Arbitral Panel will issue a report on whether there has been a consistent pattern of failure by the government concerned to effectively enforce the law in question. The Panel will make recommendations where such pattern exists. The recommendation may require the Party complained to adopt and implement an Action Plan sufficient to remedy the pattern of non-enforcement. [Again, we will have to discuss the nature of penalty for non-implementation of the Action Plan. Because the Charter is not tied to trade, assessments based on the value of total trade in goods between parties against the offending government is impossible, i.e. NAFTA's NAALC provides a financial penalty not to exceed .007% of the value of total trade in goods between concerned parties assessed against offending government. Alternatives could be imposing a fine on the offending enterprise, blacklisting the enterprise, or wide publication of the labor violations of the offending enterprise. The ILO may also withdraw support to the country. Any or all of these alternatives may be considered.]
- Penalties may also be imposed according to the Level/Grouping of rights cited above. Like the NAALC, financial sanctions may only be imposed for violations of ILO Conventions ratified by all ASEAN members, i.e. prohibition on the worst forms of child labor. Penalties may also be imposed progressively depending on the span of acceptability and practice of certain labor rights.
- It is important that in all the foregoing engagements, the presence of the ILO on a consultative basis should be assured. Of equal importance is the provision for a venue within the Labor Ministers (the ALMM) for trade unions in the region to participate in discussions/deliberations. They should form part of an effective consultative mechanism within the ALMM. Again, this poses a challenge to the trade unions in the ASEAN region to organize an all-inclusive or more representative ASEAN-wide network or coalition of trade unions.

For *Part IV-Amendments*, this section may include future expansion or additional rights to be included in the Charter, i.e. acceptable conditions of work such as minimum occupational health and safety standards, hours of work, etc.

For *Part V-Denunciation*, this section includes provisions on the right of any party to denounce the Charter only at the end of a specified period (e.g. in ILO, 10 years; in the European Social Charter, 5 years) from date of signing of the party. However, bases for denunciation must be specified in this section. It is important to note that the act of denunciation is not absolute, meaning, the denouncing Government should still remain bound to labor rights in the first tier of the Charter, i.e. minimum age for employment, abolition of forced labor and equal remuneration.

The following concerns should also be addressed:

- Many of the key informants interviewed are not comfortable with the term ‘Social Charter’ noting its prescriptive character as a Western (developed country) instrument. Some see it as a protectionist instrument. No doubt, even ASEAN Governments view labor standards and trade tie-up as protectionist. In this regard, we would need to consider other alternative “name” or reference to this instrument. What about *ASEAN Declaration on Labor Promotion*”, “*ASEAN Cooperation on Labor Promotion*”, “*ASEAN Agreement on Labor Cooperation*”?
- The authors strongly believe that the Charter or whatever it would be called should eventually or progressively be tied up to trade issues if it would be effective and relevant. There are initiatives within the ASEAN that signal the possibility in the medium or long term of this link. The free trade agreements with labor rights provisions entered into by some ASEAN countries, i.e. U.S.-Singapore FTA, and possibly U.S.-Vietnam, U.S.-Thailand, etc. are clear indications.

The inclusion of the ASEAN+3 countries, i.e. China, Japan, Korea, in the Social Charter debate also deserves significant consideration. ASEAN members’ trade with these countries is even greater than intra-ASEAN trade.

Part IV – CONCLUSION AND RECOMMENDATIONS

Conclusion

Globalization in its present form is unfair and exclusive. The WCSDG has emphasized this in its February 2004 report. For globalization to be more inclusive, all nations must be able to participate in the governance of international trade. Regional integration initiatives that focus on social dimensions of integration are stepping stones for the developing world to have more voice in global trade governance.

The social dimension of integration could be addressed through multilateral engagements on social or labor conditionality clauses, social charters, social compact, social accords, and the like. Whatever we call it, these social instruments should, at the minimum, seek to promote and protect the core international labor standards.

The paper attempted to present and provide country-specific analyses of the influences of several factors that may determine the extent of receptiveness or opposition of the study countries to an ASEAN Social Charter (ASC) proposition. The paper argues that the most important variable that would push for a Social Charter discussion in ASEAN is the relative influence of trade unions within and across the member states.

The discussions and analyses presented in this paper provide strong support to the following hypotheses posited:

1. The ratification (of ILO core conventions) behavior is not a strong indicator of a country's receptiveness or opposition to an ASC proposition.
2. Diversity-related arguments will largely shape the ASEAN member states' posture on the ASC proposition. This paper argues that Singapore, Vietnam, and to a lesser extent, Indonesia and the Philippines will most likely be receptive to the proposition. Thailand may shuttle between a "wait-and-see" and "opposed" posturing, but more likely on the former. The strongest opposition may come from Malaysia, but recent trends in the country, i.e. political changes, new leaders, and in the ASEAN indicate some measure of flexibility of the country in approaching the ASC proposition.

3. The so-called ASEAN Way (consensus, non-intervention, sensitivity to the needs of others, and minimal institutions), gradualism, and pragmatism can effectively address diversity arguments against the ASC proposition, especially if the same would be shaped among the ASEAN members themselves.
4. Recent global and regional trends point to the weakening of arguments against social dimensions of integration and liberalization. Trade unions must seize these opportunities to strengthen their influence in drumming up support for the ASC proposition.

The adoption of an ASEAN Social Charter, like the European Social Charter, will be fraught with many obstacles and challenges. The ASEAN Way of consensus, non-intervention, sensitivity to the interests of others, and minimal institutions, is seen as a major stumbling block that will further delay any agreement on the coverage, structure and implementation of the Social Charter. But the task is not as insurmountable as formerly thought. Trends and developments in each of the study countries as well as within the ASEAN organization indicate that a Social Charter proposition stands a chance in the ASEAN, under a framework of gradualism and pragmatism in approaching the labor standards issue in the region. ASEAN member states recognize diversity, and this very recognition will, on the contrary, facilitate an agreement on what core labor standards will be progressively adopted by the ASEAN member states at given stages of development. A pragmatic, rather than a purist, approach will better the chances of an ASEAN Social Charter. If individual ASEAN member states were willing to engage in (and some are considering or in the process of negotiating) unilateral free trade agreements with labor conditionality clauses with the U.S. and other developed countries, and maintain their beneficiary status under GSP programs, there is no reason why a multilateral regional engagement on an ASEAN Social Charter is not possible.

Recommendations – A Call for Action

Strategizing for an ASEAN Social Charter

The study has emphasized the pivotal role of trade unions in effectively putting on the ASEAN discussion table through the ALMM the ASC proposition. But the reality is that trade unions' influence in many of the ASEAN member states is on the wane, while other social movements have been on the rise. It would do well for the trade union movements in the ASEAN countries to strategically link or build coalitions with other emerging actors in industrial relations.

In drawing a Plan of Action to mobilize support for the ASC proposition, this study presents the following recommendations:

1. The ASC proposition will require regional engagements among unions of member states. Coalition-building among unions and other social movements remains an untapped area in transnational labor rights campaign. *Transnational coordinative unionism* could launch a new regional strategic campaign for an ASEAN Social Charter. This new form of regional unionism will involve information sharing, consultations, participation in regional and international trade secretariats and global union federations, and other activities aimed at facilitating greater understanding of the Social Charter. Along this line, the ASC proposition could provide a good organizing theme for an ASEAN trade union coalition.
2. Transnational initiatives protecting workers' rights such as those undertaken by Malaysia's National Union of Telecommunication Employees (NUTE) must be documented and encouraged. In 1996, the NUTE urged Telekom Malaysia to observe minimum labor standards in South Africa Telecom where substantial investments were poured in by Telekom Malaysia. NUTE and Union Network International leaders even went to South Africa to assist the union in organizing activities.
3. The first order of tasks of national unions is to "get the ASEAN Social Charter proposition down and move it all around" in their respective sectors. Awareness-raising should start at the enterprise level. This strategy will help create a critical mass of supporters.
4. The various offices of the Friedrich Ebert Stiftung and the Global Union Federations (GUFs) in the ASEAN region can also initiate convening national conferences on the ASEAN Social Charter. These national conferences should aim to "sound the drums" about this initiative. Participation to these conferences should cut across all key sectors in each ASEAN country. This paper may be presented in these national conferences to serve as springboard for a more country-specific discussion and strategizing for an ASEAN Social Charter.
5. The ASEAN Trade Union Council's (ATUC) initiative of seeking consultative status in the ASEAN Labor Ministers Meeting deserves substantial support.¹⁶¹ The "representativeness" issue raised against the

¹⁶¹ On January 13, 2004, a four-member ATUC delegation met the ASEAN Secretary General, Mr. Ong Keng Yong, in Jakarta. In the meeting, Mr. Ong advised the ATUC to submit a formal

ATUC should not be a deterrent for non-member unions to throw support on this initiative. The ATUC has seriously noted this issue and is certainly taking steps to render the ATUC membership more inclusive.

6. In ASEAN member countries where union leaders can directly participate in legislation, i.e. party list representatives in the Philippines' House of Representatives, linking with other party list representatives and other sympathetic legislators is an effective strategy in introducing reforms in trade policy-making and international trade negotiations pursued by their respective governments. In the Philippines, for example, legislators are kept in the dark about the country's negotiation agenda in the WTO.
7. Enterprise unions should be encouraged to include in their collective bargaining negotiations provisions pertaining to political labor standards, particularly on gender equality issues. The CBA is a good channel for promoting international core labor standards in the workplace.
8. This paper presented a proposed configuration of an ASEAN Social Charter (ASC). Though the authors strongly endorse that the ASC be initially promotional, it must gradually and progressively graduate to a more sanction-bearing instrument. Of course, the major determining factor will be a country's level of development.
9. For the academe and labor research institutions, empirical multivariate research on the comparative advantage potential of international core labor standards (ICLS) is still wanting. Research on the benefits of standards to workers, employers and the overall economy should be further pursued. Case studies on good or best practices involving labor standards promotion at the enterprise, industry, and country levels may help raise the level of economic appreciation of ICLS, especially among developing countries.

application with the ASEAN Secretariat, seeking affiliation as a non-governmental organization representing ASEAN workers. The ATUC submitted an official application on April 14, 2004. Mr. Ong also informed the ATUC delegation during the meeting that he would be making the necessary arrangements to invite an ATUC delegation in the ASEAN Labor Ministers Meeting in mid-May in Brunei, and meet the Ministers on ATUC's application for affiliation. [Part of Senator Zainal Rampak's, ATUC Secretary General, presentation in the 3rd FES Workshop on "An ASEAN Social Charter – Shaping the Draft and Exploring Its Chances", April 19, 2004, Royal Park Plaza Hotel, Singapore.]