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DISSERTATION**

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**EU MIGRATION LAWS AND POLICIES
AND PROTECTION OF MIGRANT WORKERS FROM
DEVELOPING COUNTRIES PERSPECTIVE: LESSONS AND
RECOMMENDATION FOR VIET NAM.**

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Subject: Recommendation for the Public Defence of the
PhD Dissertation of Nguyen Thuy Anh

Dear Doctoral School Council,

As the PhD supervisor of Nguyen Thuy Anh, I am pleased to submit this formal recommendation for the public defence of her doctoral dissertation entitled "EU Migration Laws and Policies and Protection of Migrant Workers from Developing Countries Perspective: Lessons and Recommendation for Viet Nam".

The dissertation addresses a highly complex and timely subject with significant socio-legal and policy relevance. The research provides a comprehensive comparative analysis of the legal frameworks of the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) regarding the protection of migrant workers, with a specific focus on the Vietnamese perspective.

The work is structured into four main chapters:

1. Legal Studies of Labour Migration: Defining fundamental concepts and international legal instruments.
2. Migrant Labour in Europe and Hungary: Analysing EU migration policies and the specific legal environment in Hungary.
3. Migrant Workers Policies in the ASEAN Region: Evaluating regional cooperation and challenges in Southeast Asia.
4. Comparison and Lessons for Vietnam: Drawing nuanced conclusions from the divergent approaches of the two regions and providing grounded recommendations for legislative development in Vietnam.

The candidate demonstrates a rigorous methodological approach, combining comparative, qualitative, and case study methods, supported by a rich array of international legal documents and empirical observations.

I hereby declare that following the workplace (preliminary) defence, the candidate has diligently incorporated the suggestions and criticisms provided by the official opponents. The dissertation has been thoroughly revised in accordance with these proposals, and the candidate has successfully addressed all requested modifications.

Based on the candidate's analytical capacity, the originality of the research, and the successful completion of the revision process, I conclude that the work meets the high academic standards required for a doctoral degree. Therefore, I officially recommend the dissertation for public defence.

Yours sincerely,



Dr. Péter Sipka, PhD

Assistant Professor

PhD Supervisor

University of Debrecen

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1. Introduction

1.1. Background of Study

In 2022, the ILO's Global Estimates on International Migrant Workers reported that 167.7 million migrants were engaged in the labor force in destination countries. A total of 102.7 million were men, while 64.9 million were women. This figure indicates an increase of over 30 million individuals since 2013, which had been documented during 2013-2019. There was 86.5 percent of migrant workers are 25–64. Only 10% and 3.6% of migrant workers were 15–24 years old and 65 and older, respectively. The proportion of young individuals among international migrant laborers has increased over time, rising from 8.3% in 2017 to 10.0 percent in 2019. In contrast, the proportion of workers aged 65 or older decreased. The majority of migrants in the labor force were located in Northern Europe, Southern Europe, Western Europe, North America, and Arab countries. The percentage of migrants in the workforce residing in Northern Europe, Southern Europe, and Western Europe rose from 22.5% in 2013 to 23.3% in 2022. The share of migrants in the labor force in North America and Arab countries has experienced a slight decline. In 2022, 155.6 million migrants were employed, while 12.1 million were unemployed, out of the 167.7 million migrants who were in the labor force.

Labor migration may provide advantages for both the origin and destination countries. In nations experiencing an aging demographic, their involvement plays an important role in mitigating the labor shortage. According to international labour standards such as those of the ILO, which has established a set of labour rights for all migrant workers, whether legal or illegal, these foreign workers are referred to as "migrant workers". Association of Southeast Asian Nation (ASEAN)¹ and European Union (EU)², by setting up their own region and their own rules only relating to their Member States. The UN 2030 Sustainable Development Agenda recognizes migration as an important aspect of development policy, urging governments to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies” (target 10.7) and to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment” (target 8.8). The ILO has developed the Guidelines on International Labor Statistics to underscore the significance of labor migration. International migrant workers are defined as persons of working

¹ Association of Southeast Asian Nations, [https://asean.org/\(10/10/2022\)](https://asean.org/(10/10/2022)).

² European Union, [https://european-union.europa.eu/principles-countries-history/country-profiles_en\(10/10/2022\)](https://european-union.europa.eu/principles-countries-history/country-profiles_en(10/10/2022))

age present in the country of measurement and who are in one of the following two categories³: usual residents and not usual residents.

When seen through the lens of global human rights, migration becomes a pressing matter. There are a number of important regional and international accords, but few of them address or even acknowledge migrants as a distinct category. These instruments are spread across various branches of law and the relevant human rights norms are therefore dispersed throughout a wide range of texts. Therefore, as the topic of human rights for migrant workers is getting increasing attention, it is necessary to examine EU's existing laws and policies. At present, Vietnam places the issue of migrant workers of great importance in economic and foreign policy. In fact, Vietnam has sent about half a million workers to work in about 462 countries and territories, belonging to 30 industry groups, requiring an international legal mechanism to protect them. It is also important to study the characteristics and practice of migrant workers from Vietnam - a typical developing country which has a migration trend to EU for the last few year and the smuggling networks are smuggling approximately 18,000 Vietnamese people to Europe every year, according to the United Nations Economic and Social Council. Almost the legal documents of migrant labor are trying to protect the elements of migrant workers' rights with the collaboration of the Member State. This indicates that laws or regional labor standards are developed in accordance with agreements among the Member States. Supposing that the key factors for all migrant workers are the national labour law and regional labor standard which mean what rights have been established in the national labor laws determines whether correct or not. Since many years ago, there have been two separate categories of migrant workers: regular migrant workers and irregular migrant workers. There remains a big issue regarding unlawful labor migration; cross the border countries and alter the state. They have to be treated fairly and humanely in the country of destination because they are also humans. As a result, policies for illegal immigrants have been proposed in various forms, such as deportation legal programs or legalization.

There are thousands of articles and news stories every day that discuss about an international movement and have been studied broad by scholars. The author categorizes the research into three sections to examine the data: migration in Europe, migration in ASEAN, and the policies and legislation related to migration in Hungary and Vietnam. Including are comparison publications between the EU and ASEAN, such as "The Future of EU-ASEAN Relations" (UN), "Free Flow, Managed Movement: Labour Mobility Policies in ASEAN and the

³ ILO 2018a, para. 14a and 14b

EU" (EIAS). Alongside the documents addressing migrant labor trends in Europe and ASEAN, numerous articles emphasize the presence of Vietnamese labor in Europe. The article "Rethinking Asian Mobilities: Socialist Migration and Post-Socialist Repatriation of Vietnamese Contract Workers in East Germany" by Christina Schwenkel examines the various waves of Vietnamese migration to the Soviet Bloc countries from the mid-1950s until the dissolution of the Soviet Union. The second article, "From Contract Workers to Entrepreneurs: Gender and Work Among Transnational Vietnamese in East and Reunited Germany" by Gertrud Hüwelmeier, examines significant aspects of the Vietnamese population in Eastern Europe. The author highlights the influence of socialist and post-socialist migration on the development of ethnic and cultural diversity in Central and Eastern European nations. The article "Between the devil and the deep blue sea: Acculturation of young Vietnamese women in Poland" addresses the challenges encountered by a particular demographic of Vietnamese individuals—young women residing in Poland. The author examines the psychological issues and inner conflicts experienced by the study subjects, detailing the challenges associated with navigating two cultural environments during development. The cited articles offer the author a comprehensive overview of the key issues concerning the Vietnamese community in Central and Eastern Europe.

1.2. Research question

My research questions are the following: (i) What are the fundamental rights of irregular migrant workers in the receiving country (ii) what are the equal rights of migrant workers compare to native workers in ASEAN and EU; (iii) What are the benefits in migrant protection policies between EU and ASEAN? (iv) What are the legal provisions of migrant workers from developing countries like Vietnam, and the reasons why their rights need to be respected and protected in Vietnam? This analysis positions ASEAN as a representative of developing countries, characterized by notable labor movements, and contrasts it with the EU to formulate informed recommendations for Vietnam regarding migration protection.

The initial question relates to undocumented migrant laborers in receiving nations. The primary issues in this matter are immigration paperwork and the fundamental rights necessary for their protection. Do they demonstrate human rights, or does national law include provisions for them? Legal workers show valid documentation and are entitled to welfare benefits. From a human rights perspective, what legal protections are available for undocumented workers? The Universal Declaration of Human Rights (UDHR) claims that all individuals possess the right to life and security, the right to freedom from slavery or servitude, and the right to protection from

torture, as well as cruel, inhuman, or degrading treatment. The status of illegal workers in society is frequently unsafe due to the lack of legal protections, which exposes them to exploitation, sexual abuse, and discrimination. Conversely, evaluating the number of illegal migrants presents significant challenges due to their tendency to conceal their status or engage in underground employment, complicating the efforts of managers to monitor and account for illegal workers. In addition to the challenges posed by illegal immigration removing border control, there are situations where legal migrants accidentally become undocumented by exceeding their permitted duration of stay. The dissertation by Moe (2022) indicates that certain Asian countries have subjected illegal migrant workers to poor treatment, including the requirement to engage in tasks within hazardous environments.

The second question addresses the equal rights of migrant workers in the European and ASEAN regions, specifically examining their treatment in comparison to native citizens. All citizens residing and employed in EU countries are afforded equal rights; nevertheless, differences in employment conditions exist between migrants within the EU and those from third countries. Migrant workers in ASEAN continue to face disparities in opportunities.

The third question addresses the advantages in the protection policies of migrant workers between the EU and ASEAN. Regional regulations in ASEAN are comparatively more limited than those in the EU, as analyzed and discussed in Chapter IV. By comparing the two regions, we can point out the weakness of one region and the strong point of another. Several counterarguments indicate that ASEAN's operations and administration better correspond with the particular traits and situations existing in Asia. In this context, I have defined my perspective by analyzing the distinctions between hard law and soft law in the comprehensive regulations governing labor migration within ASEAN and the EU.

Finally, there is the question of why it is vital to concentrate on the subject of immigration protection in Vietnam, as I write at the end of Chapter IV. I chose Vietnam because it is an ASEAN nation that is rapidly and effectively growing, while also prioritizing investment in education and training high-skilled people to gap the labor needs of recruiting countries. Furthermore, past wars have had an immense effect on Vietnam, with a significant number of Vietnamese citizens living and working all over the whole world. As a result, a focus has been placed on improving policies and regulations not only in Vietnam's internal legislation, but also using international conventions, multilateral and bilateral agreements that Vietnam has signed. A lot more Vietnamese people are leaving their home countries to work in other countries, include people sent by the government, students who stay to study, and people who were born and raised in those countries. While moving within ASEAN or to Europe, not everyone can fully

access and understand the rules and social aid benefits they receive. As a result, I am of the belief that it is of great significance to contribute to the strengthening of the legal framework in order to safeguard the rights of Vietnamese migrant workers, as well as providing an analysis of the legal aspects that are involved.

1.3. Hypothesis

My research indicates that this thesis is correct: "Regional regulations are appropriate and comply with international labor standards and are agreed upon by all member countries, thereby ensuring that no migrant workers face violations of their rights." Furthermore, the hypothesis states that "active regional cooperation is a safe method for migrant workers belonging to vulnerable groups." In my first theory, I will discuss the categories of rights associated with social welfare, as well as trade union rights, which encompass the right to form unions and engage in collective bargaining, in Chapters II and III. I focus on these rights as they relate to a number of EU countries across the Eastern, Western, and Central European regions. I evaluate the 10 member countries in the ASEAN region for identifying which nation is currently implementing limitations on trade union rights.

The second theory that was discussed in Chapters II, III, and IV is described here. In Chapter II, I analyze the EU's rules, joint declarations, and general agreements that demonstrate respect and compliance in safeguarding migrant workers inside the EU. This is obvious in EU member states' national legislation, as well as bilateral agreements made by EU host nations and labor-sending countries. Guest workers from third countries are seen as essential by EU nations, particularly those experiencing significant labor shortages in agriculture, construction, and industry. Because of this, the EU has several rules and special policies concerning migrant labor, while individual nations also maintain their own legal frameworks governing the ability to move of their workforce. In Hungary, a nation with strict and careful policies regarding migrant labor, there have been recent developments that have created numerous opportunities for migrant laborers. While ASEAN countries only refer to national laws regarding internal migrant labor specifically, they only include them in multilateral agreements with consensus without any enforcement measures or address the issue in separate bilateral agreements. As a result, Chapter III describes ASEAN's labor migration regulations, the lack of decisiveness, and the weakness in regional cooperation to protect the rights of migrant workers abroad.

This study further contends that the effectiveness of regional labor migration frameworks depends not only on the existence of legal standards but also on the presence of transparent systems that ensure monitoring, accountability, and enforcement. Such systems provide clear

mechanisms for reporting violations, facilitate the participation of trade unions and civil society in oversight, and create enforceable procedures that hold member states responsible for compliance. By establishing transparency at every stage—from policy formulation to implementation—these mechanisms help to safeguard the rights of migrant workers, particularly those belonging to vulnerable groups. Accordingly, the hypothesis of this research posits that active regional cooperation, when supported by transparent and accountable systems, constitutes a safe and effective method for protecting migrant workers across member countries.

1.4. Aims and Objectives

My aims and objectives for the dissertation are in the following:

- a. To compare labour policy and law between ASEAN and EU.
 - b. To point out the lesson of labour migration regulation of ASEAN.
 - c. To know the EU policies for EU citizen workers and the non-EU citizen workers
 - d. To point out the recommendation in migrant protection in Vietnam.
- a) Evaluate the policies and regulations regarding migrant labor in accordance with the standards of the EU and ASEAN. Simultaneously, evaluate the advantages that regional agreements can provide to migrant laborers and migration trends. It appears that the EU's responsibilities are being increased as it not only receives migrant workers but also surges of immigration from other countries, despite the fact that it has long been a model system with numerous legal frameworks and policies for migrant workers. Consequently, the European Union is emphasizing the organization and development of a management system within the Union. In contrast, ASEAN prioritizes profound economic integration. Consequently, the organization's future objective with respect to labor migration is to prioritize the provision of qualified labor to recipient countries and to implement policies that encourage talented individuals to return to their homelands.
 - b) ASEAN has made significant improvements in protecting the rights of migrant workers, however, labor standards in ASEAN remain fragile and are not protected according to ILO standards. In addition, some countries have not yet ratified the ILO conventions on migrant workers' rights. Therefore, identifying the strengths and weaknesses in the management and protection of migrant workers in ASEAN is quite an important goal.
 - c) The number of migrant workers in the EU is large, and they come from both inside the EU and from other countries. The EU has rules in place for both intra-EU and third-country work, which is classified into several sorts such as long-term labor and seasonal labor. To attain migrant labor standards, the EU takes decisive action, establishing

common laws independent of individual member state legislation. Meanwhile, ASEAN is founded on respecting national sovereignty without intervening in domestic problems, which results in bilateral agreements between sending and receiving countries. As a result, illegal laborers are not identified or protected as fundamental persons since ASEAN has yet to create complete laws and regulations on the subject.

- d) Vietnam is now sending a big number of workers to Europe, including Germany, Hungary, Poland, France and the Czech Republic. In addition, the number of international workers moving to Vietnam for work is increasing. The Ministry of Labor, Invalids, and Social Affairs estimates that by the end of 2023, there will be around 136,800 foreign workers in Vietnam. More than 10,000 persons do not need a work permit, but almost 126,000 do, including 91,974 freshly granted licenses, 15,875 renewed permits, and more than 10,000 reissued permits⁴. Since 2015, the number of foreign workers in Vietnam have increased by 1.5 times. China accounted for 19.4%, South Korea for 18.3%, Taiwan (China) for 12.9%, Japan for 9.5%, and international workers for 39.9%⁵. In recent years, a rising number of unskilled and semi-skilled migrants from China have come to Vietnam to work on different contractual projects. However, this workforce creates significant issues and implications in controlling the labor market, including the issuing of work permits, working in jobs and skill levels not indicated in the permits, upsetting social order and safety, and breaking the law. Statistical data on their work, income, and living situations have not yet been thoroughly compiled. As a result, in addition to offering comments to help Vietnam better safeguard its workers overseas, local rules governing migrant labor in Vietnam must also be investigated and updated.

1.5. Methodology

The following methods have been used in this dissertation:

- a. Comparative Method
- b. Qualitative Method
- c. Deductive Method
- d. Case Study Method

⁴ CAFEF, Foreign laborers are increasingly drawn to Vietnam, <https://cafef.vn/viet-nam-ngay-cang-hap-dan-lao-dong-nuoc-ngoai-188240502091229392.chn> (13/1/2025).

⁵ Figures and events Review, Vietnamese statistics on foreign labor, <https://consosukien.vn/lao-dong-nuoc-ngoai-o-viet-nam-qua-con-so-thong-k.htm> (13/1/2025).

The thesis analyzes policies and legal regulations in the protection of migrant workers in the EU and ASEAN, thereby drawing evidence from the experience of protecting the rights of migrant workers in the EU. The comparative method is primarily used to analyze the rules, regulations, and trends of each region; the issues in migration management as well as the labor union policies of the countries. The organizations compared are the EU and ASEAN, and the countries compared are Vietnam and Hungary, discussed in Chapters II and III. The purpose of the comparative method is to identify the causes as well as the best methods to improve weaknesses in labor migration in ASEAN (which are related to fundamental rights, social security rights, and trade union rights).

Data collection channels, policy analysis articles, and interviews with migrant workers are approaches in qualitative research methodology. The data for this report mainly come from the database of the UN Department of Economics and Social Affairs (UNDESA) and the ILO. The Discourse Analysis (DA) technique is primarily used by me to interpret the meanings in conventions, agreements, or decrees related to laws for migrant workers. In addition, document and content analysis methods are used to analyze articles and social media to compare perspectives from different sources, primarily from the UN, ILO, IOM, journal articles, and online publications. In data collection in qualitative research, I use interview with couple persons who Vietnamese living and working in Hungary (including student graduation and people migrate to Hungary). In addition, I conducted a survey with nearly 50 people about their job and life satisfaction in Hungary. The survey is explained in chapter IV.

The deductive reasoning method is used based on theories and laws to provide analysis and results. The deductive reasoning method includes describing literature review articles, theories of some authors, and events from the collected data. Therefore, my hypothesis is presented through the evaluation of existing theories and viewpoints.

Throughout the thesis, three methods—comparative, qualitative, and deductive reasoning—are combined. Among them, the comparative method is primarily used, while the case study method is employed in the analysis of the cases of Hungary and Vietnam. It is used extensively in Chapter IV, the final section. This method helps assess some practical issues in the area.

1.6. Research Structure

The thesis is divided into 4 chapters, each of which will have a summary section at the beginning of Chapter. Chapter I with titled "Legal studies of labour migration," primarily focuses on labor migration in general, including the concept of migration, legal documents related to the

protection of migrant workers' rights, the labor market, trade union rights, as well as the basic rights of migrant families. Chapter one also addresses regular and irregular migration as well as basic rights according to international standards. The role of regional integration as well as trade unions in labor-related issues is also mentioned in Chapter I. Chapter II focuses on the European region along with the case of Hungary. Chapter II includes headings on the European migration wave, intra-EU migration, assessment of social welfare rights in several countries, labor market analysis, and labor market policies. In addition, the new policies and laws in Hungary regarding migrant labor, especially guest workers, are regulated and applied in what manner. Chapter III is an analysis of migration policies in the ASEAN region and the case of Vietnam. This chapter includes the policies of the countries, an assessment of the level of implementation in protecting migrant workers, as well as the freedom of association as stipulated in the laws of each country. The challenges that ASEAN is facing in combating illegal workers and future solutions to this issue. Chapter IV is a comparison of the differences between the labor policies of the EU and ASEAN by examining the institutions, labor markets, regulations, trade unions, and migration management in these two regions. The final part of Chapter IV analyzes the policies as well as the legal regulations on migrant labor in Vietnam. Each chapter includes summaries of the conducted research, addressing my research questions. The conclusion and the entire thesis are connected through the different analyses of the chapters.

CHAPTER I

LEGAL STUDIES OF LABOUR MIGRATION

In this chapter, I present general issues in migrant workers such as the definition of migrant workers based on dictionaries, IOM, and the theory of scholars. The distinction between legal and illegal workers, as well as the fundamental rights of migrant workers, including the right to freedom, the right to non-discrimination, the right to security, and the ability to access healthcare and education. It has been an important issue for the whole UN system for a long time in protecting the rights of migrant workers. The freedoms stated in the Universal Declaration of Human Rights apply equally to migrants and any other person. The ILO Declaration on Fundamental Principles and Rights at Work points out the rights of migratory workers. In section 2.2 I will discuss the legal framework issued by the UN and ILO on the protection of migrant workers and their families. I examine the ICMRW convention, the only convention including all 87 provisions pertaining to legal and illegal migrant workers and their family rights. International documents protecting migrant workers usually do not disturb the sovereign rights of countries in receiving migrant workers into their territories. This chapter also focus on the significance of regional integration for migrant workers. This establishes a stringent protective bloc among nations, particularly for intra-regional migration, such as in the Asia-Pacific, EU-EU, and ASEAN-ASEAN contexts. In addition, regional agreements have the role of strengthening the domestic laws of the countries of origin and destination, creating a solid legal foundation for migrant workers. The EU is almost a complete region in regional cooperation for migrant workers. With the success of the free movement regime, followed by policies focusing on attracting highly skilled workers while establishing specific programs for unskilled workers. ASEAN countries cooperate mainly by agreement, in which the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers is the framework for cooperation on migrant workers in the region. Trade unions also play an important role in migrant workers; the role of trade unions has two main ideas: as a tool to help workers ensure freedom of movement and adequate working conditions and as a strategy for national labor policies. I will analyze trade unions in Europe and ASEAN detail in Chapters II and III.

2.1 Labour Migration

2.1.1. *What is a migrant worker*

This is important to specify what is labour migration. Migration is defined as 'the movement of a person or people from one country, locality, place of residence, etc., to settle in another; an instance of this'⁶. (Simon et al., 2015) pointed out that labor migrants are considered people who are seeking work or employed in the host country. The International Organization for Migration (IOM)⁷ defines a migrant as any person who is moving or has moved across an international border or within a state away from his/her habitual place, regardless of (i) the person's legal status, (ii) whether the movement is voluntary or involuntary, (iii) what the cause for movement is, and (iv) what the length of the stay is. The IOM also differentiates economic migrants from labour migrants (DeWind & International Organization for Migration, 2008). It defines several subgroups of migrant workers, including highly skilled migrants, seasonal migrant workers, temporary migrant workers, and immigrant investors. The International Labour Organization (ILO) defines a "migrant worker" as "a person who migrates from one country to another (who has migrated from one country to another) with a view to being employed other than on his own account and includes any person regularly admitted as a migrant for employment"⁸.

As IOM assumed, the "migrant" is someone who moves temporarily or permanently from their usual place or residence, either within a country or across borders, for a variety of reasons⁹. The term covers several legally clearly defined categories of people, such as migrant workers, people whose special types of movement are defined in law, such as smuggled migrants, and people whose status or means of movement are not specifically delineated in international law, such as international law.

(Tsegay, 2023) indicated that there are two forms of migration are immigration (the number of people entering a receiving area) and migration (which is the gradual arrival of individuals from one country over an extended period). Internal migration encompasses both internal and international migration, constituting an exception to the norm wherein a migrant

⁶ Definition of Migration, Oxford Dictionary, <https://www.ourmigrationstory.org.uk/about/what-is-migration.html>. (05/07/2024)

⁷ Who is a migrant, IOM, access at <https://www.un.org/en/fight-racism/vulnerable-groups/migrants#:~:text=The%20UN%20Migration%20Agency%2C%20International,movement%20is%20voluntary%20or%20involuntary.> (05/07/2024)

⁸ Migration for Employment Convention (Revised), access at https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312242. (5/7/2024)

⁹ IOM UN Migration, Key Migration terms, <https://www.iom.int/key-migration-terms>. (19/07/2024)^[17]_{SEP}

resides outside their home country for a minimum of one year (Raymer & Wiilekens, 2008). Furthermore, anybody who relocates from their country of normal residence with the intention or expectation of remaining for a period of time is considered an international migrant, according to policymakers, practitioners, and scholars (Carling, 2023). Jorgen Carling asserts that migration is driven by two factors: negative feedback and unequal development. The number of individuals living abroad increased from 120 million in the year 1990 to 244 million in 2015 (Bălan, 2017). In some categories, the policy discusses the cross-border mobility of people, it draws attention to the distinctions between “labour mobility” and “migration” (ESCAP, 2014). A common definition is that ‘labour mobility’ involves only access to host country labour markets, whereas ”migration” involves wider claims on rights or citizenship. Labour migration plays an important part in balancing and controlling irregular migration. Until the 1960s, immigration was intended to establish a permanent settlement in the host country, but many individuals only migrated for short periods and were not interested in moving permanently.

In a 2020 report by the United Nations (UN), it was indicated that one in 30 people are migrants. Approximately 82 to 84 million migrants are living in Europe and Asia alone. These regions are followed by North America, which hosts nearly 52 million international migrants. Every year, the percentage of international citizens traversing borders increases and drastically impacts a country’s population size, cultural diversity, and economic productivity. The reasons for migration are (i) Social and political factors; (ii) Demographic and economic causes and (iii) Environment and Climate migration.

(i) Social and political factors: One of the socio-political factors that causes migration is war and conflict. Due to warfare, individuals may be forced to evacuate their homes in search of safer areas. Refugees are people fleeing conflict zones and seeking the protection of their human rights. On the other hand, there is religious, racial and political persecution, which poses serious threats to the quality of life indicated that the state can establish a repressive environment in both “active” and “passive” in both ways (Davenport et al., 2003). In the active mode, people flee because they are targeted in human rights violations. In other cases, in the passive mode, refugees flee as expected (when individuals speak out against government repression). Most people have recently migrated to Europe to avoid war, mistreatment, and persecution in their native countries. The backbone of international humanitarian law is the Geneva Conventions, which regulate the conduct of armed conflict and seek to limit its effects.

(ii) Demographic and economic causes: Demographic change is one of the determinants of migration flows. Ageing or rejuvenation of populations affects economic growth and immigration policies of destination countries. The main reasons for demographic and economic

migration are wages and employment opportunities. Enhanced salaries, improved quality of life, and better education are all desirable outcomes. According to the United Nations International Labour Organization (ILO), migrant workers – defined as those who migrate for the purpose of employment – numbered around 169 million worldwide in 2019 and accounted for more than two-thirds of all international migrants. Over two-thirds of migrant workers are in high-income nations. The demographic trends influence domestic and the international migration (Salzmann, 2010). The world population is estimated to increase to over 8.0 billion people by 2025¹⁰ (United Nation Population Division). This strong population growth could lead to increased internal migration in poorer countries (especially from rural to urban areas) and potentially to migration to Europe.

(iii) Environment and Climate Migrations: According to the ILO, environmental migrants are people who, for reasons of sudden or progressive environmental change that adversely affects their lives or living conditions, are forced to leave their usual place of residence, temporarily or permanently, and who move within their own country or abroad. (Luyt, 2018) indicated that mass migration is activated by frequent disasters since most migrants are reluctant to return, leading to long-term migration. The World Migration Report 2024¹¹ reveals that 281 million international migrants worldwide. The crisis of displacement is becoming more urgent as the number of displaced people affected by conflict, violence, and disasters has reached an all-time high of over 117 million. Most migration is regular, safe, and regionally focused, directly linked to opportunities and livelihoods. According to the report, international remittances have increased by over 650% between 2000 and 2022, from \$128 billion to \$831 billion, highlighting the importance of international migration in driving human development and economic growth. The increase continued despite many analysts predicting a significant decline in remittances as a result of COVID-19. In fact, the real number of migrant workers, including regular, and irregular, cannot be counted exactly. However, the number is increasing each year, and the undocumented migrant cannot be completely prevented.

2.1.2. Regular and irregular migrant workers and their fundamental rights

a. Distinction between regular and irregular migration

¹⁰ United Nations, Peace, dignity and equality on a healthy planet, access on 4th August 2024 at: <https://www.un.org/en/global-issues/population>.

¹¹ The World Migration Report 2024, access on 1st August 2024 at: https://reliefweb.int/report/world/worldmigrationreport2024?gad_source=1&gclid=CjwKCAjw5Ky1BhAgEiwA5jGujgd6VnXxWYYWVpmdv_9eW291pVYxCOjD2DVALQbExS_LHKZU_z2choCqosQAxD_BwE.

According to current global estimates, there were approximately 281 million international migrants worldwide in 2020, representing 3.6 percent of the world's population¹². The majority of ILO labor standards are legal and encompass migrant workers worldwide, with some also addressing irregular migrants. Nonetheless, the receiving country has the right to all worker rights according to international labor standards, and all workers have human rights. An ordinary migrant worker is someone who legally enters a country through its borders and works as an employee there, according to the rules of that country. The document migrant worker can work in both legal and illegal markets because of their desire to improve their salary. The regular migrant workers' wages are higher than those of irregular immigrant (Perkowska, 2016). Since legal migrants have more freedom, options, and choice than illegal immigrants, this study found that legal migrants can hire other legal migrants to do some illegal jobs. Moreover, the regular workers' status changes into irregular when their valid documents (visa or work permit, etc.) expire and are not extended. All legal workers will get protection under the international labour standards and national legislation of the receiving country.

Despite having their own conventions, protocols, agreements (bilateral or multilateral), and cooperation to safeguard labour rights, the protection of workers is governed by the International Labour Organisation. ILO¹³ standards are binding globally as it sets all the protocols and conventions in conformity with each description of worker (for example, child labour, women labour, disability, etc.). They can fully exercise their rights under international treaties: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR)¹⁴, the International Covenant on Economic, Social, and Cultural Rights (ICESCR)¹⁵, the Convention concerning the Status of Refugees¹⁶ and and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁷.

¹² World Migration Report 2024, access on 6th August 2024 at: <https://worldmigrationreport.iom.int/msite/wmr-2024interactive/#:~:text=The%20current%20global%20estimate%20is,percent%20of%20the%20global%20population>

¹³ International Labour Organization, <https://www.ilo.org/global/lang--en/index.htm>

¹⁴ United Nations Human Right Office of the High Commission, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁵ United Nations Human Right Office of the High Commission, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹⁶United Nations Human Rights Office of, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

¹⁷ United Nations Human Right Office of the High Commission, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>.

The distinction between legal and illegal is conceptual in theory, however the concept has been defined in EU law. According to many legal sources, different entities (legislative, executive, or judicial) may influence alterations in status (domestic, EU, or human rights-related, such as under the ECHR). Because of this convergence in the law, the combined structure of legal and illicit becomes ambiguous, presenting a point of contention. The designation of the phenomenon known as "illegal migration" is contentious (Guild, 2004). The researchers utilize the terms "unusual" and "undocumented." When describing the many different types of immigration, avoid using the word "illegal" or "covert" to avoid the negative connotation that comes with it. In the EU, emigration and the residency of EU citizens in other EU nations are allowed with domestic consent, which is just suggestive and does not establish those rights. All EU nationals possess the right to relocate inside the EU for the purposes of residence and employment, subject to a charge. The word "illegal" refers to significantly more than only the situations of EU citizens, this is not limited to EU citizens, but also encompasses many other groups, especially migrants and workers from third countries (Van Houtum & Pijpers, 2007).

The EU's immigration policies treat migration status as a binary, focusing on both legal and irregular immigration. By distinguishing between legal and illegal immigration, the European Union's policy on immigration use a binary approach. The EU establishes the criteria for lawful immigration and residency, although member states retain the authority to control the influx of non-EU workers. However both of migrants legal and illegal have the fundamental rights in not only Organization but also in Conventions. Migrant workers' rights are prioritized, as evidenced by their inclusion in SGD-8 of the United Nations' Sustainable Development Goals (SDGs) for 2030¹⁸. The United Nations Development Programme (UNDP) is interested in migration from a human development standpoint, and its Human Development Report 2009 takes a "human (rights) approach to migration, exploring how improved migration policies can enhance human development." The New York Declaration for Refugees and Migrants, adopted on September 19, 2016, and the Global Compact for Safe, Orderly, and Regular Migration (GCM) outline principles, obligations, and understandings among Member States regarding international migration in all its aspects. At the regional level, various initiatives were taken to protect and promote the rights of migrant workers; one was by the ASEAN in 1997, SAARC in 2014 (Cholewinski, 2010). Development has two aspects: economic and human. Human rights

¹⁸ Goal 8: Decent Work and Economic Growth Ensure inclusive and sustainable economic development worldwide. Achieve higher levels of economic productivity through diversification, technological upgrading and innovation. Achieve full and productive employment and decent work for all, including for young people and persons with disabilities. Achieve equal pay for work of equal value.

emphasize equality and non-discrimination, whereas development prioritizes long-term equity for speedier growth.

b. The fundamental rights of migrant workers

The position of migrants under public international law is qualified by two main considerations. The right to exist is one of the rights guaranteed by law; second, all people, regardless of nationality, have the same rights to personal freedom and security. They are entitled to freedom of movement, the ability to choose where they live, and the ability to leave the nation. It is true that such rights are not numerous; only two rights proclaimed in the International Covenant on Civil and Political Rights (ICCPR) require a legal presence within the territory. Nevertheless, their impact is both significant and representative because the two rights in question specifically refer to the movement of person (VincentChetail, 2013). According to research of (Niño-Zarazúa et al., 2017) human rights and development have a complementary relationship. So that one of the main rights is non-discrimination because it focuses on equality, followed by security, medical health care, and education.

The right to be treated equally and without discrimination: Discrimination against migrant workers is common in a variety of situations, including the workplace. Migrant workers are often subjected to discrimination (by employers or colleagues), particularly vulnerable group or low-skilled workers¹⁹. Because they are afraid of getting in trouble with their bosses, these workers rarely make complaints. Even when the law technically guarantees migrant workers' rights, direct reliance on employers makes it difficult to enforce them. Due to fear of retaliation or adverse consequences from their employers, migrant workers—particularly those in an irregular situation—are often reluctant to lodge formal complaints, which significantly undermines the effective enforcement of their labor rights (Milliken et al., 2003). The reality is that they are unlikely to be able to resist due to the disadvantaged legal environment (if they are illegal migrants) and, in large part, the dread of losing their employment. In the EU, job discrimination against migrant workers is a recurring labor market infraction²⁰. Some of the legal frameworks protecting migrant workers can be found in EU legislation, including the scope of the right to free movement of workers, the continuous development of the legal framework, the vulnerability of EU anti-discrimination law, and the protection that migrant workers within the EU have against discrimination based on nationality (EU and non-EU workers). Furthermore,

¹⁹ FRA (2005) Racism and Xenophobia in the EU Member States: Annual report 2005

²⁰ Labour Standards of International Labour Organization , C143- Migrant Workers (Supplementary Provisions) Convention 1975 (No.143), Part II Migration in Abusive Convention,Article-8(2), 09 December 1978, access on 10th September, 2024 at: <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO>

migrant workers have been treated equally in all facets of employment. They will get same treatment as native workers in terms of alternative employment, relief work, retraining, and job stability. Migrant workers must be treated equally in terms of salaries, union membership, housing, social security, employment taxes, and legal processes, regardless of nationality, gender, religion, or color²¹.

Right to Access to Justice and Legal Protection: One of the most important rights that all migrant laborers should have is the right to social security. The security rights of migrant workers pertain to the protections and safeguards afforded to them to ensure their safety, dignity, and well-being in both their occupational and residential settings. These protections are critical for ensuring that migrant workers are not subjected to mistreatment, exploitation, or discrimination²². The safety of migrant workers is a priority for many international conventions and agreements: International Labour Organization (ILO) Conventions, such as Convention No. 97 (Migration for Employment) and Convention No. 143 (Migrant Workers—Supplemental Provisions); United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); ILO Convention No. 189 on Domestic Workers: Provides specific protections for migrant domestic workers, who are often at higher risk of abuse and exploitation. Migrant workers can face several obstacles to securing remedies for recruitment-related abuses, their legal rights are established in law.

Right to Access to Healthcare: The “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, as stated in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²³ is abbreviated as the “right to health”. A number of rights touching on the right to health and firmly related to its fulfillment are contained in the International Bill of Rights that is comprised of the UDHR (1948), the ICCPR (1966) and ICESCR (1966)²⁴. Among these rights are those that cannot be restricted under any circumstances. Migrants as individuals entitled to the full enjoyment of human rights lack healthcare, food, and education. Legal status, language barriers, cultural misunderstandings, and discriminatory practices are some of the obstacles that people with low-skilled jobs

²¹ International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article-6 (1), access on 10th September, 2024 at: <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO>

²² General Assembly resolution 45/158, International Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article-6 (1), <https://normlex.ilo.org/dyn/normlex/en/f?p=1000:1> (10/9/2024)

²³ Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force, Jan. 3, 1976), at p. 52.

²⁴ IOM, Migration and the Right to Health: A Review of International Law, p16-20, https://publications.iom.int/system/files/pdf/iml_19.pdf

encounter when trying to access quality healthcare. The receiving country is obligated to ensure the medical health of migrants seeking employment and the members of their families who are entitled to accompany or join them, if they are in reasonable health²⁵. The education of migrant workers and their families is crucial, in addition to their right to healthcare. Article 30 of ICPRMW states that each child of a migrant worker will have the basic right of access to education because of equality of treatment with nationals of the state concerned²⁶. Children of migrant workers, regardless of their legal status, have the right to access free and compulsory primary and secondary education in many countries(Heckmann, 2008, pp. 3–10). This is consistent with international treaties, including the UN Convention on the Rights of the Child (1989) and the International Covenant on Economic, Social, and Cultural Rights (1966), which underscore the right to education for all children.

Undocumented workers are among the most vulnerable populations in any country, and therefore, it is imperative to show them support. Those who have entered a country illegally, overstayed their visa, or lost their legal status are working illegally and therefore do not have the proper documentation to live and work in the country. Despite their contributions to the economy, they face significant challenges, including lack of legal protections, risk of exploitation, and limited access to basic services. International Labor Organization (ILO) Conventions and other legal, social, and economic protections are necessary to ensure the rights and well-being of undocumented workers. Furthermore, conventions such as the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), promote the safeguarding of migrant workers from exploitative conditions, irrespective of their legal status. United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990): Provides comprehensive rights to all migrant workers, including those who are undocumented, ensuring their protection from discrimination and abuse. Supporting undocumented workers not only upholds their dignity and rights but also benefits host societies by promoting fair labor practices, social inclusion, and economic stability.

2.2. International Legal Framework for the Protection of Migrant Workers and their Family members

²⁵ General Assembly resolution 45/158, Article 28.

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES%2045_158.pdf.

²⁶ General Assembly resolution 45/158, Article 30., <https://documents.un.org/doc/resolution/gen/nr0/565/47/img/nr056547.pdf> (10/9/2024)

Building upon the general overview of the international legal framework for the protection of migrant workers and their family members, this section further distinguishes between two interrelated but distinct dimensions of protection. On the one hand, international law establishes a set of norms specifically aimed at safeguarding the rights of migrant workers themselves, regardless of their migration status. On the other hand, it also recognizes the need to extend protection to the family members of migrant workers, whose rights and welfare are often directly affected by migration processes. Accordingly, Section 2.2.1 examines the international legal instruments governing the protection of migrant workers, while Section 2.2.2 focuses on the legal protection afforded to their family members

2.2.1. The protection of migrant workers

(i) United Nations

Human rights legislation are contained in the Universal Declaration of Human Rights²⁷, the International Covenant on Civil and Political Rights (ICCPR)²⁸, and the International Covenant on Economic, Social and Cultural Rights²⁹, illustrating that these documents safeguard all individuals without consideration of their nationality and legal status. Resolution 70/174 adopted by the General Assembly³⁰ stressing also the obligation of States to protect the human rights of migrants. There is a convention that directly relates to migration, known as International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRWM), with 87 articles about the rights of migrant workers and their families. That convention not only consider the rights of regular workers but also mentions irregular migrants who are frequently employed under less favorable conditions of work than other workers. There are a number of other UN agreements that play a significant role in preventing discrimination against migrants. Migrant workers frequently experience violations of their rights, including freedom from slavery, forced labor, and inhumane treatment or punishment (Latham-Sprinkle et al., 2019). They are safeguarded by international human rights regulations. It is inevitable that there are numerous locations worldwide where the working conditions are commensurate with the descriptions of these rights' violations. The approach frequently targets migrant workers who

²⁷ Universal Declaration of Human Rights, https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf (20/10/2024).

²⁸ United Nations Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (20/10/2024).

²⁹ United Nation Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (20/10/2024).

³⁰ United Nations, General Assembly A/RES/70/147, Protection of migrants, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_147.pdf (22/1/2025).

are trafficked or exploited to settle debts. All workers and their family members, irrespective of their legal status, possess the right to freedom. Exempt from capricious arrest and confinement. They are safeguarded by international human rights regulations. Freedom of movement and the right to depart are two human rights that are of utmost importance for migrants³¹.

(ii) *ILO Conventions*

The initial international instruments providing more extensive solutions to the challenges facing migrant workers are the Migration for Employment Convention, 1949 (Revised) (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), along with their respective recommendations. Forty-five states have ratified Convention No. 97, while nineteen have ratified Convention No. 143. In particular, the Convention 143 provides aid, information, protection, and equal treatment and opportunities for the migrant workers and prevents abuse in this regard. The Convention broadens the extent of equality between migrant workers and local workers, supplementing the provisions of Convention 97 that seek to provide equal opportunities and treatment in employment. The treaty also seeks to facilitate the family reunion of lawfully dwelling migrant workers. Besides, the Equality of Treatment (Accident Compensation) Convention dated 1925 and numbered 19 to ensure balance treatment in accident compensation, Social Security (Minimum Standards) Convention No. 102 of 1952 is adopted in order to determine the principles to be applied in periodic payments, Equality of Treatment (Social Security) Convention no 118 of 1962, discrimination in social security implementations for the foreigners, refugees and stateless persons is eliminated.

ILO texts on migrant workers provide guarantees and support for migrant workers and their families during the migration process. The ILO Convention does not affect the right of each country to determine how to concur or dispute with migrant labor itself. ILO instruments do not address all migration issues due to the absence of universally applicable principles or laws. For instance, the development and establishment of national labor migration policies are not mentioned in. According to , the papers will emphasize the need for governments and employers' groups to work together to address instances of illegal migration and misuse. Furthermore, the texts underscore stipulations regarding the right to receive social services, healthcare, and suitable housing. In addition to ensuring that local and migrant workers be treated equally in the

³¹ E.g. ICCPR, Art.12(1) and (2). The right to leave is also protected by ICRMW (Art. 8(1)).

workplace, the convention broadens the scope of economic security, cultural protections, and union rights³².

Several concepts and rights in the workplace, based from the ILO, have been articulated and developed in eight Conventions considered essential by the community and the ILO for protecting the human rights of workers, including migratory workers. Following the ratification of the ILO Declaration on Fundamental Principles and Rights at Work in 1998, all members, regardless of whether they have ratified the specified conventions, are mandated to respect, promote, and implement them in good faith and in alignment with the Charter. One of the most important International Labor Organization guidelines for migratory workers is the Employment Agencies Convention, 1997 (No. 181). Countries that have ratified Convention 181 are obligated to implement action to safeguard their workforces from recruiting companies' exploitation of their labor. These measures will encompass legislation or regulations that impose penalties, including prohibitions on fraudulent and abusive acts. Furthermore, the 1949 Wage Convention (No. 95) requires particular consideration.

(iii) *UN Migrant Workers Convention (ICRMW).*

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, ICRMW) was adopted in December 1990. The overall structure and underlying rationale of the ICRMW are similar to those of the other core international human rights treaties adopted since the late 1970s. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying states was reached in March 2003. The Committee on Migrant Workers (CMW) monitors the implementation of the convention and is one of the seven UN linked human rights treaty bodies. The convention applies as of October 2022 in 58 countries. The ICRMW consists of nine parts: scope and definitions; non-discrimination with respect to rights; human rights of all migrant workers, other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation. Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families, Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families, Application of the Convention, General provisions and Final provisions. Like the Conventions on the Rights of the Child (CRC) (UN 1989) and Persons with Disabilities (CRPD) (UN 2006), the ICRMW

³² Convention No. 143, Art. 14(a), however, permits limited restrictions on equality of opportunity in access to employment (Textbox VII.1). With respect to access to employment and protection against loss of employment, see also ILO (1999: paras. 381-401 and 577- 597).

takes the rights set out in the International Bill of Human Rights, namely the UDHR, ICCPR (UN 1966a), and ICESCR (UN 1966b) and codifies them in relation to a particularly vulnerable constituency, in this case, migrant workers and members of their families (Nguyen, 2023).

Although the Convention's primary objective is to prevent and eradicate illegal migration, it also advocates for the rights and protection of migrant laborers, including those who are found in irregular situations. Another critical aspect of the Convention is that countries are prohibited from excluding any category of migrant workers from the Convention's scope (Article 88). The "indivisibility" principle effectively includes any type of migrant workers. In comparison to other ILO rules, the UN Convention more explicitly emphasizes the idea of equitable treatment of workers and migrants in terms of salary and other working conditions (Articles 18, 25, 28, 30). Concerning the supplementary rights available to documented migrants and their family members (ICRMW, Part IV), the texts from the ILO and UN exhibit considerable similarity; however, the ILO Conventions indicate additional rights for migrant workers, including the right to join a union and the right to equitable access to education, housing, and occupational and social services. The ICRMW establishes an individual complaint system for migratory workers (Article 77); nevertheless, in contrast to ILO regulations, it does not prioritize the involvement of workers' and employers' groups.

(iv) The European Social Charter (ESC)

The European Social Charter (ESC) contains an extensive series of rights which give wide-ranging protection to migrant workers. There is a worthy that in the charter, the rights provided to workers regarding social security, equal treatment, and family reunification are all required of accepting states to actively implement the rights of migrant workers (Article 18). Adopted in 1961,³³ the European Social Charter was a ground-breaking instrument, being the first international human rights treaty to set out binding legal obligations to respect socio-economic rights, predating the UN International Covenant on Economic, Social and Cultural Rights by five years. It was designed to complement the European Convention on Human Rights (ECHR), by establishing a pan-European 'floor' of social rights that would complement the protection afforded to civil and political rights by the Convention (O'Conneide, 2014).

The ESC is grounded in a rights-based approach to social and labour rights, recognizing these rights as fundamental human rights inherent to all individuals. Unlike legal regimes that

³³ The European Social Charter was signed by thirteen member States of the Council of Europe in Turin on 18 October 1961 (CETS n° 35; 529 UNTS 89). It entered into force on 26 February 1965.

condition social protection strictly on nationality or legal status, the Charter adopts a broader human dignity perspective. Consequently, several of its provisions apply not only to citizens and legally resident workers but also, to a certain extent, to all persons within a state's jurisdiction. A number of articles within the Charter are particularly relevant to migrant workers. Article 1 guarantees the right to work, obliging states to pursue policies aimed at achieving full employment without discrimination. Article 4 enshrines the right to fair remuneration, which the European Committee of Social Rights (ECSR) has interpreted as extending to migrant workers regardless of their residence status, insofar as remuneration is due for work actually performed. Furthermore, Articles 11 and 13, concerning the right to health protection and social assistance, establish minimum obligations that states must respect even in relation to irregular migrants, especially in situations affecting human dignity or public health.

Most notably, Article 19 of the Charter explicitly addresses the rights of migrant workers and their families, requiring states to ensure equality of treatment, fair working conditions, and access to essential social protections for lawfully resident migrant workers. While this provision primarily targets regular migrants, its interpretation by the ECSR has reinforced the broader principle that migration status should not be used to justify exploitative labour practices or the denial of basic social rights.

Although the ESC does not legalize irregular migration, its jurisprudence has played a crucial role in preventing the complete exclusion of undocumented migrant workers from social and labour protections. A landmark example is *Defence for Children International (DCI) v. Belgium* (Complaint No. 69/2011), where the Committee held that denying essential assistance to undocumented migrant children violated the Charter (Vandenhoele, 2017). The ECSR emphasized that the Charter must be interpreted "in a manner consistent with human dignity," even when individuals are unlawfully present. Similarly, in *FIDH v. France* (Complaint No. 14/2003), the Committee ruled that access to emergency medical care must be guaranteed to undocumented migrants, despite their irregular status. This case established the principle that certain core social rights are universal and cannot be conditioned on immigration status (Y. Donders & R. Brouwer, 2010).

In the labour context, the Committee has stressed that irregular migrant workers remain workers in fact and therefore must not be exposed to exploitation. Excluding them entirely from labour protection would incentivize abusive practices and undermine the social objectives of the Charter. In conclusion, despite being an instrument of the Council of Europe rather than the European Union, the European Social Charter constitutes a key normative framework for the protection of migrant workers in Europe. Its inclusive, human-rights-oriented approach

complements EU migration and labour law by addressing protection gaps, especially for vulnerable migrant populations. As such, the ESC contributes to balancing migration control with social justice and human dignity within the broader European legal order.

2.2.2. The protection of family members of migrant workers.

The phrase “family member” is defined in the general migration context as a person either married to, or having a relationship legally recognized as equivalent to marriage to a migrant³⁴. As well as their dependent offspring or other dependents who are recognized as family members by the applicable legislation. It is evident that understanding the regulations and policies for safeguarding family members of migrant workers is crucial in a foreign country. In international human rights law, family rights are communicated through a series of interconnected principles that are intended to safeguard and honor the family, which is the foundation of society. Although family rights are found in various international human rights instruments, the most extensive and detailed international case law regarding these rights is based on Article 8 of the European Convention on Human Rights (ECHR) and has been developed by the European Court of Human Rights (ECtHR). According to Mrazik, "the European Court's analysis of Article 8 is well-developed and extremely useful for contemplating the right to respect for family life, to the extent that [other international adjudicating bodies] seek guidance from the European Court" (Mrazik & Schoenholtz, 2009). Human Rights conventions have promulgated the rights for the family members. The rights of family members of all migrant workers are provided in the conventions of ICRMW, the International Covenant on Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, the Conventions of the International Labour Organization, etc. The family members have almost the same rights as the migrants themselves.

Family reunification refers to the process of reuniting separated family members within a nation, which hinders migrants from establishing their family life outside their country of origin. In particular, the right to family unity is not explicitly stated; however, it is inherent in the recognition of the family as a "group unit." If the members of the unit do not have the right to reside together, there is no family to respect or protect (Battistella, 1995). Family unity is fundamental to the well-being of migrant families. At the global level, for example, in United

³⁴ European Commission, Migration and Home Affairs access at https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/family-member_en (11/9/2024).

Nations instruments³⁵ recognition is given to family life both through protection against violations and development-directed policies that support the right to reunification. The general obligation to protect the family has been interpreted as including “the adoption [by the destination state] of appropriate measures [...] to ensure the [...] reunification of families” when an objective obstacle³⁶.

The European Court of Human Rights (ECtHR) has examined the responsibility of states to assist family reunion for migrant workers. The Court has given reasons for its consideration that (i) states have the right to control the entry of non-nationals into their territory, as a matter of well-established international law; and (ii) "as regards immigration, Article 8³⁷ does not impose an obligation on States of destination with respect to the choice of the country of residence of spouses/partners as their marital residence." However, under Article 8, the State is required to encourage family reunification on its territory where there are objective barriers. (Halleskov, 2016) has added that Article 8 is intended to apply to refugees or individuals given subsidiary protection who are regarded to be at danger of significant suffering if they reside with their family in their home country in order to exercise their right to live there. Irregular migrant workers lack comparable opportunities and rights due to their unlawful status and noncompliance with legal regulations. Despite the ICRMW delineating the rights of all migrant workers irrespective of their status, it is evident that numerous host governments fail to facilitate the exercise of these legal rights. Consequently, each state is accountable for safeguarding the family members of migrant workers and upholding the rights of migrants. Article 9 of the ICRMC specifies that the right to life of migrant workers and their families must be safeguarded by law. Therefore, family members of migrant workers should be protected by national labor laws in every state.

The right of migrant workers and their families to leave and enter any state³⁸, including their state of origin, is a fundamental human right enshrined in international law. This right ensures the freedom of movement for migrant workers and their families, allowing them to travel, reside, or return to their home countries without undue restrictions. Migrant workers and

³⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 9. <https://www.unhcr.org/media/3-2-5-international-convention-protection-rights-all-migrant-workers-and-members-their> (11/9/2024).

³⁶ United Nation, Commission on Human Right 1990, paragraph 5

³⁷ United Nation, Commission on Human Right 1990, paragraph 6

³⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 8. <https://www.unhcr.org/media/3-2-5-international-convention-protection-rights-all-migrant-workers-and-members-their> (12/9/2024)

their families have the right to leave any country, including their own, at any time. The UDHR and the ICCPR both guarantee this right in their respective articles 13 and 12. A migrant worker's right to leave their host country for reasons such as returning to their home country or relocating for family or employment is a fundamental human right. If migrant workers or their families are subject to expulsion or deportation from a host country, they have the right to return to their country of origin. In addition to the necessity of humane and fair treatment, individuals must be guaranteed due process rights, which include the ability to appeal and the availability of legal representation, as stressed by ICMWR.

Access to education for children: The significance of family life has led to the examination of the unique requirements of children within the migrant family unit. This means that children's right to reside with their parents is a fundamental principle in international law, alongside the supreme principle governing children's rights, which is that their best interests must always take precedence in all matters pertaining to them (see, for example, CRC, Art. 9(1); African Charter, Art. XIX (1); UDHR, Vienna Declaration, Para. 21). Even though they are the children of irregular migrant workers, they have the basic right of access to education. As a result, Article 30 states that, as citizens of the state in question, migrant workers' children have the same fundamental right to an education as any other citizen.

Social security of member families of migrant workers: Social security is broadly defined as a public policy measure aimed to protect members of society against social and economic distress in relation to sickness, economic insecurity, unemployment, disability, poverty, old age, and so on (ILO, 2021, p. 21). As a fundamental and universal right with the approach of the International Social Security Association, it is important that the family members of all migrant workers get social security in the receiving country (Mrazik & Schoenholtz, 2009). Regarding social security, Article 27 of the Convention states that migrant workers and members of their families are entitled to the same treatment as nationals if they meet the requirements outlined in that state's legislation and the applicable bilateral and multilateral treaties. Article 28 guarantees migrant workers and members of their families the right to obtain any medical care that is urgently necessary for the preservation of their life or the avoidance of irreversible injury to their health, on the same basis as nationals of the state in question. In conclusion, family members have the same rights as migrant workers regarding emergency medical treatment and social security benefits.

2.3. The importance of the regional integration from the perspective of the migrant labor

The rights of migrant workers have been and will continue to be important on a national, regional, and global scale. In addition to the importance of national rules and regulations in

creating opportunities and protecting migrant workers, regional integration is an effective instrument for achieving unity and equality between member states. The issue of liberalizing internal flows has been partially addressed by the rise of regional migration frameworks since 1990 in various forms, including the European Union (EU), the Association of Southeast Asian Nations (ASEAN) regional integration, the Economic Community of West African States (ECOWAS), and the North American Free Trade Agreement (NAFTA). Promoting regional mobility is an important aspect of the regional integration process. In addition, there is a second type of regional migration institution called Regional Consultation Processes (RCPs)³⁹, RCPs are inter-state consultation mechanisms on migration (ISCMs) at the regional level. In addition to their member states, RCPs may also have observer states or organizations. RCPs are typically led by a nation (either rotating or permanent) and supported by secretariats. RCPs focus on migration security, particularly the restriction of undesirable migration (mostly from outside the area). RCPs acted as "laboratories" to trial regional migration initiatives, allowing for the collection of migration data and the development of member nations' capacities in different aspects of migration.

I believe regional integration to be an important level of protection as it is the closest thing to a national level of protection. Each country should have its own rules about migrant workers, but there should also be a shared set of laws (EU) or deals (ASEAN) to help migrant workers and quickly settle problems that come up. In many nations, migrant laborers continue to work in border regions, even in the destination country, as unauthorized migrants. The nation of origin and the host country will engage in consultation and collaboration to achieve a solution grounded in regional consensus. Furthermore, regional integration concerning migrant labor could facilitate the establishment of a unified legal committee to address issues related to migrant workers, while simultaneously reinforcing the domestic legislation of both the countries of origin and the host nations, thereby creating a solid legal foundation for migrant laborers. Collaboration in migration can occur in several ways, including conversation, information exchange, experience sharing, and joint efforts in policy formulation and execution (Moe, 2022). International collaboration will enhance the formulation of more effective national policies (The Bern Initiative, 2004), while regional cooperation may immediately tackle migratory challenges with an emphasis on equity for both sending and receiving nations. In order to comply with ILO

³⁹ International Organization for Migration (IOM), Regional Consultative Processes on Migration (RCPs), <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/microsites/rcps/RCP-Infosheet.pdf> (19/9.2024).

standards and human rights, it is essential that both the countries of origin and destination are participants in ILO and human rights conventions, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, consultation and international collaboration have significance for ensuring the safety of all migrant workers. The execution of regional consensus will continue in accordance with their regional agreements. This fact is crucial to regional integration. My doctoral study shall concentrate on two primary regions: Europe and ASEAN. The subsequent presentation will address the labor migration perspectives of these two areas.

2.3.1. European Union regional integration

As regional agreements become more significant in the field of trade and investment, developed countries are increasingly focusing on agreements on freelance labor. The EU has the most comprehensive migration framework among regional integration systems, addressing issues of mobility, social rights, and security. The right to free movement of laborers, afterwards termed "citizens," was incorporated from the first about the liberalization of movement (Article 18, EC)⁴⁰. The removal of restrictions at the internal borders of the EU, based on the Schengen Agreement of 1985 and implemented in 1996, serves as a potent emblem of the freedom of movement regime. A number of jobs are accessible to workers from member nations, with the exception of those in public service (Article 39, 48)⁴¹. Nonetheless, several policies aim to recruit skilled labor, such as the EU Blue Card, with specific programs for unskilled workers. These policies correspond with the major trend of being increasingly willing to employ skilled workers while simultaneously maintaining or expanding limitations on the mobility of low-skilled labor. The policies reflect a broader trend of increasing openness to skilled labor while concurrently enhancing restrictions on the movement of low-skilled labor. The Maastricht Treaty (1992) grants EU migrant workers and their families equal taxation rights and access to social benefits comparable to those of local citizens in the host country (i.e., child raising allowances⁴²). Additionally, EU member states have unified their social security systems and established a framework for the mutual recognition of qualifications (Deacon, 2011). The EU Long-Term Residence Directive addresses the social rights of third-country nationals. The elimination of internal border controls is perceived as a catalyst for collaborative efforts on migration externally, a collaboration that has progressively evolved into a communal framework (Geddes

⁴⁰ Fundamental rights of the rights of the EU, right to asylum

⁴¹ Ibid

⁴² European Family benefits, https://europa.eu/youreurope/citizens/work/social-security-and-benefits/family-benefits/index_en.htm (19/9/2024).

& Scholten, 2016). Currently, the EU has established a unified visa policy, regulated the external border control system, and set common standards for addressing asylum requests. Additionally, the directives on legal migration include the rights of long-term third-country nationals residing in the EU, regulations for family reunification, and general rules for the admission of skilled workers, researchers, students, and intra-workers. Additionally, through internal integration, migration has emerged as an essential component in the EU's foreign policy, as demonstrated by the development of a comprehensive network of cross-regional relationships, especially with neighboring countries and African nations.

2.3.2. Association of Southeast Asian Nations regional integration

Association of Southeast Asian Nations (ASEAN) incorporates a consensus on protecting all migrant workers' rights. Member States must implement the ASEAN Consensus Covenants and Articles among all ASEAN Member States. In Europe, it is evident that the Member States enable all workers from another Member State to work in each state under the European Convention for the Protection of All Migrant Workers. ASEAN leaders adopted a regional declaration in 2007 to protect and promote the rights of migrant workers. The goal is to defend the rights of migrants and their families within national laws and regulations. This includes ensuring adequate employment protection, pay, and living circumstances, as well as coordinating anti-trafficking initiatives. The ILO estimated there are 10 million international migrants in ASEAN. The Arab States have the highest proportion of migrant workers among all workers (40.8 percent) and host 13.9 percent of migrant workers worldwide, most of them from the Southeast and South Asia⁴³. ASEAN prioritizes labor mobility to build an integrated economic community, exceeding other regional groupings in Asia-Pacific in promoting labor market access. One of the objectives outlined in the ASEAN Economic Community (AEC) blueprint is the unrestricted movement of skilled labor. This builds on the ASEAN Framework Agreement on Services (AFAS), which was signed in 1995 and aimed to liberalize trade in services across the four modes of supply given in GATS, including Mode 4 on Movement of Natural Persons.

Recent years have seen an increase in negotiations concerning regional consultation policies on migrants and their integration (Solomon, 2005). The meetings are non-binding and government-led, focused on addressing issues related to migration with the objective of

⁴³ International Labour Organization, Labour migration in Asia and the Pacific, <https://www.ilo.org/resource/labour-migration-asia-and-pacific#:~:text=There%20are%2010%20million%20international,South%2DEast%20and%20South%20Asia.> (17/9/2024).

achieving consensus on regional migration policies among countries (Pécoud, 2010). Similar to NAFTA, the opening up of mobility within ASEAN relates primarily to skilled workers and is restricted to a limited period of residence. The ASEAN Economic Community follows a model similar to those of the EU: there is more liberty for trained workers, although severe restrictions persist for low-skilled labor. In Thailand, the Foreign Employment Act mandates work visa requirements for ASEAN workers, while 39 occupations are exclusively designated for Thai residents. The EU has a common legal mechanism to address shared issues, whereas ASEAN does not, as the nature of regional agreements within ASEAN is primarily founded on voluntary participation and consensus. The ASEAN Intergovernmental Commission on Human Rights is an organization that is part of ASEAN (AICHR)⁴⁴. Since AICHR is an agency established under Article 14 of the ASEAN Charter, its main purpose is to "promote and protect human rights." The AICHR's regulations recognize two distinct attributes of ASEAN: "upholding international human rights standards" (Article 1.6) and "advancing human rights within the regional framework, while considering the uniqueness of each nation and region and respecting historical, cultural, and religious differences" (Article 1.4). AICHR and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) mainly specialize in executing workshops, seminars for experience exchange, training courses, and specialized research on issues vital to member nations. These agencies also facilitate conversation meetings with other nations or organizations in the area and engage in consultations with non-governmental organizations and other organizations. Furthermore, it is also consistent with the following AICHR mandates:

- Article 4.2 to establish a framework for human rights cooperation in ASEAN;
- Article 4.8 to engage in dialogue and consultation with ASEAN bodies;
- Article 4.12 to prepare studies on thematic issues of human rights in ASEAN.

In addition, it also contributes to the realisation of the ASEAN's commitment to regional cooperation to protect and promote the rights of migrant workers as enshrined in Chapter 7 of the ASEAN Consensus as follow:

- Article 53 "Facilitate information sharing through development or strengthening of their respective database and information systems on matters relating to migrant workers, for the purpose of enriching policies and programmes concerning migrant workers in both Sending and Receiving States"

⁴⁴ AICHR was established under Article 14 of the ASEAN Charter to promote and protect human rights, <https://aichr.org/> (19/9/2024).

- Article 54(a) “Building capacity and sharing of information including on laws, regulations, policies, and practices in relation to protection and promotion of migrant workers’ rights and welfare”.
- Article 54(b) “Encouraging constructive dialogue, consultation, cooperation, and regular exchange of information, and regular exchange of information, for the purpose of effective enforcement of policies and programmes concerning migrant workers”.

Regional migration regimes have established the majority of their requirements within the general structure of global economic integration. Regional frameworks designed for enhanced economic integration have established regulations for the liberalization of internal movement flows. While certain regions, such as Mercosur and ECOWAS, have implemented the EU's comprehensive model of free movement, others, like ASEAN and NAFTA, have been considerably more selective, adhering to the GATS model of skilled movement rather than complete freedom. A cohesive framework governing regional migration regimes is absent, resulting in a situation where migration is characterized by inconsistent policies and a lack of international norms for both origin and destination nations. National migration policies are essential for any country in regulating labor migration processes. Vietnam, with 9.7 million foreign migrants residing in ASEAN's net destination nations, receives a substantial annual influx of remittances. Vietnam has undertaken initiatives in regional integration to safeguard migrant workers, especially through the partnership of IOM and WHO in ensuring the health of migrant laborers. The IOM and ASEAN member states are advancing initiatives to enhance migrant health in accordance with the objectives of the GCM.

2.4. Trade unions and migrant workers

2.4.1. What is a Trade Union

The Oxford Dictionary defines a trade union is an organized association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests⁴⁵. The Trade Union of Labour Union is an organization formed by workers in a particular trade, industry, or company to improve pay, benefits, and working conditions⁴⁶. The process of collective bargaining refers to the procedure by which labor union representatives negotiate with employers. The procedure produces an initial arrangement that must be approved by the entire membership. The other definition of the European Industrial Relations Dictionary, a trade union is a legal entity consisting of employees or workers who have a common interest, such as all the

⁴⁵ Oxford Dictionary, <https://www.oxfordlearnersdictionaries.com/definition/english/trade-union?q=trade+union>.

⁴⁶ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/trade-union>.

assembly workers in a company, or all the workers in a particular industry⁴⁷. The Collins Dictionary indicates a trade union is an organization that has been formed by workers in order to represent their rights and interests to their employers⁴⁸. The European Industrial Relations Dictionary defined a trade union is a legal entity consisting of employees or workers who have a common interest, such as all the assembly workers in a company, or all the workers in a particular industry. A trade union is formed for the purpose of collectively negotiating with an employer (or employers) over wages, working hours, and other terms and conditions of employment. Trade unions often use their organizational strength to advocate for social policies and legislation favorable to their members or to workers in general. The European Convention on the Legal Status of Migrant Workers provides the definition of migrant workers. According to that, migrant worker means a national of a contracting party who has been authorized by another contracting party to reside in its territory in order to take up paid employment. (Nakache, 2018) indicates that a trade union is an organization that represents workers. There are four main types (i) Craft unions represent skilled workers from one occupation, for example, SOGAT 82 (printers) and the AEU (engineering). (ii) General unions represent mainly unskilled workers from many occupations, i.g the TGWU (Transport and General Workers' Union), (iii) Industrial unions represent mainly workers in one industry, i.g the NUM (miners' union). (iv) Professional or white-collar unions representing skilled workers in mainly service industries. For example, the NUT (Morris, 2002).

In each country, trade union legislation (usually a Trade Union Act) gives a legal definition of a trade union and sets out its objectives. The Labour Relations Code 1976, established under the Labour Relations and Industrial Disputes Act 1975 of Jamaica sets out what is the main objectives of the trade union: *“The main objective of a trade union is to promote the interest of its members, due regard being paid to the interest of the total labour force and to the greater national interest. To achieve this aim, trade unions have a duty to maintain the viability of the undertaking by ensuring cooperation with management in measures to promote efficiency and good industrial relations.”* The function of trade unions is to advocate for the collective interests of employees. These advantages encompass compensation, working hours, benefits for employees, and occupational circumstances (health and safety concerns). Many trade unions also contemplate additional matters, like peace, justice, and quality of lifestyle.

⁴⁷ Eurofound, European Industrial Relations Dictionary, <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/trade-union>.

⁴⁸ Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/trade-union>.

Trade unions employ diverse strategies and exert multiple influences on workers across numerous dimensions.

(i) Education and Assistance

The trade unions offer several training programs for their members, with some unions providing training manuals, films, and resources on health and safety. Worker training is required as per several federal and state health and safety standards. This is frequently a responsibility of the company. For instance, several agreements among Canadian auto workers provide that members of the union will carry out all educational and training programs for employees. The members participated in a two-week training program provided by the Canadian Centre for Occupational Health and Safety, financed by the Ontario Workplace Safety and Insurance Board.

(ii) Trade Union in workplace health promotion

Trade unions may play an important role in promoting health and safety, resolving disputes, and enhancing workers' well-being. Unions can represent their members in their immediate workplace or in industry-wide discussions. The connection between trade unions and healthcare in enhancing workers' overall health and mitigating social health disparities is crucial. Nordic nations have had well-organized unions since the early 20th century, with membership rates reaching 80-90% and encompassing the majority of the labor force (Johansson & Partanen, 2002). Cooperation between unions and working-class parties has been the primary policy. Instances of cooperation between employees and their employers exist to enhance occupational health among technical experts and authorities in social management, labor, and health.

2.4.2. The role of Trade Union

Trade unions play an important role in protecting migrant workers' freedom of movement and access to decent jobs. They are also an important measure for developing national policy concerning migratory labor. One of the primary goals of trade unions is to safeguard and promote their members' interests in the workplace; they may advise and resolve workplace concerns, as well as serve as a voice for workers during discussions and bargaining. Providing migrant workers with the ability to join trade unions in their destination countries is one of the most effective measures against mistreatment. The ILO 2014 Protocol to the Forced Labour Convention, 1930, which encourages states to include employers' organizations and trade unions in the development and implementation of policies to protect migrant workers from abusive recruitment practices (Eliza Marks, Anna Olsen, 2016). When some of the rights of migrant workers are violated in the destination country, they have the opportunity to secure their rights

through trade unions established under national labor laws. Every worker has trade union rights under International Labour Organization Protocols and its recommendations⁴⁹.

In the context of the study, I address the right to join a trade union and collective bargaining as a key right for migrant workers. One of the most important rights, as stipulated in the international acts, is the right of workers to form and join unions, in order to promote and protect their rights and interests. The right to form and to join trade unions is stipulated in the following UN legal documents: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Copenhagen Declaration of UN. The collective rights and freedoms that the ILO pays special attention in documents: Convention no. 87 on Freedom of Association and Protection of the Right to Organize, the Convention 98 on the Right to Organize and Collective Bargaining adopted in 1949. This right guarantees workers and employers the right to form and join unions. The right of employees and employers to organize is based on the following principles: voluntariness, autonomy and democracy (Majhoshev & Krusharska-Velinovska, 2017). Freedom of association is significantly influenced by the right of employees to negotiate openly with their employers. Collective bargaining is an informal process in which employers and employees discuss and negotiate their working relationship, particularly the terms and circumstances of employment. Employers or their agents, as well as trade groups or other officials chosen by the workers themselves, take part in the process directly. Wages, salaries, and bonuses are frequently the subject of negotiating. Bargaining is often conducted in good faith with the goal of improving the situation for both workers and employers. The ILO's supervisory authorities maintained that all laws and processes must respect both parties' independence and autonomy in order to facilitate bargaining conversations (Carabetta, 2020).

In several industrialized cultures, trade unions have traditionally had a significant role. Since 1945, the advancement of the members has progressively improved, advocating for communal representation, participation, and universal suffrage (Waddington et al., 2023). Trade unions currently employ transnational frameworks such as the European Trade Union Confederation (ETUC) and industry-wide European federations to tackle cross-border mobility issues. The European Trade Union Confederation has a long history and was established in 1973. Conversely, the ETUC was established during a phase of reconstruction in Western Europe post-

⁴⁹ ILO Declaration on Fundamental Principles and Rights at Work, <https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work/about-declaration>.

WWII to foster economic conditions that facilitated the free movement of labor migration. Trade unions in the EU depend on the deliberations and decisions of the ETUC to resolve issues between employees and employers. Establishing EUTC is intended to construct an organization that can contend with the growing number of multinational corporations in Europe (Seeliger & Wagner, 2016, p. 5). European trade unions are bodies that function within one or many sectors of the public or private economy, advocating for the interests of workers across diverse domains at the European level. In the ETUC Constitution⁵⁰, European trade union federations are the main organizations standing for the workers and the real responsibility in serving for the ETUC. Trade unions frequently employ communication and negotiation to achieve optimal effectiveness in human rights and workers' rights. The ETUC facilitates the finding of solutions and decision-making between workers and employers throughout consultation and collective bargaining processes. Consequently, the collaboration of ETUC with Europe is paramount in addressing workers' rights.

The present situations surrounding migration and refugee movements in Europe are complex and could be considered a refugee crisis. Following the creation of the ETUC, suggestions concerning labor migration have emerged (Ciampani, 2017). Nevertheless, ETUC has significant challenges in implementing practical cooperation due to the wide range of economic, cultural, and educational systems throughout Europe's 39 member states. (Neumann, 1997) indicated that since 2005, Hungarian trade unions have maintained a rather solid and powerful position. Joining the European Union brought about a number of positive changes in Hungary, including a stabilization of bargaining coverage, a slowdown in the rate of market liberalization, and relatively large social assistance programs to compensate people who were forced out of the labor market due to the transition. Industrial unions in Hungary are slowly losing influence in terms of company-level leadership as trade unions become more decentralized. Originally, Hungary followed Germany's union structure to achieve a comparable level of dominating industry; however, in practice, companies are given more and more freedom to alter their work as they consider suitable. Various professions perceive that their viewpoints are not adequately represented by main organizations (Andras, 1997). The Hungarian trade union movement is not only decentralized but also divided along political and sectoral lines.

Trade unions are also key partners in implementing Decent Work Country Programmes that guide ILO's work in each country, especially in Asia. The Asia and the Pacific region faces multiple challenges cause decent work deficits. They are also key actors enhancing gender

⁵⁰ EUTC Constitution 2023, <https://www.etuc.org/en/publication/etuc-constitution-2023>

equality, social protection, green jobs, child labour, and skills development and lifelong learning as well as safeguarding the rights of migrant workers⁵¹. There are two major regional trade union bodies: The International Trade Union Confederation - Asia Pacific (ITUC-AP), has 59 affiliates from 34 countries and territories in Asia and the Pacific and; The World Federation of Trade Unions - Asia Pacific (WFTU-AP) is a regional umbrella organization of national trade unions throughout the region. There is ASEAN Trade Union Council (ATUC) that was established with 18 national labour centres except Brunei. Recent days, IndustriALL⁵² organized an Asia-Pacific MNC trade union network meeting with affiliated unions in the region's chemical and pharmaceutical sector. Thailand, Indonesian, Vietnamese, Indian, Sri Lankan, Bangladeshi, and Philippine union leaders met to talk about working conditions, job quality, the effects of digitization on the workforce, and collective bargaining deals in their own workplaces and countries. Some problems are still there, like salary, abuse at work, and maternity leave for women workers. It is important for union leaders to work together to fight global capital and build a better regional network so that people can share information and resources. The leaders of unions also promise to work to make unions more open to women and younger workers, both as members and leaders. ASEAN trade unions frequently organize conferences, seminars, and projects focused on solving the problem of safe migration. These activities demonstrate that ASEAN trade unions are more focused on preserving the rights of migrant workers. In Chapter III of my thesis, I shall go over national trade unions in more detail.

2.4.3. The solution of Trade Union for the migrant workers.

Countries are encouraged to include employers' groups and unions in the process of creating and executing policies to safeguard workers against abusive practices, according to the International Labor Organization's 2014 Protocol to the Convention on Forced Labor⁵³. Ensuring migrant workers' freedom to join trade unions in host countries is a highly effective measure to avoid their exploitation. The International Labor Organization's protocols guarantee the right of all workers to join unions. As a result of cultural and personal differences, some research implies that migrant workers are less likely to actively engage in trade unions. On the other hand, trade

⁵¹ ILO, Workers; organizations in Asia and the Pacific, <https://www.ilo.org/resource/workers-organizations-asia-and-pacific>.

⁵² IndustriALL Global Union represents 50 million workers in 140 countries in the mining, energy and manufacturing sectors. IndustryALL challenges the power of multinational companies and negotiates with them on a global level. IndustriALL fights for another model of globalization and a new economic and social model that puts people first, based on democracy and social justice. <https://www.industrialall-union.org/what-we-do>

⁵³ Thomson Reuters Foundation News, <https://news.trust.org/item/20160115141746-mr2gt/> (30/9/2024).

unions really help their members out by standing up for their rights, offering resources like education and social assistance, speaking out for workers' opinions, and making it easier for people to integrate. As a result, the authors of the study that challenged this perspective contended that trade union policies and initiatives had a substantial impact on migrant workers (Stefania Marino, 2024). Trade unions have used a variety of approaches to advocate for migrant workers despite the numerous challenges that they confront. International cooperation and human rights are two of the official attitudes that the trade unions have taken on migrant labor. The rights of migrant workers have been the subject of certain international market judgments. Some examples of this kind of cooperation include the ratification of many treaties by trade unions inside the International Labor Organization (ILO) that address issues including forced labor, human trafficking, and migratory workers. Furthermore, the ITUC and GUF, two international trade unions, have negotiated with governments and employers throughout the world and backed worldwide initiatives addressing the dire circumstances of migrant workers. Particularly in Asia, the GUFs are vital in providing for temporary migrant labor.

Since the 1990s, the majority of European trade unions have been actively addressing the issue of migrant workers' lack of representation and inclusion in their organizations. But how much of a "special" approach they take to representation differs from nation to country (Waddington et al., 2023). The method of treating all individuals equally has been condemned for its inadequacy in fostering equality and facilitating integration into the job market and labor organizations (Wrench, 2000). Given the importance of "special treatment," the union must give this issue its full attention when dealing with prejudice inside and outside the organization. The specific treatment of trade unions, in accordance with their historic duties and activities, mainly seeks to enhance the working conditions and status of migrants by resolving their labor-related issues. Examples include helping with work-related concerns, translating union documentation into other languages, and educating people about their rights as workers. Another related strategy is the establishment of labor centers to organize and promote the rights of migrant workers (Holgate, 2015). The newly developed organizational methodology is extensively utilized in nations having a labor relations heritage of the Anglo-Saxon⁵⁴ culture. In England and Ireland, labor unions have participated in conflicts and executed initiatives concerning migrant workers.

⁵⁴ Anglo-Saxon, term used historically to describe any member of the Germanic peoples who, from the 5th century ce to the time of the Norman Conquest (1066), inhabited and ruled territories that are today part of England and Wales.

This strategy requires the union to allocate substantial resources, covering specialist training, the creation of organizational academies, and the enhancement of organizational learning.

In a number of nations, the discussion also centers on how to actively include migrants and their opinions inside the union framework. In the United Kingdom, Italy, Spain, and the Netherlands, for instance, labor unions continually fight for and support immigrant representation in the workplace. Departments that prioritize diversity and inclusion are more likely to have migrant workers on staff at the executive level. While the existence of these institutions signifies the unions' formal dedication to equality and anti-discrimination, their actual transformational effect on the unions' culture and organization can sometimes be not much (Connolly et al., 2019). The rights of migrants have been attempted by several labor unions through the use of their fundamental tools. Both company- and industry-wide collective agreements in Italy represent the requests for longer vacations to enable travel to other places, a topic that has been the subject of union debate on special negotiations since 1990.

The direct protection of migrants' civil or social rights as a condition for integration is another possible approach. There are a variety of degrees of organization and most activities in this sector are organized on a volunteer and flexible basis. Countries such as France, Italy, Germany, and the United Kingdom have examples of similar projects carried out by labor unions in conjunction with civic actors and other non-governmental groups. Countries with a history of labor migration, such as Italy and Spain, may have contributed to the development of this strategy and its close relationship to union policies, which in turn have addressed the needs and challenges faced by migrant workers in host societies. Services related to housing, health insurance, employment, and administrative and legal assistance for work, residence, and renewal of permits are also made available through territorial information centers and union offices in these nations as part of their efforts in this sector (Martínez Lucio & Robert Perrett, 2009). In terms of the social rights of migrants, trade unions are responsible for combating prejudice within their own organizations, as well as in society and the workplace. Union campaigns or support for external initiatives are frequently employed to implement actions in this domain.

The treatment of migrant workers presents trade unions with a number of challenges on a national and international scale. Tapia highlighted that the "integration" of migrant workers is impossible without recognizing the ways their identities intersect (Tapia & Alberti, 2019). Nevertheless, there are unions that intentionally search out these difficulties in order to reawaken internal tensions, even though some of these unions have a history of discriminatory policies within their own sections. The capacity of unions to adapt their structure and culture to adequately represent the needs and preferences of a varied membership has been affected by this

background, which has molded integration as an endeavor to improve union democracy. Although continuous internal challenges keep them from growing, the number of such efforts is still quite limited. To avoid losing members and risking their support, transformation initiatives need to involve the collection of interconnected resources and the introduction of fresh ideas. Communities and social movements are just as important as the workplace and the labor market when it comes to fighting and reversing these tendencies. The migrant and ethnic minority group is particularly significant in this regard, not alone because to their need for representation, but more crucially because their interlinked resources, alliances, discourses, and conflicts offer a novel viewpoint and depth to the collective labor movement (Cholewinski, 2010; Marino et al., 2024).

2.5. Conclusion for Chapter I

Chapter I delineates the theoretical aspects of labor migration, encompassing legal and illegal labor migration, alongside the essential rights of migrant workers and the fundamental rights of their family members. Furthermore, it examines the influence of regional integration and collective bargaining by trade unions on labor migration. Legal migration and illegal migration are the two main categories of labor migration. Legal migrant workers are sure to start controversy whenever they are not granted full citizenship rights by the home country. The framework that EU status regards as a binary term is established by the legislation and practices of EU nations. When it comes to immigration, member states of the European Union get to select how many people from outside the EU can legally work in their nations. Illegal migrant laborers fulfill several requirements, including lower salaries and easier recruiting, among others, and fill unskilled labor gaps that arise as a result of international integration in industries, agriculture, and manufacturing. International labor integration and the control of illegal workers must happen concurrently, making the condition of migrant workers a binary problem. The EU has also remained open to highly skilled workers while maintaining control over low-skilled workers. In addition, the EU has coordinated its social security system and recognized qualifications, in contrast to ASEAN which only deals with highly skilled workers. The EU also has its own directive dealing with third country workers. The Commission and the European Court of Justice are responsible for monitoring and enforcing the law. ASEAN also allows for free movement within the region, but ASEAN's liberalization of movement only covers skilled workers, for a limited period of stay. Illegal workers in ASEAN are not officially mentioned, illegal workers often face many risks, including the lack of protection of basic rights.

People migrate to work for 3 reasons: social and political factors; demographic and economic; and environment and climate migration. However, the primary factor is their

migration in order to obtain improved pay and a markedly higher standard of life compared to their country of origin. Illegal migrant workers who unlawfully enter the host country, enter legally but remain without proper papers, or arrive and live legally but engage in unauthorized employment, will be expelled by the host country and will not be entitled to labor rights under national law. Nonetheless, they have to retain fundamental human rights as stipulated by international labor standards. Countries hosting migrant workers are obligated to solve these difficulties; hence, discussions between sending and receiving nations ought to take place to reduce the number of illegal migrations. Likewise, the family members of migrant workers possess the right to access fundamental rights, including education, healthcare, and social security, akin to those afforded to migrant workers themselves.

Migrant workers confront several challenges, including discrimination on the job. The majority of people point fingers at the host nation when they complain about labor, yet that country cannot address the problem on its own. In order to ensure the safety of all migrants, it is crucial to establish regional integration. Every country has a responsibility to safeguard its domestic workers and foreign migrants, and every area has its own set of protocols and agreements pertaining to migration. The area must prioritize dialogue and compromise; therefore, a regional agreement to safeguard migrant workers will result from a regional consensus. A large number of nations are members of the International Trade Union Confederation, which is an important organization representing unions across the world. When it comes to worker welfare, health and safety, and resolving complaints, trade unions may be a powerful force. As a common method, trade unions mediate conflicts between companies and employees via discussion and bargaining. Officials from the relevant government agencies can act as impartial mediators or reconcilers to help parties reach mutually beneficial agreements. It is the universally recognized right of all employees to organize into unions and participate in collective bargaining, regardless of their country of residence.

Chapter I has outlined the fundamentals of labor migration, and often, there is no dispute on the right of lawful labor migrants to the same rights as citizens of that nation, including both basic rights and labor rights. Despite the EU's open policies for legal labor migration and distinct regulations for illegal labor, several disputed issues remain concerning labor migrants and their families. The labor market in the EU remains among the top destinations for workers due to factors such as higher living standards, significant wages, a favorable educational environment for workers' children, and the prioritization of human rights and humanitarian law within the EU. In this thesis's second chapter, I will explain how the European Union has included human rights into its policies and laws.

CHAPTER II

MIGRANT LABOR IN EUROPE AND HUNGARY

Sustainable labour development is one of the important elements in the Sustainable Development Goals, which international migration management is a factor promoting sustainable labour development. This chapter will discuss the EU labour migration system, how to solve problems arising from migration (from illegal migration to common disputes), types of trade union rights as well as difficulties of employers in managing migrant workers. Chapter II also discusses some social security policies of some European countries, and Hungary's approach to labour migration policy compared to some other EU countries. Although recent reforms in Hungary's migration and labour law were intended to create a more structured and predictable system for employing migrant workers, the 2024–2025 amendments have also revealed significant shortcomings. While stricter permit categories and quotas may enhance migration control and labour market regulation, they simultaneously limit legal access to employment, increase dependency on employers, and risk pushing migrant workers into irregular or informal. One of the sustainable migration development policies is to proactively control the migrant force in the countries, while promoting integration and enhancing the personal responsibility of immigrants in society. In addition, the flexibility in the labour market also plays an important role in managing migrant workers based on aspects of recruitment, working hours, wages and salaries. Migration management at the international, regional, national and employer levels all have their own advantages and challenges. However, the EU is considered an ideal model in regional cooperation and compliance with international standards in migrant labor management. This is not yet complete in the ASEAN region (the author will analyze in Chapter III). At the end of Chapter II, I chose Hungary to focus on analyzing policies, laws, and social protection for migrant workers. I selected Hungary because of its higher number of migrant workers abroad compared to the number of immigrant workers inside the nation. Moreover, Hungary, a nation with stringent rules for migrant workers, has amended its legislation concerning migrants from third countries while simultaneously addressing the labor shortages in its businesses. The Hungarian settlement program is the only immigration program in the system of developed countries that grants residence cards first, requiring investment later (investment in real estate worth 70 million Forints (about 170,000 EUR)). This indicates that despite Hungary's stringent policies regarding migrant labor, it yet creates circumstances favorable to their resettlement. The author selects Hungary as a model for Vietnam to potentially adopt its strategies for simplifying

procedures for seasonal migrant workers. While this is going on, Hungary and Vietnam have a similar perspective about the need of education investment for the workforce of the future. The Stipendium scholarship program in Hungary is an example model for knowledge investment that Vietnam should replicate, since it attracts the highest quality foreign experts and elevates Hungary's educational standards internationally.

3.1. EU migration policies in the context of sustainable development

This part will examine the EU's labor migration framework and the migration patterns inside the European bloc, specifically focusing on the East-West migration flow from 2004 to the present and the movement in Centroepe. Also covered will be the recent changes to Hungarian legislation pertaining to migrant labor. In this setting, Europe must contemplate active migration policies and strategies to equilibrate native and migrant labor. Furthermore, to foster the development and recruitment of highly competent migrants, as well as to be more inclusive of all migrants with the potential to work. During the 1960s and early 1970s, Germany was the primary destination in the European Economic Community, as guest workers were recruited to address labor shortages. Significant numbers of immigrants from Turkey and other nations that have never participated in the European labor market have come since 1970. (Münz, 2007) indicated a positive correlation between the immigrant population and the income levels of countries; for instance, Luxembourg has the highest proportion of foreign citizens at 47.5%, followed by Switzerland at 25.1%, as both are among the nations with the highest per capita income globally. Sometimes, the destination for migrant labor is higher-income countries in Western Europe, as many Eastern European countries have a lower number of foreign migrants. As workers migrated to Swiss enterprises, (Beerli et al., 2021) discovered that the rise in cross-border labor in Switzerland correlated with a labor shortage in border areas of France and Italy. A significant number of employees left for Switzerland, leaving businesses in the Italian border districts with a severe lack of labor and even lower salaries. Intra-EU movement is progressively rising, prompting less developed nations to broaden guest worker arrangements to address labor shortages, even in low-skilled sectors. Thus, one policy to achieve sustainable migration is to restrict the migratory labor.

Access to healthcare, education, and social protection is central to the European Union's migration policy, which seeks to integrate immigrants into society. At the international level, sustainable development policy is increasingly emphasizing the integration of migrant laborers into the country. Nevertheless, the administrations of some nations fail to guarantee this transformation for certain demographics. Migration indeed enhances the economy of EU nations

and offers immediate advantages to the economies of host countries. For instance, in April 2024, the Finnish government submitted a proposal to the Parliament in Finland that highlighted the necessity of adjusting integration policies in keeping with the targets, which included the provision of multilingual citizen-oriented services. Giving immigrants the knowledge they need about Finnish culture, regular life, and work, as well as their individual rights, in their mother tongue is the goal. In reality, it has been applied at different levels in Finland for some years and is widely regarded as effective⁵⁵. The Immigration Act (Skilled Immigration Act, effective March 1, 2024) has also undergone modifications in Germany. The new immigration policy will be based on a point system that considers five criteria: professional qualifications, German language proficiency, work experience, connections to Germany, and age, as per the new regulations that have recently been implemented. Previously, only those with a valid occupational qualification could apply for a temporary residence visa in Germany for job purposes. But the new rule states that anyone in Germany with a professional certificate can look for work, even if they change their plans and want to learn a different job that isn't related to their original certificate. Western European countries have progressively become destinations for foreign migrants and refugees during the last 60 years, proving that Europe is a suitable location for migrant labor. In the present day, numerous migrant laborers have made Western European countries and certain Central European countries (such as Austria, Hungary, Slovakia, and the Czech Republic) their destinations. The protection of migrant workers has grown in significance for both sending and receiving nations, as well as on regional and around the world level. As regional integration becomes more critical, critical issues like migration are being addressed and implemented with greater urgency. Currently, the European Union is the most integrated entity seen as a solution for establishing a war-free zone in Europe. The example of European integration is often brought up in discussions on global economic regionalism. Migration has long been a topic of discussion and controversy; nevertheless, no uniform laws or regulations exist on the subject.

An overview of migration and sustainable development is linked to issues like international labor mobility, inequality, and security. (Nica, 2015) emphasized that the connection between sustainable development and migration is characterized by a reciprocal interaction. Developing migration policy within the framework of sustainable development

⁵⁵ See more at <https://valtioneuvosto.fi/en/-/1410877/government-integration-programme-emphasises-employment-personal-responsibility-and-obligations> (6/2/2025)

objectives is a shared objective of both parties in this partnership. Nevertheless, both the regulation of migration flows and the integration of migrants into the labor market present substantial challenges to the unification of political approaches. Consequently, a tension exists between the objectives of migration policy and those of sustainable development policy (Nyberg–Sørensen et al., 2002). Highly skilled migrants enhance the growth of high-income countries, but low-skilled migrants place a considerable strain on the budgets of EU nations and elevate the need for social assistance (Carling, 2023). Sustainable development in migration is a growing trend, yet problems with the ever-increasing influx of illegal immigrants persist. In order to guarantee the stability of the education system, the quality of life, and the reduction of the disparity between highly skilled and low-skilled migrants, policies must be designed to effectively manage the substantial migrant workforce. Moreover, training and educational initiatives have to be included into migration policy, and access to healthcare education should be enhanced via salary increases. By establishing legal migration channels, the rights of both low-skilled and high-skilled migrants will be better protected, and the integration of migrants into EU life will be more effective.

3.2. The intra-EU labour migration

After the migrations from the EU's expansions to the East, the waves of migration were mainly for economic reasons. Nevertheless, cultural, linguistic, and psychological correlations are additional factors that influence East-West migration. According to the research of (Sprenger, 2021) a 1% divergence in language, religion, and culture decreases migratory flow by 0.76%, 0.29%, and 0.34%, respectively. Language barriers substantially contribute to the obstacles encountered by migrant laborers. The freedom of movement is one of the basic principles of the European Union (EU); nonetheless, this crucial component of European integration has grown contentious as member states experience pressure on their labor markets. Temporary labor migration (TLM) constitutes a global phenomenon with a lengthy and problematic history. Although quantifying the scale of TLM is difficult, empirical analyses concur in suggesting that TLM is an extremely significant trend in migration flows and one that keeps increasing. Although not mandatory, freedom of movement in EU region must be accompanied by equal and non-discriminatory treatment for citizens of EU member states in respect of employment, wages and other situations. other work-related. Moving within the EU has many benefits in many forms of exchange, worker training and, for EU members, by meeting one country's needs with another country's supply or excess.

(Benton, 2004) said that the TLM are twice as likely as natives to possess a high level of education, they are generally overrepresented in low-skilled jobs. They tend to work in specific sectors, such as manufacturing, construction, hospitality, agriculture, the food industry, and private households. Temporary labor migrants are vulnerable to poverty and social exclusion as low-skilled work is associated with low wages. Temporary migration has the potential to benefit sending countries because migrants prefer to invest in their home countries and send remittances back home. Although temporary EU labor migrants are disadvantaged, the fact that they enjoy many of the same rights as nationals and permanent residents makes it difficult to grasp their disadvantages. This is considered unfair to TLM. After all, (Nutti, 2018) assumed that many former "guest worker" schemes outside the EU have given low-skilled migrants short-term work by legally restricting their political, social and economic rights and ask them to leave their home country when the contract expires. This is obviously with many examples include the already mentioned Bracero program between the United States and Mexico, which ran from 1942 to 1964 to address shortages in the US agricultural sector; and the German program, which ran between 1955 and 1973, invited Turkish emigrants to work temporarily in Germany.

The injustice that temporary migrants should enjoy with respect to political, economic and social rights is not being fully informed about things unrelated to the constraints they claim to be theirs. Indeed, it can even lead to the mistaken belief that once temporary migrants hold many of the same rights as some "citizenship rights" (uninhibited from settling and applying for nationality), any injury they have suffered is seen as an unwarranted misfortune, not an injustice. Such a conclusion, however, ignores the injustices that persist even when people (or citizens) have formal access to rights and opportunities. An institutionally unfair approach reveals how temporary migration projects in the EU are enabled and how they serve to reinforce unjust structural processes in receiving and sending countries. The processes put not only the migrants themselves but also other similarly positioned migrants and other groups of people in a difficult and dangerous position. The importance of granting temporary migrants certain special rights to achieve their legitimate goals cannot be denied by the view of structural injustice.

3.2.1. Skilled occupation migration before 2015

The author examines migration trends from 2004 to 2015, a time characterized by the reconstruction of European unity. Administrative restrictions are implemented to mitigate the pressure of foreign migration, which is in part due to the EU's labor shortage. The number of asylum seekers is escalating. The development of intra-EU migration flows from East to West and South. The amount of migration is progressively growing in various Eastern nations. The present migratory surge is institutionalized as a result of the European integration initiative.

There are primarily four types of migration in Europe: (i) movement within the European Union (EU) from the east to the west, (ii) movement within the EU but only between neighboring countries (e.g., Ireland-UK, Germany-Switzerland, Austria-Germany, etc.) and, (iii) movement within Europe but not within the EU, and movement from outside Europe. I will explain these type of migration specify in the next part.

The Lisbon Treaty of 2000 underscored the need for intra-EU labor mobility to rectify regional structural imbalances and to prepare for the significant East-West migration that would follow the 2004 expansion. The European Union has grown eastward since 2004, gaining eight member nations from Eastern and Central Europe: the Czech Republic, Slovenia, Poland, Latvia, Lithuania, Hungary, and Estonia. The 2007 expansions in Romania and Bulgaria, as well as the 2013 expansion in Croatia, all contributed to a European migration pattern that had begun with this expansion (Barbulescu, 2019). Nevertheless, the flow of migrants from CEE has been substantially boosted by the progressive opening of the EU-15 labor market after the expansions. Nevertheless, the flow of migrants from CEE has been substantially boosted by the progressive opening of the EU-15 labor market after the expansions (Herm, Cheung, & Poulain, 2012). The past few years have seen increased labor movement patterns from the newer EU member states (Poland, Lithuania, Bulgaria, and Romania) to Western European areas, particularly Italy, Portugal, Spain, and the UK (Münz, 2007). An rising number of people are migrating illegally from many parts of the world, including West Africa, the Middle East, and Asia. One new source of migration comes from Ukraine. The research by (Balaz et al., 2017) indicates that migration to Germany mostly originates from Austria, Hungary, Italy, Greece, and Poland, while Italy and Spain get substantial migration from Romania and Bulgaria.

Germany and the United Kingdom are the two markets that have been selected due to their high immigrant labor rates. Recent EU Commission estimates indicate that approximately 187,000 EU-mobile workers were employed seasonally in Germany in 2019, whereas only 6392 workers were posted for this purpose (EU Commision, 2022). In the EU, mobile labor in specialized professions constitutes 88% of employment, surpassing native labor at 26%. In Germany, seasonal laborers from Eastern Europe comprise around 67% of the overall seasonal workforce in the agricultural, forestry, and fishing industries (El Spaeth, 2018). The percentage is 98% in the UK, but it's more difficult to implement working conditions there since there are so many organizations that handle various parts of employment. Furthermore, as noted by (Berlioz, 2016), the diminishing influence of labor unions, which are crucial to this endeavor. In summary, the absence of effective coordination in social welfare, as well as inequalities in labor protection and enforcement, present obstacles for migrant workers employed in highly seasonal

industries. According to (Pál Bite & Konczos Szombathelyi, 2020), the choice and length of migrant workers' stays are also influenced by the immigration laws of the countries. In the theoretical model, immigration obstacles are assessed on a scale from 0 to 10, with 10 indicating unrestricted admission. Denmark (7.73) and Luxembourg (7.55) are the most hospitable nations, while Switzerland (4.32) and Austria (5.43) exhibit lower levels of openness. Not only do economic considerations play a role in shaping migratory patterns, but so do cultural, linguistic, and psychological ones. Migrant workers are often young and lack definitive perspectives on their future or employment, resulting in less financial strain (El Spaeth, 2018). Recent research by (Strockmeijer et al., 2019) indicates that a new pattern of European migration has arisen, shown by a sample of migrant workers in the Netherlands who return home at the conclusion of their contracts and then relocate over time. The phenomenon is referred to as transient circular mobility, prevalent among individuals migrating from Eastern European nations to Western Europe. The educational attainment of migrant workers also influences the economics of host nations (D'Amuri et al., 2010). Migrant laborers possess unique perspectives and abilities that are a result of their diverse educational backgrounds. This variety enhances the local intellectual capital. According to research (Glaveanu & Taillard, 2018a), enterprises that possess extensive knowledge or experience have an even stronger correlation between variety, quantity, and productivity.

Research by (Pál Bite & Konczos Szombathelyi, 2020, p. 206) indicates that a decline in work motivation results in shortages and imbalances in many professions within the labor market. The motives for immigration may be delineated as follows:

- (i) Culture and ethnicity: Countries that share cultural and ethnic similarities with potential migrants are the target of their attention. A little linguistic barrier results in a reduced burden of labor migration.
- (ii) Changing economic and political circumstances: Despite the fact that labor migration is regarded as advantageous for host countries, individuals continue to encounter unemployment (particularly during recessions) and discrimination, which necessitates their departure from foreign countries.
- (iii) The Schengen Area: The freedom of movement is a significant draw for migrant laborers. Following the ratification of the Schengen Agreement, laborers from post-Soviet nations migrated to Northern and Western Europe. Work permits and visas are unnecessary; individuals from other cultures and nations are formally welcomed.
- (iv) Location: Travel within Europe is comparatively brief, and transportation is efficient,

facilitating regular commuting and employment opportunities. No one can deny that Europe is a major stop for those making the journey across the world. Despite the EU's restrictive policies regarding the flow of migrants from third countries, there are still measures that promote the migration of immigrants into the EU from third-country citizens (Tsegay, 2023). According to the research by (Karasová et al., 2018) Germany remains the nation with the highest immigrant influx throughout phases 3 and 4⁵⁶. While some individuals remained in their home countries, the eastward expansion is mostly responsible for the trend's prominence; yet, the rise in unemployment may be attributed to the economic downturn and the subsequent financial crisis. The Czech Republic, Slovakia, Slovenia, Estonia, and Hungary are among the Eastern European nations where migration became less noticeable after 2004, but Bulgaria, Croatia, Latvia, Lithuania, Poland, and Romania are among those where movement has been ongoing.

3.2.2. Main migration patterns in Europe today

Five primary stages of the European migration process over the course of 70 years were summarized in a study conducted by (King, 2018). Phase 1 (1945-1948) constituted the post-war rebuilding period, during which migration was modified in response to the conflict. Phase 2 (1949-1973) marks the period of the arms race, characterized by economic advancements in the West and undeveloped economies in Southern and Eastern Europe. Phase 3 (1974-1984) was the era of economic transformation in Western Europe after the 1973 crisis, progressively engaging with the East. Phase 4 (1985-2004) is characterized by the collapse of communist socialism and the occurrence of civil conflicts. During this age, there was considerable migration from the East in response to the disintegration and transformation of the political structure. Phase 5 (2004-2015) represents the reestablishment of European unity. Throughout historical periods, European migration has integrated different factors and paradigms.

The current geographical scope encompasses a variety of primary migration channels, including: (i) intra-EU migration from East to West, (ii) migration within the EU but restricted to neighboring countries (e.g., Ireland-UK, Germany-Switzerland, Austria-Germany, etc.), (iii) migration from European countries that are not EU members, and (iv) migration from third countries (outside Europe). The two intra-EU pathways have become essential elements influencing the European migratory picture. The analysis by (Penninx, 2019) indicates that from 2004 to 2011, the percentage of migrants to EU member states rose from fifty percent to sixty-six percent. (Panagiotis Tsakiroglou, 2019) determined that "In an enlarged EU, primarily due

⁵⁶ The third stage (1974-1984) and the fourth (1985-2004) for migration flow.

to the significant East-West migration flow, intra-EU mobility replaced external migration as the principal source of migrant labor within the EU."

The cross-border movement of the migrant population in the surrounding territory of the Central European territory (Centroepe), including Austria, the Czech Republic, Hungary, and Slovakia, is significant. Citizens of the Czech Republic, Slovakia, and Hungary have enjoyed unrestricted access to Austria's job market since 2011. The border region with Austria is a desirable place to work because of its proximity to other major cities and because of the higher earnings offered there. Centroepe is an area characterized by a history of transnational migration and social interaction. Because of the well-established rail and vehicle infrastructure, traveling in this region is relatively straightforward. Many countries send labor to Austria in pursuit of superior earnings and enhanced employment prospects for qualified individuals (DeWind & International Organization for Migration, 2008). On the other hand, migration in this area is known as cross-border labor, which denotes a kind of mobility where workers may find employment in another member countries without really relocating there. The research by (Wiesböck, 2016) included several interviews with both big and small enterprises, indicating that in Austria, corporations choose Hungarian or Slovak workers over local employees because of their dedication to their job. There is a great demand for their services since they are laborers with few options in their own nation. Besides wages, laborers from other countries may be amenable to accepting conditions that are substantially lower than those of the host country.

The third group from European nations outside the EU mostly originates from Ukraine and Albania. The majority of Ukrainians reside in Italy and Spain, almost Albanian live in Greece (King, 2018). Furthermore, a significant number of Serbians reside in Austria. Numerous nations contribute to international migration; nevertheless, the majority of migrants originate in Asia, Latin America, and Africa (both north and south of the Sahara). Chinese nationals are the largest group of third-country migrants and are significant in recipient nations such Finland, Hungary, Iceland, Italy, the Netherlands, Portugal, and the UK (Gëdeshi & King, 2018, p. 5). Additionally, Moroccans are found in Belgium, France, Italy, and Spain in rather large numbers. Labor migrants are dispersed throughout the region: Somalis in Norway and Sweden, Iraqi citizens in Finland and Sweden, Vietnamese in the Czech Republic and Poland, Algerians and Moroccans in France, Australians and Indians in the UK, Brazilians and Cape Verdeans in Portugal, and Colombians in Spain. This is a dispersed group of labor migrants: Iraqis in Sweden and Finland, Somalis in Norway and Sweden, Vietnamese in the Czech Republic and Poland, Algerians and Moroccans in France, Australians and Indians in the UK, Brazilians and Cape Verdeans in Portugal, and Colombians in Spain. Eurostat forecasts a 15% reduction in the potential labor

supply throughout the EU during the 50-year period from 2010 to 2060. This decline will be more pronounced in the new member nations. For instance, a workforce increase of 10% is expected in the UK and 8% in Sweden, but a 40% decline is predicted in Poland, Slovakia, Romania, and Bulgaria (Юрѣвич, 2023). Waves of illicit migration that occur in numerous regions, including Africa, the Middle East, and Asia, as a result of political conflicts, such as civil wars and ethnic cleansing, pose additional migration pressures that threaten Europe.

3.3. Social Protection right for migration in Europe

The European Union is experiencing substantial growth in both intra-EU labor migration and migration from outside in. Temporary labor migration occurs for both low- and high-skilled workers, in addition to long-term migrant labor. Social security rights are guaranteed to migrant laborers in accordance with the national laws of the country in which they arrive. Despite the fact that the European Union is governed by common regulations and rules, the consideration and approval of laborers by each country is quite flexible in accordance with their own laws. The EU offers insurance for all domestic migrant workers to safeguard their fundamental rights, enabling them to feel secure and assured during their regional integration process. Here, the author will assess several migrant worker-related EU directives, compare and contrast the social welfare policies of European nations with regard to migrant workers, and discuss the absence of cooperation between the systems of member states and third countries

3.3.1. Social Security Right in the EU Directives on migration labour

EU stipulates with European Convention on Social Security 1972⁵⁷ by aiming the facilitating their social progress and multilateral coordination of social security legislation. According to Article (2) of the Convention, the social security rights are: sickness and maternity benefits; Invalidity benefits; Old age benefits; Survivors' benefits; Benefits in respect of occupational injuries and diseases; Death grants; Unemployment benefits and Family benefits. Besides, the Directives aim to some main groups like (i) Students and researchers, (ii) Highly qualified workers, (iii) Illegal staying third country and (iv) Seasonal workers.

(i) Students and Research

(Verschueren, 2024) mentioned the first directive about the students and trainees is 2004/114/EC⁵⁸ but it doesn't have direct the regulation about the migrants. However, it does contain a provision which allows students to be employed in the host Member States outside

⁵⁷ European Convention on Social Security, European Treaty Series No.72, Paris, 14.XII.1972. <http://www.worldlii.org/int/other/COETS/1972/7.html> (4/11/2024).

⁵⁸ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (oj 2004 L 375/12).

their study time. The first directive which directly concerns labour migration as such is Directive 2005/71/EC⁵⁹ on researchers. In its Article 12, it also provides for equal treatment with the nationals of the host State as regards working conditions. Nonetheless, this does not inherently imply that these researchers will be protected by a conventional employment contract or by all facets of social security. The EU has merged Directive 2004/114/EC on students and trainees and Directive 2005/71/EC on researchers to create Directive 2016/801. The directive aims to improve the legal framework for these categories and extend the scope of existing directives to trainees. Researchers and trainees are both guaranteed equal treatment under the directive's Article 22. However, the trainees' right to equal treatment is limited to work arrangements inside Member States.

(ii) *Highly qualified workers*

The so-called 'EU Blue Card' Directive 2009/50/EC⁶⁰ was adopted to facilitate the admission and mobility of highly qualified migrants and their family members. This directive aims to attract numerous highly skilled individuals to the European labor market, thus it is unsurprising that these individuals are afforded a broad spectrum of rights, including the right to equal treatment with the nationals of the Member States that issued the 'Blue Card.' Article 14 guaranteed equal treatment for all employment as well as for the branches of social security. Member States are obliged to continue paying pensions to these holders, even if there is no bilateral social security agreement. Article 14(3) allows Member States to withdraw or refuse to renew the EU Bleu Card if the holder lacks sufficient resources to maintain themselves and their family without resorting to the host state's social assistance system.

(iii) *Illegal staying third country*

Directive 2009/52/EC⁶¹ prohibits the employment of illegally staying third-country nationals and outlines minimum standards and measures for employers. Its stated goal is to reduce demand for hiring unauthorized workers, who frequently deal with exploitation, low pay, and unsafe working conditions in addition to not paying social security taxes. The payment obligations of employers are addressed in Article 6. According to the directive, member states must make sure that companies employing foreign nationals without legal documentation have

⁵⁹ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research (oj 2005 L 289/15).

⁶⁰ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (oj 2009 L 155/17).

⁶¹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (oj 2009 L 168/24).

to be financially responsible for any unpaid wages or social security contributions that would have been paid by the company if the employee had been employed legally. The directive lacks a provision ensuring equitable treatment of workers in host Member States, impacting their employment and social security rights. The scope of these rights is contingent to the laws of individual Member States, with the majority emphasizing the repatriation of irregular immigrants, which may compromise their rights.

(iv) *Seasonal workers.*

In 2014, the EU adopted two additional labour migration instruments, the first being Directive 2014/36/EU⁶² on seasonal workers. This directive outlines conditions for third-country seasonal workers in EU Member States, ensuring decent working conditions and circular migration. It aims to address temporary low-skilled workers in sectors like agriculture and tourism, but weakly outlines obligations for Member States. The goal of the directive is to establish a regulated admittance system in order to guarantee seasonal workers legal status and good working conditions. Before being admitted, seasonal workers must have a job and be financially supported. Those spending more than 90 days are also required to have enough money to live on their own. Article 23(2)(i) permits Member States to limit equal treatment by excluding family and unemployment benefits, so denying seasonal workers access to these benefits while fulfilling the requirements set for nationals. Because seasonal workers are not permitted to stay in the host Member State after concluding their employment or joining family members, this clause emphasizes the circular migratory component of the regulation. The Seasonal Workers Directive aims to prevent labour migration and ensure equal treatment for seasonal workers moving to a third country. However, invalidity and death pensions are not mentioned, limiting the rights of these workers (Verschueren, 2024, p. 400).

The EU's labor migration rules stem from a sectoral approach and typically provide equitable treatment for migrant workers from third countries. Regulation 593/2.8 of the EU stipulates that the directives do not violate the principles of Private International Law. The employment contract may be governed by the legislation of the home country in the event of third-country workers temporarily deployed to an EU Member State. The directives also exclude seasonal laborers, as well as posted or seconded workers. Although it is uncertain whether this is consistent with other international and European human rights laws, the right to fair treatment

⁶² Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (oj 2014 L 94/375).

in social assistance programs is also eliminated. Each of the analyzed directives includes a provision declaring that they do not affect the ability of Member States to adopt or maintain regulations that are more beneficial to the individuals to whom they pertain.

3.3.2. Migrants's Access to Social Protection

Austria: Austria's welfare system is significantly restrictive on immigration, with insurance payments dependent upon legal work and restricted access to legal employment for foreigners. Tax-funded benefits need residency permits, and non-EU/EEA/Swiss nationals must provide evidence of enough income and comprehensive health insurance. Permanent resident permits may only be awarded after an extended period of stay in the nation (Chmielowski, 2020). This combination of characteristics made Austria stand out as persistently very restrictive when it comes to letting immigrants participate in the welfare state generosity (Römer et al., 2021).

Belgium: The Belgian social security system is an employment-based framework aimed at delivering social support to those at risk of poverty. The majority of benefits are not accessible to claimants who relocate abroad, and access to them is contingent upon the number of years of contributions. Some benefits, such as unemployment payments, need effective residency in Belgium, while the elderly's minimum guaranteed income requires 10 years of residence and at least 5 years of continuous residence. This condition is applicable to both nationals and nonnationals; however, it has a distinct influence on foreigners.

Czech Republic: The Czech social security system is typically accessible to EU members, although third-country nationals may get access if they are employed or possess permanent residency. Nevertheless, Czech nationals have the ability to export their benefits to other countries, particularly those members of the European Union and non-EU states that have bilateral agreements. None significant discussions or policy ideas exist about alterations to the access of foreign residents or non-resident nationals to the Czech social security system (Melin, 2020). The Czech social security system is typically accessible to EU members, although third-country nationals may get access if they are employed or possess permanent residency. Nevertheless, Czech nationals have the ability to export their benefits to other countries, particularly those members of the European Union and non-EU states that have bilateral agreements. None significant discussions or policy ideas exist about alterations to the access of foreign residents or non-resident nationals to the Czech social security system. Even though many Vietnamese have become citizens of the Czech Republic, the country does not have a bilateral agreement with Vietnam and does not accept many refugees (Koldinská, 2020, pp. 117–120).

Denmark: Denmark has transitioned from a policy that prioritized labor immigration and protected refugee rights to a more stringent approach that restricts the entry of immigrants and refugees. The nation has transitioned its welfare state from national citizenship and territoriality to residency, emphasizing labor market participation and EU-related worker status (Melin, 2020). Immigrants are entitled to a range of financial assistance, including cash benefits, unemployment compensation, guaranteed minimum income, and family allowances, in addition to in-kind benefits from the public service sector. The viability of the Danish welfare state and migration has been a subject of political discourse, raising worries around 'welfare tourism' and the portability of child benefits for EU residents.

Finland: For a long time, Finland has been mainly a country of emigration and started to attract large numbers of immigrants only during the past decades. EU and non-EU immigrants have identical treatment for access to social benefits; nonetheless, there are instances when EU citizens enjoy more favorable access. Social rights and entitlements are influenced by residence permits, the duration of stay, and the reasons for residence. Children access social protection more readily than adults, and conduct influences the amount of assistance received. Non-residents may receive monetary benefits from abroad flexibly, provided they stay in the Finnish system for six months. In recent years, political debates have become increasingly prominent, as the Finnish system is on the brink of a significant transformation as a result of the efforts of two successive administrations to implement the most extensive social policy reform in Finland's history⁶³

France: The French social protection system is characterized as both extensive and fragmented, having for long relied mostly on social security or insurance benefits (Math, 2020). The definition of regularity and the database of recognized documents/permits have changed over time. Consequently, foreign nationals who are legally residing in France but do not possess the "good" document may still be denied access to social benefits. More immigrants are left with unstable and short-term permits as a result of tighter immigration laws; during this time, social benefits are stopped for these foreigners.

Germany: Germany's migration patterns have markedly evolved during the post-war era, with EEA nations emerging as the primary source of immigration to Germany. Social security is provided to German citizens and migrants without discrimination through the social insurance system, which facilitates mobility. Eligibility for minimum income support is limited for those entering Germany without work. Non-EEA nationals have difficulties stemming from stringent

⁶³ Laura Kallioma-Puha (2020), Migrants' Access to Social Protection in Finland, p155

temporary residency permits for workers, with three alternatives: student visas, academic qualifications, or family reunification. Employees from third countries without academic degrees are required to petition for asylum in order to receive a visa. After many years of being a tolerated migrant, there is a possibility to obtain a permanent residency card.

Netherlands: In terms of accessing unemployment, disability, old-age pensions, and family benefits, the Dutch system regards immigrants working in the Netherlands in a way similar to that of national inhabitants. Individuals who are unemployed are required to get residency status; nevertheless, they risk having their status revoked if they use government aid during the first five years. While they may not be eligible for old-age benefits in the Netherlands, they may be able to apply for public assistance in their home countries. Within the EU, the export of disability and old-age benefits is guaranteed; however, a bilateral agreement is required for exports made outside of the EU.

Spain: The Spanish social protection system is a welfare administration that is characterized by its "Mediterranean" nature, which combines universalist schemes and social insurance programs (Callejo, 2015). The accessibility of social schemes to foreign nationals is influenced by this system, as Spanish nationals are granted more favorable access to schemes due to their prior contributions. The welfare entitlements of foreign nationals are also influenced by the nature of international agreements that Spain has ratified. As their work situations worsened, immigrant communities became more vulnerable as a result of the contributing logic of access to social security. Immigrants are granted inadequate protection by Mediterranean welfare states that have substantial informal economies, as their entitlements to welfare are substantially contingent upon their participation in the formal labor market (Eloísa Del Pino, 2015)

3.4. The challenges of European companies in labour migrants

There is a self-regulating mechanism in the labor market of countries that maintains the natural balance of the national economy's labor supply. The market may be categorized into two types: flexible markets and restrictive markets (Moe, 2022). Will Kenton characterizes the labor market's flexibility as "an important part of the labor market that allows companies to make certain decisions about changing their workforce in response to market fluctuations and helps drive production"⁶⁴. (Piore & Schrank, 2008) identified four distinct dimensions: flexibility in recruiting and terminating employees, internal flexibility about working hours, functional

⁶⁴ Will Kenton, 'Labor Market Flexibility' (Investopedia, 18 April 2021), <https://www.investopedia.com/terms/l/labor-market-flexibility.asp> (7/11/2024)

flexibility pertaining to job content alterations, and pay flexibility concerning compensation. The flexibility of hiring and firing migrant workers, as well as the difficulties companies have in managing and recruiting them, will be covered by the author in this section.

As discussed in Section 3.1, the migratory worker in the context of sustainable development is becoming more prevalent and significant. The number of immigrants is increasing significantly in European nations, including both skilled and unskilled labor. Additionally, managers in European organizations have obstacles in acquiring talent. Migration permits firms to tap into a wider workforce, accordingly facilitating the selection of more appropriate applicants for recruiting roles. According to (Anna-Maija Lämsä, 2019), three factors influence an organization's perception of its recruitment capability: the recruiter's characteristics (including a propensity to hire individuals similar to oneself and the observation of migrant hiring), the standards deemed appropriate by the organization, and the organization's level of international orientation. Immigrants bring a wide range of experiences, perspectives, languages, genders, ages, and levels of education to the workforce, which is becoming more diverse as a result of the aging population in Western nations. The workforce diversity is expanding owing to the aging population in Western cultures and the influx of immigrants to metropolitan areas, who vary in knowledge, skills, language, gender, and age. The variety of information and abilities enhances the capacity for quick problem-solving (Ali Dehghanpour Farashah, 2019). Managers, on the other hand, have a difficult challenge when it comes to fostering an inclusive environment in the workplace.

The recruitment of new personnel encounters several challenges; managers indicate that language hurdles provide a considerable obstacle in the recruitment process, as noted in the research by (Vasić, 2022). They estimate that 59% of the migrant labor is unskilled and that language competence is typically poor. They have several challenges in using technical jargon and engaging in discussions. In fact, a lack of language can result in communication barriers and problems with workplace cohesion. Since immigrant workers sometimes struggle to comprehend technical words in the workplace, a lack of communication skills might impact professional progression chances or make it more difficult to accept allocated jobs (Liyong Cheng et al., 2020). As stated by (Jens Hainmueller et al., 2010) companies, regardless of their financial situation, are interested in highly qualified migrant labor. This necessitates that they possess formal qualifications and work experience, as the strain to recruit exceptional individuals is heightened. As a result, there is a growing need to find and hire exceptional people, who ideally will have relevant job experience and academic credentials.

One of the challenges that managers have is having to create a workplace that is welcoming to all employees. Facilitating and fostering integration among personnel enhances their linguistic proficiency, knowledge, cultural adaptation, and international collaboration abilities, among other benefits. Nevertheless, managers perceive the challenge of managing cultural differences as a result of a shared issue: the majority of them have not received the requisite training (Malik & Manroop, 2017). It is essential that all employees, including administrators, participate in at least some training programs in organizations with low levels of workforce diversity and internationalization. The research by (Bleijenbergh et al., 2010) highlights that fostering an inclusive diversity in the workplace relates favorably with job performance, as certain people may experience discomfort, fear, or anxious while starting a new position. The complexity of motivating migrant workers to acquire a new language and succeed in their careers is something that managers are well-aware of. There is a significant lack of personal career development opportunities for the majority of the migrant workforce, as they do not remain with the employer for an extended period. (Mehreen Ali, 2018) argues that decreasing turnover rates enables firms to save recruiting expenses and increase team cooperation.

The management of cultural management, which is often referred to as diversity management, is thus something that managers need to be accountable for in addition to managing human resources. Moreover, overseeing everyday operations in the workplace is crucial for enhancing employee job satisfaction (Belawati et al., 2019). High performance on the job is possible in an innovative organizational setting, but only if leaders can inspire their teams to strive towards common objectives. The research conducted by (Tariq & Ding, 2018) demonstrates that managers do not have a tough time exerting influence on the performance of their workers, motivating them, and maintaining discipline in the workplace. Conversely, they have more challenges in managing effective communication and regulating rivalry in the workplace. The concealment of knowledge and the sharing of knowledge among colleagues are among the grounds for workplace competition (Michael Hopkins, 2003). There is a paucity of personal relationships, particularly when senior managers and lower-level managers originate from diverse cultures, which results in the concealment of knowledge not only horizontally among colleagues but also vertically (Ahmad, 2019). Recruiting procedures, language barriers, social interactions, communication barriers, and cultural differences are some of the problems that managers confront when it comes to migration operations. Organizations may support managers by offering comprehensive personnel profiles or superior language education.

3.5. Hungarian policies on migration

3.5.1. The historical context of Hungarian immigration

Since the late 1980s, the role of migration as a source of labor and human capital has become increasingly important as a result of a number of factors, including the ever-increasing competition in the global economy, the development of EU integration, changes in the international environment, and shifts in demographic and labor market processes. The number of places and persons taking part in international migration networks is growing. Throughout the course of the last sixty years, Eastern Europe has shown a growing diversity of net migration rates, which refers to the balance between entering and exiting migrants. Between the 1960s and the 1990s, the region experienced a loss of homogeneity; certain areas, like Slovenia and the Czech Republic, evolved into immigration countries with a positive migration balance, whereas others, such as Romania and Bulgaria, became or continued as emigration areas with a negative migration balance (Melegh, 2012). Since the middle of the 2000s, Hungary has begun to shift towards an emigration model, similar to that of Romania and Bulgaria. As a result, the country has experienced the loss of a younger, more educated, and/or skilled workforce as individuals have moved to Austria, Germany, and the United Kingdom. Previously, Hungary had a tendency to follow the path of becoming an immigration country (Gábor, 2020).

During the 1950s, Hungary had a comparatively high income compared to other countries in the area. Its welfare improved in comparison to regional and world norms until the 1980s, when it experienced stagnation or even recession. Hungary's migration balance has been deteriorating since 2008, as indicated by estimates derived from the United Nations migration framework, which is based on statistics and stock data on the country of birth (Bleha et al., 2024). In addition, the simultaneous rise in migration and the reorganization of the economy has resulted in a growing dependency on remittances, a pattern that can also be seen in other countries that were once socialist (Böröcz, 2014). As an example of the importance of historical linkages in huge migration, the destination nations of Hungarian migrants have remained relatively unchanged over the last 60 years. Austria, Germany, the United Kingdom, North America (the United States and Canada), and to a lesser degree Australia, as well as Israel in the 1970s, have always been the five countries that Hungarian migrants have chosen to settle in as their primary destinations. Despite its impressive resiliency, Hungary, along with the rest of the area, has shifted its foreign policy focus to Europe and has weakened ties to countries outside of Europe that attract migrants.

This region only receives immigrants from the immediate surrounding areas, and links to more distant regions are extremely rare and relatively weak (such as China, Vietnam, or other parts of the world). This issue of immigration is characterized by the fact that the entire region, including Hungary, has historically sent massive waves of people to the 'West' through

continuous migration links. However, this region only receives immigrants from nearby areas. Not only does Romania play a significant role as a source of immigration, but Hungarian minority communities in Ukraine and Serbia also play key roles. At the 1990s, immigration reached a lower level, with an intake of twenty to thirty thousand individuals per year (Melegh, 2016). This was after it had reached a high point at the beginning of the decade. The flow of Hungarian people from neighboring countries (including Romania) and the flow of Hungarians who live outside Hungary who used to leave the country have resulted in a situation in which the main immigrant groups are not balanced with the flow of migrants. In addition, they do not match the 'lost population' in terms of younger age composition, average education level, and local employment rates (Melegh et al., 2021). There are a number of direct demographic 'solutions' that may be implemented, such as increasing the birth rate and increasing immigration from countries outside of Europe, particularly China and Vietnam. This might result in a decrease in the number of migrants if structure factors do not undergo any changes.

3.5.2 What changed in the Hungarian labor market

(i) How Hungary sets their policies labour market

Hungary did not place a significant emphasis on the development of a complicated immigration strategy while it was under the communist state rule. The first legislative reform that was made after the fall of the communist system in Hungary was to speed up the process of repatriation of Hungarians residing in the West who moved out of the country or who could have lost their citizenship as a result of restrictive measures (Act XXXI of 1989). Due to the fact that they were subjected to political and ethnic persecution in their native country, Hungary was able to take in a significant number of refugees from neighboring countries, particularly Romania. These individuals had illegally crossed the border and sought asylum in Hungary. Hungary experienced a substantial number of refugees from East Germany, who were subsequently authorized to go to West Germany over Austria. As a result of the effects of the Yugoslav conflict (which began in 1991), the amount of people seeking refuge and immigration increased dramatically, making the laws almost impossible to handle, necessitating yet another amendment to the legislation in 1993. At the time of its implementation in 1993, the Act on the Entry, Residence, and Settlement of Foreigners in Hungary, additionally referred to as the "Foreigners Act" (Act LXXXVI of 1993), was more restrictive than the legislation that had been in place since 1989. The citizenship procedure for foreign nationals requires eight years of residency in Hungary and a minimum of three years of living and working in Hungary with a residence permit to get a settlement permit (Gödri, 2016).

The first wave of legal reforms indicates that Hungary has integrated its legal system with international legal frameworks since the late 1980s (Andras, 1997). According to (Nógrády et al., 2013), during the era prior to the incorporation of the European Union, national migration laws and regulations were modified to conform to EU legislation. The legal status of immigrants was separated into EU citizens and Third Country Nationals (TCN) by the 2001 Act on the Entry and Residence of Foreigners (Hungarian National Assembly 2001), which serves as the foundation for the free movement of EU citizens in Hungary. Nevertheless, it preserved the requirement for a residence permit in both situations: a minimum of three years of work and residence in Hungary with a residence permit in order to obtain a settlement permit or immigration status. For TCNs, the duration of residency required prior to citizenship is eight years. In addition, the system has been modified to include a number of ethnic advantages. The most significant of these are the provision of social and educational help to ethnic Hungarians who are residing outside of Hungary, as well as certain types of legal assistance when seeking for Hungarian citizenship (Fox, 2007).

It was the 2001 Act on Entry and Stay of Third Country Nationals (Hungarian National Assembly 2007b) that established the framework for the free movement of EU nationals in Hungary, and it was to this statute that national migration regulations and laws were amended prior to EU membership. A minimum of three years of work and residence in Hungary with a residence permit is required in order to obtain a settlement permit or immigration status. Despite the fact that it divided the legal status of immigrants into EU citizens and third-country nationals (TCN), it still maintained the requirement for a settlement permit in both cases. Before being naturalized, TCNs must have lived in the country for a total of eight years. Other ethnic privileges were also incorporated into the system, with the most significant being social and educational support for ethnic Hungarians residing abroad, as well as certain forms of legal assistance when applying for Hungarian citizenship (Noémi Kántor, 2012). Particularly, in 2011, the citizenship law was also amended to grant full citizenship (granted within a few months) to anyone born abroad, whether or not they currently reside in the country, who speaks Hungarian, can demonstrate historical Hungarian background, and has an ancestor who lived on the territory of historical Hungary (the Kingdom of Hungary ahead of time to the Trianon Treaty of 1920). This was done in order to improve the privileges of those with Hungarian ancestry and those in neighboring countries, following a number of precedents in the previous decade (András Gelencsér, 2011).

Providing preferential treatment to native Hungarians does not amount to explicitly aiding the immigration of native Hungarians. This is because it is thought that native Hungarians are

responsible for maintaining Hungarian ethnic enclaves in surrounding countries. However, it does provide individuals with rights that enable them to freely relocate and live in Hungary—regardless of whether they originate from a non-EU country (Nagy, 2019). On the other hand, TCNs who do not have such a history are required to comply to stringent and selective standards in order to remain in Hungary, and the process of naturalization takes a total of eleven years (three plus eight times). In 2012, the government established a unique immigration procedure known as the Government Bond Residency Program, which is paradoxical to conventional nationalist reasoning. This scheme facilitates residence and settlement for individuals who invest 250,000 euros (up to 300,000 euros from January 1, 2015) in certain government bonds issued by the Government Debt Management Agency (Hungarian Parliament 2012). This country is unable to formulate a migration policy that is based on rules that are widely accepted and systematically used, which are related to concepts of global justice (such as the fair use of human rights, the rights of migrants as a vulnerable group, etc.). This is due to the tensions that exist between political and economic interests, the central nationalist rhetoric, and the anti-immigration attitude (Lucarelli, 2021). Rather, the nation's immigration policy is founded on a sophisticated, historically developed hierarchical logic. A document entitled "Migration Strategy" was published by the government in 2013 with the primary objective of justifying programs that were founded on a variety of EU-funded migration-related funds (Government Decree 1698/2013).

By the end of 2014, the number of asylum seekers, the majority of whom came from Western Asian nations, had increased from around 2,000 to over 40,000 (Meral & Kumar, 2025). This marked the beginning of a more dramatic shift that occurred over the winter of 2014 and 2015. As a result of the crisis that occurred in Hungary in 2015, more than 170,000 individuals, the majority of whom departed the country immediately, submitted asylum applications (Melegh, 2020). In response, the government enacted a series of legislation that altered the legal status of certain nations, classifying them as 'safe countries.' Subsequently, emulating Bulgaria (2014) and Spain (1993), Hungary constructed a border barrier along the Hungary-Serbia border and subsequently along the Hungary-Croatia border. According to the Hungarian Parliament (2015), the government made it a criminal offense to try to cross the border illegally and cause damage to the barrier during the years of 2015 and 2016. Hungarian immigration policy has evolved in recent years to include unique requirements for those seeking asylum, inhabitants of the European Economic Area and their families, citizens of third countries without a Hungarian historical or ethnic heritage, and foreign individuals having historical or ethnic links to Hungary. A combination of national laws, international treaties, and European Union law forms the

foundation of this unique structure. To comprehend the Hungarian state's moving within international hierarchies, one must be familiar with its institutional architecture. The primary objective is to "revitalize" the country by drawing selected or "culturally close" Hungarian immigrants to fill labor shortages and balance the long-term decline and elimination of the population.

(ii) *The labor market integration*

Hungary's labor market has seen considerable changes since 2010. Instead of sustaining a welfare state, Hungary is attempting to turn into a "work base on society" (Lakner & Tausz, 2016). The labor market's integration function is assessed in terms of worker effectiveness (wage, social benefits, social security, and so on). In the period after the regime change in 1989–90, Hungary was among the countries where the proportion of the economically active (employed and unemployed) was rather low among the working-age population. The large increase in migrant labor can also be attributed to free movement inside the EU. Hungary became the center of attention due to a significant number of refugees (Simionescu, 2016). However, Hungary's position towards foreign labor has changed in recent years. This generates a good wave for the economy, fostering an effective investment circumstance. As a certain location grows, it attracts more of the workforce owing to increasing employment options (Glaveanu & Taillard, 2018b). In Hungary, 60% of foreigners are concentrated around the capital (Karwasiński, 2012). One of the reasons for attracting other foreign workers to Hungary is the terms of the labor contract. The contract specifies who will pay the employee's taxes, as well as the appropriate wage. Hungarian legislation requires employers to notify tax authorities about who is responsible for paying taxes and social security duties. If the company misses to inform the designated individual, the competent authorities may consider any of them as accountable (Marica, 2020).

Some research studies identify three forms of unemployment: temporary, seasonal, and frictional. Frictional unemployment happens when workers transfer jobs, but cyclical unemployment occurs when the economy is in recession, which is the reason for unemployment. Because the Hungarian economy is thriving, there is no cyclical unemployment, although seasonal labor shortages still exist in several occupations (Moldicz, 2022). For these reasons, the Hungarian government has authorized non-EU nationals to work as seasonal employees. Recruiting agencies can engage foreign workers without a work permit, which simplifies labor recruiting procedures. Labor recruiting procedures are also simplified since recruiters can employ foreign workers without a work permit. Improving labor market conditions involves integrating young people, particularly high school and university students, into the workforce.

The Association of Hungarian Student Enterprises reports that young people choose summer work in retail, hospitality, agriculture, and manufacturing. Summer jobs are becoming more popular due to the upcoming income tax exemption for young people under 25 on January 1, 2022. The number of students working throughout the summer has been estimated to be between 65 and 70 thousand, with potential for an increase to 75 thousand. The labor shortage situation in Hungary is progressively improving because of new laws and policies implemented by the country's government. Hungary's economy is expanding again, requiring the demand for workers in a variety of roles and occupations. The reader can deduct from the above two instances that the Hungarian government is attempting to increase the labor supply.

3.5.3. Hungarian emigration workers

Hungarians with good or perfect training and qualifications can start working in their home country. Previously, a job with a suitable income would be considered stable for them at least until retirement. Nowadays this is not entirely true anymore. On the one hand, workers have needs and desires for new experiences and have increasingly high hopes for their work. On the other hand, they cannot always find suitable jobs. So, what does appropriate employment mean? Those jobs confirm the employee's qualifications and experience, and finally, the employee is paid a decent salary. Financial and economic factors are generally acknowledged as the main motivating factors behind Hungarian emigration. This is especially true for educated migrants because of their salary potential abroad, especially in Western and Northern Europe. There are two types of Hungarian migrants: cross-border commuters and long-term labor migrants.

Table 1.1: Number of emigrants from Hungary having Hungarian citizenship, 2018-2022

TIME	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
GEO (Labels)										
European Union - 27 countries (from 2020)	2 44 0 64 4 ep	2 44 8 79 8 ep	2 46 1 15 6 ep	2 65 4 11 5 ep	2 62 4 10 1 ep	2 57 1 34 1 p	2 68 5 16 2 ep	2 16 9 54 0 ep	2 79 8 47 8	2 73 0 31 3 p
Belgium	102 657	94 5 73	89 7 94	92 4 71	89 6 90	88 9 35	102 936	76 5 62	87 2 72	84 6 27
Bulgaria	19 6 78	28 7 27	29 4 70	30 5 70	31 5 86	33 2 25	39 9 41	6 64 9	26 7 55	13 1 75
Czechia	25 8 94	28 4 68	25 6 84	38 8 64	27 3 16	26 7 42	77 7 98	35 8 54	18 6 30	31 7 64
Denmark	43 3 10	44 4 26	44 6 25	52 6 54	56 4 03	60 3 81	66 5 20	53 8 22	44 0 08	62 9 27
Germany	259 328	324 221	338 403	533 762 e	560 700 e	540 415	576 319 e	488 138 e	543 162	533 485
Estonia	6 74 0	4 63 7	13 0 03	13 7 92	12 3 58	10 4 76	12 8 01	12 4 27	12 4 81	9 65 7
Ireland	76 5 60	71 1 07	67 1 60	62 0 56	64 0 68	53 7 35	62 0 04	55 9 42	52 4 29	61 1 33
Greece	117 094	106 804	109 351	106 535	103 327	103 049	95 0 20	77 8 37	79 5 96	80 3 07
Spain	532 303	400 430	343 875	327 325	368 860	309 526	296 248	248 561	696 866	531 889
France	239 813	308 103	324 517	313 622	215 470	300 668	299 101	144 797	177 028	249 355
Croatia	15 2 62	20 8 58	29 6 51	36 4 36	47 3 52	39 5 15	40 1 48	34 0 46	40 4 24	46 2 87

Italy	125	136	146	157	155	156	179	159	158	150
	735	328	955	065	110	960	505	884	312	189
Latvia	22.5	19.0	20.1	20.5	17.7	15.8	14.5	11.9	12.9	16.6
	61	17	19	74	24	14	83	90	75	80
Lithuania	38.8	36.6	44.5	50.3	47.9	32.2	29.2	23.1	25.2	15.2
	18	21	33	33	25	06	73	03	05	70
Luxembourg	10.7	11.2	12.6	13.4	13.8	13.9	15.5	14.8	15.9	17.2
	50	83	44	42	31	85	93	70	59	27
Hungary	34.6	42.2	43.2	39.8	39.8	48.1	49.7	67.3	67.9	58.4
	91	13	25	89	29	78	95	64	99	08
Malta	4.77	5.10	7.09	8.30	7.02	9.34	7.99	12.6	13.5	13.1
	8	8	5	3	0	2	8	79	09	66
Netherlands	112	112	112	111	108	109	107	102	110	109
	625	900	330	477	231	635	906	502	342	616
Austria	54.0	53.4	56.6	64.4	66.1	67.2	68.2	62.5	67.2	74.2
	71	91	89	28	44	12	80	81	99	71
Poland	276	268	258	236	218	189	180	161	201	228
	446	299	837	441 p	492 p	794 p	594 p	666 p	595	006
Portugal	53.7	49.5	40.3	38.2	31.7	31.6	28.2	25.8	25.0	30.9
	86	72	77	73	53	00	19	86	79	54
Romania	161	172	194	207	242	231	233	186	216	202
	755	871	718	578	193	661	736	818	861	311
Slovenia	13.3	14.3	14.9	15.5	17.5	13.5	15.1	17.7	21.1	20.9
	84	36	13	72	55	27	06	45	44	56
Slovakia	2.77	3.64	3.87	3.80	3.46	3.29	3.38	2.42	3.39	4.46
	0	4	0	1	6	8	4	8	5	8
Finland	13.8	15.4	16.3	18.0	16.9	19.1	17.2	15.0	13.4	15.6
	93	86	05	82	73	41	63	84	59	35

Sweden	50.7	51.2	55.8	45.8	45.6	46.9	47.7	48.9	48.2	50.5
	15	37	30	78	20	81	18	37	84	92
Iceland	4.37	4.05	4.04	4.15	3.64	4.37	4.59	6.00	4.66	5.09
	2	2	6	9	1	2	0	9	1	1
Liechtenstein	497	476	468	522	26	484	446	432	516	480
Norway	26.5	29.3	29.1	34.6	31.9	27.1	23.2	21.4	34.2	32.5
	23	08	73	94	63	58	07	47	97	36
Switzerland	106	111	116	120	124	130	126	109	116	122
	196	103	631	653	997	225	221	376	769	123

Source: The data that support the findings of this study are openly available in Eurostat at (Tariq & Ding, 2018)

Base on the statistic in Table 1 shows the overall of emigrants over European countries including Hungaian. The data of migrant workers from Hungary was not highest but it was a noticeable number. After 2019 when covid 19 pandemic spread strongly, people choose work aboard was higher. There was around 10,000 people havd been looking for a job in other countries. The rising number of people moving to South-West countries while those decrease figure of working in Eastern region. The number of migrants is concentrated mainly in Germany, Switzerland, Italy, United Kingdom and Austria, where cross-border workers often choose to work in Austria for the reasons of convenient travel and a better salary than working in Hungary. Higher education and more qualified workers are attracted to the more recent magnet countries for labor emigration, primarily the United Kingdom and several other EU countries. The offered occupations are not as qualified, but in these nations, overqualified of migrant labor is not unusual. Whereas labor emigrants working in Austria, the United Kingdom, or other EU nations are more closely linked to their home country, those working in Germany are more likely to work there for a longer duration and settle in their new country. They visit their relatives at home on a regular basis and return there more often. Besides, Hungary is a country with many educational policies and programs, as well as scholarships for international students. These programs have attracted many students to study and stay at work. However, there are still a number of students who, after graduating, choose to work in another country in the EU, not Hungary. Migration and mobility (including internal or international migration, emigration or immigration, commuting, changing jobs, applying for asylum, return migration, moving to another home/settlement, leaving velvet family, etc.) are often consulted and prepared according to previous plans. In the community, people often exist in migration networks and this network is extremely necessary. The role of networks in the migration process is clearly pointed out by (MacDonald & MacDonald, 1964) "... prospective migrants learn about opportunities, are provided with convenient transportation, and have initial accommodation and jobs. arranged through basic social relationships with previous migrants". Therefore, the number of migrants is raising by a year because they often work aboard gather a group to follow these previous migrants. In some cases, some high-qualified migrant workers looking for a job by himself.

The cross-border commuters in the Central European Region

Beside the amount of migrant people, there are several Hungarian cross-border commuters who work in Central European Region (Centroe) include Czech, Slovak and Austria as well. Since 2011, the last barriers to free movement were removed for the workforce and all citizens of these states have had the right to work in Austria and in any other EU member states (P. A. Verwiebe et al., 2021). The social benefits may be one of the main reasons for commuting. According to the EC Regulation 883/2004, an individual is subject to the legislation of the country where he works as an employed or a self-employed person, independently of where he lives, so the country of work is responsible for his social benefits. I suppose a hypothesis on the difference in adaptation in the labor market of short-term and long-term migrant workers. When seasonal workers migrate after working and they tend to stay long term, their ambitions will expand to the same economic positions as natives. As temporary migrants become more permanently attached to their place of work, it becomes more difficult to separate their work status from their social role. Their attitudes toward work changed, leading them into competition and conflict with the native people. Unlike temporary migrant workers, cross-border workers often consider their work to be permanent in the country of origin from the beginning. The negative effects of adverse labor market experiences exist from the outset. They often tend to compare their jobs with those of workers in their hometown and find that their jobs have higher and better salaries. More and more migrant workers are seeking to carry out their plans or fulfill their objectives in other countries. They can have the chance to fulfill their aspirations and become who they want to be in a new country. They may even feel at home in a foreign nation if they are able to integrate.

(Jephcote et al., 2023) the findings also demonstrate that education is the main driver of occupational mobility, while marital and family status are important influences on economic activity mobility. In this part, the case example of East–West cross-border commuting in Centroe will be described. The case description will be followed by a review of preliminary research on labor market experiences of Eastern European mobile workers in the EU, including Centroe. The characteristics of East-West migrant labor are marginalization and abuse. Many immigrants from the East and West will accept employment in low-paying labor markets that Western European citizens will no longer accept, which frequently puts them at a financial disadvantage. Frequently, they take

secondary labor positions instead of primary labor occupations. In Central Europe, migrant laborers frequently receive lower wages than Austrian natives. Studies show that employees moving across border regions are viewed as having more qualifications than they do when applying for positions in Austria. On the other hand, they continue to face frequent wage discrimination.

One of the most reasons is transportation convenient. The cross-border region offers relatively easy commutes because of the short travel distances and well-established rail and highway systems. For example, commuting time between the two most populated cities in Central Europe, Budapest and Bratislava, the capitals of Hungary and Slovakia, is approximately two hours. Austria's average national economic living standards are almost twice as high as those of Hungary. Slovakia and the Czech Republic do slightly better than Hungary when compared to Austria. (Karácsony et al., 2021) mentioned that the coronavirus crisis has caused a reorganization of labour markets and severely affected cross-border travel, with the virus imposing restrictions that have hindered free geographical movement across borders and endangering daily travel. Strict control measures also cannot avoid the movement of workers. Whereas previously passengers travelled under more moderate conditions, they now also have to meet stricter requirements (e.g., Having to experience continuous challenging and only being able to enter other countries without a valid negative test result). Follow the survey of (Haindorfer, 2020) research, he indicated that the primary reason for cross-border commuters from the Czech Republic, Slovakia, and Hungary to Austria is the country's supposedly higher salaries. Around 96% of the commuter interviewees in a prior study released stated that this was a major reason for wanting to work in Austria. The views regarding jobs appear to be less important than those regarding salaries: Only 46 percent of those surveyed considered advancements in professional credentials to be significant reasons for commuting, while 76 percent mentioned improved working conditions in this nation (Haindorfer, 2020, p. 115).

The concept of dual labor market theory – that migrants view their engagement in the labor market of the receiving country as transitory and therefore accept poor labor market conditions (Piore & Schrank, 2008). It is intentional to keep workers' social roles and self-perceptions apart from their work. The example of Latin American immigrants taking tasks that they would not accept in their native countrymen scrubbing floors, for example—

illustrates this division. As temporary migrants become increasingly firmly tied to their workplaces, it becomes more difficult to separate their employment status from their social roles and self-perceptions. They are more demanding in terms of salary at work and more competitive with locals. Eastern Europeans make up a sizable portion of the workforce in the West, according to the dual labor market hypothesis. The secondary segment differs from the primary segment in that it has a greater concentration of low-paying occupations, high levels of instability, bad working conditions, and low social status. Jobs in the secondary segment are frequently avoided by Indigenous people. Temporary migrants can be especially useful in filling workforce shortages at the lowest levels of the labor hierarchy. They accept bad labor market conditions in the secondary labor market category because they see their work in the host country as transient (Christof Parnreiter, 2019).

Base on explain of (Fritsch et al., 2023), of working people's life satisfaction in Austria includes variables of various negative labor market experiences (e.g., experiences of ethnic discrimination), as well as economic living conditions. Cross-border workers exhibit varying degrees of life satisfaction in different economic and non-economic areas. In terms of material and human needs, the data demonstrates that higher monthly income has a substantially greater positive influence on life satisfaction for migrants than for non-residents in the host country (Lechner et al., 2010). Furthermore, humor in life is somewhat impacted by the president's health. Medical risks will have an immediate impact on their productivity and safety at work. Life satisfaction is also impacted by commuting time, particularly for those who work abroad for an extended period of time. Finally, there is the factor of proficiency in foreign languages (especially German) for workers in this country.

In terms of social requirements, migrants who identify as "European" will be happier than those who prioritize explicitly identifying their national background (Zott & Amit, 2010). Furthermore, persons who exclusively had work partnerships and those who did not have children reported considerably better levels of life satisfaction (Fritsch et al., 2023). In addition, workers' life happiness is not positively impacted by more subjectively measured work-family balance. There is no discernible difference between working people who have more or less interaction with Austrian friends and those who work in Austria. Life happiness improved significantly when they perceived a favorable working environment in the organization, however life satisfaction declined significantly when they

encountered difficulties in the company related to their racism. In terms of the impact on personal development needs, the literature indicates that none of the analyzed variables have a substantial impact on working people's life satisfaction. Working individuals experience varying levels of life satisfaction despite negative indicators of overcapacity and irregular employment (Dumont et al., 2007). These limitations are not really noticeable in the Austrian workplace. Additionally, employees' life satisfaction is not much impacted by their ability to implement their own ideas at work. Working individuals in the Czech Republic have much lower life satisfaction than Hungarians in terms of socio-demographic and labor market variables (Blanchflower & Oswald, 2008).

High-skilled emmigration

Overall emigration, educated emigration, refugee immigration and emigration, and the number of Hungarian citizens leaving the country all reached new records in 2015. With regard to refugees, Hungary is in a situation that is one of a kind since it was significantly engaged in the refugee crisis that occurred in 2015, yet the nation became a frontline country without any immigration. There has been a significant decrease in the overall number of students in Hungary who are pursuing postsecondary education, as stated by KSH (2018). (Sergey A. Kremen, Faina M. Kremen, Kseniya P. Tsitsikashvili, 2023) observes that a growing number of students are opting for education abroad to facilitate earlier and more accessible emigration. The government may save money on education costs as a result, but the economy suffers since fewer individuals with advanced degrees are working in it. Both the overall migration and educated migration of Hungarian nationals, as well as the immigration and migration of refugees, achieved an all-time high in the year 2015. This was also the case for the year 2015. Hungary is in a distinctive position with respect to refugees, as it was significantly involved in the 2015 refugee crisis, yet it has since become a borders state without any immigration. (A. Juhász & Szicherle, 2017) observes that in 2015, Hungary received 391,384 illegal migrants and 177,135 legitimate asylum applicants. The majority of these individuals were attempting to get westward, however their number rose by 314% over the previous year. Asylum seekers apply in Hungary only for formal purposes, and with few exceptions, they thereafter go to Western Europe, mostly to Germany. By the conclusion of 2015, only 900 to 1,000 migrants stayed in Hungary. The majority of them had started the immigration process, while the other half were confined to

detention facilities and unable to leave. In addition to the homogenous culture of Hungary, many people moved for economical reasons. By stastic of KHS the number of students follow Hungary universities and education vocational training decreased 25% in 10 years. Increasing discontent with education policy and the social assistance system, in addition to concern about the future, are all sources of motivation that contribute to the intensification of migration from one country to another.

According to Castle, migration is a communal activity that arises from social, economic, and political challenges that impact the whole society of both the areas that are receiving migrants and the regions that are sending migrants. Hungary is not an exception to the rule that the movement of highly trained workers is generally seen to be a problem within the European Union. (Barslund et al., 2014) observe that the early 2000s had a renewed increase in migration from Hungary to Western Europe. Both the overall number of migrants and the number of immigrants and Hungarian residents with advanced degrees reached historical highs in 2015. As noted by (SZEMÉLYI, 2011), the motivations for migration among educated persons have mostly remained consistent since the dissolution of communism in Hungary. Ten percent of individuals with higher education had credentials that were higher than a PhD, and four percent of them were members of the Hungarian Academy of Sciences, according to the research that was conducted in 2005. As a result of the restricted employment market in Hungary for professionals with expertise in the domains of engineering and natural sciences, they decided to leave. According to (Galgóczi, 2013) earnings in the UK are 3.3 times more than those in Hungary, 2.8 times greater than in Germany, and 2.4 times greater than in Austria. Therefore, is Hungary witnessing a brain drain as a result of the rising migration of highly trained labor forces to countries that are much more developed? According to the literature on brain outflow, in addition to its disadvantages, brain drain can enhance a nation's institutions, and the knowledge acquired abroad can be applied in the native country. (Faini, 2003) examined the effects of skilled migration, remittances, and education. The author claims that there is not much data to determine if the improvement of migrants' skill levels positively impacts education in their countries of origin, since many migrants decided to pursue education elsewhere. In addition, migrants with high levels of expertise have lower amounts of

remittances, which indicates that they have a less influence on the economy of their home country.

It has been observed by (Lancellotti et al., 2016) that the membership of Hungary to the European Union has resulted in an increase in the mobility of Hungarian medical professionals. While 24,828 medical professionals have departed Hungary in the last 22 years, the migration rate of 0.4288 is still below what is thought to be a brain drain in the medical industry. Most Hungarian medical professionals choose to work in the United Kingdom as their destination of choice (Straubhaar, 2000). The natural sciences, including biology, chemistry, physics, and geology, are also seeing significant brain drain in Hungary. (SZEMÉLYI, 2011) discovered that from 1990 to 2000, around 20% of migrants have degrees in scientific sciences. Migration in this industry is a result of low compensation and a dearth of chances for the growth of research. Despite the fact that only 6% of job candidates possess higher education qualifications, Hungarian companies are experiencing difficulty in recruiting employees. Furthermore, almost half of all businesses (47%) report that jobs go empty because applicants don't have the right set of abilities. Healthcare, medical technology, and communication technology are among the industries experiencing significant labor shortages.

Research by (Mayo, 2021) indicates that Hungary has a robust migrant network and substantial personal remittances. It is estimated that fifty percent of migrants in Hungary who have educational degrees continue to maintain contact with people in their home country. The newly gained expertise from working overseas will continue to be shared with other Hungarians residing in Hungary. Although the rate of emigration has grown, the percentage of remittances from highly educated emigrants has been constant, which is a benefit of skilled migration for Hungary. Gyere Haza Fiatal, translated as “Come Home Young Person”, was a program run by the Országos Foglalkoztatási Közhasznú Non-profit KFT – OFA (National Employment Foundation) from April of 2015 to June of 2016. It targeted young Hungarian professionals living in the United Kingdom and aided in moving back home and finding a suitable job in Hungary. Particularly among the younger generation, the government is extremely worried about measures that are targeted at maintaining the population that is migrating for work. The program's method is straightforward, since applicants submit their applications immediately and thereafter

undergo interviews and evaluations conducted by OFA staff. In the case which they are approved, they will be given 325 Euros every month for a period of one year in order to cater to their financial needs. The initiative has engaged approximately 600,000 individuals within a few weeks of initiating applications. Not only has the government strengthened regulations in recent years to accommodate returning local workers, but it has also expanded those rules to include labor from third nations, which has helped to reduce the gap in the labor shortage. Hungary's position in the migrant labor market is being enhanced by the simplification of the guest worker employment process and the relaxation of social benefits for migrant labor. An in-depth discussion of the section on migrant labor in Hungary is going to be provided by the author in the following paragraphs.

To sum up the features of Hungary, (Kozma & Polónyi, 2022) stated that the level of internationalisation is in the middle of the Central European Countries. In recent years, Hungary has had many policies to attract international workers and students, while at the same time retaining domestic workers (especially high-knowledge workers). There are several possible reasons for commuting across borders. One of the main reasons for commuting is social benefits. According to EC Regulation 883/2004, individuals, regardless of their place of residence, are subject to the law of the country in which they actually work as an employee or self-employed. The country of work is therefore responsible for their social benefits. Therefore, almost migrant workers have their own desire and finding jobs by themselves without forcing. The previous literatures had shown that the workers' life satisfaction is relatively high (compared to non-migrants in their origin country). However, the proportion is significantly lower than other large groups in Austria (Bartram et al., 2011; Safi, 2010; R. Verwiebe et al., 2019). In general, the negative experiences do not have much impact on the life satisfaction of cross-border workers. The majority of migrant workers are in the group of medical professionals, doctors, and physical therapists. Almost them are satisfied with the salary and standard of living in the destination countries. Life satisfaction was thought to be more affected by negative experiences in the labour market than temporary migrants, who were viewed as innocent economic breadwinners. Indeed, those travelling across the East-West border (Czech Republic, Slovakia, Hungary, Austria) consider this for the long term, as they have advantages such as a relatively stable East-West welfare gap and relatively distant geography. The same

goes for short connections between Central European countries. Moreover, the expansion and development of exchange programs (Erasmus) and contract scholarships (TPF) have also changed student migration in the EU market. Hungarian undergraduate students prefer to participate in exchange programs because they believe that studying abroad will promote their professional careers and future mobility. On the other hand, postgraduate students rate their satisfaction based on different factors, such as technical facilities, management, quality of the program and life in the country they live in. All students consider studying abroad to be a better way to achieve their future job and desired salary. The focus of Hungary's efforts is on regulation, specifically the implementation and transfer of EU rules as a means of promoting multi nationalization and labor market flexibility. By loosen the bond of laws and policies for guest workers and improving benefits for knowledge workers, Hungary is opening up a whole new playing field that will help it recover some of its national strength.

3.5.4. Third-country migrant labour in Hungary

This part attempts to answer the question of what is the new light for migrant workers in Hungary now. The primary focus of this article's writers is on the significance and relevance of Hungarian labor migration, as well as the factors that contribute to it. There are many employees choose Germany, Austria and UK as their destinations cause of the higher wages offer, more stable job markets and often better social support systems compared to Hungary. However the source of third-country labour aim to work in Hungary still raising. A shortage of domestic labor has resulted, particularly in the fields of healthcare, specialized professions, or technology, as a result of a substantial number of domestic laborers departing. The government is contemplating steps to use foreign workers to fulfill the operational requirements of projects. Research on labor migration in Hungary is less commonly referenced than that of Poland, which is regarded as the "homeland."

Hungary, much like Central and Eastern Europe, has been forced to deal with a significant influx of migrants for a considerable amount of time. Reports from the OECD, Eurostat, and the Hungarian Central Statistical Office suggest a substantial rise in Asian student labor since the financial crisis. This phenomenon is altering the existing demographic landscape. Nevertheless, Hungary had implemented a restrictive new immigration law by 2024. This law explicitly delineated the legal status of individuals who

were permitted to remain in Hungary and granted immigration enforcement agencies significant authority to execute their duties. The latest data from the Hungarian Central Statistical Office (KSH) reveals that in November 2023, there were 98,500 foreign nationals employed in Hungary, with over 76,000 being from outside the EU. This marks a 13% increase in foreign workers over the past year largely due to the arrival of nearly 14,000 more third-country workers since November 2022 . Hungary started importing large numbers of foreign workers in 2016, mainly from Serbia and Ukraine (Sayfo et al., 2023). Since then, Asian workers, particularly those from Vietnam and the Philippines, have been gradually replacing Serbian and Ukrainian guest workers . The government has facilitated the import of Asian guest workers through the Immigration Act, making it easier for Vietnamese, Indonesian, Mongolian and Filipino workers to enter Hungary. Guest workers receive a two-year residence and work permit, renewable for up to one year. Upon expiration, they may return to their home or relocate, as their EU residence permit remains valid for a longer duration. Beside guest workers from third countries, the number of foreign students after graduation staying for entrepreneurship is increasing in Hungary. Some international students prefer to stay and work in Hungary after graduation, while others return to their native countries or seek employment elsewhere. Today's universities are one of the most diverse organizations in the world, with representatives from dozens of countries among students, faculty and support staff (Harrison, 2012). The internationalization of higher education in Europe is motivated by the goal of fostering a competitive labor market, with corporations seeking brilliant individuals from stronger labor sources (Tempus Public Foundation, 2018). According to the research of (Srovnalíková et al., 2018), Students prioritize learning about important business services and finding jobs in technology and communication enterprises. In addition, students with experience abroad are more likely to develop independent business skills and expand their understanding of information and communication technologies (Van Hooft et al., 2020). (Mosneaga & Winther, 2013) believe that in the global competition for talent, international students are regarded as potential skilled workers. Therefore, Hungary labor market will be shattered by a shortage of foreign guest-workers and skilled workers. Despite differing opinions from Hungarian workers who are concerned that foreign workers will replace the local workforce, Hungarian employers continue to hire guest workers. According to the

impact assessment that accompanied the draft at the time, "the availability of a workforce is essential to maintain the viability of investments, but any labor that has been available is dispersed locally or has inadequate skills⁶⁵." As a result, it goes on to state that "in order to address mobility problems and implement retraining, it is necessary to employ guest workers on a temporary basis to ensure the sustainability of investments and to maintain competitiveness. Following the research of (Balázs, 1995), although the government has set a quota of 20,000 for third-country nationals to satisfy labor market demands, it has yet to be fully used. However, it is predicted that tens of thousands of extra guest workers may be required by the end of 2024. At present, 17 non-EU countries are sending guest-workers to Hungary, including Vietnam. In the following article, the author makes recommendations about Vietnam's responsibility in protecting guest workers, particularly in Hungary, based on a review of documents and the current state of Vietnam's labor law.

Current Labor law for foreign workers

Constitutional Law of Hungary: Under Article XVII (3) and (4) said that "Every employee shall have the right to working conditions which ensure respect for his or her health, safety and dignity..... Every employee shall have the right to daily and weekly rest periods and to a period of annual paid leave." Article XX (1) mentioned that "Everyone shall have the right to physical and mental health." All employee has the right to maintain their good life-standard without any discriminatory, especially foreigners from third countries. Almost migrant workers face to bad treatments from not only owners, since they lack law and language. There are a several of workers are strong stressful with jobs because of over times or tones of work, even they cannot suffer lonely and become depression. Therefore, in the Constitution Law of Hungary contain articles about the fair treatment and right to mental health without subject distinguish.

Hungarian Labor Code 2023: The Section 295 and 297 related a foreign employer employs a worker in the territory of Hungary under agreement with a third party. They have right in term of working time, duration of annual paid leave, minimum wage (Article

⁶⁵ Impact Assessment Sheet, KKM/15444/2023/NNY, 2 May 2023. <https://cdn.kormany.hu/uploads/document/2/28/286/286aacbabf9343dcd4048a37f2502077318b1569.pdf>, accessed on 29 October 2023.

295(2)), conditions for temporary agency work (Sections 214-222), conditions of employment or work by pregnant women, principle of equal treatment.

Act II of 2007 on the Entry and Residence of Third-Country Nationals (Harmtv.): With a view to partaking in the progressive establishment of an area of freedom, security and justice, and to promoting the social and economic development and advancement of countries within and outside the borders of the European Union, Parliament has adopted the following Act - with due consideration of the provisions of Article 58 of the Constitution - concerning the admission and residence of third-country national

Act XC of 2023 on general rules on the entry and residence of third-country nationals (Btátv.): The "Btátv." (Act XC of 2023) is Hungary's new immigration law, replacing the old code (Harmtv.) to create a unified system for third-country nationals' entry and residence, introducing distinctions like short vs. long-term stays and specific permits (guest worker, investor). While enacted in late 2023, its practical application was delayed pending detailed implementing decrees, but it significantly restructures Hungary's immigration framework, emphasizing clearer categories and procedures, although it faced initial implementation hurdles and public debate. The most noteworthy change between the former (i.e. the Harmtv.) and the new legislation (i.e. the Btátv.) is that the legislator has moved from a more general to a more categorical and in many respects more restrictive form of regulation. To be specific, residence in Hungary for employment purposes is covered by several types of permits that did not exist before or were regulated differently from the previous ones, but there are also permits that have been created to unify the 'scattered' provisions (see the National Card). The mechanisms practised under the Harmtv. are therefore not applicable under the Btátv. or only with significant differences.

The Btátv. basically distinguishes between three categories depending on how long the third-country national wishes to stay in Hungary, so the type of permit required can be decided on the basis of this period:

- **short:** i.e. any stay of no more than ninety days in any one hundred and eighty days is planned by the third-country national. This requires – for entry purposes – “only” a visa, or even none for certain nationals.
- **permanent:** this category includes planned stays in Hungary of more than ninety days in any one hundred and eighty days. Stays of this duration are subject to

authorisation, i.e. the person concerned must apply to the immigration authority for a permit adapted to the purpose of his/her stay, which is in fact pre-selected on the basis of the purpose of the stay.

- **long-term:** this is a group of residence permits and cases for indefinite term, and of course subject to additional conditions compared to the previous categories.

All third-country nationals are covered by the Btátv but not all persons covered by the Btátv need a permit from the labour authority (either separately or combined with their residence) to work (as mentioned in the previous point, there are of course exceptions in the direction that the third-country national is not covered by the Btátv but rarely).

Act 2007 about residency and migration: This act authority may grant the right of residence to persons on the grounds of family reunification with chapter related to right of visa, residence permanent, exclusion order, etc.

Act on the General Rules on the Entry and Residence of Third-Country Nationals (Hrmtv).

New Law on the employment of guest workers in Hungary: On June 13, 2023, the Hungarian Parliament passed a new law regulating foreign worker employment. The law presents the idea of guest workers—third-country nationals from non-EEA and non-neighboring nations—and lays out rules for their employment in Hungary.

The Hungarian parliament approved a law to create a new category of work and residence permits for migrant workers who are nationals of certain third countries. This Act on the Employment of Guest workers (Act Law 2023 on the employment of guest workers in Hungary) was into force on 1st of November 2023 with six parts of contents: general provisions, conditions of residence and employment in Hungary, rules for the issue and renewal of a single permit, rules on data management, final provisions and compliance with European Union law. Employers in Hungary used to have the option of hiring foreign workers from third country who have full-filled application for a dual residency and work visa. Under the new law, nationals of countries which are not neighbors border Hungary and nations outside the European Economic Area can apply for a residency visa for working aboard. The new law will also set a maximum number of guest workers in each country as well as the total number permitted annually. In addition, the law also limits the recruitment of guest workers to specific jobs. It is significant that the laws give company/employers

more accountability with oversea workers. The employer is required to pay for the expenses of deportation and may be held by immigration authorities if the guest workers stay in the EU after their residence permit expires. Guest worker residency will be available only to workers coming from a few specific countries listed in the relevant regulation: Belarus, Bosnia-Herzegovina, Columbia, Georgia, Indonesia, Kazakhstan, Kyrgyzstan, Mongolia, Montenegro, Northern Macedonia, Russia, The Philippines, Venezuela, Vietnam (Sarkadi, 2023).

On 1st of January 2024, Hungary will implement a new immigration legislation that will impact the options and conditions for someone willing to work there. The new law is suitable for third-country nationals who want to reside, work and do business in Hungary. Everyone who is considering obtaining a work permit or already has a work permit. Until the end of 2023, third-country nationals who want to work in Hungary must apply for residence permit based on their employment relationship referred to as “work permit”. Under Hungary’s new law immigration, the expected length of work and the job requirements are the two most significant elements. Instead of work permit, the following options will be available: residence permit for seasonal work, residence permits are issued for the purpose of making investment (for people who want to do their own business or carry out specific investment projects); residence permit for work purpose, for guest workers, Hungarian card, EU Blue Card. The most popular residence permit is for guest workers with some reducing of functions. In the past, the length of a work permit was determined by a number of circumstances, including the expiration date of the passport and might be one, two or three years. The work permit can be extended indefinitely when it expires, while permanent residence in Hungary also becomes a popular choice for workers after three years of residency. Family reunification is also important but will not be possible to guest workers today in new rule. The work permit can only be renewed for a maximum of one additional year after its initial two-year period without the possibility of a further extension. These applicants will not be able to reunite their families and permanent residency status cannot be based on guest worker status.

There are some advantages and disadvantages from the Act Law 2023 on the employment of guest workers in Hungary. (i) At the same time, the application will not require an official opinion from the relevant Hungarian authority, which is a serious relief

compared to the regular procedure. This new change support for guest workers who want to employee as soon as possible. (ii)Migrant workers in some countries, it open wildly for many Asia countries including Vietnam. (iii) For now, it seems that similarly to the previous procedure, the guest workers won't waste a lot of time for knowing. First, the worker will need to prove that they have the right skills and qualifications for the job; Article 6(6) of the new Law: *“ If the procedure does not require a statement from the competent authority, the guest worker shall provide the aliens' registration authority with proof of the professional qualifications and education required for the activity. ”* Besides, the employer will be required to state their labor demand at the local Labor Department and prove that they tried to fill the position with Hungarian workforce before recruiting from abroad. (iv) Have another chance to work with other employers; Art 7(7): *“If the guest worker wishes to establish an employment relationship with another employer, the guest worker must submit an application for the extension of the guest worker residence permit. ”* (v)Besides, the employer must ensure that their employee can leave Hungary and the EU before their guest worker residency expires.

Contrast to benefits, the Act Law 2023 exists a few of drawbacks as following: (i) Guest worker residency can be issued only for two years, and can be renewed only once, for one year (as opposed to a regular work permit, which can be renewed anytime)⁶⁶. (ii) Guest workers cannot bring their family members to Hungary through family unification⁶⁷. (iii) If a guest worker wants to apply for Hungarian residency for a different purpose, they cannot do so from Hungary: they must go back to their country of origin and submit their application there⁶⁸. For example, (iv) No assign to women guest workers especially about the days off or maternity. These problems which mentioned in Law on Gender Equality in 2006. In general, the new law on recruitment of foreign workers introduces the concept of guest workers and sets out regulations on their employment in Hungary. While it simplifies certain aspects of the process, it also places limitations and responsibilities on both employees and their employers. The experts say the new law is needed to address labor shortages, especially amid significant national investment. While it remains to be seen

⁶⁶ Article 3(2), New Law on the employment of the guest workers in Hungary

⁶⁷ Article 6(5), Ibid

⁶⁸ Article 4, Ibid

whether this law will be enough to alleviate workforce shortages, this appears to be a necessary step in that direction.

Expanding laws and practices for third-country guest labor benefits both the sending and receiving nations, in this case, Vietnam and Hungary. The new law allows Hungary to promptly and legally welcome foreign workers, which is critical in the context of the economy's recovery from the Covid-19 epidemic. The labor shortage in Hungary has been occurring since 2015 because of strict policy. This is an opportunity for bridge the gap of labor market by recruitment international labor, especial the guest workers. The new law establishing general criteria for the admission and residency of third-country nationals is an unprecedentedly strict piece of legislation designed to govern the hiring of workers from outside the European Union, not just in Europe but also internationally. Lawmakers have implemented a number of assurances to ensure that workers cannot stay in Hungary after their job contracts expire and cannot bring their families with them.

3.5.5. Social Rights in terms of the Laws in Hungary

At the conclusion of the 19th century, Germany's social reforms catalyzed the establishment of social insurance schemes in Hungary. The primary component of the Hungarian social security system is social insurance, which constitutes 84% of social security expenditures⁶⁹. Social insurance has two components: pensions and health insurance. The central budget compensates for the arbitrary deficits of both programs, which are funded through contributions from employers and employees on an as-needed basis. Both systems' cash assistance programs are income-based. Contributions support a welfare system that provides income-related benefits to the jobless and self-employed to the maximum extent possible. The second pillar is the comprehensive family welfare system. Family assistance programs are universal and constitute 11.9% of the social security budget. In Hungary, the social welfare system's fundamental components were established during the communist era, when migration was relatively low. Within the framework of comprehensive and unitary social insurance, full employment (mandatory)

⁶⁹ Own calculation. In 2016, the total expenditure on social protection was €21,252 of which €17,929 was spent on sickness, healthcare, old age, survivors and disability benefits and services., <https://ec.europa.eu/eurostat/tgm/refresh>.

assists in mitigating all social risks associated with the decline and loss of working capacity, including old age, widowhood, orphanhood, disability, maternity, and so forth.

The social insurance legislation does not consider nationality, since it explicitly applies only to 'individuals and their family who contribute to the construction of a socialist society. The only people who can be considered national citizens are those who construct socialist societies (Gábor, 2020). The social insurance legislation does not consider nationality, since it explicitly applies only to 'individuals and their family who contribute to the construction of a socialist society.' The only people who can be considered national citizens are those who construct socialist societies (Gábor, 2023). New concerns about sharing the advantages of the 'early welfare state' (János Kornai, 1997) with immigrants from less developed nations in Hungary's vicinity arose with the fall of the Iron Curtain and the country's openness to the outside world in the 1990s. Hungary has delayed ratification of Articles 18 and 19 of the European Social Charter in order to limit the ability of migrants from surrounding countries to enter the Hungarian labor market and social support system. The issue of Romanian citizens receiving benefits from Hungary's social welfare systems was raised in a 2004 referendum, during which a majority of voters rejected the notion of bestowing Hungarian citizenship to Hungarians residing in neighboring countries. The access that migrants have to social assistance systems is not often restricted by legislative laws, despite the concerns that have been raised.

(i) *Unemployment*

During the early 1990s, Hungary implemented the unemployment benefit program in response to the political and economic transition. The program is governed by Act 4 of 1991. Despite the absence of citizenship conditions and the absence of a specific prior residence period in Hungary, the mandatory nature of this program may present a particular challenge for non-EU citizens who are engaged in economic activities (employment) and must obtain work permits or a special status while residing in Hungary. On the other hand, citizens of third countries who possess a work permit will be afforded the same benefits in terms of social security and the labor market as permanent residents. Applicants for unemployment benefits must register with the National Employment Service (NES) and demonstrate a minimum of 12 months of contributions. The subsidy amount is 60% of the recipient's prior earnings, up to a maximum of the federal minimum wage. The recipient is

required to cooperate with NES and be prepared to work (failure to do so may result in penalties such as the removal of the subsidy). The subsidy is granted for a maximum of 12 weeks. Even though export is not officially restricted by law, recipients faced significant challenges due to these regulations while trying to take this allowance outside. Non-resident Hungarians are effectively prevented from collecting benefits from Hungary by restrictions that are quite similar to these. In this nation, there is no dedicated program providing assistance to those who are unemployed

(ii) *Health Care*

Child benefit recipients, retired people, registered unemployed individuals, and children under 18 are eligible for health insurance coverage without the requirement to pay contributions. Individuals lawfully resident in Hungary has the ability to freely engage in health insurance irrespective of their nationality, while certain regulations govern their contribution rates (G. Juhász et al., 2007). Signing a contract with the National Health Insurance Fund and providing at least 50% of the minimum salary each month is a requirement for voluntary participation in health insurance. Under the terms of the contract, they will only have access to emergency medical services for the first two years of the engagement. To fully access healthcare services, a payment in advance for 24 months is required. The Hungarian government does not cover the medical expenses of its residents living outside of the country unless they have an official work contract or have signed a contract with the National Health Insurance Fund. Medical insurance encompasses all workers and the self-employed, however participation cannot be freely elected. Contributions are required in order to be accepted into sickness benefits; however, past existence in this nation is not a requirement for admission. Health care payments may be provided for a maximum duration of 12 months and are tied to income, calculated at 60% of the recipient's prior earnings, not surpassing twice the minimum wage. Employers are required to compensate for 15 days of sick leave annually, with sick leave payments commencing afterward. Even though there is no distinction based on nationality among the applicants, non-EU foreign nationals encounter greater challenges getting this benefit because of the requirement to submit a work permit and residence permit in order attain employment in Hungary. In the early 2010s, the law changed disability pensions for individuals under the age of retirement into a special health benefit (Benefit for those who

lack work capacity). Old-age pension benefits are available to individuals who have reached retirement age. Other individuals could apply for treatment or disability benefits that are funded by the Health Insurance Fund (Őri et al., 2020). Foreign residents from both EU and non-EU countries possess the right to obtain these benefits similarly to domestic permanent residents.

(iii) *Family Benefits*

Hungary has a broad and intricate family assistance system, including both contributing earnings-related and universal benefits (Juhász, 2020). Hungary has a broad and intricate family assistance system, including both contributing earnings-related and universal benefits (G. Juhász, 2020). Mothers have the option of selecting between two categories of financial benefits during following childbirth in relation to pregnancy benefits. The Infant Care Allowance (csecsemőgondozási díj) is a pregnancy benefit that women can get for 24 weeks if they have had health insurance for at least 365 days in the two years before giving birth. Both parents may apply for the Child Care Fee and Child Care Allowance, however the beneficiary of these benefits are often the mother. Under a new labor legislation proposal, dads are granted 5 extra paid leave days at the conclusion of the second month after the birth of a child. The employer is responsible for covering the expense since this is a labor law provision and not a social welfare benefit. The childcare allowance is a set payment financed by taxes, with a maximum length of three years, or ten years if the kid has a persistent disease or severe handicap. The childcare allowance is a set payment financed by taxes, with a maximum length of three years, or ten years if the kid has a persistent disease or severe handicap. The entitlement to receive this benefit is conferred to all residents, irrespective of their nationality. Nevertheless, third-country nationals are only eligible to apply for this subsidy if they possess individual status (officially recognized as a resident, refugee, or stateless person) or a work permit that is valid for six months, in contrast to national citizens or EU Citizens. There is no requirement in the legislation for a certain amount of time spent living in Hungary in the past. The protection of EU social security coordination regulations is provided to EU immigrants who are domiciled in Hungary. This protection is achieved through the aggregation of credit periods that have been accumulated in EEA countries. Hungary offers a universal tax-funded Family Allowance for families with children, which is provided until the kid

completes secondary school. The monthly salary is depend on the number and health condition of the children, as well as the relationship status of the parents. Although the applicant's residency in Hungary is not a determinant of their ability to receive family benefits, it is a requirement that need to be reached. EU nationals are treated identically to Hungarians, although non-EU people may get Family Allowance if they are refugees, settlers, or stateless. Bilateral agreements establish the access rights of non-EU immigrants to this benefit (Gábor, 2020).

3.6. Conclusion for Chapter 2

There is a constant increase in mobility throughout the European Union (EU), which is why less developed nations are being forced to broaden their policies regarding guest workers in order to cover the gaps in their labor force (even for low-skilled professionals). Consequently, regulating migrant flows is a policy essential for fostering sustainable migration. However, low-skilled migrants place a considerable strain on the budgets of EU nations and significantly raise the need for social protection. On the one hand, highly skilled migrants contribute to the growth of high-income countries, while on the other hand, low-skilled migrants increase the demand for social protection. Despite this, low-skilled workers continue to be recruited, and there are even illegal workers employed in certain countries. This is due to the fact that the labor balance in some nations is becoming uneven. The protection of migrant workers is not only the duty of the nation that is hosting them, but it also needs the cooperation of the country that is sending them. The sending countries should do more than just sign more bilateral agreements with the host countries; they should also take proactive steps to help their migrant workers, like improving their language skills or professional abilities through high-quality courses, giving them access to thorough legal information, and setting up channels of communication to report instances of unfair treatment. After going to other nations for employment, there have been several instances in which workers have been difficult to find a place to seek assistance or ask for assistance (in connection with being abused or losing their fundamental social rights).

Social security rights are very important when it comes to harmonizing national laws, and attempts have been made to change national labor laws. The existing social security framework comprises Regulation No. 883/2004, Regulation No. 987/2009, the European Social Charter (ECSR), and the Community Charter on the Fundamental Social

Rights of Workers. In accordance with the requirements of their respective national laws, the member states shall be responsible for enforcing the responsibilities pertaining to the right to be treated equally and without any form of preference. Every nation that is a part of the European Union is obligated to treat all individuals in the same manner as their own people. Rights to social security have been created for all people of the area, and these rights are based on the rules of equal treatment. Regulation 1213/2010 confers social security rights to all migrant workers from third countries by extending Regulation No. 883/2004 and Regulation No. 987/2009. Third-country citizens who have legally resided in one of the member countries of the European Union are the focus of Regulation 1231/2010. However, this regulation is not applicable to third-country nationals who are trying to enter, remain, or settle in the European Union. Third-country nationals who are legally residing will also not be impacted by their eligibility for disability benefits and old-age or survivor's pensions under Regulation 883/2004, according to Article 13 of Regulation 1231/2010. In the case of unemployment benefits, third-country nationals must have applied for jobseeker status and be eligible to receive benefits that have been used for at least four weeks, as stated in Article 14. Third-country nationals do not have the entitlement to certain special privileges or social security benefits since they are not citizens of the member states of the European Union. These benefits include disability payments and pensions for the elderly. Regulation No. 1231/2010, which covers all social rights with the exception of disability and old-age pension benefits, has been published, although those regulations on social security rights do not make any explicit reference to workers from third countries. Consequently, third-country national workers are also entitled to substantial social rights in the EU, albeit they are unable to assert the same level of entitlements as national workers. When it comes to these major rights, the granting of unemployment benefits by the European Union to workers who are nationals of third countries is worthy of praise. This provision may be regarded as a "special right," because even workers who are citizens of ASEAN member nations do not have the right to receive unemployment benefits.

Migrant workers' trade union rights in the EU are divided into national and European trade union federations, both of which are affiliated with the European Trade Union Confederation (ETUC), with 89 member organizations. Through its partnership with the Migrant Workers' Network, the European Trade Union Congress (ETUC) provides

assistance to migrant workers while also advocating equality, justice, and against discrimination. On the other hand, workers are protected by European national laws since the EU has standardized labor regulations throughout the member states. Concerning citizens of other countries, there are three contentious topics that are still being argued by specialists. The first question is: do unions restrict businesses' efforts to seek out foreign workers? The EU has the capacity to attract migrant laborers or third-country nationals to its unions; however, some nations are in opposition to this. The second question is whether migratory workers should be considered permanent members of trade unions. It is important to remember that foreign workers are part of trade unions, even though they can't become members because of strict rules in the host country. The third problem concerns whether trade unions should just stand for the collective interests of workers while developing policies and strategies that consider the particular needs and requirements of migrant members.

In light of labor shortages or inadequate European workforce, the EU must fulfill the labor supply need from other nations. The recruiting system serves as an effective intermediary between companies and workers; nevertheless, trade unions should refrain from engaging in recruitment processes to avoid potential bias favoring employers and the risk of compromising their basic rights. Employers have several obstacles in recruiting and managing the workforce, particularly with migratory labor. Among them, limits in communicative language are a significant factor contributing to a deficiency in professionalism within the workplace. Managers agree that employing migrant workers would enhance variety in innovation, expertise, and opinions inside the company, hence preventing stale thinking. Consequently, to mitigate obstacles in the recruiting process, migrant workers had to equip themselves with specific knowledge and skill in the local language. Simultaneously, language training should be improved and established as essential inside the organization after the recruitment of migrant personnel.

In modern economies, labor migration plays a key part in the labor market and is closely related to the globalization movement. The European Union's freedom of movement is one of its most significant benefits. The EU labor market now allows Eastern European countries' citizens to participate in it without any restrictions. Freedom of movement and commuting helps reduce labor market imbalances, and commuting will play an increasingly

important role in the future. Since 2015, there was number of Hungarians have been choosing not only to work and live in the but also to study in the other countries in EU. The European Union's (EU) expansion has impacted the growth of employment and these types of labor flows. The EU strategy includes labor market incentives at the European level, including migration and mobility. This article attempts to answer the question of how the lives of Hungarian migrant workers are affected by labor market integration. The primary focus of this article's writers is on the significance and relevance of Hungarian labor migration, as well as the factors that contribute to it. There are many employees choose Germany, Austria and UK as their destinations cause of the higher wages offer, more stable job markets and often better social support systems compared to Hungary.

The migratory network in Hungary is effective, and the country receives a significant quantity of personal remittances. Fifty percent of educated migrants from Hungary maintain contact with individuals in their place of origin. This means that which the new knowledge obtained while working abroad will continue to be communicated with other Hungarians who are still in Hungary. Additionally, the Hungarian government supports the return of highly qualified migrants to Hungary since it is worried about the workforce that is comprised of migrants. This is valuable for nations with significant labor exports. The government of Hungary has made significant efforts to attract international students of all cultural backgrounds in order to ensure the long-term economic sustainability of the country's higher education system. The government provides benefits to Hungarian higher education institutions and prospective students to counteract the declining number of Hungarian students by augmenting the percentage of international students. Students from other countries make a major contribution to the economies of the cities that are home to universities by paying tuition fees and making use of a variety of services (Losonczi, 2017). According to (Maria João Militão Ferreira, 2018)., the Hungarian government has devised a plan for higher education with the objective of ensuring that fifteen percent of students studying in Hungary are foreigners by the year 2024. According to statistics compiled by the Education Office, the number of international students enrolled in Hungarian universities has risen dramatically in the last five years. While 20,694 international students were accepted in the 2012–2013 school year, over 36,000 (or 16.5 percent) were admitted in the 2019–2020 school year. During the 2017–2018 school year,

approximately four thousand students applied for scholarships under the Stipendium Hungaricum program, which uses funds from the Hungarian state budget to support the education of international students (Lukács, 2023). According to information that was made available on the website of Study in Hungary, the number of scholarship winners for the current academic year (2020–2021) is more than 10,000. (Jekatyerina Dunajeva, 2022). A significant number of students are from countries that are geographically and culturally remote from Hungary, including Jordan, Syria, Mongolia, Pakistan, and Azerbaijan" (Lukács, 2023). In terms of geography, this is entirely at odds with the official government communications regarding migration. Conversely, the government has declined to acknowledge migrant groups that do not generate economic or cultural value. The quota distribution system was rejected, new rules regarding law enforcement were implemented, border walls were built, and extensive media campaigns were run. According to KSH figures, Hungary received 177,000 asylum applications in 2015, of which around 500 were approved. In 2016, applications decreased to about 29,500, with fewer than 500 being approved. In 2017, 3,397 asylum applications were submitted, with 1,216 of them being approved. In 2018, an additional 671 applications were submitted, with 367 of them being accepted (Fabienne Lind, Tobias Heidenreich, 2021).

In the context of global and regional hierarchies, Hungary is a unique case study for the examination of global justice narratives and migration policy. First, it is a possible place for both legal and criminal movement going north to south and east to west. This is different from the countries of the former Soviet group in Eastern Europe. Freedom of movement and commuting helps reduce labor market imbalances, and commuting will play an increasingly important role in the future. Since 2015, there was number of Hungarians have been choosing not only to work and live in the but also to study in the other countries in EU. The European Union's (EU) expansion has impacted the growth of employment and these types of labor flows. The EU strategy includes labor market incentives at the European level, including migration and mobility. The new Hungarian labor code aims to expand employment by matching the market expectations of global multinational corporations in order to attract investment and generate jobs. The trade unions, formerly lacking strength, now face an increasingly challenging situation in advocating for workers' rights. Hungary's foreign policy has three goals: integration, maintaining stable relations with all surrounding

nations, and assisting the Hungarian population outside of Hungary's boundaries (Nagy, 1997).

Despite the fact that migration patterns in Hungary are representative of the present economic reality and the interests of the people who move. There is a tendency in Hungary to place an emphasis on legal regulation and stringent control, which unquestionably results in the protection of the Hungarian labor market from the presence of a foreign labor force, particularly TCN labor. The migration to Hungary has a pronounced ethnic character. It is the responsibility of the host nation to establish a number of legal and institutional policies that make it easier for ethnic Hungarians to migrate across international borders, and migrants make use of these practices (Andrea Petó, 2021). The main characteristic of foreigner's employment in Hungary is that the majority come from neighbor countries as its historical and culture. However these migrants has no significant effect on the domestic labour so the policies do not treatment as an importance strategic (Andrea Petó, 2021, p. 130). There is a huge group which is high-skilled in higher position living and working in Hungary. There is also a wide category of illegal foreign worker and both classes work general in capital Budapest and the metropolitan areas. In the research of (A. Juhász et al., 2015) the migrant group from Chinese and Asian employ in business in cookery while adjacent countries work in manufacturing, construction, agriculture and services. At the beginning of the 1990s, a number of small eateries in Hungary that were managed by people from neighboring countries were gradually replaced by Asian restaurants. Ukrainian migrant laborers are mostly seasonal agricultural and construction workers that across the border. Romanian labor dominates certain low-skilled sectors, including domestic care and healthcare services. A number of domestic occupations, including nursing, housework, and cleaning, are among the professions that are among the targets of illegal labor in Hungary.

CHAPTER III.

MIGRANT WORKERS POLICIES IN ASEAN REGION

Rapid progress and deep integration within ASEAN will make it easier for workers to move around. There are many reasons why people move jobs within the same group, such as cultural similarities, ease of access, and closeness of geography. However, there are still many areas where more needs to be done to protect migrant workers in ASEAN. In Chapter III, the author presents an overview of intra-bloc labor mobility within ASEAN, highlighting that the primary labor supply is centered in three countries: Thailand, Malaysia, and Singapore. ASEAN has many issues in safeguarding the rights of migrant workers, including the protection of human rights for undocumented workers and the adaptability of social security rights throughout the ASEAN community. ASEAN employs the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, the ASEAN Mutual Recognition Arrangements, and the ASEAN Qualifications Reference Framework, among others, to enhance cooperation for the mobility and safety of workers. ASEAN is the best at keeping the peace and safety of the region. However, because of the principle of non-interference in internal affairs and the use of consensus, countries often find it hard to agree on regional rules (which are often just declarations that don't have to be followed), so there are no enforcement measures for migrant workers (especially illegal migrant workers). The ASEAN Framework Agreement on Services (AFAS), Mutual Recognition Arrangements (MRAs), and the ASEAN Economic Community (AEC) Blueprint all highlight the value of this labor supply, which makes it somewhat reasonable given ASEAN's emphasis on high-quality workers. On the other hand, to address the remaining issues of low-skilled labor, ASEAN also regularly organizes meetings, negotiations, workshops and adopts the ASEAN Forum on Migrant Labor (AFML). Nevertheless, due to nations' preference for using MOUs and agreements, the stringent management of problems remains ineffective. The safeguarding of migrant workers from a social security standpoint is included in The Cebu Declaration and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.

Completely fulfilling the right to associate with a trade union is a crucial step in achieving ASEAN's objective of regional integration. With the goal of achieving an integrated skilled labor market by 2040 characterized by mutual recognition of educational qualifications, professional licenses and work experience, ASEAN focuses on expanding more occupations in the MRA. However, there are some problems, such as problems with recognizing skills, hiring people for certain jobs, and language and cultural hurdles. In each country, foreign workers also have different rights, such as different rights to join a trade union and different rights to deal as a group. As of now, only Singapore, the Philippines, and Malaysia allow foreign workers to join trade unions in almost all of their ways. Myanmar, Thailand, Vietnam and Indonesia are progressively making progress in establishing favorable circumstances for foreign employees to participate in trade union activities. Brunei and Laos have no regulations permitting migrant workers to join in trade union activity. At the end of Chapter III, the author will explain more about the policies of migrant labor in ASEAN Member States.

4.1. Background and Flows

Despite Southeast Asia's rich history of migration, which has been extensively researched and documented, the complex conditions of population mobility within and from the area have significantly intensified in recent years. Much of the international migration occurring today is propelled by the search of decent work. Southeast Asian countries become more and more faced with compound mixed migration flows, which include labor migrants traversing national borders (primarily irregular) and forced migration, comprising environmental displacement and asylum and refugee flows (Capaldi, 2023). The ILO estimated in 2017 that there are 164 million migrant workers worldwide, which accounted for 70 per cent of all migrants of working age. The centrality of work to migration flows, particularly in the context of Asia-Pacific⁷⁰. There are 10 million international migrants in the ASEAN of whom almost half were women. The Arab States have the highest proportion of migrant workers to all workers (40.8 per cent), and host 13.9 per cent of migrant workers worldwide, most of them from South-East and South Asia. The ASEAN region organization

⁷⁰ ILO, Labour migration in Asia and the Pacific, <https://www.ilo.org/resource/labour-migration-asia-and-pacific>.

has ten countries with a population of 650 million⁷¹, focused on promoting economic, political, and security cooperation.

Labor migration in Southeast Asia started in the 1960s and intensified in the 1980s. Following the oil crisis that occurred in 1973⁷², the nations of the Gulf region initiated initiatives with the purpose of luring immigrant laborers from South Asia and Southeast Asia (Kaur, 2010). Thailand, the Philippines, and Indonesia saw this chance as an economic lifeline and have initiated foreign labor deployment schemes to capitalize on employment prospects in the Middle East. Afterwards, Singapore and Malaysia also had trouble finding workers, so they became popular places for contract workers to move to in the region (in the 1990s, Thailand became a net consumers of workers). This methodology identifies two types of nations based on their distinct migratory characteristics: predominantly emigration and primarily immigration. The Philippines, Cambodia, Myanmar, Laos, Vietnam, and Indonesia comprise the first group, whilst Singapore, Brunei, Malaysia, and Thailand constitute the second group (Maruja M.B. Asis, 2017). The report indicates that seven ASEAN Member States (AMS), namely Cambodia, Indonesia, Laos, Myanmar, the Philippines, Thailand, and Vietnam, have sent 2.1 million migrant workers within ASEAN, with 93.4% from Myanmar and 66.8% from Cambodia migrating to other AMS. The importance of worker remittances to national economies requires that the countries which send labor have laws and institutions created to their population. Consular officers are often positioned in consular offices in other nations to safeguard their residents and alleviate migration hazards. In general, the flow of foreign workers is good for both the countries that send and receive them. Both the sending and receiving nations have benefited from migrant labor. The former has been able to satisfy their growing need for human resources, while the latter has been able to use their excess of workers and earn much-needed foreign currency. Migrant labor has historically contributed to and continues to enhance the overall development of several ASEAN nations.

⁷¹ ASEAN was established in August 1967 with five member countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Brunei Darussalam joined on January 8, 1984, Vietnam on July 28, 1995, the Lao People's Democratic Republic (Lao PDR) and Myanmar on July 23, 1997, and Cambodia on April 30, 1999. Currently, ASEAN has 10 member countries and several other countries such as Australia, China, the European Union, India, Japan, South Korea, and the United States (US) as dialogue partners.

⁷² Saudi Arabia and the members of Organization of the Petroleum Exporting Countries (OPEC) wanted to punish the supporters of Israel by announcing a 5 percent cut in oil output

Each year thousands of migrants move between ASEAN member countries in search of work. There are a reported six million ASEAN citizens currently residing in other ASEAN member states though this is probably a large underestimate ASEAN members can be broadly divided into net sending and net receiving countries for labour: Cambodia, Lao Democratic People's Republic, Myanmar, Indonesia, Viet Nam and the Philippines are net senders; Singapore, Thailand, Malaysia and Brunei Darussalam are net receivers (Capannelli, Giovanni, 2013). The majority of migrants are low-skilled, and many are irregular. Large income disparities among geographically close ASEAN members; differential rates of population growth and aging; and the absence of regional redistributive mechanisms create large labour deficits and surpluses (Chia, 2014). These are a powerful spur to migration with labour flowing mainly from the poorer countries to the richer. ASEAN members are pursuing economic integration across numerous fronts. The expected benefits of integration include: an enlarged market with economies of scale and scope; enhanced resource allocation with free movement of factors of production. Indeed, labour migration, when well-managed, can bring substantial benefits to: (i) migrants themselves in terms of higher wages and opportunities to acquire skills and experience; (ii) host economies by addressing labour shortages and boosting growth; and (iii) sending countries through financial remittances and knowledge transfers (Huelser & Heal, 2014). For host societies, greater openness to migrants also needs to be weighed against public concerns over social cohesion. There is little evidence, however, that migrants generally depress wages for native workers as is often feared. Mobility of service providers within the Southeast Asian region was not part of the original Declaration (Smith, 2004), however it has become an important aspect of regional economic integration with the adoption of the 1995 ASEAN Framework Agreement on Services (**AFAS**) and then later with the initiative to conclude an agreement on Movement of Natural Persons (**MNP**) (Wei-Yen, 2005). Mobility of skilled labor within ASEAN is also promoted through the so-called Mutual Recognition Arrangements (**MRAs**) of professional services (Trebilcock & Daniels, 2009). Finally, the goal to achieve the free flow of skilled labour and professionals within the forthcoming 2015 ASEAN Economic Community has brought along a series of reforms envisaged to enable member states to meet these liberalization targets. In addition, Aspects

related to migrant workers' rights are covered in a regional Declaration signed by ASEAN leaders in 2007.

The main type of labor migration in Asia is temporary migration, which is facilitated by fixed-term contracts. The limited length of migration restricts the acknowledgment of migrants' rights and their socio-economic assimilation in the host nation. The majority of migrant workers are either unskilled or semi-skilled, including construction laborers and female domestic assistants. Compared to professionals and skilled workers who relocate with foreign capital and have greater negotiating leverage, these workers suffer several protection concerns in both the sending and receiving nations (The Bern Initiative, 2004). The rising number of female workers heading out on their own to find employment overseas is another noticeable trend. Domestic work and other low-paying employment are the main reasons they move. Certain nations in the subregion have a greater-than-average percentage of women among their Most labor movement in Asia is based on short-term contracts. Because of this, migrants' rights aren't often full-filled and they have a harder time getting in socially and economically in the destination nation where they go. The majority of migrant workers are unskilled or semi-skilled, including construction workers and female domestic workers. These workers have more protection issues in both sending and receiving nations than higher educated labours and professional workers (The Bern Initiative, 2004). Another noticeable trend is the growing number of female workers who independently go abroad. The majority of them move for low-wage occupations, such as domestic work or other part-time employment. As a result of women coming from other countries, some countries in the subregion have higher than average numbers of women in their migrant communities. According to the numbers, Thailand leads with 61%, followed by Malaysia (56.7%) and the Lao People's Democratic Republic (55.9%). However, in 2020, the COVID-19 epidemic drove hundreds of thousands of migrants to return to their home nations, although migration levels have since increased. As a result, regulating labour migration plays an important role not just in the EU area (as discussed in Chapter II), but also for the ILO and its ASEAN parts (governments and employers' organizations).

Although these movements of people are a result of the region's fast economic growth, which makes policy decisions difficult, the lack of protection mechanisms has never been obvious. The lack of protective measures is particularly evident amid the

ongoing humanitarian crisis caused by the irregular maritime flows of Rohingya fleeing Myanmar and Bengalis from the Bay of Bengal, alongside the escalating violence in Myanmar following the February 2021 military. At the International Labour Conference in June 2019, the ILO adopted a Centenary Declaration for the Future of Work, which included a call for “deepening and scaling up its work on international labour migration in response to constituents’ needs and taking a leadership role in decent work in labour migration. The Singapore Statement adopted by ILO constituents from the Arab States and Asia-Pacific at the 17th Asia and the Pacific Regional Meeting of the ILO in December 2022 calls for enhancing labour migration policies⁷³. Protecting the rights of migrant workers should be a top national priority. This can be achieved through improved housing, wage protection, and the expansion of social protection, as well as through strengthened bilateral labor migration agreements when necessary.

4.2. Labour Migration in ASEAN: Cause and Origins

4.2.1. Reason for migration

Labor movement across the AMS is mostly caused by three main things (Harkins, 2018): (i) changes in the economy and society; (ii) political battles (for example, Myanmarese refugees living in Thailand); and (iii) differences in population. Moreover, regional integration serves as a catalyst for labor movement, fostering regional growth and development. One of the primary goals of the recently formed AEC is to make it easier for highly trained workers to migrate across national boundaries. ASEAN has expanded labor mobility under the AEC to include eight high-skilled professions, including architecture, dentistry, engineering, medical, nursing, and tourism. Nevertheless, the implementation of Mutual Recognition Arrangements (MRA) for a variety of professions continues to be sluggish and inconsistent across countries (Mendoza & Sugiyarto, 2017). Only 0.3% to 1.4% of all positions in AMS are high-skilled, according to the ASEAN Secretariat's 2019 report on regional integration (ASEAN, 2019). The majority of labor migrants within ASEAN are employed in low-skilled sectors, where they perform labor-intensive tasks in agriculture, fisheries, domestic work, manufacturing, and construction.

- (i) Economic disparity

⁷³ See at <https://www.ilo.org/resource/news/17th-asia-and-pacific-regional-meeting-concludes-launch-%E2%80%98singapore>.

The region's economic disparity results in a one-way migration movement, with the primary destination being more advantageous countries. The first 'push and pull' theory of Ravenstein posits that migration serves as a "mechanism for establishing economic-spatial equilibrium" (Amaral, 2020). For instance, the migration of people from Indonesia, Thailand, and the Philippines to Malaysia is promoted by economic reasons owing to the disparities in wages that exist between the nations (Ismail et al., 2014). Therefore, the choice to move for employment is more of a plan for the family to maintain their standard of living than it is for the individual to profit (Alex J. Bellamy & Catherine Drummond, 2011). The movement of young people is mostly prompted by economic crises and challenges in their families, and countries with greater youth populations also encourage migration (Jens Hainmueller et al., 2010). Keith Griffin's analysis identifies nine valid motivations for labor migration: augmenting income in both origin and destination countries, improving global resource utilization (in affluent and impoverished nations); revitalizing stagnant economies; fostering small business development; amplifying investment savings in wealthy countries; expediting innovation; enhancing remittance flows to home countries; and immigration mitigating economic challenges associated with aging populations in affluent nations. As examined in section 2, most migratory workers mostly want increased earnings. The predominant cause is evident, since unemployment and poverty in the originating nations serve as motivating reasons for migration. The relationship has been characterized by the economic disparity between segments of Asian countries, with per capita incomes ranging from as low as 200 USD in the poorest countries to approximately 35,000 USD (e.g., Japan, South Korea, Taiwan) (Wickramasekera, 2002). According to (Parreñas, 2008) exporting nations encourage labor migration for two reasons: to reduce the burden of internal unemployment and to generate more foreign currency. Indonesia is one of the nations that have established objectives regarding migrant labor, which contains the movement of laborers abroad. A good example of this is the labor export movement in the Philippines, which gained momentum during the presidency of Gloria Arroyo, who famously said: "They are the backbone of the global workforce" and "the best export product" of the Philippines. This country's workforce is strong because its members are highly skilled in their fields, speak English well, and have experience living in an industrial environment. As a result, they have little trouble assimilating into the social life of their host country,

particularly in Western countries. Workers from the Philippines migrate to nations where the government has signed bilateral labor agreements to find employment. The Philippine government advocates for the idea of deploying workers overseas while simultaneously imposing limits on particular professions to avert local labor shortages. According to Labor and Employment Secretary Silvestre Bello, the Philippines urgently requires skilled workers such as chief electricians, highly skilled carpenters, plumbers, experienced laborers, and trained workers to build bridges, roads, airports, and other infrastructure in accordance with the current administration's push for speedy construction.

(ii) Demographic change

Countries with an extensive export labor force are characterized by fast population expansion, which is a common feature among these countries. The population in the ASEAN area has increased thrice since 1970. Five Southeast Asian nations are now ranked among the 20 most populated countries globally, with Indonesia positioned as the third most populous nation worldwide. The population density in nations such as Singapore, Vietnam, and the Philippines has risen dramatically. The research by (Velez et al., 2024) indicates that population density influences GDP, resulting in changes to migration policy and economic efficiency. Countries such as Indonesia, Malaysia, the Philippines, and Brunei are encountering economic difficulties attributable to their substantial populations. Indonesia, with a population of 270 million and a growth rate of 1.09%, is exerting strain on its resources and environment (Parsi Legend, 2023). Malaysia's healthcare and education institutions are experiencing strain due to its population of over 32 million and a growth rate of 1.25%⁷⁴. The Philippines, with a population over 110 million and the fastest growth rate in ASEAN at 1.62%, is facing challenges in generating sufficient employment opportunities for its populace⁷⁵. Conversely, Vietnam and Cambodia are two nations that adeptly use their populace by investing in education and healthcare (Velez et al., 2024). One of the main reasons for their strong economic development is the highly educated and talented workforce that has been fostered by these investments. As a result, we find a rather

⁷⁴ World Bank, Data Bank Population Estimate and Projections, <https://databank.worldbank.org/Total-Population-2023-to-2050/id/4a13639> (23/11/2024).

⁷⁵ Ibid

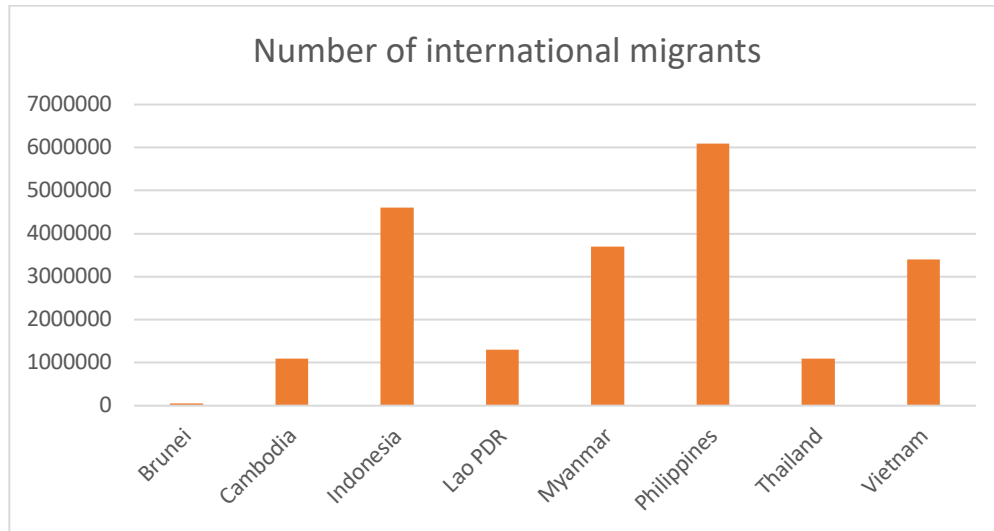
beneficial connection between a big population and economic growth, emphasizing the relevance of both quantity and quality in terms of population influence on GDP.

(iii) Climate change

Worker migration patterns have been drastically altered as a result of climate change, particularly in industries that are directly influenced by the phenomenon, such as agriculture, fishing, construction, and manufacturing. The environment will influence the productivity of these industries and directly effect salaries. These will be more mobility-related considerations for impacted nations and communities with lower resilience and less resources. Workers possess limited options and face the potential requirement for relocation, including involuntary migration. A considerable portion is also accounted for by evacuations, both pre- and post-disaster. For instance, tropical storm Nalgae in the Philippines necessitated the pre- and post-storm relocation of over 3 million people, respectively (IDMC, 2023). Additionally, pre-Typhoon Noru preventative evacuations accounted for the vast majority of 2022 evacuations in Vietnam. IDMC, 2023. Climate change has especially bad effects on weak social groups, like migrant farmers, who can't get to social services or important infrastructure.

The amount and features of mobility patterns differ across the area, as seen in Figure 1.1, Philippines and Indonesia has the highest numbers of foreign migrants. Followed by Myanmar and Vietnam with around 3.900.000 and 3.500.000 migrant workers respectively. For males, the most common forms of movement are seasonal labor migration and migration from rural-to-rural areas. Some of the industries that men migrate to include construction, agriculture, fishing, heavy manufacturing, and transportation. The most common labor migration patterns for women are long-term (as opposed to seasonal) rural-urban movement, and they tend to work in occupations including childcare, nursing, medicine, clothing manufacture, and domestic and hospitality services (IOM, 2019).

Figure 1.1. Total International Migrant Stock from ASEAN at mid-year 2020



Source: UNDESA 2020 from IOM Migration Data Portal 2021.

Data on Singapore not reported.

Remittance flows become a flexible source of funds for the country, playing a significant role. The sum of money invested in accommodation and equipment from remittances is substantial, as indicated by research. This provides a timely recovery from the disruptions induced by climate change (IOM, 2024). A number of complicated relationships, such as how, when, and why migrants send remittances, what households choose to spend these remittances on, and the continued socioeconomic and climate vulnerability of both migrant and remittance receiving households, affect the capacity to develop resilience from remittance availability (Ober, 2019). In the context of the Ukraine-Russia conflict and Covid-19, remittance flows to Vietnam remain relatively consistent, according to the report by the World Bank (WB) and the Global Knowledge Partnership on Migration and Development (KNOMAD). Many economic experts have concluded that remittances are an indispensable source of foreign currency that maintains the equilibrium between supply and demand for foreign currency. They also play a substantial role in the promotion of monetary policy, exchange rates, and interest rates, despite the substantial pressure to raise interest rates and exchange rates. Some groups are known to have a greater rate of immobility than others; this includes impoverished individuals and communities with lower levels of education. A recent research that included Cambodia and Viet Nam discovered that persons with low levels of education and wealth typically had a decreased

risk of out-migrating after being exposed to sudden-onset climatic disasters. This was one example of the findings that emerged from the study (Vally Koubi, 2022). According to the statistics on internal displacements, the Asia-Pacific area is responsible for three quarters of the worldwide displacement, and Southeast Asia is dealing with more than 75 million displacements. The majority of these displacements are the consequence of abrupt severe weather events such as storms and floods. Relocations are measures of last option, with instances in the area limited to three countries: Indonesia, the Philippines, and Vietnam, exhibiting inconsistent performance in mitigating the climate vulnerability of displaced individuals.

4.2.2. ASEAN challenges irregular migrants

The largest category of 'non-choice migrants' in Southeast Asia comprises refugees and internally displaced persons (IDPs). From UNHCR shows that whilst in the 70s and 80s, Vietnam, Cambodia and the Philippines were the main sources of refugees, over more recent decades, the major source country in the region for refugees is Myanmar. Burmese ethnic minorities such as the Chin, Karen, Shan and Mon, have moved to Thailand across land borders with more than 97,000 so called 'displaced persons' living for decades in camps along the Thai border and an approximate 5000 within Thailand's urban areas (UNHCR, 2021). Southeast Asia is infamous for human trafficking as the same geographical, cultural and socio-economic realities that lead to migration can also be risk factors of trafficking. The scale and scope of human trafficking in Southeast Asia is due to the limited safe and legal pathways to migrate as migrants and refugees are often left with no choice but to use smugglers and brokers in crossing international borders (Capaldi, 2023),

(i) Migration management

The administration of international migration worldwide has been significantly impacted by the extensive frequency of illegal immigration. Due to the characteristics of illegal immigration, quantifying the figures is very challenging; research depends on reports, media, and associated data. A major reason people migrate irregularly is because receiving nations have very stringent immigration policies and a persistent pattern of rejecting unskilled workers. Moreover, unemployment and poverty are the fundamental drivers of labor migration from originating nations. Because of a lack of employment

prospects at home, unskilled workers often go to neighboring nations in search of better chances. The involvement of the extensively commercialized private recruiting sector in Asia in facilitating the overseas deployment of labor, whether via legitimate or illicit channels, to maximize profits is prevalent (Wickramasekera, 2002). It is normal in the Middle East for national agents to send links with local middlemen to find workers, even if the jobs don't really match what the companies need. Consequently, several workers arriving in nations such as Bahrain and Kuwait discover a lack of available employment, leading them to promptly assume an unlawful status. Due to the misinformation issued by recruiters, certain migrant laborers may not even be aware that they are unlawfully entering another country. Nevertheless, there are still significant concerns regarding illegal immigration.

It is still a serious problem in ASEAN because migrant workers are not able to take their social security entitlements with them when they leave their country. (Ong & Bista, 2015) contended that migrant workers should retain their social security benefits while relocating across countries. It is necessary for the individual to have access to the social protection system of the country in which they are presently employed. Nonetheless, bilateral agreements between nations are absent, resulting in the non-recognition of these transfer rights (Tamagno, Edward, 2008). A large number of migrant workers are unable to enroll in either their home country's or their host country's social security system. Migrant workers may have dual disadvantages due to inadequate social protection in both their country of origin and the host nation. Many low-skilled workers encounter challenges during the naturalization process, as they are compelled to immediately pursue employment opportunities and provide for themselves. Consequently, they are inclined to accept positions in the host country without legal documentation. It is challenging to control and safeguard populations affected by irregular migration, which is like a vicious circle. The majority of migrant workers are often excluded from tax-funded initiatives, including social assistance and pension programs, despite their contributions to the host nation's economy via employment, consumption, and taxation. Documented workers get certain advantages from the host nation, based upon their immigration status (Olivier, 2018).

(ii) *Concensus principle of ASEAN*

The primary challenge that ASEAN countries encounter is the presence of illegal or undocumented migrant workers in the informal sector. These workers originate from neighboring countries and are mostly employed in the informal field. In order to handle these problems, all governments are either signing bilateral agreements or sending unauthorized migrant workers back to their home countries. The Bangkok Declaration on unlawful Migration, including Australia, Bangladesh, China, Japan, South Korea, New Zealand, Papua New Guinea, Sri Lanka, and Hong Kong, has compelled ASEAN leaders to prioritize the problem of unlawful migrant labor and to respond with fairness and humanity (Charanpal S. Bal, 2017). The ASEAN Consensus aims to safeguard the rights of irregular migrant workers, closely linked to the national policies of host countries; such regulations frequently provide formally employed workers irregular upon dismissal by their employers or job transitions (Moe, 2022). Countries often struggle to comply with regional legislation, and pronouncements are typically non-binding, resulting in a lack of enforcement mechanisms. According to Art. 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission for Human Rights (AICHR)⁷⁶ is responsible for human rights. It is composed of members of the governments⁷⁷ but is not empowered to exercise any coercive force and merely performs consultative functions. Nevertheless, the prospects for political and legal resolutions remain constrained by agreement, since the absence of universal acceptance among nations precludes the advancement of the matter for settlement.

(iii) Non-interference principle of ASEAN

The main argument within ASEAN concerning migrant workers compromises and compromises the rights of undocumented migrants, including fundamental human rights, owing to the principle of non-interference in matters of national sovereignty (ASEAN norms encompass non-interference in the internal affairs of member states and the respect for sovereignty). The principle was first lined out in ASEAN's foundation document, the Bangkok Declaration, issued in 1967⁷⁸. It was further reinforced in the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC), in which the principle of non-interference

⁷⁶ The ASEAN Intergovernmental Commission on Human Rights, Annual Report 2018, Adopted on 31.7.2018, <https://asean.org/>

⁷⁷ AICHR TOR 5.1, <https://asean.org/>

⁷⁸ 1967 ASEAN Declaration, Thailand 8th August 1967, <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1967-ASEAN-Declaration.pdf>

in members' internal affairs was explicitly referred to as one of the association's fundamental principles. The non-interference policy was reaffirmed in the Kuala Lumpur Declaration of 1997, illustrating that this value is a cornerstone of ASEAN. According to (Alex J. Bellamy & Catherine Drummond, 2011), "While the Association refrains from defining 'intervention,' regional practices indicate that it is perceived as an ongoing series of involvement in a nation's domestic matters, encompassing everything from subtle political commentary to forceful actions." From this wide perspective, the non-interference principle stops foreign nations from weakening political authority and governance in member states. Although ASEAN allows feedback on problems affecting its member nations, legal or political action seem to be difficult related to the constraints of this concept. At the same time, each nation implements its own legislation and policies concerning labor migration matters. ASEAN's ideals are hardly comprehensive (Molthof, 2012), but similar interests have helped handle regional concerns and safeguard migrant workers in recent years. Particularly in relation to sustainable labor development as outlined in Sustainable Development Goal (SDG) 10.7, which states: "Facilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies."

In contrast, the Memorandum of Understanding (MOU) that has been accepted in Cambodia, Thailand, Vietnam, and Malaysia, as well as in Indonesia-Malaysia, Laos-Thailand and Vietnam, Myanmar-Thailand, Philippines-Indonesia, and Laos, is an appropriate response to the issue of migrant workers between member countries. These agreements are primarily designed to prevent human trafficking. The protection of illegal migrant workers in ASEAN is a very complicated problem, making it difficult to reach an agreement. As a result, every nation that is organizing the event makes an attempt to pass legislation or national policies that are related to this matter. Malaysia, for example, has deported 30% of its illegal migrant workers in the past, while Thailand has helped to legalize illegal status. This means that illegal migrant workers can now register, but the process isn't easy because some employers don't want to pay the registration fee (Orbeta, 2013). 47% of Singapore's population consists of foreign-born individuals, including 30% temporary migrant workers and 4% illegal migrant workers (Nowrasteh, 2018). Malaysia is one of the nations that works with labor-sending countries to address the problem of

illegal migrant labor, such as Indonesia, which is mainly impacted by Indonesian labor (Low Choo Chin, 2017). Numerous initiatives have been implemented by the Malaysian government to address the issue of illegal migration, such as the regulation programs. This indicates that the government is committed to preventing human rights violations and deportations for laborers. On the other hand, this is a method of respecting the social issues with nations that are sending. Nevertheless, Malaysia has not yet addressed the issue of illegal migration and is exerting considerable effort to eradicate this problem. One of the most effective organizations in the world, ASEAN helps to keep the peace and security of the area intact. The organization's decision-making process is predicated on consensus⁷⁹. A number of viewpoints raise doubt on the idea that this brings the members together on some matters, particularly those related to security. ASEAN's policy is based on non-interference, quiet diplomacy, and consensus consultation, which is why illegal migrant workers have the most difficulty accessing fundamental social welfare benefits like as healthcare and sick leave. A number of social assistance legislation may not apply to them since they are not citizens of the United States.

4.3.Migrant workers mobility in ASEAN

As to the most recent 2019 estimates from the United Nations Department of Economic and Social Affairs (UNDESA), there are around 10.1 million stock migrants in ASEAN now, as seen in the Table 1.1 below. The number shows that half of these countries in ASEAN have increase migrant workers while others of those reduce slowly by 2020. Malaysia, Thailand, Singapore and Brunei are favored destination for intra-movement of migrant workers. Labour migration from Lao PDR is characterized by informal and undocumented processes, mainly involving low-skilled workers. These conditions result in exploitation and abuse concerning the rights and welfare of migrant workers, women, and children (AICHR, 2023, p. 16). The migration experience in countries such as Cambodia and the Philippines became increasingly significant during the 1970s and has persisted to the present day. Most Myanmar's migrants in the last several years have only traveled to China, Malaysia, and Thailand. Many Filipinos work as housekeepers in Singapore and

⁷⁹ Association of Southeast Asian Nations, ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, <https://asean.org/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/>. (29/112024)

Malaysia, while a smaller number have professional positions such as teachers and engineers in Vietnam, Cambodia, and Thailand.

Table 1.2. Intra- migrant flow

Country	1999	2000	2020
BruneiDarussalam	73,200	96,296	63,407
Cambodia	38,375	146,085	42,730
Indonesia	465,612	292,307	206,538
Lao PDR	22,866	21,948	31,393
Malaysia	695,920	1,463,598	2,156,265
Myanmar	133,545	98,011	41,898
Philippines	154,071	318,095	117,105
Singapore	727,262	1,351,619	1,112,517
Thailand	528,693	1,257,821	1,821,857
Vietnam	28,118	56,754	44,471

Source: “International migrant stock 2019,” UN Department of Economic and Social Affairs, accessed on 8/1/2024, <https://www.un.org/development/desa/pd/content/international-migrant-stock>

4.3.1. Intra-region skilled workers

What is the significance of talent mobility for sustaining the ASEAN region's fast economic growth? The unrestricted mobility of skilled personnel is essential for elucidating the integration process of ASEAN. Each AMS has distinct capabilities and specialized services, facilitating comprehensive and coherent development throughout ASEAN. The significance of skilled labor mobility is emphasized in several ASEAN accords and publications such as The ASEAN Framework Agreement on Services (AFAS) and the ASEAN Economic Community (AEC) Blueprint indicate that labour mobility is considered an important part of the ASEAN integration project. The comprehensive AEC strategy prioritizes the development of skilled labor and professionals, who represent less than 10% of the regional labor flow, with Singapore as the primary destination. Malaysia and

Thailand attract millions of irregular laborers from adjacent nations (Chia Siow Yue, 2019). Over the years, ASEAN has approached the issue of labor mobility as an extension of trade.. The two other agreements were designed specifically to promote intra- ASEAN mobility of people. The ASEAN Framework Agreement on Visa Exemption (AFAVE)⁸⁰ and The ASEAN Agreement on the Movement of Natural Persons (MNP)⁸¹. AFAVE was established with the objective of enhancing the tourism economy of the AMS and reducing the development gap by facilitating the unrestricted movement of ASEAN citizens. The AMS collectively resolved to eliminate visa requirements for citizens of other AMS, allowing a stay of up to 14 days from the date of entry, dependent upon the individual possessing a valid national passport, traveling only for visitation purposes, and holding a passport with a minimum validity of six months from the date of entry.allows visa-free travel for ASEAN nationals across the region for up to 14 days. However, the AMS may grant a period for more than the stipulated duration for temporary visits in accordance with their respective immigration regulations and bilateral arrangements (Pioquinto & Dicolen, 2020). AMS citizens are able to travel freely across the area without the need for visas because to a multilateral agreement. The implementation of AFAVE simplifies the process of leaving the country for tourist-workers. It also enables them to enter the AMS without being required to register for a visa, regardless of their purpose. The implementation of AFAVE promoted regional economic development by establishing local employment and tourism-related businesses. It also improved ASEAN connection by presenting local historical sites and cultures to visitors from ASEAN. The ASEAN Agreement on the Movement of Natural Persons (MNP)⁸² was signed in 2012 to further liberalize services trade across the region (Ishido & Fukunaga, 2012). This Agreement aims to enhance the mobility of individuals engaged in commercialization, service trade, and investment (Article 1, Objective).

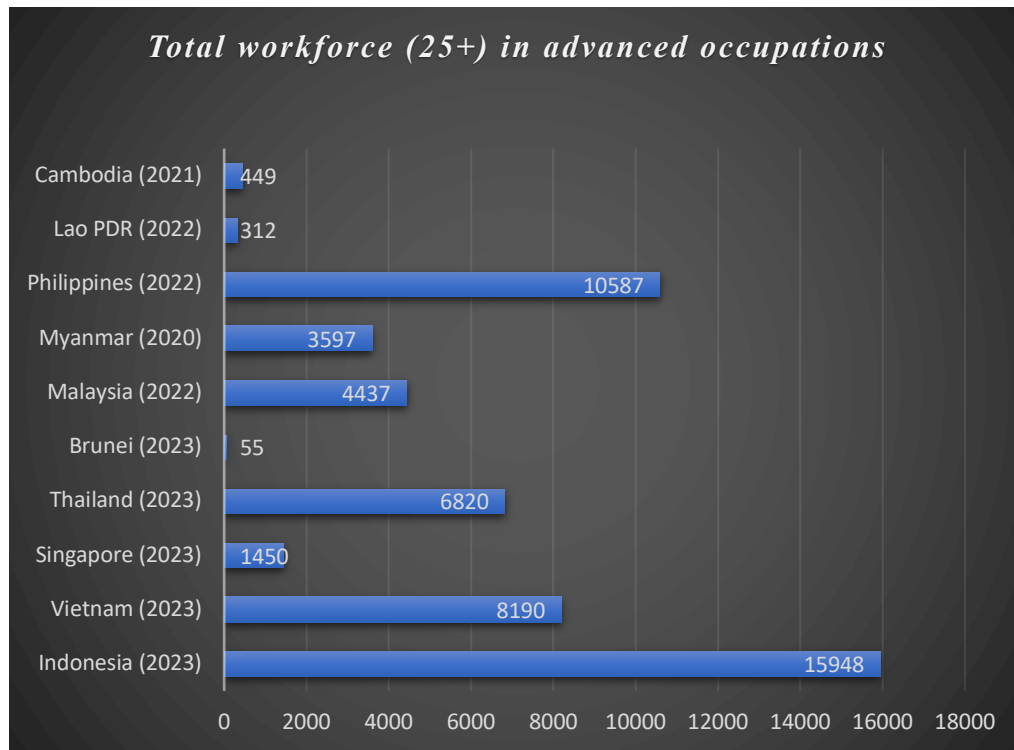
⁸⁰ AFAVE was signed by the ASEAN Foreign Ministers on July 25, 2006 during the 39th Meeting in Kuala Lumpur, Malaysia, <https://agreement.asean.org/media/download/20160831072909.pdf> (9/12/2024)

⁸¹ MNP streamlines and makes transparent the procedures for immigration applications for the temporary entry or entry of stay of natural persons. <https://agreement.asean.org/media/download/20240329064603.pdf>

⁸² <https://agreement.asean.org/media/download/20240329064603.pdf> (9/12/2024).

In contrast to the EU, the symmetry of intra-regional labor movements within ASEAN remains unequal. Countries such as Brunei, Malaysia, Singapore, and Thailand have an uneven ratio in their overall migrant populations. On the other hand, nations such as Indonesia, Laos, Myanmar, and the Philippines are net exporters of labor. The significant one-way migratory movements within ASEAN are mostly regulated by the governments of the sending nations. Thailand has distinct memorandums of understanding (MOUs) with the governments of Cambodia, Laos, and Myanmar. Additionally, Malaysia has memoranda of understanding (MOUs) with numerous countries, including Indonesia. A challenge in evaluating skilled labor in ASEAN is the lack of publicly accessible statistics, as well as the limited sources of information about labor migration categorized by skill level or educational qualifications. As to the World Bank 2016, Singapore hosts a significant population of qualified professionals; nevertheless, information on skilled foreign workers and their nationalities remains undisclosed to the public. Research by (Barbulescu, 2019) indicates a fast increase in the number of medical professionals from ASEAN nations, including the Philippines and Malaysia, migrating to Singapore. Figure 1.2 indicates that the most substantial segment of the highly skilled workforce, aged 25-64, comprises 15,948 persons (both male and female) as of 2023. The Philippines, Thailand, and Vietnam have made investments in higher education. Furthermore, the percentage of individuals with advanced vocational skills remains low in ASEAN nations. On average, more than 87% of migrant workers are either unskilled or highly skilled, despite the fact that labor mobility has grown in the last few decades among ASEAN member states (Piyasiri Wickramasekara, 2016). Nonetheless, labor mobility in recent years has decelerated and is inequitably allocated across nations within the area.

Figure 1.2. Total workforce (25+) in advance occupation



Source: International Labour Organization. (2025). *Labour force by sex, education and citizenship*. ILOSTAT database accessed 04/2025 at <https://ilostat.ilo.org/data/>

An important step by ASEAN in facilitating skills mobility in the region including Mutual Recognition Arrangements (MRAs)⁸³. The MRA is a major instrument for skilled labor mobility in ASEAN. However, recognition of each other’s qualifications and experience does not ensure market access. MRAs have been signed for many qualifications, including technical services, nursing, architecture, tourism, physicians, dentists, and accountancy. Each service has a distinct operating methodology (Mendoza, Rannveig, Sugiyarto, & Guntur, 2017), with the MRA achieving the most notable advancements in architectural and engineering services. The limited number of registered and qualified personnel in some professions is the cause of a significant number of difficulties and issues, as stated by (Avinandan Taron, 2020). A suitable task force must be established to support the skills that are attempting to develop ASEAN recognition programs. ASEAN actions to establish a labor market that is both healthy and integrated by 2040, with mutual recognition

⁸³ ASEAN Mutual Recognition Arrangements, <https://investasean.asean.org/asean-free-trade-area-agreements/view/757/newsid/868/asean-mutual-recognition-arrangements.html>

of professional licenses, educational qualifications, and work experience (Chia Siow Yue, 2019). Nonetheless, hurdles to the skilled labor mobility throughout ASEAN, as highlighted by (Chia, 2014), include degree recognition concerns, recruiting limits in certain industries, and cultural and linguistic impediments. Without significant initiatives to improve the mobility of skills within ASEAN, the region is susceptible to losing its talent to other regions of the globe. Instead of other ASEAN countries, the Middle East, Europe, North America, and Australia are the principal recipients of goods exported by Indonesia, Myanmar, the Philippines, and Vietnam. The primary factors influencing these choices are competitive salaries, a liberal lifestyle and culture, and an improved living environment. The research by (Mai Quoc Dung, 2023) indicates that the industries attracting the highest number of migrant workers are construction for Cambodian workers (46%), hotel and food services for Laotian workers (32%), manufacturing for Myanmar workers (37%), and fishing for Vietnamese workers (29%). As the Member States reaffirm their commitment to labor mobility, the flow of skilled workers within the area will intensify. In 2017, the entire workforce in these eight industries constituted just 1.5% of the overall labor force of ASEAN nations (Hoàng, 2013). In the member countries, the professions that are currently covered by the MRA constitute only approximately 0.3%-1.4% of the total employment. At the same time, ASEAN does not value its highly skilled people or their employment prospects. This becomes a significant obstacle for AMS in achieving the AEC objective of unrestricted migration of skilled workers within the bloc. Research indicates that by 2025, a significant portion of the 25.9 million skilled positions in Vietnam, Cambodia, Laos, the Philippines, and Thailand are going unfulfilled (Adhisti, 2018). This indicates that, for the majority of ASEAN nations, sourcing skilled personnel will be a significant challenge. In the light of the global battle for talent, the Association of Southeast Asian Nations (ASEAN) needs to achieve greater integration under the auspices of the Asian Economic Community (AEC). Increasing salaries in ASEAN may entice some overseas workers to return to the region. The comprehensive strategy of AEC 2025 persists in depending on the movement of proficient workers via MRA (A5, AEC 2025)⁸⁴. Despite the fact that ASEAN continues

⁸⁴ The objective of facilitating the movement of skilled labour in ASEAN began with MRAs that would allow practitioners in eight professions to practice in other ASEAN Member States through mutual recognition of their qualifications and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework (AQRF), for which referencing by the ASEAN Member States is voluntary, to support

to be a net exporter of human resources, which includes a significant number of skilled workers, the mobility of professional workers has not been substantially enhanced by the MRAs. A viable solution to this problem is to entice overseas migrants to return to the country and streamline the mobility of workers among different tiers within the AEC.

4.3.2. Intra-region lower-skilled labour

In 2007 ASEAN passed the Declaration on the Protection and Promotion of the Rights of Migrants⁸⁵ which commits ASEAN. This is a significant advancement in safeguarding migratory laborers. In a commentary published by the S. Rajaratnam School of International Studies, Senior Analyst with the Centre for Multilateralism Studies (CMS), Phidel Vineles, argues that the region - especially the ASEAN-5 (Singapore, Malaysia, Thailand, Indonesia, and the Philippines) - lack industry-ready skilled workers in spite of its vibrant demography. The research by (Vineles, Phidel, 2017) identifies many factors contributing to labor force shortages in nations. Singapore contends with its traditional education system, while Malaysia and Thailand grapple with the need of imparting technical and scientific abilities. Brunei confronts the issue of transitioning to a knowledge economy, while the CLMV nations (Cambodia, Laos, Myanmar, and Vietnam) focus on industrial development. An irregular migrant is an individual who has entered a foreign nation without applying to the official immigration procedures or without a valid work permit, or one who has subsequently attained irregular status post-entry. Because of weak border controls, the occasionally difficult and expensive procedures connected with legal migration and employment, and the existence of known migrant routes, many people choose to turn to irregular migration as their only realistic choice. Women may be forced to engage in irregular migration as a result of constraints placed on their legal movement, which are often imposed by sectoral legislation and age limits .

Irregular migrants engage in actions they did not expect. The vast majority of migrants worldwide arrive in a country on a regular basis, but they subsequently become irregular due to their overstaying. This might be attributed to their self-motivation or to

lifelong learning and enhance recognition and the ASEAN Agreement on Movement of Natural Persons (MNP). These arrangements aim to facilitate the temporary cross-border movement of natural persons and business visitors engaged in the conduct of trade in goods, trade in services, and investment

⁸⁵ Association of Southeast Asian Nations, <https://asean.org/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/> (12/12/2024).

ambiguous administrative processes. Non-resident migrants are more susceptible to deportation, and several nations in Asia have had extensive deportation efforts. In September 2013 Malaysia entered the final phase of the Regularization and Comprehensive Settlement of Foreign Workers and Illegal Immigrants Programme (6P), an arrest and deportation campaign targeting 500,000 undocumented migrants in Kuala Lumpur, Selangor, Penang and Johor. The operation further focused on employers of unauthorized migrant laborers. A significant number of those detained or locked during the operation were migrant workers who found themselves in a 'legal limbo' due to government policies or procedures that render them illegal. There was a particular cause for concern regarding the fact that numerous deportations could potentially violate the right to have individual case assessment and determination, which is outlined in Article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)⁸⁶. In Thailand, a research by (Palmgren, 2013), indicates that the amount of illegal migrants entering via unauthorized brokers is a minor portion, with many being referred by friends and acquaintances to aid in border crossing. Additionally, the Thai government has implemented numerous amnesty programs for illegal migrants, which result in them obtaining temporary legal status upon their illicit entry into Thailand (Maryann Bylander, 2019). These amnesty programs have granted temporary residency and documentation to millions of low-skilled migrants in Thailand, enabling them to work in the country for a designated period. Historically, crossing the border illegally and then seeking for temporary status has been substantially cheaper and simpler than going through the standard immigration recruiting procedures, which is one of the primary motivations for illegal immigration.

Unlike Thailand, Malaysia has implemented a variety of preventive measures to address the current surge of illegal immigration, including biometric screening and expulsion (at least 30% of illegal immigrants have been deported). (Kazim et al., 2011) discovered a fast increase in the number of illegal migrants, equivalent to that of normal migrants in Malaysia. When the government started taking the locking up of illegal

⁸⁶ OHCHR, Differentiation between regular and irregular, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/RegularAndIrregular.pdf> (11/12/2024).

immigrants seriously, it incurred fees in the courts and elsewhere, and the system became overloaded. In spite of this, there are several reasons why illegal immigration is still a problem in Malaysia. One of these reasons is the inadequate border control with nations that are located in close proximity to Malaysia. Furthermore, there are irrational policies, shown by a study indicating that tax rates for positions necessitating foreign labor are minimal, prompting employers of foreign workers to endorse visas for roles with reduced tax rates. Disputes emerge when workers are expected to acquire better skills, which causes them to leave their positions and become illegal immigrants since they no longer have visa protection.

Particularly if one includes irregular migration, that worker movements in ASEAN is dominated by unskilled and semi-skilled workers. In addition, the movement of unskilled and semi-skilled workers is dominated by irregular migration. Many consider this to be the result of the lack of avenues for legal migration of these types of workers (Abella, 2006). This implies that if better ways for legal migration can be provided, irregular migration is expected to decline, and this can be expected to improve migration outcomes for the lower skilled workers. Despite the fact that the majority of migrants are low-skilled (and many are illegal), and increasing economic integration is anticipated to accelerate labor flows, the AEC does not address mobility of low(er) skilled persons within the area (Huelser & Heal, n.d., p. 50). The mobility of low-skilled labour which represents the majority of intra-regional migration is simply absent from the economic integration plan. Their right to move, to reside and to work is left to national discretion (Orbeta, 2013). In general, ASEAN member states use a work permit and a quota system to regulate the inflows of foreign labour. Foreign labour and employers are also subject to various administration fees. Migration policy is designed mainly to protect national labour and to answer the market's need (Jonathan Chaloff & Georges Lemaître, 2009). The restrictive national frameworks have resulted in a continuing/increasing number of irregular migrants. In order to address the problem, the main receiving countries, such as Thailand and Malaysia, have concluded non-binding bilateral agreements with the sending countries (Stefan Rother, 2018). These MOUs have provided for temporary regularization of migrants as well as arranging for legal migration channel for migrants. However, many migrant workers still opt for the irregular channels since the MOUs' procedures for recruitment of workers are quite complicated,

lengthy, expensive, and requiring contact with many authorities or agencies. Due to the high costs, long duration, and considerable complexity gating the existing bilateral channels for migration, many intra-ASEAN migrants are precariously employed in an irregular status. Regardless of the legal documents they hold, migrants employed in low-skilled work often face exploitation and abuse because of inadequate protection of labour rights during recruitment and employment.

In ASEAN, illegal migrant laborers are subjected to a variety of risks and injustices, including inadequate working conditions, inadequate remuneration, recruitment agency deception, and inadequate safety standards. Even worse yet, they may be subjected to sexual abuse, illegal detention, and violence (particularly in the case of female migrants). The many human rights abuses of domestic workers in ASEAN have highlighted the inadequate legal protections for thousands of women (Richa Shivakoti, 2021). Another big group of women who work in ASEAN are foreign domestic workers, but they don't always have all the rights that women workers should have under the law. There are around 300.000 helpers in Malaysia under the Employment Act 1955 failed to get any protection as provided due to exceptions listed under the act (Part IX, XII, & XIIIA). From this, foreign domestic worker is not eligible to get basic labour rights including maternity and termination as well as annual and sick leave (Maruja M.B. Asis, 2017, p. 162). In 2009, the Indonesian government announced that it would review its policy regarding the relocation of domestic workers to Malaysia in response to an increasing number of maltreatment incidents perpetrated by the employer. The Indonesian government then sought further discussions over the bilateral agreement with the Malaysian government and demanded enhanced protections for Indonesian domestic workers. Migrant laborers often get differential treatment from ASEAN member nations. Research shown that, a migrant worker received different payment for similar jobs in 2 different ASEAN states (G, 1997). The development disparity across ASEAN nations is evident, putting discrimination a significant concern. Establishing wages may be seen as a metric; nevertheless, because to the lack of consensus among most AMS, the advancement of worker protection in ASEAN appeared to be barely anything.

4.4. Protection of migrant workers and international instrments

4.4.1. Intra Agreement of Association of Southeast Asian Nations

(i) *Highlight activities of ASEAN*

The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers resulted in the formation of an ASEAN Committee for the Implementation of the Declaration and the creation of the ASEAN Forum on Migrant Labour for ongoing discussions. Many ASEAN countries continue to depend on bilateral memoranda of understanding (MOUs) that are designed to regulate the movement of migrant labor, despite the numerous efforts made since 2004. A recent ILO research reveals that a formal bilateral agreement is essential to address welfare and social security concerns related to the diverse occupations of migrant workers. The Association of Southeast Asian Nations has made endeavors to safeguard migrant laborers over time.

In 2003, ASEAN adopted the ASEAN Concord II (Bali Concord II)⁸⁷, reaffirming its commitment to building the ASEAN Community.

2007, The ASEAN Charter was established⁸⁸ to provide the legal foundation and institutional framework necessary to improve the connectivity and cooperation of ASEAN. It also grants ASEAN legal personality as a regional cooperation organization. On December 15, 2008, the ASEAN Charter was implemented. The declaration outlines significant measures to direct ASEAN towards adherence to United Nations agreements and treaties. This proclamation recognizes the need of collective responsibility in the area to safeguard migrant workers.

2008, The ASEAN Committee enforces the Declaration on the Agency for the Protection and Promotion of Migrant Workers' Rights (ACMW)⁸⁹. The AMS endorsed the ASEAN Charter, which articulates a vision for labor mobility throughout the region.

2009 The whole strategy for economic-cultural and political-security components has been devised. The ASEAN Task Force on Migrant laborers has suggested a framework for the protection and promotion of the rights of migrant laborers.

⁸⁷ Declaration of ASEAN Concord II, <https://asean.org/speechandstatement/declaration-of-asean-concord-ii-bali-concord-ii/> (2/12/2024).

⁸⁸ 2007 Charter of ASEAN, <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2007-ASEAN-Charter-1.pdf> (2/12/2024).

⁸⁹ 2008 ASEAN committee on the implementation of the asean declaration on the protection and promotion of the rights of migrant workers work plan, <https://cil.nus.edu.sg/wp-content/uploads/2019/12/2008-ACMW-Work-Plan.pdf> (2/12/2024).

2012 The approval of the comprehensive plan assisted in the development of documentations⁹⁰ to safeguard the rights of migrant workers in the area, in accordance with AMS legislation and policy rules.

2013 The ASEAN Declaration on Enhancing Social Protection acknowledges migrants as a susceptible category of laborers⁹¹

2016 The ACMW Work Plan 2016–2020 has been approved. This plan includes four key areas: (i) mechanisms for managing labor mobility, including recruitment, job placement, and reintegration programs; (ii) social protection measures for migrant workers in ASEAN; (iii) the protection and promotion of migrant workers' rights; and (iv) the labor aspects of human trafficking.

2018 The ASEAN Action Plan 2018–2025 was adopted to guide the implementation of ASEAN's consensus⁹².

The ASEAN Forum on Migrant Labor (AFML) is one of the initiatives ASEAN takes part in to defend and advance the rights of migrant workers. AFML convenes yearly to discuss and exchange experiences concerning the safeguarding of migrant workers' rights. Members of the ASEAN region's labor migration community, including the tripartite delegates chosen by each member state, gather during the AFML Forum⁹³. There are a few proposals that have been adopted by AFML that have an immediate influence on the social welfare of migrant workers from ASEAN. The 4th AFML (2011) advocated for the creation of bilateral and multilateral agreements regarding the mobility of social security schemes and the improved execution of current programs, while the 7th AFML (2014) urged for strengthened collaboration between countries of origin and destination to assist migrant workers with health concerns⁹⁴, ensuring their access to necessary treatment and social

⁹⁰ASEAN Documents series 2012, [https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(11.%20Nov\)%20-%20ASEAN%20Documents%20Series%202012.pdf](https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(11.%20Nov)%20-%20ASEAN%20Documents%20Series%202012.pdf) (2/12/2024).

⁹¹ ASEAN Declaration on strengthening social protection, https://www.asean.org/wp-content/uploads/images/archive/23rdASEANSummit/5.%20asean%20declaration%20on%20social%20protection_final.pdf (2/12/2024).

⁹² Action Plan (2018-2025) to implement the ASEAN consensus on the protection and promotion of the rights of migrant workers, https://asean.org/wp-content/uploads/Action-Plan-of-ASEAN-Consensus_EXTRACT-FOR-ASEAN-WEBSITE_25-NOV-2020.pdf (2/12/2024).

⁹³ International Labour Organization, The ASEAN forum on Migrant Labour, <https://www.ilo.org/resource/other/asean-forum-migrant-labour>

⁹⁴ Of course, tax-funded provisions are not only limited to health care. Also important in this regard is access to a non-contributory social pension for non-nationals above the statutory age residing in the destination

welfare services. The inclusion of the mobility of social protection as a subject in several ASEAN dialogues outside of the annual AFML reflects the growing interest and awareness of ASEAN stakeholders in this area. The 7th ASEAN Region Tripartite Dialogue on Growth, Employment, and Healthy Labor Relations in the Services Sector on the theme "Managing Labor Markets in an Integrated ASEAN," held in Malaysia on October 12-13, 2015, called for national and regional social partners to work together to improve social protection for all in ASEAN.

(ii) *MOUs, BLAs and declarations related to migration*

Bilateral Labour Agreement (BLA) và Memorandum of Understanding (MOU) được sử dụng rộng rãi ở các nước ASEAN. The main purpose of these agreements is to regulate labor migration and expand labor rights. Below are BLAs and MOUs related to labor migration ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers⁹⁵

- Policy on labour Migration for Cambodian⁹⁶
- National labour migration Policy for Sri Lanka⁹⁷
- National Policy for Overseas Pakistanis⁹⁸
- Regional Consultative Process on the management of overseas employment and contractual labour for countries of origins in Asia (Colombo Process)
- Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Cooperation in the Employment of Workers⁹⁹

country. Another example relates to the exclusion of child allowances, where the exclusion is based on nationality criteria.

⁹⁵https://asean.org/wp-content/uploads/2023/11/ASEAN_Declaration_on_the_Protection_of_Migrant_Workers_Family_Members-in-Crisis-Situation-and-its-Guidelines.pdf

⁹⁶ International Labour Organization, <https://www.ilo.org/publications/cambodia-policy-labour-migration-cambodia>

⁹⁷ International Labour Organization, <https://www.ilo.org/publications/national-labour-migration-policy-sri-lanka-launched>

⁹⁸ International Labour Organization, <https://www.ilo.org/resource/news/first-ever-national-policy-overseas-pakistanis>

⁹⁹ International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-government-kingdom-thailand-and-government-2>

- Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on bilateral cooperation for eliminating trafficking in children and women and assisting victims of trafficking¹⁰⁰
- Memorandum of Understanding between the Royal Thai Government and the Government of Lao PDR on employment cooperation¹⁰¹
- Memorandum of Understanding between the Government of the Kingdom of Thailand and the Lao People's Democratic Republic on cooperation to combat trafficking in persons especially women and children¹⁰²
- Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on cooperation in the employment of workers¹⁰³
- COMMIT Memorandum of Understanding on cooperation against trafficking in persons in the Greater Mekong Sub-region¹⁰⁴
- Phuket Declaration¹⁰⁵

Bilateral agreements are the main means for managing migration between nations. Memoranda of understanding are less formal. Many destination nations like MOUs, perhaps because to their non-binding nature, which facilitates negotiation and implementation. Certain destination nations, such as South Korea, have established bilateral agreements concerning the recruitment of foreign workers under the labor permit framework. In 2024, South Korea will provide work permits to foreigners in four industries: restaurants, hotels, forestry, and mining. South Korea has executed Memorandums of Understanding with Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Myanmar, Mongolia, Nepal, Pakistan, the Philippines, Thailand, Timor-Leste, Uzbekistan, Vietnam, and Sri Lanka. The

¹⁰⁰ International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-government-kingdom-thailand-and-government-0>

¹⁰¹ International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-royal-thai-government-and-government-lao>

¹⁰² International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-government-kingdom-thailand-and-lao>

¹⁰³ International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-government-kingdom-thailand-and-government>

¹⁰⁴ International Labour Organization, <https://www.ilo.org/resource/commit-memorandum-understanding-cooperation-against-trafficking-persons>

¹⁰⁵ International Labour Organization, <https://www.ilo.org/resource/memorandum-understanding-between-government-kingdom-thailand-and-lao>

Korean system may serve as an effective example for government-to-government work permit licensing. Malaysia has established Memorandums of Understanding with Bangladesh, China, Sri Lanka, Thailand, Pakistan, Vietnam, and Indonesia to govern recruiting processes and procedures. “*The signing of this new MoU will ensure that the hiring process is transparent, fair, and avoids exploitative practices that could negatively impact both migrant workers and the local workforce*”, Human Resources Minister Steven Sim Chee Keong said (Ainul, 2024).

The Philippines is the place of origin with the highest number of bilateral agreements, totaling 13 labor-receiving countries and one labor-sending country, Indonesia; however, this excludes primary destinations for Filipino workers overseas, like Singapore, Japan, and Saudi Arabia. In order to guarantee the seamless operation of these agreements, it is necessary to implement specialized management. This includes the recruitment, screening, and certification of candidates for the program, as well as the expeditious exchange of data and information between the two countries. Nevertheless, the monitoring and enforcement mechanisms for the majority of these agreements are typically insufficient and frequently prioritize recruitment procedures over welfare and protection. There are a number of regional and sub-regional agreements on various elements of migration, in addition to the many bilateral agreements that have been reached. A series of meetings is frequently incorporated into regional agreements on migration to facilitate the exchange of experiences, the development of relationships, and the consensus on shared issues. The annual ASEAN Forum on Migrant Labour (AFML) convenes governments, workers' organizations, employers, and civil society stakeholders to review, discuss, and exchange best practices and ideas on Southeast Asia's key migrant worker issues and make recommendations to promote the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, also referred to as the Cebu Declaration, outlines commitments to safeguard migrant workers; however, these commitments are non-binding. ASEAN ha reafirmado esto al suscribir el Consenso de ASEAN sobre la Protección & Promoción de los Derechos de los Trabajadores Migrantes; sin embargo, los compromisos permanecen como voluntarios (Rother, 2018).

This practice "inevitably leads to an extremely complex and difficult-to-manage set of rules on the transferability of social security benefits," as noted by (Holzmann, Koettl, & Chernetsk, 2005), despite the fact that entering into bilateral social security agreements is often considered the preferred method of ensuring the social security rights of migrants. Moreover, such agreements may provide various rights and privileges to migrants, thereby jeopardizing regional integration. A potential solution to this issue is to implement uniform standards within a regional or global framework that facilitates the consideration of bilateral agreements. This is characteristic of the EU, since, despite many bilateral agreements, they all derive from a single legal foundation, EU Regulation 883/2004.

4.4.2. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMRW)

In the late 1930s, the International Labour Organization (ILO) issued several treaties regarding migrant workers. The first treaty in this area of the ILO is the Migration Convention on Employment. This convention was later amended by the Migrant Workers Convention (Convention No. 97 of 1949). Following this, in 1975, the ILO adopted Convention No. 143 on migrants in abusive environments and the treatment of migrant workers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMRW)¹⁰⁶ is a comprehensive international human rights mechanism adopted with the purpose of protecting the migrant workers and members of their families. However, as compared to other international human rights treaties, the ICMRW has been less recognized by States. According to the available information¹⁰⁷, until this date there are only 58 States which have ratified the Convention, 11 signatories, and 129 no action. As of early 2020, only two countries, Indonesia and the Philippines, had ratified the global. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which states that migrant workers' rights are to be respected without undermining state laws. This low ratification record shows that most governments do not consider the rights of migrants as "real" human rights that should be guaranteed by international law.

¹⁰⁶ Adopted by General Assembly resolution 45/158 on 18 December 1990

¹⁰⁷ <https://indicators.ohchr.org/>.

The ICMRW provides a more precise and specific interpretation of the way human rights should be applied to migrant workers which target other potentially vulnerable groups (women, children and, more recently, disabled people, for example). While ICMRW codifies some new rights specific to condition of migrants (such as the right to transfer remittances or to have access to information on the migration process), one of the most important thing is that ICMRW covers the rights for undocumented migrants. Logically, undocumented migrants are human beings and, as such, are protected by international human rights law; the ICMRW puts this on paper, in a way that earlier treaties did not. However, it is controversy when the destination States are required to guarantee the people they may not wanted to admit. States tend to find it very difficult to respect migrants' rights when trying to remove undocumented migrants and, in practice, these measures regularly lead to human rights violations (E. V. A. Dissanayake, 2023). The legal doctrine has frequently noted that the ICMRW generally complies with current legal norms, particularly in Western democracies. States would find it reasonably simple to ratify if they were inclined because the majority of the rights outlined in the ICMRW are already covered by their own laws (Cholewinski et al., 2009). This convention is more noticed to Asia countries than suitable domestic law. One of the most detailed analyses found that 'Belgian national law is (in practice) highly compatible with the provisions of the Convention' (Tholen, 2024). ICMRW calls for a new set of rights that they haven't existed before in domestic laws, therefore no legal obstacle that could justify the reluctance to ratify and implement the Convention. Antoine wrote that from a cost-benefit perspective, the rights of migrants are difficult to reconcile with market logics in destination countries and there are structural economic forces that make it very difficult to reach multilateral agreements on migrant workers' rights. In particular, the socio-economic imbalances between origin and destination States make reciprocal arrangements almost impossible.

One of the central contents of the 1990 International Convention is the rights of migrant workers as provided for in Parts III and IV of the Covenant. These rights can be divided into 2 basic groups: (i) civil and political rights group: no migrant worker or member of their family shall be subjected to torture, ill-treatment, inhumane or degrading treatment or punishment; no migrant workers or members of their families shall be enslaved, forced or forced to work; (ii) economic, social and cultural rights group: all

migrant workers and their families are entitled to health care; the right to an education equivalent to that of people in the country of origin; the right to ensure respect for the cultures and beliefs of migrant workers and members of their families and not to interfere in preventing them from maintaining cultural ties to their country of origin. The convention, in its articles 8 to 35, promotes and seeks states to ensure civil, political, economic, social and cultural rights and freedom already recognized by other conventions. The list of comparative analyses is annexed as Annexure 1. Among the rights recognized by the convention, are non-discrimination (Art 7), the right to life (art. 9), freedom from torture (art. 10), freedom from slavery and forced labour (art. 11), the right to freedom of opinion, expression, thought, conscience and religion (arts. 12–13), rights to privacy (art 14), freedom from arbitrary deprivation of property (art 15), the right to liberty and security (arts. 16–19 and 24), the right to social security (art. 27), right to health (art 28), right to nationality of a child of migrant worker (art 29), and the right to education (art. 30).

In addition, the 1990 International Convention also stipulates two groups of special rights for migrant workers: accommodation-related rights for migrants who have a legal place of residence in the host country and group of rights related to accommodation, especially for migrant workers. The convention has established specific rights and conditions that the receiving and hosting countries must adhere to, in addition to the general human rights. These include safeguards against the confiscation, destruction, or attempts to destroy identity documents (Art 21), freedom from arbitrary collective expulsion (Art 22), the right to protection and assistance of the consular or diplomatic authorities of their State of origin (Art 23), including when they are under arrest and detention (Art 16 (7)), and the right to receive treatment that is not less favourable than that of the nationals of the State of employment in terms of remuneration. With a comprehensive regulation of the rights of migrant workers, the 1990 International Convention attempted to establish the minimum standards that Member States should apply to migrant workers and Members. In addition, the 1990 International Convention also covers the protection of the rights of undocumented migrant workers, in which states recognize that workers with informal status often exploited and suffered serious human rights violations. The Convention recognizes that appropriate action should be encouraged to prevent and eliminate the illegal movement and entry of migrant workers, and to protect their human rights.

As a treaty entity, the Committee on the Rights of All Migrant Workers and Members of Their Families (CRMW) was constituted under article 72 (1) of the convention to monitor and guarantee the convention's implementation. The Committee is responsible for three critical functions: (1) receiving and responding to the state's periodical reports, (2) issuing general comments, and (3) receiving communications from affected parties. A key function of the Committee is to define the rights recognized by the convention as appropriate through general comments widening the rights perspectives parameters of the convention. The Committee has released five such general comments up to now. *“Each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of ‘general comments’ or general recommendations”*¹⁰⁸. The general remarks provide advice on a variety of topics, including how to interpret substantive provisions and what information states should include in their reports on particular treaty articles. (E. V. A. Dissanayake, 2023) mentioned about the two mechanism can support mutual. "Treaty bodies," which are formed in accordance with international human rights treaties, and "special procedures," which are originally established by the United Nations Commission on Human Rights and subsequently established by the Human Rights Council, are two mechanisms that fall under the umbrella of the international human rights body. The special procedures are utilized in the multilateral approach, while the treaty bodies implicitly employ a bilateral approach. The two mechanisms function independently but in a complementary manner.

4.5. Impact of Trade Union Rights on migrant workers in ASEAN countries

The ASEAN Services Employees Trade Union Council (ASETUC) is a network of trade unions in the ASEAN region to formulate and implement a consolidated trade union response to the fast moving economic and social development in ASEAN. The majority of ASEAN countries are confronted with the issue of undocumented or illegal migrant laborers, who primarily operate in the informal sector in bordering countries. Numerous domestic policies and legislative reviews, in addition to bilateral and global agreements, are being considered by governments as potential solutions to the issue. Furthermore, they use severe measures, including deportation or repatriation of workers to their countries of

¹⁰⁸ UNOHCHR, ‘General Comments: Treaty Bodies’ (United Nations Office of the High Commissioner for Human Rights, 2023) accessed 3 July 2024.

origin. The Declaration the Cebu Declaration was started by signing in 2007 in the three components: ASEAN Committee on the Implementation of ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, a group of experts and ASEAN Forum on Migrant Labour (AFML), then finally goaled to get the ASEAN Consensus on the Protection and Promotion of Migrant Workers (H. Q. Anh et al., 2021). Inaccordance with the ASEAN Consensus, the main goal is to protect the rights of irregular migrant workers, which is related to the national policies of the receiving countries. Trade unions have been reluctant to acknowledge even local laborers in the informal sector, similar to the governments of various countries. In the past, trade unions have disregarded workers who are not employed full-time in formal sectors due to their nonconformity with the voter groups that served as the foundation of trade labor in England and Europe following the Industrial Revolution. East and Southeast Asia may have the most active opponents of informal sector worker organization (Michele Ford, 2006). In East and Southeast Asia, Hong Kong exemplifies the degree to which informal sector workers may be assimilated into official labor relations frameworks (Chen, 1987). According to author Michele Ford, union engagement in migrant worker concerns is a patchwork phenomena; yet, it is important to recognize that there is still a tie between labor groups and unions. In each country, migrant workers have the right to establish and join a union, as outlined below. In some nations, trade unions are prominently established, whilst in others, their role is fulfilled by NGOs.

Philippines: The Trade Union Congress of the Philippines (TUCP) was founded on December 14, 1975 by 23 labor federations which saw the necessity and importance of uniting themselves into a strong and dynamic labor center¹⁰⁹. The members shall directly elect their officers, including those of the national union or federation, to which they or their union is affiliated, by secret ballot at intervals of five (5) years¹¹⁰. Article 269 of the Labor Code prohibits foreign entities and individuals from directly engaging in trade union operations. Nevertheless, foreign nationals who are employed in the country and possess a valid permit issued by the Ministry of Labor and Employment are entitled to exercise their

¹⁰⁹ TUCP, <https://tucp.org.ph/tucp-labor-center-about-us/>

¹¹⁰ Chapter II, Article 241, Labour Code Law of The Phillipines, [https://amslaw.ph/philippine-laws/labor-law/labor-code-law-of-the-philippines-\(6\)](https://amslaw.ph/philippine-laws/labor-law/labor-code-law-of-the-philippines-(6))

right to self-organization and to support or participate in labor organizations of their choosing for the purpose of collective bargaining. Furthermore, the above listed foreign people are citizens of a nation that confers comparable or equal rights to Filipino workers. Amended according to Section 29 of Republic Act No. 6715, March 21, 1989.

Malaysia: According to a study by (Ramesh Kumar Moona Haji Mohamed, 2012) the government has approved the recruitment of 45,000 foreign workers from India to meet the demand in 13 business sectors. It is the firm belief of the Malaysian Trades Union Congress (MTUC) that the planned migration of 45,000 Indian laborers will have a negative impact on the employment prospects of Malaysian citizens. Trade unions in Malaysia first emerged in the 1920s when the Communist Party of Malaya encouraged unskilled workers to unionize. There was no legislation then relating to trade unions in Malaysia¹¹¹. Malaysian labor unions are often small, disconnected, and localized (Ramasamy, 2008). Collective bargaining in Malaysia is generally quite limited, although workers have the right to form and join unions (Section 5 of the Industrial Relations Act, 1967). In addition to legal considerations, international workers also influence the rights of Malaysian unions (Sharma, 1989). In Malaysia, the Trade Union Act 1959 grants trade union rights to all workers, including migrant workers, who possess the right to strike with the approval of two-thirds of union members; thereby, migrant workers are able to join trade unions. MTUC addresses situations when employers retain the official documentation of migrant workers.

Indonesia: For Indonesia, the right to freedom of association does not exclude migrant workers, while the right to collective bargaining is recognized by law but is strictly regulated¹¹². Under Labour Union Act of Indonesia¹¹³, Article 13 that the membership must not limit or discriminate workers and union-members on the grounds of political allegiance, religion, ethnicity or sex. A worker is not allowed to be a member of more than one union at an enterprise (Art. 14) and workers holding various management positions in an enterprise are not allowed to become union officials (Art.15). In Indonesia, the government has implemented many measures that undermine equitable protection for migrant workers.

¹¹¹ IOM, <https://micicinitiative.iom.int/malaysian-trades-union-congress-migrant-worker-resource-centres-0>

¹¹² The right to freedom of association is recognised by law but strictly regulated.

¹¹³ Labour Union Act (Act No.21 of 2000), <file:///Users/nguyenthuyanh/Documents/PhD./DEB%20UNI/PhD.%20Thesis/Database/Asean%20policy/Indonesi.pdf>

Most Philippine unions mostly neglect foreign migrant workers, with the exception of those employed at sea (Ford, 2004, p. 8). When local circumstances allow, Indonesian migrant workers overseas have established unions or other groups to oppose discriminatory legislation (Michele Ford, 2010). The national trade union federation remains comparatively small and mostly focuses on domestic labor concerns, whilst the most robust sectoral unions—constituting the foundation of the domestic labor movement—represent industries with little migrant presence. Conversely, NGOs vigorously champion the rights of migrant workers, dedicating the majority of their efforts to tackling specific instances of abuse, including human trafficking, sexual assault, torture, and wage theft. The lack of a dependable migrant workers' union is a significant problem for Indonesia.. The purpose of Labour union is to improve the welfare of its members or of workers in general. Thus, the union must be open in accepting members, and not discriminate on the basis of political orientation, religion, ethnicity, or gender.

ThaiLand: Section 42 of the Constitution mentions the freedom of association and the right to join trade union; “A person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group”¹¹⁴. In the study of (Moe, 2022), workers from the informal sector are organized but do not have much bargaining power. On the other hand, migrant workers have the right to join existing unions although they do not have the right to organize because they are not national workers in Thailand, however, migrant workers rarely join existing unions.. The affairs of the labour rights protection are being served by the Labour Congress of Thailand (LCT), Thai Trade Union Council (TTUC). In implementation, the complete rights to form unions and to participate in collective bargaining have not been exercised by even the regular migrant workers in Thailand. (Ayudhya, 2010). Sardine Caracul Na Atudhya indicated that just 39 of Thailand's 76 provinces has unions, demonstrating that a limited segment of the populace engages in union activities. Despite the fact that migrant laborers have established trade unions and joined national trade unions, the establishment and membership of trade unions are contingent upon the government and the actions of employers.

¹¹⁴ Constitution of the Kingdom of Thailand, [https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+(B.E.+2560+(2017)).pdf) (12/12/2024).

Vietnam: The Vietnam General Confederation of Labour (VGCL) is the sole national trade union center in Vietnam. It was founded 29 July 1929 as the Red Workers' General Union in Northern Vietnam, and extended into the entire country after the collapse of South Vietnam in 1975¹¹⁵. Vietnamese workers are allowed to join trade unions according to the regulations and conditions of Vietnamese trade unions¹¹⁶. However, according to the latest information, foreign workers will be allowed to join trade unions starting from July 2025¹¹⁷ in the Law on Trade Unions (amended). Therefore, the conditions of voluntary membership, approval of the principles and purposes of the Trade Union or length of residence in Vietnam... will be specifically regulated in the Charter of the Vietnam Trade Union and specifically guided by the Vietnam General Confederation of Labor. Expanding the scope of trade union membership to include foreign workers will contribute to increasing the number of members. This strengthens the collective strength that the trade union represents and the ability of the trade union to negotiate with employers, as well as enhancing the voice of workers in domestic and international forums (delegate Nguyen Hoang Bao Tran said). In addition, when expanding the right to join trade unions, foreign workers will not be able to run for election, receive nominations as trade union officials and will only be active at grassroots trade unions (Nguyen Thuy Anh, Chairwoman of the National Assembly's Social Committee).

Lao LDR: The role of trade unions to protect the rights of all workers is enshrined by the Labour Law and Trade Union Law in Lao PDR and hence, the Lao Federation of Trade Unions (LFTU)¹¹⁸ is committed to protecting the rights of migrant workers and ensuring safe migration through the effective governance system of labour migration. Lực lượng đư The force that can participate in labor unions in Laos is the citizens of this

¹¹⁵ Vietnam General Confederation of Labour, <file:///Users/nguyenthuyanh/Documents/PhD./DEB%20UNI/PhD.%20Thesis/Database/Asean%20policy/Vietnam.pdf>

¹¹⁶ Trade Union, 12/2012/AH13, Article 5, <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=163545> (12/12/2024).

¹¹⁷ Electronic information portal of the Communist Party of Vietnam Vietnam Trade Union, *Foreign workers are allowed to join trade unions*, https://dangcongsan.org.vn/congdoanvn/lists/tinhoatdong/View_Detail.aspx?ItemID=4566 (12/12/2024).

¹¹⁸ Lao People's Democratic Republic, Law on Lao Trade Unions, https://asean.org/wp-content/uploads/2016/06/L1_LAW-on-Lao-Trade-Unions-2007.pdf

country¹¹⁹.. Applicants for union membership are Lao officials, workers, civil servants, and intellectuals, regardless of nationality (Article 20)¹²⁰.. Therefore, to summarize, migrant workers do not have the right to establish or join unions in Laos.

Brunei Darussalam: It is a recipient country for migrants that has a Trade Union Act in its national legislation. The national Labour Law in Brunei only pertains to domestic workers and does not apply to migrant workers, therefore precluding them from membership in any trade union¹²¹.. This implies that migrants lack the right to freedom of association or collective bargaining.

Myanmar: The Confederation of Trade Unions, Myanmar (CTUM), formerly known as the Federation of Trade Unions of Burma (FTUB). Like Indonesia, the right to form unions in Myanmar is based on trade union law. Under Article 21, Trade Union Law that Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed. According to Article 6(d)(e), the admission of members to a trade union must be those who actually participate or work in an industry that the trade union is related to. The Trade Union Code does not restrict immigrants from joining trade unions, it can be understood that foreign workers can join but must meet the conditions under Articles 6, 21 and 22 of the Labor Code. In addition, the right to collective bargaining is not mentioned in the law in Myanmar¹²².

Singapore: The Trade Union in Singapore come under the following legislation: Trade Union Act (Cap 333)¹²³, Trade Unions Regulations¹²⁴. The Trade Unions Act and its Regulations regulate the activities of trade unions, including the proper management of

¹¹⁹ Article 19, Part IV The membership of Trade Unions: “*The members of trade unions are from staff, employees, workers and intelligentsias, who work using their physical and mind powers, and may be paid in return in forms of the salaries, wages, and stipends and have been registered as the members of trade unions with the trade unions in the Party’s and State’s organs, the Lao Front for National Construction, mass organizations and labour units*”.

¹²⁰ Part IV, Chapter I: The Membership of Trade Unions, https://asean.org/wp-content/uploads/2016/06/L1_LAw-on-Lao-Trade-Unions-2007.pdf

¹²¹ ITUC Annual Survey of Violations of Trade Union Rights, <https://unhcrsurveys.wordpress.com/category/brunei-darussalam/> (12/12/2024).

¹²² International Trade Union Confederation, Myanmar- Legal Profile, Right to collective bargaining, https://www.ituc-csi.org/spip.php?page=legal_info&cc=MMR&lang=en

¹²³ Trade Union Act, https://asean.org/wp-content/uploads/2016/08/S12_Trade-Unions-Act.pdf

¹²⁴ Trade Unions Regulations, <https://sso.agc.gov.sg/SL/TUA1940-RG1>

union affairs, safe custody of funds and the free election of union officers. The Singapore Labour Foundation Act¹²⁵ improves the welfare of trade union members and their families, and further develops Singapore's trade union movement. Beside the section of the Criminal Law Act¹²⁶ makes temporary provisions for the prevention of strikes and lockouts in service. Ba nhánh luật trên dành cho lao động di cư hợp pháp tại Singapore bất kể quốc tịch khác nhau. Based on Country Baseline under the ILO Declaration¹²⁷ that The National Trades Union Congress (NTUC) advocates for the freedom of association and the effective acknowledgment of the right to collective bargaining, which is recognized by all tripartite partners. The Industrial Relations Act (IRA) was amended to permit rank-and-file unions to collectively represent managers and executives. Besides, the Article 30 mentioned about the requirement for an officers shall not act¹²⁸. That assumed all workers in Singapore including migrant have the right to join, the law does not prohibit formation of trade unions by non-citizens.

The issue of labor migration appears to have been of greater concern to NGOs than to trade unions over the past decade. (Piper, 2003) states that several non-governmental groups are tackling migrant labor concerns in East and Southeast Asia, undertaking operations that include data gathering, policy lobbying, and the management and organization of migrant workers. The labor movement is recognized at both national and local levels. Unions are most effective in addressing full-time workers in the formal sector. However, many temporary migrant workers do not satisfy the criteria for "ideal members" due to their status as temporary migrant laborers, including women who work as domestic assistants (Ford, 2004). Nevertheless, there are a number of labor organizations that are starting to see temporary migrants as possible members both in their home countries and, to a lesser degree, in the East and Southeast Asian nations from which they originally came. Nonetheless, several philosophical and institutional impediments persist in the formation

¹²⁵ Singapore Labour Foundation, <https://sso.agc.gov.sg/Act/SLFA1977>

¹²⁶ Criminal Law Act 1955, <https://sso.agc.gov.sg/Act/CLTPA1955#P1III-#P1III->

¹²⁷ Country Baseline under the ILO Declaration, <file:///Users/nguyenthuyanh/Documents/PhD./DEB%20UNI/PhD.%20Thesis/Database/Asean%20policy/Singapore.pdf>

¹²⁸ Article 30 of Trade Union Act, A person shall not act as an officer of a trade union or any branch thereof, and shall be disqualified for election as such officer if he is an undischarged bankrupt or has been convicted by any court of criminal breach of trust, extortion or criminal intimidation, or of any offence which, in the opinion of the Minister, renders him unfit to be an officer of a trade union.

of labor unions. Similar to many destination nations, prominent exporting countries in the area see temporary labor mobility as a migration concern rather than a labor relations one (Ford, 2004, p. 6). The governments' perspectives on transitory migrant labor in East and Southeast Asia are primarily shared by trade unions in the region. In recent years, the ILO and the International Confederation of Free Trade Unions (ICFTU) have sought to motivate unions to adopt a more proactive stance for all migrant workers; however, only a limited number of national-level union movements in ASEAN consistently engage in activities addressing the needs of temporary migrant workers. In several circumstances inside the host nation, unions exhibit considerable reluctance to accept workers. (Wickramasekera, 2002). The ambiguous status of foreign workers as non-citizens and the transitory nature of many current positions make it difficult for trade unions to provide support. Nevertheless, several nations, like Vietnam, the Philippines, and Thailand, have enacted legislation that provide migrant workers the rights to unionize and engage in collective bargaining. In many nations, trade unions are not significant; rather, NGOs have arisen, as shown by Indonesia.

4.6. The policy of Asia labor migrant

ASEAN is composed of countries that sends and receives migrant workers. The presentation in this section is grouped into those two types of countries. This is to highlight the distinct issues faced by sending and receiving countries. Even though Malaysia and Thailand are both sending and receiving countries, the presentation in this section groups these countries as receiving since their primary migration issues are that of receiving countries. There is no such controversy of Singapore as a receiving country. The rest of the ASEAN countries are considered sending although what are covered here are countries with readily available information¹²⁹. In this section I have summarized the measures adopted by some ASEAN member states regarding the social security status of migrant workers.

(i) *Myanmar:*

As of January 2024, UNHCR (2024) estimated that there were 2.6 million internally displaced persons in Myanmar and 60,500 officially recognized refugees and asylum

¹²⁹ These grouping of countries is used in the IDRC-funded project implemented by the Philippine Institute for Development Studies called “Different Streams, Different Needs and Impact: Managing International Labor Migration in ASEAN,” with six cooperating countries namely Cambodia, Indonesia, Malaysia, Philippines, Singapore and Thailand. This section draws heavily from the reports of the project.

seekers from Myanmar in other countries¹³⁰. Migration in Myanmar comprises both seasonal internal migration and more long-term migration to cities, and cross-border migration to nearby countries such as Thailand, as well as further afield (Griffiths & Ito, 2016). The Myanmar Constitution neglects references to social welfare rights and the position of migrant workers in Myanmar. Nevertheless, the Constitution guarantees that all citizens are entitled to healthcare¹³¹. In 2012, the government enacted a new Social Security Act. The social security legislation of Myanmar does not clarify the insurance coverage for migrant workers¹³². It makes no difference whether workers in Myanmar join freely or not; they will not be entitled for full welfare benefits either way. Under the Social Security Law of 2012, migratory workers are allotted a mere one month for registration. Myanmar may be required to fulfill international requirements concerning insurance for migrant workers. Myanmar has not signed any treaties pertaining to the protection of migrant workers, but it has accepted many particular social security conventions, mostly with workers' compensation programs. Bilateral memoranda of agreement signed with other nations may have an influence on residents' access to Myanmar's social assistance services.

(ii) *Singapore:*

Singapore is known to have the highest dependence on foreign workers in ASEAN comprising 34.7% of its labor force in 2010. It has a dual track policy on foreign labor with unrestricted inflow for the highly skilled and a managed inflow for the lower skilled workers. It is one country in ASEAN where migration policy is closely integrated with its national development strategy. It is worth noting that its declared intention for the future is to limit Singapore's dependence on foreign labor due to its constraints on physical space and concerns for the crowding out not only of jobs but also public and recreational spaces as well as services. On the one hand, foreign talents are being recruited with liberalized immigration policies consisting of eased requirements for permanent residency and citizenship, offer of scholarships and research fellowships at tertiary institutions and improved living and cultural attractions and tax regimes. It is recognized that the country needs to compete with many other countries for desired foreign talents as their economy

¹³⁰ Statista Research Department, Labour migration in Myanmar, <https://www.statista.com/statistics/880228/myanmar-labor-migration-flow/> (19/12/2024).

¹³¹ Constitution of the Republic of the Union of Myanmar, article 347.

¹³² Social Security Law, 2012, articles 26, 31(a)(i), 31(a)(ii), 32, 33, 35, 36 and 37.

restructures and globalizes. Singapore has a non-interventionist emigration policy that encourages people to work in other countries. Except for obligatory military duty for its male nationals, there are no legal barriers to Singaporeans departing. The assumption is that when the migrants return home, they would use their expertise to contribute to the economy.

Singapore was a British colony prior to its incorporation into the Federation of Malaysia in 1963. The nation was ejected from the Federation in 1965, thereby forfeiting access to the bigger domestic market and transitioning towards export-oriented manufacturing. In order to mitigate wage inflation pressure, the state permitted the recruitment of immigrant labor (originally from Malaysia) in the late 1960s, as it encountered a labor shortage. The state further urged married women to enter the job market to augment the workforce. Consequently, a channel for voluntary and highly specialized, short-term female labor migration has been established in the domain of domestic work and caregiving, due to the lack of state-sponsored childcare services in the Southeast Asian area. Additionally, the immigration system has been steadily changed to draw in businesses, entrepreneurs, and qualified professionals. Singapore's immigration policy seeks to fulfill the state's long-term objectives of economic enhancement and technical advancement while simultaneously preserving short-term competitiveness (Manning & Bhatnagar, 2006, p. 55). The state has enacted a human capital investment policy to enhance its service industry by augmenting the influx of skilled and professional migrants. A nation-building plan based on diversity has been applied in Singapore to safeguard the rights of minority groups concerning race, language, and religion (Joseph Chan, 1997). The Singapore Manpower 21 Report, which rebranded the Ministry of Labour as the Ministry of Manpower, emphasizes that augmenting the national workforce with overseas labor is essential to the nation's future economic strategies and policies. The enumerated six fundamental techniques comprise: Integrated workforce planning; Continuous education for enduring employability; Augmenting the talent reservoir; Revamping the workplace environment; Cultivating a dynamic labor sector; and leveraging collective potential. The deployment and management of foreign labor in Singapore are regulated through three main legal documents, namely the

Immigration Act¹³³; the Employment of Foreign Manpower Act¹³⁴ (hereinafter incorporated into the Employment Agencies Act); and the Penal Code¹³⁵. The Immigration Act delineates protocols for law enforcement authorities to address immigration infractions and to use prosecutorial discretion for both employers and undocumented immigrant laborers. The Employment of international Workers Act governs the hiring of immigrant labor via several work visa and permit classifications, as well as international taxation frameworks. The Employment Agencies Act mandates that employment agencies may not impose fees on job searchers beyond the state-prescribed limit, whilst the Penal Code stipulates penalties for non-payment and the maltreatment of workers (Karl & Torres, 2016). In Singapore, the guest worker program offers permanent residency rights, subsidized healthcare services, housing incentives, and education for dependents to professionals and skilled migrants. The migrants mostly originate from Malaysia, industrialized Western nations such the United States, Australia, and the United Kingdom, East Asia (primarily Japan and South Korea), as well as China and India (Yeoh, 2007). The share of workers in managerial, professional, and technical jobs rose from 11% in 1970 to almost 40% in 1999 (Gaur, 2006).

At the same time, the state's policy regarding low-skilled labor is predicated on the assumption that this demographic is employed seasonally: the labor force expands during economic expansions and contracts during recessions (Stalker, Peter, 1997, p. 225). The state has implemented measures to reduce reliance on low-skilled workers. In contrast to Malaysia and Thailand, Singapore lacks a similar agricultural industry and has advanced in industrial output. The manufacturing, construction (infrastructure and housing), marine, and low-wage service industries (including domestic work, caregiving, and other manual labor employment) employ the majority of the low-skilled workers. Progressive revisions to the existing immigration framework have been implemented to attract entrepreneurs and executives, as well as individuals with higher levels of education. Singapore's primary labor regulations include both skilled and unskilled migrant workers; nevertheless, domestic workers lack official labor agreements and basic labor standards, resulting in a far weaker

¹³³ Immigration Act (Chapter 133), <https://www.rcrc-resilience-southeastasia.org/wp-content/uploads/2018/01/2008-Immigration-Act.pdf>

¹³⁴ Employment of Foreign Manpower Act (Chapter 91A), https://asean.org/wp-content/uploads/2016/08/S9_Employ-of-Foreign-Manpower-Act-Chapter-91A.pdf

¹³⁵ Penal Code (Chapter 224), <https://www.icj.org/wp-content/uploads/1972/09/Singapore-Penal-Code-1872-2011-eng.pdf>

protection framework. They lack designated working hours or scheduled days off each week. Domestic workers are typically required to remain on the employer's premises, unless they are on official duty or having a day off. This is typically outlined in the contract. Domestic workers, who earn between 200 to 250 Singapore dollars monthly, are required to pay around 600 Singapore dollars, equivalent to three months' compensation, to recruiting brokers for securing a work contract (Amarjit Kaur, 2010). Compensation also differs and is contingent upon the worker's nationality. Consequently, domestic workers from the Philippines, who are proficient in English, are compensated at a higher rate than domestic workers from Indonesia or Sri Lanka. Every six months, domestic workers are required to get a pregnancy test. If they are pregnant, they are deported, but they can choose to have an abortion to avoid being sent back home. Low-skilled foreign workers, like domestic helpers, also have less personal freedom. Marriage with Singaporean citizens and the reunion of children of foreign laborers are prohibited in Singapore without prior authorization from the government.

(iii) *ThaiLan:*

Thailand is both a sending and a receiving country. IOM estimates that Thailand is home to 3.9 million migrant workers from Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam (2019). This suggests that migrants currently constitute over 10 per cent of Thailand's total labour force¹³⁶. The current net migration rate for Thailand in 2024 is 0.273 per 1000 population, a 0.73% decline from 2023. The net migration rate for Thailand in 2023 was 0.275 per 1000 population, a 0.36% decline from 2022¹³⁷. The Thai Ministry of Labour has set a target to send 100,000 Thai workers abroad in the 2024 fiscal year, with Taiwan, Israel, and South Korea being the top three destinations¹³⁸. The main target is to send Thai workers to the Asian region, totalling 72,000 people. This is followed by Europe with 14,000, the Middle East with 10,500, North

¹³⁶ IOM Thai Land, <https://thailand.iom.int/labour-mobility-and-social-inclusion#:~:text=IOM%20estimates%20that%20Thailand%20is,of%20Thailand's%20total%20labour%20orce>.

¹³⁷ ThaiLand net Migration Rate 1950-2024, <https://www.macrotrends.net/global-metrics/countries/tha/thailand/net-migration#:~:text=The%20current%20net%20migration%20rate,a%200.36%25%20decline%20from%202021> (18/12/2024).

¹³⁸ Mekong Migration Network, Thai Ministry to send 100,000 workers aboard in fiscal year 2024, <https://mekongmigration.org/?p=22694> (18/12/2024).

America with 1,800, Africa with 1,100, and South America, Australia and Oceania with 600. It is becoming, however, more and more a net receiving country, particularly, if one counts the irregular immigrants from Cambodia, Lao PDR and Myanmar (CLM) countries. Although refugees are no longer the major cause of immigration into Thailand, the number of undocumented migrants continued to increase through the years because of different reasons. It is interesting to note that instruments have been developed to handle the high frequency movements of migrant workers across the border. For instance, Thailand uses border and temporary passes for regular commuters from Cambodia and Lao PDR which are payable per crossing or less frequently like per week . Even if it is not a high priority, deploying Thai workers overseas have some support.

The 1997 Draft Constitution of the Kingdom of Thailand –in chapter III on the “Rights and Liberties of the Thai People”, provides for equal treatment of all persons. It stipulates, “All persons are equal before the law and shall enjoy equal protection under the law¹³⁹. The State shall enhance people to be capable of carrying out the work suitable to their capacities and ages and of obtaining employment. The State shall ensure the protection of work safety and hygiene for workers and the receipt of income, welfare, social security and other benefits appropriate for their livelihoods, and shall provide or promote the savings for their retirement. The current policy framework applicable to allowing the immigration of foreign workers into Thailand needs to be understood against the background of Thailand’s economic growth and its labour market needs, particularly the insufficient human resources available in the labour market to fill certain positions (in particular lower-skilled positions) and the expected imminent shrinking of its labour force¹⁴⁰. In 2015, the government declared that non-Thai nationals who are leaving Thailand might receive elderly compensation in the form of a single amount (Olivier, 2018). Thai government promulgated the policy for the social protection that all the children comprising the

¹³⁹ Section 74, Chapter III, Thailand Kingdom Constitution, <https://law.dit.go.th/Upload/Document/7c5d31bd-a52c-421f-b875-f18e37e88211.pdf>

¹⁴⁰ According to ILO and ADB (2014, p. 92–93) projections, “Thailand’s labour force will start to shrink around 2022 and continue to do so at an increasing rate. Correspondingly, the demand for migrant workers is projected to increase over this period, with the greatest demand being for low- and medium-skilled workers. Based on these projections, labour migration will be an important feature of Thailand’s sustained growth and development in the short and medium-term. As such, Thailand will have to implement adequate policies to better manage and truly benefit from labour mobility.”

documented and undocumented migrant children, have the right to education, right to health care and child protection services. Thailand’s Immigration Act, 1979 – read with the Alien Working Act, 2008 – generally prohibits the entry and employment of unskilled foreign workers¹⁴¹. In addition, as a rule, foreign workers are only allowed to be employed in certain occupations. Though fragmented, Thailand has a comprehensive social security system, covering all nine classical social security risks provided for in ILO instruments. In the health care system of Thailand, the government allowed the migrant children the right to access to the health care as the migrant workers and their dependents have been provided by two insurance schemes (Moe, 2022). Under the Labour Protection Act, B.E. 2541&2551, migrant workers are entitled to maternity leave, protection from termination due to pregnancy and other protection¹⁴². In essence, but subject to qualification, migrants are also covered under these arrangements (ILO and ADB, 2014). Migrant workers in the formal sector, whose stay and work in Thailand is regular, in principle have access to the health-care benefits available under the Social Security Fund, as regulated by the Social Security Act, 1990. This applies to both employees (see section 33 of the law above) and newly self-employed persons who were previously workers covered as employees under section 33 of the law (ILO and UN, 2013). Migrant workers, including undocumented migrant workers enjoy health-care protection on the basis of a separate. The new scheme is known as Compulsory Migrant Health Insurance (CMHI)¹⁴³, which “targets undocumented migrant workers and does not cover dependent. Thailand has ratified a few ILO Conventions with social security implications, but has not ratified any of the key ILO migration Conventions¹⁴⁴. Thailand has also concluded a range of bilateral labour agreements/MOUs in its capacity both as a sending and as a receiving country. Here mention is only made of agreements related to its position as a receiving country. Bilateral agreements have been

¹⁴¹ Section 12, Immigration Act B.E. 2522 (1979), https://www.royalthaipolice.go.th/downloads/laws/laws_03_03-03.pdf

¹⁴² International Labour organization (ILO), Migrant Workers’ Rights And Welfare: Combating The Worst Forms Of Child Labour In Shrimp And Seafood Processing Areas Of Thailand Tha/10/50/USA, 2015/2016.

¹⁴³ The CMHI scheme was originally established on the basis of a ministerial announcement from 2009: The Announcement of Ministry of Public Health on Health Check-up and Health Insurance for Irregular Migrant Workers from Myanmar, Lao People’s Democratic Republic and Cambodia, 1 July B.E. 2552 (2009).

¹⁴⁴ International Labour Organization, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102843

concluded with Cambodia, the Lao People's Democratic Republic, Myanmar, and Viet Nam. An extensive framework for the protection of Thai migrant workers abroad has been put in place. The welfare protection available in this regard is perhaps less pronounced, but has been steadily developing. In particular, Thai nationals whose employers have offices abroad or who regularly travel to work abroad are now able to voluntarily participate in the national contributory social insurance scheme provided for under the Social Security Act, 1990, following a legislative amendment in 2015¹⁴⁵. Significantly, the aid provided by the Fund for Job-Seekers Working Abroad, intended to support Thai expatriate workers, is of paramount significance. The fund was created according to the stipulations of Chapter VI of the Employment and Job-Seeker Protection Act B.E. 2525 (1985).

(iv) Malaysia:

Malaysia is the predominant user of international migrant labor in Southeast Asia. This nation functions as both a labor exporter and importer. Furthermore, between 1987 and 1993, Malaysia transitioned from a net labor-exporting nation to a labor-importing one. The transformation process transpired rapidly. Moreover, in contrast to other nations in the Asian area, like Japan, South Korea, and Taiwan, Malaysia's migratory transformation occurred well before the nation attained full employment and when its GDP per capita was about 1800 US dollars (Lin Lean Lim, 1996). Malaysia's reliance on migrant labor has transpired with pro-natalist population policies and a domestic labor force growth rate of 2 to 3 percent. The growth rate of the domestic workforce is markedly superior to that of the majority of other Southeast Asian nations. Racially-based policies and legislation have profoundly impacted Malaysian Chinese and Indian populations. There is a growing tendency towards fewer families among them, partially to manage their diminishing share of economic resources. Secondly, individuals with resources and education have emigrated to nations such as Singapore or Taiwan in pursuit of employment possibilities.

Malaysia is also both a sending and receiving country. Recently, it is generally considered more and more a receiving country as its dependence on contract migrant workers is one of the highest in ASEAN next only to Singapore. One estimate says 22 percent of the Malaysian labor force consists of migrant workers. This is dominated by

¹⁴⁵ Social Security Act (No 4) B.E. 2858 (2015).

unskilled and low skilled workers comprising as much as 98% of the flow. In addition, close to half of this are irregular migrants . Malaysia’s immigration policy and labor recruitment strategies are shaped by bilateral agreements with sending countries, domestic politics and lobby power of employers, and cultural context of migrants But unlike Singapore, its international labor migration policy is not as closely related to its national development strategy (Bhatnagar & Manning, 2005). It employs work permit and levy to control immigration. Although social welfare is not specifically addressed in the 1963 Malaysian Constitution, the government has acknowledged several steps to legalize the status of undocumented migrant workers During a two-month period, a total of 2.3 million migrant workers had registered under 6P, including 1 million regular and 1.3 million irregular workers. In 2011, the Ministry of Home Affairs tried the most expansive pardon program it had ever tried to deal with the problem of illegal immigration. The initiative, known as "6P," had provisions for amnesty, registration, legality, monitoring, enforcement, and expulsion of migrants. Malaysia ratified ILO Convention No. 19 – which requires equal treatment of national and foreign workers – in 1957. As of 1 January 2019, foreign workers’ protection related to work-related injury moved from the scope of the Foreign Workers’ Compensation Scheme under the Workmen’s Compensation (Foreign Workers’ Compensation Scheme) (Insurance) Order 2005 to the ESSS administered under the Employees Social Security Act (ESSA). Except for specific exclusions mentioned in its First Schedule, the ESSA does not make any difference between national and non-national workers as to their coverage and entitlement to work-related injury benefits¹⁴⁶. The extension of the ESSS to foreign workers shows the willingness of the Government to act upon the CAS’ recommendations. The effective implementation of the coverage extension is underway, with a transition period planned to end no later than 31 December 2019. Malaysia does not have a dedicated policy or other framework arranging for the social security protection of its own citizens employed abroad¹⁴⁷

(v) Philippines:

¹⁴⁶ ILO, Foreign workers in Malaysia are covered and entitled to the same work-related injury benefits as the national workers, <https://www.ilo.org/resource/news/foreign-workers-malaysia-are-covered-and-entitled-same-work-related-injury> (19/12/2024).

¹⁴⁷ See <https://www.kwsp.gov.my/portal/en/web/kwsp/member/member-responsibility/contribution/self-contribution>

The Philippines is now among the Southeast Asian nations that have established a comprehensive legislative framework for labor export operations. The Labor Code of 1974 established the framework and streamlined the procedure for deploying people overseas for employment. In 1995, Republic Act No. 8042, referred to as the Migrant Workers and Overseas Filipinos Act, marked a significant turning point. The system of legal documents associated with this field is consistently being developed and expanded. For example, the Anti-Trafficking in Persons Act of 2012, the Law on Strengthening Measures to Protect Overseas Filipino Citizens in Distress, and the Law on Filipinos Marrying Foreigners in 2016 are all designed to combat fraud and migration through marriage. The framework of legal documents pertinent to the aforementioned domain is continually evolving, including the Law on Strengthening Measures to Protect Overseas Filipinos in Distress, the Anti-Trafficking in Persons Act of 2012, and the Law on Filipinos Marrying Foreigners enacted in 2016 to address scams and immigration issues related to marriage, among others. Moreover, the Philippine government has implemented an online registration system for overseas workers. This system enables citizens who are employed abroad to voluntarily submit their personal information, passport number, destination country, and work address online. This information will be aggregated and preserved for future use. Furthermore, the government of the Philippines has established an online database for information on foreign workers. Filipino nationals who are employed abroad are encouraged to proactively update this database with their personal details, passport number, country of destination, work address, etc. This information will be aggregated and retained for future use as required. Furthermore, each employee traveling overseas for work is issued a unique identification number, specifically allocated to each individual. The information is incorporated and part of the migration history of the workers when they return and work in a different country or under a different contract. The Philippines has a national initiative for expatriate workers. The government formed an inter-agency advisory committee, which is under control and has to report periodically to the National Assembly. The Ministry of Labor and the Ministry of Foreign Affairs are tasked with law enforcement. Additionally, the Philippines establishes a labor management system and offers support to Filipino workers at overseas representative offices in regions with a substantial workforce. Labor attachés are assigned to conduct research and advocate for the labor market. Philippine legislation rigorously

governs the issuing of professional licenses and the execution of personal employment contracts. The labor contract execution permit serves as the foundation for the issuance of passports for abroad employment to workers. Philippine workers seeking jobs overseas own passports that have unique passport numbers. This license method facilitates the thorough tracking and administration of international labor movement patterns, enabling relevant authorities to oversee the conditions of workers overseas. The legislative framework, organizational structures, and administration of migrant labor in the Philippines are regarded as quite comprehensive and now the most successful.

The Philippines has ratified some of the ILO social security Conventions, as well as all the key ILO migration Conventions and the ILO Domestic Workers Convention, 2011 (No. 189) and has taken steps to implement the ILO Recommendation No. 202 (ILO & ADB, *Managing Integration for Better And Shared Prosperity*, 2014). The Philippines also ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, in 1995, and is therefore bound by the provisions of that Convention dealing with social security. The Philippines contributory-based social security system provides for most (i.e., seven) of the traditional ILO social security contingencies and related benefits, including medical care, sickness, old age, employment injury, maternity, invalidity, and death (survivors' benefits) (Ong & Bista, 2015). The Social Security Act, 1997, provides for the following contingencies: retirement; death (i.e., survivors' benefits plus funeral grant); disability; injury or sickness; and maternity¹⁴⁸. The law also covers foreign employers,²²⁵ and is meant to have extra-territorial application: Filipino workers working for foreign-based employers abroad may be covered by the Social Security System (SSS)¹⁴⁹.

(vi) *Cambodia:*

Cambodia is a migrant-sending country. Unfortunately, it is confronted with the unique problem of having majority of its migrants being irregular. Due to a disparity between the supply and demand for workers in urban and rural regions, Cambodia's labor market is struggling. The system of employment interaction services and information distribution between job seekers and recruitment information is not yet completely

¹⁴⁸ Social Security Act, 1997, Section 8(c)

¹⁴⁹ Ildb, Section 9 (c)

developed (ILO, 2023). Due to a lack of knowledge, some individuals with current skills and work experience have been unable to take advantage of career prospects in the established economic sectors and provinces/capitals. This also prompted some to emigrate in pursuit of employment prospects. It is estimated that 21 million P a g e | 15 migrant workers from ASEAN countries migrate to other countries and regions around the world. Among the total number of migrant workers, 6.8 million workers migrated to other countries within ASEAN region. The trends of labour migration in Cambodia are also in line with regional trends, in which Cambodian workers migrated to other countries within and outside ASEAN countries. For Cambodia, legal and official labour migration began after the Royal Government of Cambodia issued Sub-Decree No. 57 dated 20 July 1995 on the Sending of Cambodian Workers Abroad¹⁵⁰

Cambodia is also a signatory to many international agreements impinging on international migration. This includes the eight core ILO conventions, the UN Convention on the Program of all Migrant Workers and Members of their Families, the ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers. Migration of workers is a key factor in Cambodia's economic growth and development, which the government has acknowledged. As a result, in recent years, the government has made significant progress in developing its labour migration governance framework, including the drafting of a series of prakas to support the implementation of Sub-Decree 190 on the Management of Sending Cambodian Workers Abroad via Private Recruitment Agencies. Cambodia has enacted its third Labour movement Policy and Action Plan (2019–2023), defining the Government's dedication to harnessing the advantages of labour movement for the nation's sustained growth. Nevertheless, addressing the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors requires that further legislative progress is made towards the adoption of international labour standards. Significant gaps remain in providing labour protections for migrant fishers¹⁵¹. the Constitution of the Kingdom of Cambodia, Chapter 3 on the Rights and Duties of the Cambodian People and the Labour Law, the Royal Government of Cambodia has adopted

¹⁵⁰ ASEAN Main Portal, Policy on labour Migration for Cambodia 2019-2023, p.14.

¹⁵¹ ILO, Cambodia's labour migration governance framework: A comparative analysis with international labour standards for recruitment, work in fishing and forced labour, <https://www.ilo.org/publications/cambodias-labour-migration-governance-framework> (23/12/2024).

many legal regulations to effectively strengthen the management of labour migration. In August 2011, the Royal Government amended the Sub-Decree No. 57 and Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies. Cambodia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-1979) on 20 October 1992 and adopted the Optional Protocol 1999 on 11 August 2009 and General Recommendation No. 26 on Women Migrant Workers, that describes the obligations of the State parties to respect, protect, and fulfil the human rights of women migrant workers. Cambodia is one of the 193 member states of the United Nations that adopted the Sustainable Development Goals (SDGs) in 2015, where the labour migration issues indicated in point 5.2¹⁵². On 27 September 2004, Cambodia became a signatory member of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), which entered into force on 01 July 2003. In addition, the Royal Government of Cambodia has pay serious attention to implement the provisions of the conventions and treaties of international organizations and the United Nations related to labour migration.

(vii) Indonesia:

Indonesia is one of the nine major global worker-sending countries in Asia. In fact it has a deployment and remittance receipt targets. For instance, in 2009 the deployment target is 1 million and about 10 billion US\$ for remittances . The flow is dominated by the unskilled and semi-skilled workers. In addition, a substantial proportion of the migrant workers are irregular making official estimates grossly understated. Indonesia is one of the major sending countries of migrant workers in the region, with approximately 274,000 migrant workers being deployed annually, according to the Protection Agency of Indonesian Migrant Workers or the BP2MI's data in 2023. However, this data does not account for undocumented workers, of which it has been estimated there are anywhere from nearly 5 (UN DESA, 2020) to 9 million workers abroad (MARIE MCAULIFFE et al., 2017). The governance strategy for safeguarding Indonesian migrant workers has been specified in Law No. 18/2017 on the Protection of Indonesian Migrant Workers (PPMI). This Law which replaced Law No. 39/2004 on the Placement and Protection of

¹⁵² The elimination of all forms of violence against women and girls in public and private, including human and sexual trafficking and other exploitation.

Indonesian Migrant Workers (PPTKI Law). The PPTKI Law is known to be loaded with a business approach that prioritizes the placement of migrant workers over protection efforts. The PPMI Law is considered very reformist and favors the protection of migrant workers, including the protection of their families. In analyzing the implementation of migrant protection policies, it can be reviewed based on the three stages of protection provided as stated in the PMI Law and its implementing regulations, such as PP No. 59 of 2021, which are divided into before work, during work, and after work (Wajid Fauzi, 2023).

Foreign nationals who have worked for at least a six month period in Indonesia and who have paid contributions are entitled to be covered by the Indonesian Social Security System. This flows from the definitions of the concepts of “participants”¹⁵³ and “employee”¹⁵⁴ in both of the social security laws. Two key laws provide for the public social security system outlined above – the framework defining Law Concerning the National Social Security System, (Law No. 40 of 2004) and the Law Concerning the Social Security Administrative Body (Law No. 24 of 2011) (ILO, 2015h)¹⁵⁵. Certain other social security benefits are regulated in Indonesia’s labour law, the Act Concerning Manpower (Act No. 13 of 2003). Indonesia has ratified one ILO social security Convention, namely the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). It has not, however, ratified any of the key ILO migration Conventions, nor has it ratified the ILO Domestic Workers Convention, 2011 (No. 189). Indonesia also ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) in 2012, and is therefore bound by the provisions of that Convention dealing with social security. Based on Wajid's study, the protection policy for migrant workers in Indonesia has not been completely implemented as per the stipulations of Law No. 18. In spite of this, there have been certain arrangements that have been effectively established, such as the development of long-term services and support, as well as the

¹⁵³ “Participants” is defined to mean “all people, including expatriates who have worked for at least 6 (six) months in Indonesia, who have paid contributions” – see article 1(8) of Law No. 40 of 2004, and article 1(4) of Law No. 24 of 2011.

¹⁵⁴ “Employee” is defined to mean “anyone who works for a salary, wage or other of remuneration” – see article 1(11) of Law No. 40 of 2004, and article 1(8) of Law No. 24 of 2011.

¹⁵⁵ Specific regulations provide for the implementation of components of the overall system – see, among others, Government Regulation No. 44 of 2015 on Administration of Occupational Accident and Death Insurance Program, and Government Regulation No. 46 of 2015 on Old-Age Program Administration.

execution of legislation linked to free recruiting. Comprehensive legislation and welfare guarantees exist for Indonesian workers overseas. The Indonesia national implementation plan of the Migration, Business and Human Rights Programme in Asia (MBHR Asia) aims to promote corporate responsibility and full respect of migrant workers' rights in global supply chains focusing on key labour migration corridors in Asia, encompassing both countries of origin and destination, including Cambodia, Indonesia, Malaysia, Nepal, the Philippines, Thailand and Viet Nam¹⁵⁶. With financial support from the European Union and Sweden, MBHR Asia builds on over a decade's work with the private sector on protecting migrant employees.

(viii) *Vietnam:*

The quantity of immigrant workers is lower to that of emigrants. The current net migration rate for Vietnam in 2024 is -0.920 per 1000 population, a 1.6% decline from 2023. The net migration rate for Vietnam in 2023 was -0.935 per 1000 population, a 2.07% increase from 2022¹⁵⁷. According to data from the Viet Nam Migration Profile 2023, during the period of 2017–2023, labor migration continued to be the predominant form of migration in Viet Nam, with nearly 860.000 workers going abroad¹⁵⁸. Despite their prevalence, the numbers do not account for the issue of Vietnamese people illegally immigrating. Similar to the framework of international migration law, Vietnam's international migration law is fragmented, including multiple legislative instruments spanning diverse domains. The legislation safeguarding the rights of migrants, particularly international migrant workers, includes the Law on Vietnamese Workers Going Abroad for Work (2020), the Labor Code (2019), the Law on Social Insurance (2014, amended in 2016, 2018, and 2019), the Law on Representative Offices of the Socialist Republic of Vietnam Abroad (2009, amended in 2017), and the relevant implementation guidelines. Vietnam's

¹⁵⁶ IOM, Launch of the National Implementation Plan in Indonesia for Migration, Business and Human Rights Programme in Asia, <https://roasiapacific.iom.int/news/launch-national-implementation-plan-indonesia-migration-business-and-human-rights-programme-asia> (23/12/2024).

¹⁵⁷ Vietnam Net Migration Rate 1950-2024, <https://www.macrotrends.net/global-metrics/countries/vnm/vietnam/net-migration#:~:text=The%20net%20migration%20rate%20for%20Vietnam%20in%202022%20was%20%2D0.916,a%202.16%25%20increase%20from%202020>.

¹⁵⁸ IOM UN Migration, Launch of Vietnam 2023 Migration Profile, <https://vietnam.iom.int/en/news/launch-viet-nam-2023-migration-profile#:~:text=According%20to%20data%20from%20the,mainly%20in%20Japan%2C%20Taiwan%20Province> (12/12/2024).

nationality, exit, and entry laws include the Vietnamese Nationality Law of 2008, the Law on Exit and Entry of Vietnamese Citizens of 2019, the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam of 2014 (amended and supplemented in 2019), the Citizen Identification Law of 2014 (amended and supplemented in 2020), and the implementing documents. Legislation addressing the prevention and suppression of crimes associated with international migration includes the 2012 Law on Prevention and Combat of Human Trafficking, the 2015 Penal Code (amended and supplemented in 2017), the 2012 Law on Handling Administrative Violations (amended and supplemented in 2019), along with the accompanying implementation guidelines. Migrants, irrespective of their entry or exit from Vietnam, are entitled to human rights as outlined in the Constitution and applicable legislation.

The Law on Exit and Entry of Vietnamese Citizens (the Law), which is the first of its kind in Vietnam, has institutionalized the 2013 Constitution regarding citizens' right to free movement and residence within the country and their right to leave the country and return home from abroad. Every people have equal opportunities for citizens to enjoy social welfare, develop a system of social security, and provide a policy assisting the elderly, the disabled, the poor and people with other difficult circumstances¹⁵⁹. The Article 58 also mentioned about the protection and care of the People's health , provide health insurance for the entire people and exercise a priority policy of health care for ethnic minorities, highlanders, islanders and people living in extremely difficult socio-economic conditions. From 1 January 2018, employees who are foreign citizens working in Viet Nam with work permits or practice certificates or practice licenses granted by competent Vietnamese agencies are to be covered by compulsory social insurance¹⁶⁰. Except for the Maritime Labour Convention, 2006, Viet Nam has not ratified any social security- specific ILO Conventions. Viet Nam has also not ratified any of the ILO migration-related

¹⁵⁹ Article 59, Vietnam Constitution 2013, https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf

¹⁶⁰ See article 2(2) of the Law on Social Insurance, 2014, and Vietnam Law and Legal Forum, 2016. The employee will have to pay 8 percent of their monthly wage while the employer will have to pay 18 per cent of the full pensionable wage, making a total 26 per cent contribution to the social insurance fund. The issuance of working visas and work permits is regulated by the provisions of the Labour Code, 2013. See now also Decree No. 11/2016/ND-CP and Circular No. 40/2016/TT-BLDTBXH, which further regulate the issuing of work permits, indicating also that the validity of a work permit is limited to two years.

Conventions;³⁵⁹ nor has it ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. However, Viet Nam did ratify the 1966 UN International Covenant on Economic, Social and Cultural Rights (CESCR) in 1982, and is therefore bound by the provisions of that instrument related to the right to social security and associated fields, such as the right to health¹⁶¹

Protection extended to Vietnamese abroad is first and foremost a matter of constitutional regulation. The Constitution of 2013 stipulates that “overseas Vietnamese make up an inseparable part of the Vietnamese nationalities community”¹⁶². Sustainable development that is founded on science, technology, and innovation is the plan that Vietnam will use for its socio-economic growth throughout the period of 2021 till 2030. Vietnam is committed to enhancing the quality of labor that is used in other countries, as shown by the fact that one of the primary objectives is to increase the percentage of workers who have achieved 35-40% via certified training. The applicable legislation is the Law on Vietnamese Workers Going Abroad for Employment under Contracts. Article 17 of this legislation mandates that the primary substance of the "labor supply contract" (i.e., agreements designed to facilitate the employment of Vietnamese workers overseas) must have a social insurance program. A policy exists to assist Vietnamese workers overseas. The Fund for Overseas Employment Support seeks to cultivate, stabilize, and enhance the market; avert, alleviate, and address risks for workers and enterprises; and safeguard the legal rights and interests of workers. The legal framework is underpinned by bilateral agreements that Vietnam has entered into with many nations. Incorporating bilateral agreements with Thailand, Laos, and Cambodia. It is clear from the information presented above that Vietnam is placing a greater emphasis on the protection of the rights of migrant workers. Vietnam acknowledges labor migration as an unchangeable phenomenon, and the significance of migrants must be duly appreciated. Vietnam is progressively prioritizing the rights of migrant workers, particularly their entitlement to social protection. Vietnamese individuals overseas are regarded by the Vietnamese government as an integral component of the Vietnamese populations.

¹⁶¹ See Articles 9 and 12 of the CESCR, https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf

¹⁶² Constitution of the Socialist Republic of Viet Nam, article 18(1).

(ix) *Brunei Darussalam:*

The biggest group of migrants to Brunei between 1990 and 2017 came from Malaysia, followed by Thailand and Philippines. From the UN Migration Report 2017: Between 1990 and 2017, the number of international migrants worldwide rose by over 105 million, or by 69 percent¹⁶³. This country become one of the most attracted migrant workers nation because of raising number by each year. Two contributory public retirement schemes, to which employers and employees contribute, provide for old age and related benefits. The Employee Trust Act¹⁶⁴ is a trust that covers both public servants and private sector employees¹⁶⁵. In general, a member is eligible to receive benefits once they reach the age of 55; however, a single payment may be made to a member at any age if they decide to leave the country permanently¹⁶⁶. Healthcare benefits are essentially an employer responsibility¹⁶⁷. The employer is obligated to stay and pay the costs of maintenance and treatment in a hospital or health facility. It is obvious that treatment and medical care, as well as medical transportation, are advantages that should be offered by the employer to the "immigrant employee" who is in question. In 2015, the Department of Labour of the Ministry of Home Affairs announced that employers of foreign workers are required to take out private medical insurance, to ensure appropriate coverage of these workers¹⁶⁸. The employees so affected evidently include migrant workers, as neither the definition of "employee" nor that of "workman" excludes foreign workers, and as specific reference is made to "immigrant employees"¹⁶⁹. Therefore migrant workers can have benefit from the provisions in the Employment Order concerning paid sick leave¹⁷⁰. Employment injury benefits are regulated in the Workmen's Compensation Act, 1957 (Cap. 74) (revised edition 1984). An extensive range of tax-based social assistance (non-contributory) benefits are provided for in Brunei Darussalam, this country may have incurred international obligations

¹⁶³ World Mapper, Migration to Brunei 1990-2017, <https://worldmapper.org/maps/migration-to-brunei-1990-2017/#:~:text=The%20biggest%20group%20of%20migrants,or%20by%2069%20per%20cent.>

¹⁶⁴ Law of Brunei, Chapter 167 Employee Trust, https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/CAP%20167.pdf

¹⁶⁵ Ildb, Section 2

¹⁶⁶ Employee Trust Act, Article 17 (1)

¹⁶⁷ Section 83(1) Employment Order 2009, https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2009/EN/s037.pdf

¹⁶⁸ Ildb

¹⁶⁹ See Article 2 about definition of "workman", Ildb.

¹⁷⁰ Section 72, Ildb

regarding coverage of migrant workers (Olivier, 2018, p. 52). However, this country has yet to ratify any ILO Conventions related to migration or social security, nor the ICMRW. However, this country has yet to ratify any ILO Conventions related to migration or social security, nor the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990. A draft labor MOU between Brunei Darussalam and Indonesia has been under contemplation for several years (Low Choo Chin, 2017); it is questionable whether this proposed text includes the scope of social security access.

(x) *Lao People's Democratic Republic*

United Nations statistics indicate that 1.35 million Laotian people reside and work overseas. United Nations Department of Economic and Social Affairs, 2020. The labor and social protection system's constraints are intended to prevent exploitation and maltreatment of workers (Amarjit Kaur, 2010). Thailand is the primary destination for migrants from Laos. Data from the Thai Ministry of Labor (DOE) indicates that there are 2,167,973 migrant workers, with Lao citizens constituting 9% of the overall workforce (190,027). These migratory laborers mostly engage in agricultural, construction, domestic assistance, manufacturing, and low-wage service sectors. The Lao People's Democratic Republic has one primary law governing labour migration – the Labour Law 2013 – and two key subordinate legislative instruments: (1) Decree No. 245 on Placement of Lao Workers to Work Abroad (2020)¹⁷¹; and (2) Ministerial Agreement No. 1050 on the Management of Employment Service Enterprise (2022)¹⁷². The MOLSW is mandated with enforcement of all three legislative instruments. The Lao People's Democratic Republic has signed a number of memoranda of understanding (MOUs) with countries of destination to manage the regular migration of Lao workers to these countries. The MOUs establish the procedures for Lao workers to migrate and seek to ensure that adequate regulations and labour protections are in place. The process has been enhanced in several ways, such as the reduction of the waiting time for migrant laborers who have worked for four years and have

¹⁷¹ The goal of the Decree is to enhance protections for workers and better regulate recruitment agencies sending workers abroad. The Decree was followed by Ministerial Agreement No. 1050 on the Management of Employment Service Enterprise, which was promulgated in March 2022 with the intention to provide more detailed guidance on implementation of the new regulations.

¹⁷² Ministerial Agreement No. 1050 introduced regulations that prohibit charging recruitment service fees to migrant workers.

returned to Thailand from three years to thirty days (Legido-Quigley & Asgari-Jirhandeh, 2018). The memorandum of understanding has several policies designed to promote normal migration; yet, migrants persist in using informal routes to regularize their status. The Lao People's Democratic Republic has also signed Memoranda of Understanding with South Korea (in 2016) and Japan (in 2017). Additionally, it is currently in the process of exploring the possibility of signing a Memorandum of Understanding with Malaysia in the near future. It is significant that the Lao People's Democratic Republic has signed comparatively few bilateral agreements concerning labor mobility.

The current Lao People's Democratic Republic Constitution provides that foreigners and those who do not have Lao citizenship have the right to be protected with regard to their rights and freedoms as stated by the laws¹⁷³. The Labour Law applies to foreign workers as well, Article 134(3) explicitly states that there is an obligation to create conditions wherein the employee and members of their family can access information, education, health care, and social insurance. Importantly, the Labour Law obliges every labour unit and employee to be insured and to make payments into the National Social Security Fund to receive social security benefits of any kind as determined in the Law on Social Security¹⁷⁴. Article 72 of the Labour Law provides for retirement age and entitlement for retirement benefits. It is assumed that migrant workers would be entitled to a lump sum payment in this regard, as they would not be able to meet the requirement of a full 15 years' worth of contributions, in view of the fact that they are allowed to work in the Lao People's Democratic Republic for a period of five years only. The state facilitates job opportunities for Lao workers both locally and internationally to safeguard Lao migrant workers. The arrangements are largely governed by Lao management papers and partially by the Memorandum of Understanding with Thailand. The governance structure of Laos enforces stringent regulations on welfare and social security systems. The study by (Olivier, 2018, p. 56), indicates that the current framework comprises: (i) Regulations governing overseas labor migration, particularly those pertaining to recruitment agencies, and (ii) Prohibitions

¹⁷³ Constitution of Lao People's Democratic Republic (2003), Article 50; information provided by ILO Lao People's Democratic Republic.

¹⁷⁴ Labour Law, 2014, article 71

or limitations imposed on Lao citizens, specifically the state's prohibition on sending workers abroad for employment in health and safety hazardous occupations.

4.7. Conclusion of chapter III

The protection of migrant workers in ASEAN is fundamentally a human rights issue, a common thread running through the documents discussed in ASEAN. Migrant workers almost are vulnerable group, as in the ASEAN Human Right Declaration (AHDR)¹⁷⁵ mentioned in phrase 4 that “ *The right of woman, children, the elderly, persons with disabilities, migrants workers and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms*”. Bảo vệ người lao động di cư theo quan điểm an sinh xã hội có thể được tóm tắt trong The Cebu Declaration and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. These two papers address the valid issues pertaining to the fundamental rights of migrant workers and their families, acknowledging the relevant responsibility of both sending and receiving nations. No comprehensive social security agreement exists among individual ASEAN nations to address the social security concerns of migratory workers (Tamagno, Edward, 2008). The aforementioned policies of host nations inadequately facilitate social welfare access for migrant workers, hence rendering families essential as the major support system. (Hall et al., 2011) assert that social welfare assistance for the families of migrant workers is essential. For several years, AMS has failed to ratify or acknowledge several significant international treaties pertaining to labor and human rights (Srinivas & Sivaraman, 2021). Currently, document number 102 (1952) serves as the principal document on social security from the ILO. Despite the ratification of the ICMRW agreement, the standards and norms outlined in this treaty have not been effectively applied. Currently, there are no bilateral social security agreements among ASEAN member states. The migrant population in the ASEAN area is rising, and the free movement policy is designed to facilitate regional integration.

At the most recent ASEAN Summit, the leaders adopted a declaration regarding the protection of migrant laborers and their families in crisis situations, according to the most

¹⁷⁵ ASEAN Human Rights Declaration, https://asean.org/wp-content/uploads/2021/01/6_AHRD_Booklet.pdf (3/12/2024)

recent news¹⁷⁶. The leaders pledged to promote sustainable safety, healthcare, psychological assistance, sickness and disability care, and reintegration into the home nation for workers. Alongside national labor migration regulations, regional measures play a crucial role in safeguarding low-skilled and unskilled migrant workers. ASEAN may capitalize on this strength by integrating into national and international standard institutions rather than functioning as an intermediary governance level between local and global frameworks. Research by (Allison-Reumann, 2017), identifies three key obstacles to successful regional governance within ASEAN. The approach of regionalism in Southeast Asia is unsuitable. Secondly, ASEAN's divided structure maintains global standards and national customs, emphasizing concepts like consensus and non-interference in domestic matters, which complicates consistent problem resolution. Thirdly, ASEAN employs non-binding agreements, guidelines, and suggestions for migration policy rather than enforceable judgments and legal laws (Quayle, 2015).

The creation of a regional document establishes a framework to assist ASEAN member countries in ensuring that migrant laborers are treated fairly and with flexibility as citizens of the host country. Numerous proposals have been made that ASEAN should implement regional-level measures to address the deficiencies in the provision of social protection for migrant laborers. The absence of cohesive, region-specific regulations or norms pertaining to admission and national treatment within ASEAN has resulted in uncertainty and discord. Numerous global locations possess frameworks for the free movement and social welfare of migrant laborers. Countries in the Caribbean – CARICOM Social Security Accord – In 1996, the nations of the Caribbean Community (CARICOM) ratified the CARICOM Social Security Agreement. This agreement is essential for enabling the unrestricted movement of workers inside the CARICOM Single Market. Latin America, including the Ibero-American Social Security Convention of 2011, involves many Latin American nations in multiple international social security accords. This encompasses the Mercosur Multilateral Social Security Agreement of 2004, which has a more restricted geographical reach, and, most recently, the Ibero-American Social Security Convention of 2011 (Fernandez, 2014).. Africa – Certain projects in Africa warrant note, notably the 15

¹⁷⁶ See more at <https://www.vietnamplus.vn/cac-nha-lanh-dao-asean-dieu-chinh-chinh-sach-ho-tro-lao-dong-di-cu-post861890.vnp> (1/1/2025).

French-speaking nations in West and Central Africa, along with the Indian Ocean, which are interconnected via the Inter-African Conference on Social Security, referred to as CIPRES. CIPRES ratified the CIPRES Multilateral African Social Security Convention in 2006, aimed at safeguarding the rights of migratory workers in accordance with the national legislation of one or more member states, together with their family members. As stated in Chapter II, under the free movement of workers in Europe, member states would incorporate the duties pertaining to the right to equal treatment without discrimination into their national legislation. All EU member states are mandated to provide equal treatment to all individuals, including their own nationals. The European Council - In theory, migrant workers in Europe may also depend on the protections established by the documents developed under the aegis of the European Council. The Council of Europe, recognized as a prominent institution in European integration, exemplifies effective migration regulation and social welfare safeguarding for migrant laborers within the regional framework.

By 2025, the labor supply in Cambodia, Indonesia, Laos, the Philippines, Thailand, and Vietnam is projected to be insufficient to fulfill the standards for over half of the high-skilled positions. ASEAN nations, as a crucial component of the AEC, must facilitate the mobility of skilled workers in accounting, architecture, engineering, medical, nursing, dentistry, and tourism. Currently, licensing methods and educational systems vary per nation. This may be resolved by standardizing and adopting steps to guarantee labor quality. The frameworks within the MRA are enhancing mobility; yet, several MRAs have yet to achieve full effectiveness owing to a lack of consistency across commitments (Mai Quoc Dung, 2023, p. 7). Guidelines for skilled workers to capitalize on market opportunities include: (i) the necessity for workers to enhance their professional knowledge and requisite skills; (ii) the imperative for governments to improve information dissemination and communication regarding the AEC; (iii) the obligation for businesses to actively update and comprehensively comprehend the labor market to satisfy the demands of the ASEAN market. Concerning the matter of unlawful migration, there are two viewpoints: that of the origin nation and that of the destination nation. According to (Hall et al., 2011), from the viewpoint of the sending country, tackling irregular migration requires three actions: addressing fundamental causes, improving protection, and reinforcing international collaboration. Poverty, insufficient employment possibilities, exorbitant expenses

associated with legal migration, and human trafficking are among these factors. From the viewpoint of the host nation, stringent border control is essential, along with a reassessment of laws and policies to facilitate the reception of migrant labor. Prevent situations in which migrants inadvertently attain unlawful status owing to obstacles in the personal documentation processing system, such as delays or complications.

CHAPTER IV.

THE COMPARISON OF THE LABOUR MIGRATION BETWEEN EU AND ASEAN AND THE CASE OF VIETNAM

The previous two chapters discussed the European Union and ASEAN, focusing on their regional rules concerning the protection of migrant workers. The purpose of comparing these two areas is to clearly demonstrate how the EU and ASEAN have decided to protect migrant workers' labor rights, as well as the weakness and strengths of each region. By comparing the effectiveness of these two locations, the weaknesses of one can be recognized, while the strengths of the other may be learned and applied. The primary aim of the comparison is to enhance future policy, particularly within ASEAN, where significant illegal labor movement occurs for both destination and sending nations. In the previous two chapters, we looked at the European Union's (EU) and the Association of Southeast Asian Nations' (ASEAN) policies and rules regarding labor migration. I also discussed how ASEAN does not have any legally binding policies. The selected countries to represent the destination and sending nations are Hungary and Vietnam. This research focused on Hungary because it is an EU country that is trying to become more integrated and has changed its rules to allow guest workers provide with its shortage of workers. Despite Hungary not establishing superior labor rules compared to member states such as Germany, it has always been a primary destination for migrant workers, particularly those from Vietnam. Moreover, Hungary continues to be recognized for its stringent policies and regulations concerning migrant labor entering the country. In recent years, particularly in 2023, Hungary has welcomed guest workers from various countries, including Vietnam, by implementing specific regulations to facilitate their entry. The reason for selecting Vietnam is its substantial population of highly trained professionals and undocumented migrants. The choice of Vietnam stems from the parallel circumstances where the outflow of workers seeking employment abroad surpasses that of immigrants. How should Vietnam regulate intra-ASEAN migration and labor exports to other continents to maintain compliance with international human rights standards? This chapter compares the following issues: differences in regional models, regional policies, trade union rights in each region, how to

manage migration issues in accordance with regional policies, regionally sensitive recommendations for amendment, and, finally, an analysis of Vietnam's migration issues. The author presents national-level suggestions for Vietnam based on regional-level recommendations, with the expectation that the recommendations in Vietnam's labor migration strategy would be determined in the context of deep regional integration.

5.1. ASEAN and the EU: Similar but different models of regional integration

According to ILO's most recent estimates, there were an estimated 169 million migrant workers globally (ILO, 2021)¹⁷⁷ and they constituted 4.9 per cent of the global labour force. This trend gets growth and more serious problems not over the world if the affairs are neglected. Although the government resolved hardly by enacting law and legislation to migrant workers. However, the number of undocumented migration enters from the border stage generally so tension. Otherwise, the destination country and their citizens have no wish to do favor on the migrant workers. Nevertheless, the International Human Rights Conventions and International Labour Organization force all the countries have responsibility to protect the labour rights including overseas people. Besides, the Unions that are formed with some countries for safeguard for migration in matter of free movement of goods, service, etc. The EU and the ASEAN integration processes arose from different contexts and have different visions and missions. As described by Ong Keng Yong, former ASEAN Secretary-General: *"The two groupings originate from different circumstances and are navigating through different terrains towards different destinations"*. It may also be claimed that the EU and ASEAN have nothing in common and are essentially distinct integration projects: their set-up, institutions, structure, techniques, purposes, and ideals are all different as regional organizations. For example, ASEAN adheres to the non-interference principle and believes that sovereignty must be zealously guarded, but the EU considers the transfer of sovereignty to a supranational level and member state solidarity to be key notions. Strong institutions and legally enforceable legislation are also important aspects of the EU that are absent from the ASEAN toolkit, which favors informality and agreement. There is nothing comparable to the European Parliament or the European Court of Justice in Southeast Asia.

¹⁷⁷ See more at [https://www.migrationdataportal.org/themes/labour-migration-statistics#:~:text=According%20to%20the%20ILO's%20most,2019%20\(ILO%2C%202021\).](https://www.migrationdataportal.org/themes/labour-migration-statistics#:~:text=According%20to%20the%20ILO's%20most,2019%20(ILO%2C%202021).)

On both sides wish to achieve peace, prosperity and stability, but which country or region doesn't support such objectives? And both sides aim at achieving a single market with free flow of goods, capital and labour (limited to skilled labour in ASEAN). ASEAN and the EU also share important goals such as regional integration between highly diverse member states and effective multilateralism in an international rules-based order. An EU-style regional integration, if at all desirable, is unlikely to happen in Asia for several decades. The current economic and financial, but also political, difficulties have probably reduced the attractiveness of the EU integration model but it can still serve as an inspiration for others. Without being a specific model the EU can help ASEAN progress towards its integration goal and many valuable lessons can be drawn from the EU experience. ASEAN is indeed the other most prominent regional integration project in the world today. Moreover ASEAN's centrality in the Asia-Pacific regional architecture is fully supported by the EU. But relations with Asia in general and ASEAN in particular may be sent far back on the European agenda as challenges and priorities in Europe are many and located elsewhere.

Coordination is important within the EU and among the Member States. The European Commission should also control the enforcement of the measures, in the sense that EU law should be respected while implementing EU recommendations and other soft law instruments. The resource to soft law instruments is something on which further research is needed: next to the flexibility and promptness, research is needed to clarify the relation between soft law and hard law, especially in the perspective of enforcement by the Member States. More inter-disciplinary research from a medical and virologic perspective is needed in order to show the impact of the closure of the borders in countering the pandemic. The Covid-19 crisis has shown the complexities of achieving transnational forms of solidarity: Conceptualizing solidarity in a triangular relation between the EU, the Member States and third-country nationals, who should be the main addressees or beneficiaries of European solidarity. The new pact on Asylum and Migration represents only the beginning of a new process of negotiations between states and institutions, showing how crucial solidarity is. Migration is not simply a challenge for the EU as a normative power, but the governance of migration is crucial for the survival of the Schengen area. Depending on how the Covid-19 pandemic develops, it is hoped that European institutions will be prepared to protect the EU

legal order against emergency actions taken by member states, which will assist them in understanding the meaning of solidarity third-country nationals.

5.2. The policies on migrant protection between EU and ASEAN

European Union has many conventions to safeguard the migrant workers in accordance the International Labour and Human Rights standards, and the implementation of these intruments is stronger than ASEAN that provides less. Obviously, some rights are not considered to put into the national laws from their regional conventions while EU Member States apply the human rights relating to their regional conventions. Customary international law¹⁷⁸ is the body of international law binding on all States which derives from the practice and legal opinion (*opinio juris*) of states themselves. EU Member States take accounts the customary law to avoid violation the international law because the rules concerning the basic rights of the human person are *erga omnes*¹⁷⁹. By reaseach of (Tawhida Ahmed & Israel de Jesús Butler, 2006) EU could well be said to have succeeded to the human rights obligations of its Member States by two factors are be bound by certain rights and EU might be bound to go beyond merely “respecting” human rights only that measure for promotion and protection of human rights (changing the EU’s currently limited method of protection).

The legal instruments for the safeguarding of the migrant workers’ rights in EU are the Charter of the Fundamental Rights of the European Unions, European Convention on Human Rights, EU Convention on the Legal Status of Migrant Workers and the European Social Charter. To comfry with those instruments, all EU citizens and their family members have the right to move and reside freely within the EU, including the migrant workers from the Member States¹⁸⁰ without work permit. The migrant workers have rights to work in another Member State and be treated on an equal footing with nationals of that Member

¹⁷⁸ Customary international law is created by State practice. State practice means any act or statement from which views about customary law can be inferred; it includes physical acts, claims, declarations in abstracto (such as General Assembly resolutions), national law, national judgments and omissions.’ It must be accompanied by *opinio juris*—the belief by the state that the practice is obligatory under international law. Akehurst, ‘Custom as a Source of International Law’, 47 BYbIL (1974–75) 53. On the possibility of persistently objecting to being subject to a rule of CIL see Charney, ‘The Persistent Objector Rule and the Development of Customary International Law’, 56 BYbIL (1985) 1. See also Pentassuglia, who underlines the significance of persistent objection in international law: G. Pentassuglia, *La rilevanza dell’obiezione persistente nel diritto internazionale* (1996).

¹⁷⁹ By nature is the concern of all States, all States can be held to have a legal interest in their protection.

¹⁸⁰ Article 21 of the Treaty on the functioning of the European Union

State¹⁸¹. It means that any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment is prohibited. EU workers also have the right to accept a job offer made in another EU country, to move freely within the country, to stay for the purpose of employment and to stay on afterwards under certain conditions. Those from outside the EU with their passport, the allowance of working with the work permit, and the irregular migrant workers are entitled to enjoy 35% of the health care and the regularization system (Moe, 2022). Government policy significantly influences immigration patterns by seeking to regulate immigration flows in alignment with national interests. This can be viewed as an effort to combine two different goals. Governments recognize immigrants as a significant labor resource, either as skilled workers in high demand or as unskilled workers willing to undertake jobs that native workers typically avoid. In contrast, there is an effort to prevent immigrants perceived as bringing social and political challenges, often resulting in immigration restrictions justified by the need to preserve "national identity" or ensure social stability. Immigration in Europe is controlled by national governments. These policies can be quite diverse but during the 1950s and 1960s they were fairly liberal. The countries of northern Europe that had colonial histories needed more workers and were happy to accept them from their former colonies (Stalker, 2002). Key general lessons for policies to integrate migrants and refugees include: (i) Focus on the Period Immediately Following Arrival (within 5 years of arrivals), Early-stage interventions have a significantly greater influence than those undertaken afterwards; (ii) Remove Unnecessary Integration Barriers, there are no positive incentives for integration and no way to tell who is qualified because of these hurdles. For example obstacles to the recognition of foreign qualifications or restrictions on the employment of asylum seekers appear to have exclusively negative effects on integration (Francesco, 2024); (iii) Reduce Uncertainty: Keeping migrants and refugees in "legal limbos", and exposing them to protracted uncertainty about their future status in the host country is detrimental to their economic integration.

¹⁸¹ Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU).

The ASEAN legal instruments are ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and Their Families and ASEAN Human Right Declaration. By implementing free movement of labour, ASEAN aims to allow practitioners in some professions to practice in other member states, and facilitate the temporary cross-border movement of natural persons and business visitors engaged in trade in goods, trade in services, and investment. Nevertheless, employees often do not have complete rights from the documentation, nor is there a robust agreement on advancing the safeguarding of migrant workers' rights. National policies throughout ASEAN exhibit few rules concerning illegal migrant labor, with the exception of Thailand and the Malaysia, which possess some remedies as previously explored. Neither low and unskilled labour migration nor undocumented migration issues have been addressed by regional efforts. Differ from work permit exemption in EU, ASEAN still appears barriers to greater integration. (Hugo, 2005) indicated that most net labour receiving countries in Asia tend to have strong restrictions on immigration, Individuals with significant financial or human capital often receive special attention, while other migrants face limitations, being granted only temporary residency and experiencing a notable reduction in their rights compared to citizens. Standard strategies to prevent low-skilled migrants from establishing residency include barring family accompaniment or visitation, restricting the worker's movement within the nation, binding the worker to a single employer, forbidding marriage to citizens, and establishing limitations on rights (Hugo, 2005, p. 114). Regulations that provide high-skill migrant workers more labor market mobility in terms of changing employers and providing pathways to permanent residence are in conflict with the non-discrimination principle, given that many migrant workers work in low-skilled industries. While regulations in popular Asian destination countries point out the responsibility of employers to conform to the rule of law, the actual systems in numerous destination countries exhibit bias against migrant workers, resulting in an unbalanced conflict of power favoring employers. All countries analyzed share the policy objective of limiting irregular migration (Sabrina Kouba & Nilim Baruah, 2019). Therefore, rules that lack to successfully promote job changes may result in a rise in irregular migration. The primary focus in the labor aspect of ASEAN Vision 2025 is on skilled labor, with less emphasis on addressing issues related to unskilled labor or the minimum standards for migrant workers.

5.3. Labour market

The sustainable integration of migrants in the labour market is key to ensuring their effective inclusion in the host societies and their positive impact on the EU economy. In all sectors and at any level of proficiency, migrants can make a substantial contribution to addressing skills shortages. The European labor market will be moving to a single market from 2021 to 2027; the new program combines numerous prior initiatives for enhanced management. It also includes new initiatives to improve the functioning of the single market¹⁸². Establishing a minimum wage can enhance the global economic recovery during the Covid-19 crisis, demonstrating that an adequate minimum wage is crucial for safeguarding low-wage workers, who are particularly vulnerable. In September 2022, A member of the European Parliament (MEPs) adopted new rules to improve the adequacy of minimum wages. The directive on minimum wages aims to ensure statutory minimum wages are sufficient throughout the EU (a minimum of 60% of the national median wage), promote collective bargaining on wage setting, and improve access to minimum wage protection for workers. The minimum wage in any nation will be determined by factors such as national advancements, productivity levels, buying power, and socioeconomic situations¹⁸³. There are changes in labour market from 2019-2023, for occupational categories observing a progressive reduction in the typical workforce in the service, office, and financial service sectors. Furthermore, the percentage of manual work has drastically dropped as a result of employment losses in the construction and manufacturing industries during the 2008–2019 financial crisis, which were mostly concentrated in Poland and Romania (Bielenski et al., 2002). In contrast, employment in public administration has risen by 1.3% annually. The main goal of active labour market policies (ALMPs) is to increase the employment opportunities for jobseekers and to improve matching between jobs (vacancies) and workers. The primary aim of these programs is to preserve current jobs, provide new employment possibilities, promote sustained engagement with the labor market, and reintegrate long-term jobless and inactive persons. The Organisation for Economic Co-ordination and Development (OECD) database classifies ALMPs into six

¹⁸² EU single market programme 2021-2027, see more at <https://www.consilium.europa.eu/en/policies/deeper-single-market/>.

¹⁸³ See more at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733535/EPRS_BRI\(2022\)733535_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733535/EPRS_BRI(2022)733535_EN.pdf).

broad categories: (i) training; (ii) employment incentives; (iii) direct job creation; (iv) start-up incentives; (v) public employment services and administration; (vi) sheltered and supported employment and rehabilitation¹⁸⁴.

In contrast to the labor market in ASEAN, the European Union regulates job opportunities and minimum wages for both high-skilled and low-skilled workers. The labor market in ASEAN emphasizes the importance of skilled workers, offering enhanced conditions and opportunities for this demographic. In contrast, unskilled labor is limited due to ASEAN's emphasis on skilled labor to promote business growth and regional integration. As evaluating destination nations, Singapore's labor market primarily targets qualified migrant workers with higher labor rights, while low-skilled migrants are targeted with less rights and insufficient job security. As a result of the fact that the Thai labor market incorporates both the official and informal areas, a large number of unauthorized migrant workers are permitted to work in the former. Follow the database of ILOSTAT, the number of migrant workers in services is majority, continue with agriculture field and at least in industry. The social protection mechanisms in Thai Lan are still lacking in strength, even though they provide students with access to school and medical treatment. Malaysia is a key destination for migrant workers in Southeast Asia as employers rely on migrants to fulfill labor shortages in manufacturing, construction, agriculture and domestic work¹⁸⁵. Malaysia has multiple ethnic groups and immigration has played a central role in forming Malaysia's population and society (Hoffstaedter & Missbach, 2021), As a result, workers with low skills and workers with semi-skills are included in the formal sector, which includes agriculture, manufacturing, and construction, and they get lower salaries. This indicates that they do not receive earnings that are equivalent to those of nationals. Singapore, Thailand and Malaysia are three main receiving countries in ASEAN, with the exception of Singapore, the rules governing the labor market in ASEAN are lacking, and the way in which irregular migrant workers are taken care of is not adequate. In comparison to the EU labor market, ASEAN's policies regarding the recruitment of migrant labor are

¹⁸⁴ ILO, Labour market policies for inclusiveness, <https://webapps.ilo.org/static/english/intserv/working-papers/wp078/index.html>.

¹⁸⁵ International Labour Organization (ILO) and United Nations Women (2020) Research Brief: Public Attitudes towards Migrant Workers in Malaysia. Research Brief, 15 December. International Labour Organization and UN Women. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_766632.pdf.

unbalanced, as the rights of migrant workers mostly prioritize highly skilled labor, which receives superior protection and wages. All citizens have to get work permits, whereas the EU allows work permits for individuals from member states, excluding third-country nationals. The European Union has established a comprehensive framework of documents and legal regulations aimed at protecting the rights of migrant workers. In contrast, the Association of Southeast Asian Nations offers only consensus-based provisions, lacking strict enforcement of national laws that regulate the rights of migrant workers. Immigrant workers in the EU have the same basic rights at work as workers from the EU. Even workers from third countries have these rights. Although ASEAN does not provide migrant workers with the same level of labor rights as domestic workers, it is imperative that ASEAN enhance its labor rights policies to ensure that migrant workers are granted complete rights.

5.4. Trade Unions Right

At the European level, the policies of EU Member States regarding asylum, migration, and migrant laborers are intricate, and the laws and practices are subject to significant variation. The EU fundamental trade union rights are regulated under the Charter of Fundamental Rights of Fundamental Rights of the European Union, adopted in December 2000 (now Part II of the Treaty establishing a Constitution for Europe), such as the right to freedom of association (Article 12) and the right to negotiate and conclude collective agreements and to take collective action (Article 28). The European Trade Union Confederation (ETUC) with 10 sectoral organizations from 89 countries including 39 European countries. Their aims are consulting workers, collective bargaining, social dialogue and create good working conditions. Besides, ETUC plays a key role on behalf of European workers to have a stronger say in EU decision-making, where enhancing the welfare of employees and their families is a primary goal. Western Europe has a long history of bargaining between employers, trade unions, and governments, resulting in minimum wage levels, sectoral wage norms, agreed-upon annual increases, and legally enforced standards for working conditions and health and safety. In Italy, for example, the Confederazione Generale Italiana del Lavoro (CGIL) joined with hundreds of other organisations in a movement to combat racism which organised a large-scale demonstration in October 2009 in Rome, and the Confederazione Italiana Sindacati Lavoratori (CISL) has also taken part in demonstrations in support of a law to reform citizenship for immigrants

(ETUC, 2010). The Belgian trade union confederations have also mobilized on multiple times to promote immigrants' rights, particularly the right to remain lawfully in Belgium for all foreign workers, whether employed or jobless, who have resided in Belgium for five years or more.

European migrant workers have the right to join trade unions and participate in negotiations or collective bargaining between workers' organizations and employers' organizations. The migrant workers from third countries have a support from Union Migrant Network¹⁸⁶ to promote the fairness and equality. As research of (Anastasia Gorodzeisk & Andrew Richards, 2013), the participation of immigrant laborers in trade unions is consistently lower than that of local workers. The research indicates that immigrants are more probable to join unions in countries characterized by higher levels of workplace security. The union participation rate of immigrants corresponds with the industrial development level of the respective country. (Kranendonk, 2016). The European Social Charter and the European Convention on the Legal Status of Migrant Workers should expand their scope to encompass all workers, irrespective of their country of origin, while allowing for reservations concerning reciprocity. Proactive policies must be developed to address labor exploitation, particularly concerning irregular migrants, emphasizing the recognition and respect of their trade union and human rights. It is essential to recognize that illegal migrant workers should have the right to join unions. This inclusion would not confer legal status but would provide necessary protection against labor trafficking and exploitative employers who fail to meet their obligations. But foreigners should not only be able to join unions (which some of them can already do, which is great), they should also be able to help to run the union. A consensus developed concerning the unions' role in the integration of migrants. This indicates that they must focus on the protection of both national and migrant workers, as well as the enhancement of relations among national workers, migrants, and society at large. Migrant associations have a responsibility to assist unions in achieving this objective (WORMS, 1992).

The ASEAN Trade Union Council (ATUC) is an apex body of 18 national trade union centers and confederations in 9 ASEAN states, except Brunei, representing 5 millions

¹⁸⁶ The UnionMigrantNet is a European network of contact points providing services to migrants established, managed and supported by trade unions. It is promoted by the European Trade Union Confederation (ETUC).

people. The union also often hosts and attends regional seminars on related subjects of union rights. Many union interviewees reported that the ILO has significantly encouraged unions to engage in SDG discussions with governments and UN agencies, which has profoundly influenced their efforts to safeguard union rights. The ASEAN Services Employees Trade Union Council (ASETUC) is another organization focused on advocating for trade union rights. It was created by the joint efforts of the three Global Union Federations (GUFs) namely UNI Global Asia Pacific Regional Office (UNI Apro), Building and Wood Workers International Asia Pacific (BWI AP) and Public Services International Asia Pacific (PSI AP). This organization has used a soft approach (regular and honest social conversation) in order to create relationships within ASEAN because it has a deep understanding of the ASEAN context. That is why this organization has adopted this method. ASETUC's actions demonstrate a strategic and measured approach in their commitments (Smith, 2004). This soft approach is seen as appropriate and effective in engaging with ASEAN not only by the ASETUC leaders themselves but also by the ASEAN Secretariat, other GUFs, regional and national employers' organizations. As the ASETUC initiative demonstrates, trade unions are powerful because they use and develop a variety of power resources at once, which allows them to shape political, economic, and social landscapes as well as connect labor organization and action on a regional and global scale. In ASEAN, destination countries are important; several nations explicitly define the trade union rights of migrant workers, although these individuals do not completely use their union rights. With the exception of a few nations such as Singapore, Thailand, Malaysia, Brunei, and Vietnam, which include labor rights management into their national policies, the other countries rely on bilateral agreements with the countries of origin.

5.5. Migration Management

5.5.1. Labour Management in European Union

The European Union confronts the challenges of migration and illegal immigration globally, prompting the implementation of several rules concerning the rights and limitations of migrant workers throughout the years. The EU has adopted various rules to manage legal migration flows, process asylum requests and return illegal migrants. The

European Commission presented 5 platform of management¹⁸⁷ include: (i) attracting skills and talent; (ii) Resettlement; (iii) Legal migration flows; (iv) Asylum seekers and; (v) Return policy

(i) Attracting skills and talent

The EU establish a talent pool which could raise the profile of the EU and give EU employers improved access to third-country nationals with specific skills. It aims to address critica, shortage in EU's domestic labour market, match third country based jobseekers. Jobseekers from third countries will be able to register their profiles on the Talent Pool platform and provide information about their skills, qualifications, work experience and language knowledge On 13 June 2024, the Council agreed its negotiating mandate on a proposal for an EU talent pool¹⁸⁸. The Council has also put in place a withdrawal procedure, with clear rules and a number of safeguards to ensure stability in the system As the EU Talent Pool is meant to tackle the problem of labour market shortages, only job vacancies that refer to designated national or EU-wide shortage occupations will be listed on the EU Talent Pool.

Additionally, the Council and the European Parliament adopted the Single Permit Directive¹⁸⁹. The Directive's rules include the majority of non-EU workers permitted to enter an EU nation for employment, with the objective of minimizing the process that helps member states in drawing skills and talent from third countries. The proposed new restrictions would not limit the one permit to one employer. EU nations may limit the ability to change employers by subjecting it to labor market inspections and requiring notification of the change. This implies that the information regarding the alterations can be recorded. In addition, unemployment of the single permit holder, provided that it does not exceed three months and is notified to the authorities of the EU country concerned, will not constitute a reason for withdrawing the single permit. Not only implementing single permit but also long-term residents also part of the wider package on legal migration for set out

¹⁸⁷ EU migration and asylum policy, see more at <https://www.consilium.europa.eu/en/policies/eu-migration-policy/managing-migration-flows/> (8/1/2025).

¹⁸⁸ Proposal for a Regulation of the European Parliament and of the Council establishing an EU Talent pool, <https://data.consilium.europa.eu/doc/document/ST-10602-2024-INIT/en/pdf>

¹⁸⁹ Directive 2011/98/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0098>

the requirements to third-country nationals who have legally and continuously resided in a country at least 5 years can acquire long term or permanent.

(ii) Resettlement

Resettlement enables refugees requiring protection to enter the EU through legal and safe channels. Since 2015, successful EU-sponsored resettlement schemes have helped more than 98.000 of the most vulnerable people in need of international protection to find shelter in the European Union¹⁹⁰. The aim of the new Resettlement and Humanitarian Admission regulation is to provide ‘a common approach to the legal and safe arrival in the EU. The regulation enters into force in June 2024 and will apply from 12 June 2026. A controversy exists between two conflicting approaches regarding the primary aim and conceptualization of this policy instrument: one as a humanitarian pathway for the most vulnerable and the other as a migration management tool within a control-oriented Common European Asylum System (CEAS). The Parliament expressed significant opposition to the latter, whereas the Council perceives substantial potential in the Resettlement Framework for regulating the numbers and profiles of individuals receiving protection under this legislation. This method has shown a good providing in managing the refugees flow as well humanity treatment.

According to the Vietnam War (1955-1975) and the relocation of substantial numbers of Vietnamese refugees in the 1970s and 1980s, governmental assistance for resettlement transitioned to a more methodical approach focused on individual situations. Such commitments were significant in the context of conflicts in the Middle East in the 1980s, the first Gulf War (1991), the collapse of Yugoslavia (1992) and the Kosovo War (1999) (Bamberg, 2018). As a result, the UNHCR started working on precise resettlement standards. The ATCR, or Annual Tripartite Consultations on Resettlement, have been running since 1995. These consultations served as an indispensable platform for international organizations, NGOs, and states to collaborate on resettlement.

(iii) Legal migration flows

Student and researchers: In 2016, the EU enacted a regulation delineating the criteria for the admission and residency of third-country citizens for research, study, training, volunteer service, student exchange programs, educational initiatives, or au pairing.

¹⁹⁰ EU Immigration and Asylum Law and Policy, The New EU Resettlement Framework: A flexible harmonization undermining fundamental rights, access at <https://eumigrationlawblog.eu/the-new-eu-resettlement-framework-a-flexible-harmonization-undermining-fundamental-rights/> (9/1/2025).

Directive (EU) 2016/801 of the European Parliament and of the Council¹⁹¹ pointed out certain insufficiencies, mainly in relation to admission conditions, rights, procedural safeguards, students' access to the labour market during their studies and intra-EU mobility provisions¹⁹². Specific improvements were also considered necessary regarding the optional categories of third-country nationals. Subsequent wider consultations have also highlighted the need for better job-seeking possibilities for researchers and students and better protection of au pairs who are not covered by Directives 2004/114/EC and 2005/71/EC. To encourage non-EU nationals engaged in research activities inside the Union, their family members, as delineated in Council Directive 2003/86/EC (6), need to be permitted to follow them and avail themselves of the internal EU mobility rules¹⁹³. This directive intends to enhance internal mobility inside the EU for researchers and students.. In addition, the EU promotes the mobility of students, researchers and entrepreneurs through its Erasmus+ programme¹⁹⁴, it offered to the participants of mobility activities in improving their foreign language competences before and during their stay abroad.

Seasonal workers: The Council and the Parliament adopted the seasonal workers directive in 2014¹⁹⁵. This outlines the conditions under which non-EU nationals may enter and stay in the EU as seasonal workers. The proposal is affirmed to contribute to the implementation of the EU 2020 Strategy and to the successful treatment of migration flows for the specific category of seasonal temporary migration. It establishes fair and transparent rules for entry and residence. while, at the same time, it provides for incentives and safeguards to prevent a temporary stay from becoming permanent.

Intra-corporate transfer and family reunification: In 2014 the Council and the Parliament adopted a directive¹⁹⁶ on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The new regulations allow non-EU citizens to apply for admission to the EU as managers, specialists, or trainee employees

¹⁹¹ Directive (EU) 2016/801, <https://eur-lex.europa.eu/eli/dir/2016/801/oj>

¹⁹² Ibid, section (4).

¹⁹³ Ibid, section (11)

¹⁹⁴ Erasmus+ is the EU's programme to support education, training, youth and sport. With an estimated budget of €26.2 billion for 2021-2027, it provides opportunities for millions of participants to study, train, gain experience, and volunteer abroad. The 2021-2027 programme places a strong focus on social inclusion, the green and digital transitions, and promoting young people's participation in democratic life.

¹⁹⁵ Directive 2014/36/EU, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32014L0036>

¹⁹⁶ Directive 2014/66/EU, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014L0066>

under the intra-corporate transfer framework. EU rules on family reunification are set out in the directive¹⁹⁷ on the right to family reunification, which establishes common rules for exercising the right to family reunification in the EU (except for Ireland and Denmark).

(iv) Asylum seekers

In the EU, highlighted by open borders and freedom of movement member states which promote shared fundamental values and a collaborative approach to ensure high standards of refugee protection. The European Commission has proposed the Pact on Migration and Asylum¹⁹⁸, which received approval from the European Parliament in April 2024, aims to assist Member States experiencing significant migratory pressures while safeguarding external borders. People entering the EU also benefit from the transparency and confidence it offers. This also enables Europeans to have confidence that migration is managed effectively and humanely, in accordance with our values and international laws.

(v) Return Policy

In 2023, employed non-EU citizens in the EU were almost twice as likely to be over-qualified than nationals for their job¹⁹⁹. In the third quarter of 2024, 27 740 persons were returned to third countries, an increase of 34.7% compared with the same period of 2023. 112 335 non-EU citizens were ordered to leave the territory of an EU country in the third quarter of 2024, an increase of 3.9% compared with the same period of 2023²⁰⁰.

The highest number of people returned to a third country were reported by France (13.2%), Germany (11.8%) and Spain (11.4%). Among those returned to another country, most were citizens of Georgia (10.9%), Albania (7.3%), Türkiye (7.2%), Colombia (6.1%) and Moldova (4.3%). The top 5 countries of citizenship of third-country nationals ordered to leave in the third quarter of 2024 were from Algeria (10 705), followed by Morocco (7 995), Syria (7385), Türkiye (6 420) and Afghanistan (5 585)²⁰¹.

¹⁹⁷ Council Directive 2003/86/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0086>

¹⁹⁸ Communication From The Commission on a New Pact on Migration and Asylum, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>

¹⁹⁹ Eurostat, <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240726-1>

²⁰⁰ See https://ec.europa.eu/eurostat/statistics-explained/index.php?title>Returns_of_irregular_migrants_-_quarterly_statistics#:~:text=Highlights,the%20same%20period%20of%202023.

²⁰¹ Statistics on the enforcement of immigration legislation are based on administrative data provided by national authorities in line with the requirements of Regulation (EC) No 862/2007 concerning statistics on migration and international protection.

The EU seeks to harmonise and support national efforts to manage returns based on the Return Directive²⁰². The strategy encourages voluntary returns and facilitates the reintegration of irregular migrants in their country of origin. It also offers financial assistance, including through the Asylum, Migration, and Integration Fund²⁰³. The Return Directive²⁰⁴ establishes uniform regulations for the treatment of irregular migrants, ensuring clarity, transparency, and fairness, while upholding their human rights and fundamental freedoms. All EU countries, with the exception of Ireland, have transposed the Directive into national law, including the four Schengen associated countries: Switzerland, Norway, Iceland, and Liechtenstein. The European Union addresses illegal migration through systematic and humane approaches. By guaranteeing close collaboration among EU agencies, organizations, and Member States, as well as by establishing a unified and efficient EU system. This enables a higher level of collaboration with third countries, prevents work duplication, and enables multiple stakeholders to partake in the process of returning illegal labor.

The Human Rights of Irregular Migrants are mentioned in Parliamentary Resolution No.1509 (2006) that emergency health care should be available to irregular migrants and states should seek to provide more holistic health care, taking into account, in particular, the specific needs of vulnerable groups such as children, disabled persons, pregnant women and the elderly²⁰⁵. Moreover, on the common standards and procedures for return illegally staying third country, irregular migrant workers should give the approach to healthcare system pursuant to Directive 2008/115/EC²⁰⁶. The third-country nationals in return processes should ensure treatment and level protection in emergency health care²⁰⁷. Health care is important to every worker, and it is a fundamental right for both regular and irregular migrant workers. In the labor market, undocumented immigrants often get lower earnings

²⁰² Council Directive 2001/40/EC, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF> (2/1/2024).

²⁰³ The EMN is funded by the European Commission through the Asylum, Migration and Integration Fund. A biennial budget is allocated to support the work of every Member State based EMN NCP, each of which are co-financed by national funds.

²⁰⁴ Directive 2008/115/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115&qid=1606153913679>

²⁰⁵ Resolution 1509, 13.2

²⁰⁶ Directive 2008/115/EC, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

²⁰⁷Ibdb, Article 14.1 (b).

than legal workers due to their willingness to accept less compensation or worse working conditions. For example, irregular immigrants earn about 8 percentage less than comparable legal immigrants; in Spain, 12 percentage less [19/1/26 23:48:00](#). Currently, the EU has two approaches to illegal workers: it does not grant work permits to undocumented migrant workers, but it allows these workers to work under invalid contracts. (Sophie Robin-Olivier, 2018). Furthermore, illegal workers get protection, although with restricted rights, including access to healthcare and security. This secondary approach is prompted by Europe's legalization policy addressing illegal immigration in response to labor shortages²⁰⁸. Over the last decade, some European nations have formalized the status of undocumented migrants, either without or possessing defective residency permits (Longo, 2013). The evidence indicates that legalization can generate a significant opportunity for legal immigrants in the workplace. In Italy, these immigrants have successfully transitioned from street vending and other informal employment (DR. PATRICK WEIL, 2004). In several instances, legalization enables immigrants to access educational and training opportunities, engage in labor groups, and oppose exploitation.

The escalating trend of illegal immigration to Europe has necessitated the development of a series of response policies by member states, both individually in national laws and collectively. The most often employed techniques include stricter border controls, visa restrictions, internal enforcement efforts, steps to discourage unlawful employment, and deportation of illegal immigrants. Furthermore, enhancing and recruiting workforce via migratory pathways is a strategy to foster collaboration with transit and labor-exporting nations. Relocation and legalization are methods to decrease the population of illegal immigrants. Nevertheless, no approach can really affect the prevalence of unlawful residence

5.5.2. Labour Management in ASEAN

Each country in ASEAN has difference way in controlling for migration because of diverse of geography, demographic, economic situation. The ASEAN region highlights sovereignty and non-interference, resulting in a reluctance to address migration issues collectively and substantively, particularly from a human rights perspective. The sending

²⁰⁸ Regularisation programmes for irregular migrants, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11614&lang=EN> (8/1/2024).

and receiving countries have instituted measure to differentiate migrants according to legal and illegal workers, skilled and un-skilled labour. As observation measure, both public and private institution (e.g government, labour brokers, and remittance entities) have become a part of migration management (AICHR, 2023). All ILO’s instruments (conventions and recommendations) apply to all workers, including migrant workers unless otherwise stated²⁰⁹. Overall, the ILO has eight core conventions, four governance-related conventions and 178 technical conventions related to technical assistance provided to countries in implementing the conventions. The ILO’s core conventions include:

- C029 - Forced Labour Convention, 1930
- C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948
- C098 - Right to Organize and Collective Bargaining Convention, 1949
- C100 - Equal Remuneration Convention, 1951
- C105 - Abolition of Forced Labour Convention, 1957
- C111 - Discrimination (Employment and Occupation) Convention, 1958
- C138 - Minimum Age Convention, 1973- Minimum age specified: 15 years
- C182 - Worst Forms of Child Labour Convention, 1999

The ILO’s four instrument that directly deal with migrant workers include:

- C097- Migration for Employment Convention (Revised), 1949 (No. 97)
- R086- Migration for Employment Recommendations (Revised), 1949 (No. 86)
- C143- Migrant Workers (Supplementary Provisions) Convention. 1975 (No.143)
- R151- Migrant Workers Recommendation, 1975 (No.151)
- C122- Employment Policy Convention, 1964 (No.122)
- C129- Labour Inspection (Agriculture) Convention, 1969 (No.129)

There are more than 185 Conventions related to Technical.

Table 1.3. Conventions ratified/ signed related migration.

Country	Ratified total ILO Convention	Ratified Convention	Migrant
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²⁰⁹ International Labour Organization (ILO), Asian Decent Work Decade resource kit: protecting migrant workers

Cambodia	13 Conventions including 8/8 ILO's core Conventions. 12 are in force, one is revoked. Cambodia has not signed any migrant workers' technical Convention of the ILO	No
Indonesia	20 Conventions including 8/8 ILO's core Conventions. 19 are in force, one is denounced. Indonesia signed ten technical assistance conventions	No
Brunei	2/8 ILO's core Conventions	No
Laos	10 Conventions including 5/8 ILO's core Conventions. 9 are in force, one is rescinded. Laos signed 4 technical assistance conventions	No
Malaysia	18 Conventions including 6/8 ILO's core Conventions. 14 are in force, one Convention is withdrawn, and three has been repealed in the International Labour Conference. Malaysia has not signed any migrant workers specific technical Convention	C138 - Minimum Age Convention, ratified on 09 Sep 1997; C182 - Worst Forms of Child Labour Convention, 1999
Myanmar	25 Conventions including 4/8 ILO's core Conventions. 18 are in force, 2 are denounced, 4 has been replaced. 21 technical assistance related conventions	No
Philippines	38 Conventions including 8/8 ILO's core Conventions. 31 are in force, 6 are denounced. 28 technical assistances related.	C097 - Migration for Employment Convention (Revised), ratified 21/4/2009 C143 - Migrant Workers (Supplementary Provisions)

		Convention, ratified on 14/9/2006
Singapore	28 Conventions including 6/8 ILO's core Conventions. 17 are in force, 6 are denounced. 20 technical assistances related.	No
Thailand	19 Conventions including 6/8 ILO's core Conventions. 18 are in force, 1 is denounced	Thailand ratified 6 and has not signed the two core conventions associated with migrant workers (No.87 and No.98)
Vietnam	25 Conventions including 7/8 ILO's core Conventions. 22 are in force, 2 are denounced, 1 is abrogated.	No

Source: Ratifications by country, International Labour Organization (ILO)

Table 1.2 indicates that Malaysia, Thailand, Singapore, and Brunei are primarily receiving countries for migrant labor. Notably, Malaysia and Thailand exhibit significant concerns regarding migration issues. The Table 1.2 indicated that Thailand has ratified conventions related to migration but has not signed them directly, while Singapore and Brunei have not taken any action. . The research of (Piper, 2004) revealed that the public's interaction and engagement with migrant workers is minimal, resulting in their exclusion, isolation, and discrimination. Despite labor shortages in destination economies and the economic benefits associated with migrant workers, public sentiment remains unsure over the necessity of employing these workers. The implementation of this strategy will contribute to the promotion of justice, well-being, and equality in relation to migration and migration management.

Table 1.4. Ratification of international treaties protecting migrant workers'

Countries	(ICMW)	Migration for Employment Convention (ILO No. 97)	for (ILO	Convention (ILO No. 189) Migrant Workers (Supplementary Provisions) Convention (ILO No. 143)	Domestic Workers
Brunei	X	X		X	X
Cambodia	√	X		X	X
Indonesia	√	X		X	X
Lao PDR	X	X		X	X
Malaysia	X	X		X	X
Myanmar	X	X		X	X
Philippines	√	√		√	√
Singapore	X	X		X	X
Thailand	X	X		X	X
Vietnam	X	X		X	X

Source: ACIHR 2020, *Cooperation Mechanism Related to Labour Migration Management in ASEAN*, <https://aichr.org/wp-content/uploads/2023/08/AICHR-Thematic-Study-on-Migration-Migration-Management-for-the-Most-Vulnerable-Groups-within-ASEAN.pdf>

ASEAN's regulations for the protection of migrant workers remain insufficient particularly concerning illegal migrant workers, as there is a lack of documentation acknowledging this issue. Consequently, national policies serve as the method mechanism for safeguarding the fundamental rights of undocumented migrant workers within ASEAN.. Table 1.3 shows AMS lack of commitment in ratified and forced international treaties on protecting migrant workers' rights except Philippines. Both legal and illegal migrants may have challenges in properly accessing protective rights if their home nations do not endorse or ratify accords pertinent to migrant work. The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and Their Families provides limited reference to Singapore, Thailand, and Malaysia as primary destinations for migrant workers from the region. Malaysia and Thailand are sending back illegal migrant workers to their home

countries, and the process of legalization is under way. Singapore regulates irregular workers by punishing companies that employ them; hence, just 4% of workers are undocumented (Sallie Yea, 2017). It is evident that the ASEAN organization is in a precarious position with respect to the protection and treatment of irregular migrant laborers when comparing its performance to that of the EU. One of the most successful methods for managing migration is to work on influencing the attitudes of local citizens toward migrant labor. The reason for this is that the EU noticeable safeguards the fundamental rights of irregular workers via basic legislative provisions. When compared to ASEAN member states, Europe's approach to irregular labor migration stands out due to its thoroughness and attention to detail, as well as its acknowledgment of all migrant workers (legal and otherwise).

5.6. Labour Migration in Vietnam

5.6.1. History Related to Labour Migration

Before 1975: Before 1945, quite many Vietnamese people migrated abroad, mainly to France and French colonies. The history of Vietnamese migration extends from 1975 to the present, with approximately 6 million Vietnamese living abroad across more than 130 countries and territories, 80% of whom reside in developed nations. The migration of 1975 resulted from the war, leading to the evacuation of 140,000 Vietnamese affiliated with the former South Vietnamese government to the United States. The evacuation conducted by the U.S. government was succeeded by a subsequent evacuation of Vietnamese individuals, who utilized boats to escape to adjacent Southeast Asian nations. By the conclusion of 1975, around 5,000 Vietnamese had reached Thailand, 4,000 had arrived in Hong Kong, 1,800 in Singapore, and 1,250 in the Philippines. In 1977, approximately 15,000 Vietnamese emigrated and sought asylum in Southeast Asian nations. By the conclusion of 1978, the quantity of individuals escaping by boat had increased fourfold. By the end of 1978, the refugee issue escalated significantly, with nearly 62,000 Vietnamese 'boat people' arriving in refugee camps throughout Southeast Asia. A significant number of individuals crossed the border into Thailand. On July 20, 1979, at the International Conference on Indochinese Refugees in Geneva, the resettlement quota was increased from 125,000 to 260,000 due to

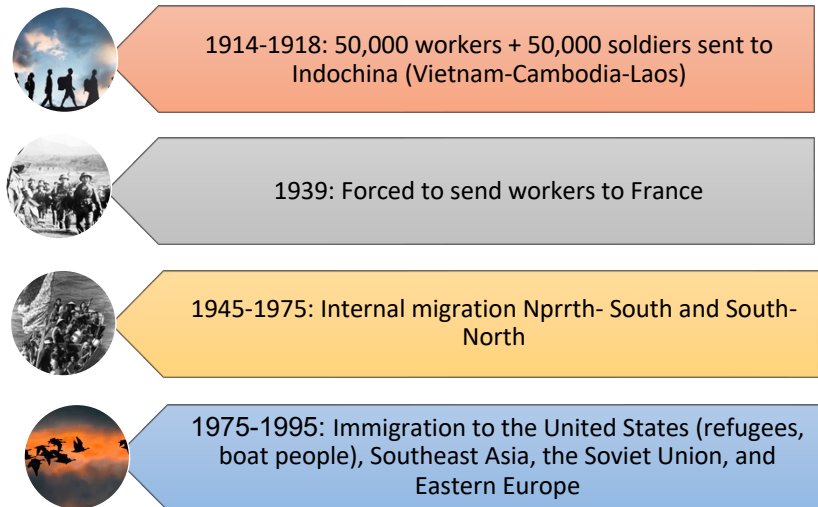
the number of refugees surpassing the capacity of ASEAN countries²¹⁰. Indonesia and the Philippines have reached an agreement to establish centers aimed at accelerating the resettlement process for refugees. Between July 1979 and July 1982, over 20 countries, including the United States, Australia, France, and Canada, resettled a total of 623,800 Indochinese refugees. Vietnam is dedicated to preventing illegal departures and to executing the Memorandum of Understanding with UNHCR, signed in May 1979, concerning the establishment of the Orderly Departure Program (ODP). This agreement permits Vietnamese authorities to facilitate the departure of citizens seeking to leave the country for family reunification and humanitarian purposes, while UNHCR collaborates with resettlement countries to secure entry visas.

Since 1975, the United States has welcomed more than one million Vietnamese immigrants via land and sea. While the highest population resides in California, this group has established communities across all states and in most major cities throughout the United States. Despite arriving for resettlement during a period of significant economic recession in the United States, by 1982, the employment rate of the original refugees remained higher than that of the general U.S. population. The Vietnamese refugee population is expanding in California, Texas, and Washington, DC. Subsequently, Vietnamese enterprises commenced providing services to the emerging communities. The second wave of Vietnamese refugees commenced their arrival in the United States in 1978. The individuals referred to as 'boat people' are those who departed to flee the escalating political repression in Vietnam, particularly among the Vietnamese of Chinese descent. The total number of Vietnamese boat people who entered between 1978 and 1997 is estimated to exceed 400,000, although precise figures are challenging to ascertain²¹¹.

Figure 1.3. Timeline of Vietnam Migration History

²¹⁰ See more at <https://vietnamesemuseum.org/vi/lich-su-nguoi-viet-ty-nan/>

²¹¹ See more at <https://www.history.com/news/vietnam-war-refugees>



After 1975: Vietnam's labor migration plays a crucial role in socio-economic development, particularly since the onset of the renovation period in 1986, which marked a significant shift from a centralized subsidized economy to a socialist-oriented market economy. Vietnam initiated the export of laborers in the 1980s, coinciding with the country's shift from a command economy to a market economy, as outlined in a resolution from November 1980. The primary job markets during that period included the Soviet Union, East Germany, Bulgaria, and Czechoslovakia. The majority of the workers chosen for deployment comprised former soldiers, government employees, factory workers, and high school graduates. Between 1980 and 1990, approximately 300,000 workers were dispatched overseas. However, the dissolution of the Soviet Union in the early 1990s resulted in a decline in demand for Vietnamese labor in these four markets, prompting the government to explore new markets during the 1990s and 2000s²¹². Some Asian economies, such as Japan, South Korea, and Taiwan, have aging populations and a rising local workforce in the value chain, resulting in demand for mechanics, domestic assistants, and senior care, which is being met by labor from Vietnam and other Southeast Asian nations. Since 2000, labor export has become increasingly significant in the Vietnamese economy, with 80,000 workers deployed to 18 countries and territories by 2005. Malaysia ranks as

²¹² Le Thi Hoai Trinh, Vietnamese workers abroad: Low skills, minimum wage, <https://kkttc.duytan.edu.vn/goc-hoc-tap/nguoi-lao-dong-viet-nam-o-nuoc-ngoai-tay-nghe> (9/1/2025).

the primary destination for Vietnamese workers, who are predominantly engaged in the sectors of electricity, electronics, textiles, mechanics, and wood processing. The low income of \$150-200 per month and substandard working conditions are rendering Malaysia increasingly less appealing, in contrast to South Korea and Japan, which provide higher wages. In 2015, the population of Vietnamese workers in Malaysia was 7,300, which significantly declined to 450 by 2019. Between 2012 and 2019, the annual number of workers traveling abroad rose by 21%, with a decline occurring in 2020 and 2021 attributed to Covid-19. Over the past four decades, Vietnam has expanded its labor markets from 4 to 40, encompassing 30 distinct industries. Over 500 labor companies annually deploy 100,000 workers abroad, with 90% of these individuals heading to Taiwan and Japan. International labor migration from Vietnam is mostly driven by economic concerns. Vietnamese people have chosen to travel overseas due to poverty and a lack of job possibilities in their own country. Vietnamese migrants are driven to migrate abroad by poverty and inadequate employment opportunities in their homeland. In looking for enhanced income and living conditions, Vietnamese individuals are urged to migrate overseas, whether temporarily or permanently. As a result, international labour migration has enormously benefitted Vietnam's economy. Since 1991, promoting labour export has been a regular policy adopted by the Vietnamese Party Congresses.

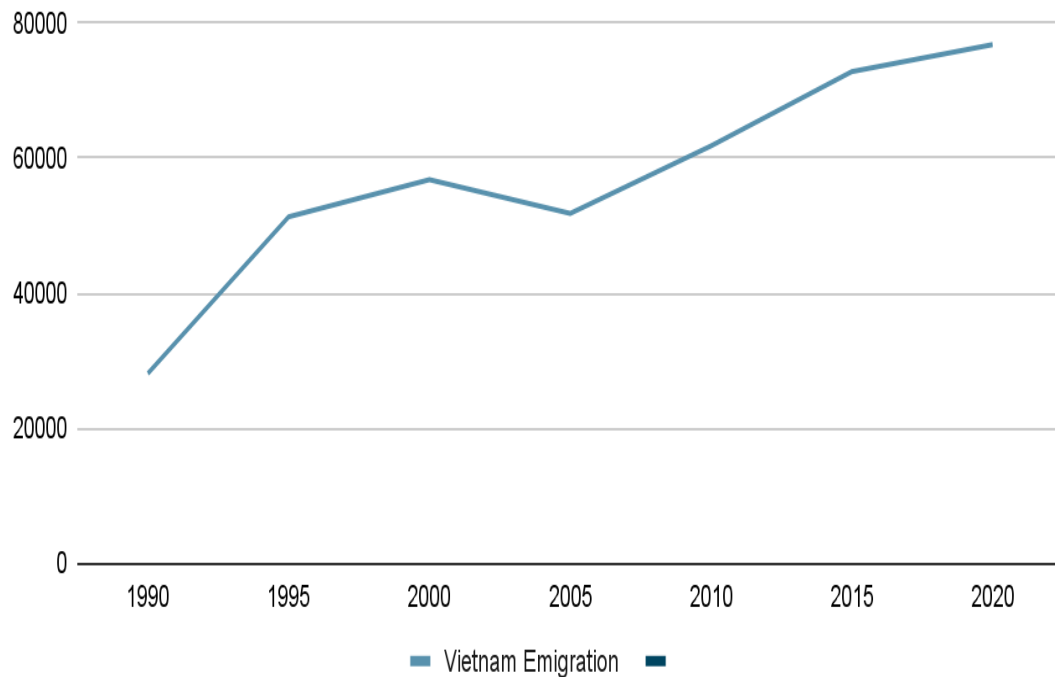
According to the above concept, in general, there have been three major waves of Vietnamese migrants. Firstly, past generations of Vietnamese people who migrated before 1945 and before 1975. They had three primary motivations for migration: (1) travel for work, (2) residing overseas after serving in the French Army, and (3) residing abroad after completing their studies in France. A number of people also emigrated from the southern region of Vietnam to the United States, France, Australia, and certain other developed countries prior to 1975. Consequently, the majority of the aforementioned migrant families are now their descendants, and they are referred to as "overseas Vietnamese." Secondly, The current generation of overseas Vietnamese. Following 1975, many Vietnamese sought new opportunities in economically advanced nations like the US, Canada, UK, France, and Germany, all in pursuit of a better life. Many of these individuals have already obtained citizenship abroad, yet they continually explore various avenues to offer financial assistance to their family members back home, including remitting funds to enhance their living

conditions. By 1980, after two long wars, a large number of Vietnamese people strived for migrating abroad due to objective reasons. There were many different channels for emigration, but the biggest ones were labor export cooperation and studying in the socialist (former socialist) countries, such as the former Soviet Union, the German Democratic Republic, the Czech Republic, Slovakia, Poland, Hungary, Bulgaria, etc (Szymańska-Matusiewicz, 2015). Post-graduation, some individuals went home, although a significant proportion choose to remain abroad for residence, employment, or business ventures. Finally is the new generation of overseas Vietnamese which include significant number of younger individuals are currently residing overseas. A number of them relocated there during their childhood, accompanied by their parents and families. Numerous individuals have successfully graduated, put in the effort, and now enjoy a respectable income, or skillfully manage their own businesses. The amount of money they invest into the Vietnamese national economy depends on the interest rate policy, the state of the foreign currency market (Hung, 2022).

Migration labour Trends and Flow

Based on the report of Migration Data Portal, the total number of international migrants till 2020 was 76.8 thousand. Overall the number of Vietnamese workers preferred to work abroad from 1990 and keep slightly increase in 5 years later around 20,000,000 people. However the rate of migrant workers did a bounce from 2005 till after 2020. About 100,000 guest workers were made available by Vietnam to the Soviets, among them East Germany, Bulgaria, and Czechoslovakia (Anh D. N. et al., 2003). Over the period of 1981 to 1990, a total of 217,183 Vietnamese were employed as contract workers in the eastern bloc, with 42% of them being females.

Figure 1.4. Trend for Vietnam Emigration



Source: UN DESA, 2020, available at: https://www.migrationdataportal.org/internationaldata?focus=profile&i=stock_abs_&t=2020&cm49=704

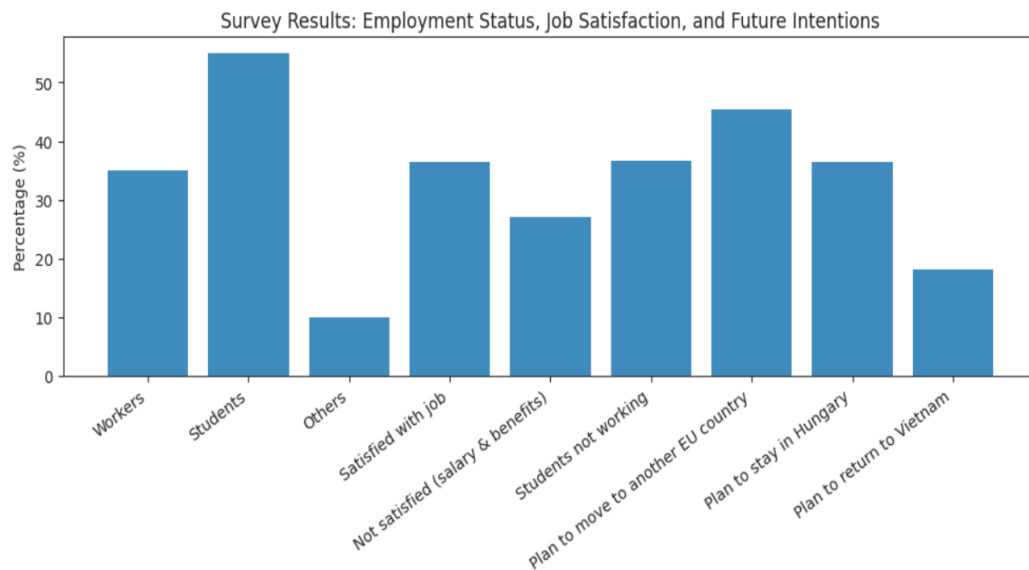
(i) *The Vietnamese Communities in Central and Eastern Europe*

Between the 1950s and the dissolution of communism in Eastern Europe, numerous Vietnamese individuals traveled to nations including the Soviet Union, Poland, Czechoslovakia, and the former German Democratic Republic for educational and vocational training opportunities. In the 1980s, a significant number of individuals were employed in factories as 'guest workers,' particularly in East Germany, Czechoslovakia, and the Soviet Union (Alamgir, 2014). Their efforts generated profits for Eastern European nations requiring inexpensive labor while simultaneously functioning as development assistance for Vietnam, as these workers frequently provided financial support to their families in impoverished Vietnam through remittances, primarily in the form of consumer goods (Christina Schwenkel, 2014). The 'socialist mobile' model persisted beyond the socialist era, as significant migration from Vietnam continued during the early years of capitalism in Central and Eastern Europe. A significant number of individuals relocated to nations like Poland, the Czech Republic, and Slovakia to participate in the trade of

consumer goods imported from Asia, particularly clothing and footwear, thereby integrating into a complex transnational trade (Martínez Lucio & Robert Perrett, 2009; Szymańska-Matusiewicz, 2015). The post-socialist migration wave differs fundamentally from the migration associated with socialist movements, which were structured and orchestrated in accordance with the policies of communist Vietnam and particular nations within the Soviet Bloc. The persistence of migration patterns underscores the significant influence of migration networks formed by former students and workers from the communist period. In the communist era, the entry of foreigners into nations like East Germany, Czechoslovakia, and Poland was rigorously restricted and regulated by the state (Anna Kicingier and Izabela Koryś, 2011). In the case of Poland, numerous authors indicate that the collapse of communism in its post-war history initiated a notable influx of immigration into the country. Communities in the former Soviet Bloc countries continue to maintain close ties with the Vietnamese government. The activities of migrant associations demonstrate a close collaboration with Vietnamese embassies in various countries and relevant organizations in Vietnam, such as friendship associations, exerting considerable control over the migrant community. More Vietnamese people choose to stay in Hungary after studying abroad for many reasons, and most of those referred to good working and good life quality.

I did a survey was conducted among nearly 50 Vietnamese nationals, including both workers and students currently living, studying, and working in Hungary, to assess their level of satisfaction with living and working conditions in the country. The findings provide empirical insights into migrants' experiences and perceptions, particularly in relation to legal status, employment conditions, and social integration.

Figure 1.5. Vietnamese's life satisfaction in Hungary



The survey results reveal several notable patterns regarding the socio-economic situation and future aspirations of Vietnamese migrants in Hungary. In terms of occupational composition, the respondents are predominantly students (55%), followed by workers (35%), with a small proportion engaged in other activities (10%). This structure reflects the dual character of Vietnamese migration to Hungary, which combines educational mobility with labour migration, particularly among younger cohorts.

Regarding employment satisfaction, the findings indicate a divided experience among those engaged in work. While 36.4% of respondents reported being satisfied with their current jobs, a substantial share (27%) expressed dissatisfaction, primarily due to low wages and limited employment benefits. These concerns point to structural challenges within the Hungarian labour market for migrant workers, especially in sectors characterized by low pay and limited social protection. Furthermore, 36.6% of respondents are students who have not yet entered the labour market, suggesting that future employment conditions will play a decisive role in shaping their long-term migration decisions.

The respondents' future intentions further underscore these challenges. Nearly half of the surveyed individuals (45.5%) expressed an intention to move to another European country, whereas only 36.4% plan to remain in Hungary, and 18.2% intend to return to Vietnam. This strong inclination toward onward migration within the European Union

suggests that Hungary is often perceived as a transitional destination rather than a long-term settlement country. Factors such as wage disparities, limited career advancement, and restrictive migration and labour policies may contribute to this trend. Overall, the findings highlight a significant gap between Hungary's role in attracting migrant labour and its capacity to retain migrant workers in the long term. The combination of moderate job satisfaction and a high intention to relocate indicates that economic and legal conditions play a crucial role in shaping migrants' decisions. These empirical insights reinforce the importance of aligning national labour and migration policies with international standards on migrant worker protection in order to promote sustainable integration and long-term stability.

Obviously, in Hungary, a large number of Vietnamese workers are employed in some fields, like agriculture, and factories. Therefore, to avoid as much illegal labor, the protection of Vietnamese migrant workers under the contract of labor law is a priority concern. More Vietnamese people choose to stay in Hungary after studying abroad for many reasons, and most of those referred to good working and good life quality. I have a few interview with Vietnamese people who is choose to stay after their studies or work in Hungary:

“There are 2 main reasons that compelled me to stay for work. The first reason is that I would like to stay in the EU for at least 2 years. I got the offer for the full-time position after the 1-year internship period. My working permit in Hungary was sponsored; even though the salary for freshmen was normal, I found that gaining working experience for the first 2 years after graduation was my priority. The second one is that my company is a multinational enterprise, in which the working environment and benefits for foreigners are generally good, and its reputation among the financial sector is highly evaluated for the future career path.” - H, a Vietnamese student graduating from university in Budapest.

“I am very in love with Hungary very much, and at that time when I came to Hungary, I had a good chance for work, so I have been working for 35 years in Hungary. I am Hungarian now, so I will live here”. —Mr. C, a Vietnamese enterprise in Hungary. However, there are some challenges at the first time or even in the process of working with the third-country workers, like working permits or language barriers”.

“The working permit/visa application process was time-consuming for me in the beginning. Although the official language used for my company is English, I found it sometimes quite difficult for me regarding the communication, as my English level is not that excellent, like that of native

speakers. Rarely do I feel cultural barriers with my colleagues, as we don't have personal conversations. However, the social distribution benefits, like TAJ or health insurance, are good. I think it is mandatory for all firms in Hungary to provide the basic social distribution for employees. Honestly, apart from the TAJ card, I am not awarded other benefits. I think my company did offer extra health insurance with Medicovert White Care.” -H, a Vietnamese student graduating from university in Budapest.

(ii) Vietnamese migrant workers in other EU countries:

The European market has increasingly been recognized as a critical sector with significant demand for foreign labor, including workers from Vietnam. European Union nations require workforce supplementation due to an aging demographic, particularly in mechanics, shipbuilding, automotive, healthcare, hospitality, and agriculture sectors. Germany, Greece, Finland, Romania, Hungary, and Poland are the six countries that require significant labor from Vietnam, with an annual demand of approximately 50,000 workers. Furthermore, emerging markets in Europe, including Slovakia and Serbia, require Vietnamese labor. Currently, approximately 2,600 Vietnamese workers are employed in Romania, primarily in mechanics, construction, carpentry, industrial sewing, and food processing. The basic salary for workers varies between 750 and 1,000 USD per month, not including overtime compensation. Potential markets with favorable income levels include Poland, offering 700 - 1,000 EU per month with a renewable 2-year contract; Hungary, providing 1,300 - 3,000 EU with numerous overtime opportunities; and Lithuania, which presents an income range of 1,200 - 2,500 EU. Vietnam intends to dispatch skilled workers to European nations, leveraging its positive relations with European countries.

(iii) Vietnamese workers in Asia

The Asia-Pacific region, commonly referred to as East Asia, has experienced significant development over the past four decades. Industrialization disseminated from Japan to South Korea, subsequently to Taiwan, and then to mainland China and various ASEAN nations. The labor flow in East Asia exhibits two distinct characteristics. Countries that succeed in their economic development strategies tend to increase their labor imports. Some countries, including South Korea and Thailand, which have limited experience in labor export, have rapidly shifted to becoming labor-importing nations. The Philippines, Indonesia, and Vietnam are notable for their early and ongoing large-scale labor exports. The report from the Overseas Labor Management Department (Ministry of Labor, Invalids,

and Social Affairs) indicates that in the first half of 2024, a total of 78,640 Vietnamese workers were sent abroad for employment, representing 62.91% of the annual plan for 2024. In the first half of the year, Japan emerged as the leading destination for Vietnamese workers, accommodating 40,596 individuals. This was followed by Taiwan (China) with 27,837 workers, South Korea with 5,582, China with 1,080, Singapore with 609, Romania with 379, and Thailand with 295 workers. The labor flow in East Asia exhibits two distinct characteristics. Countries that succeed in their economic development strategies tend to import more labor. Some countries, including South Korea and Thailand, which have limited experience in labor export, have rapidly shifted to becoming labor-importing nations. The Philippines, Indonesia, and Vietnam are notable for their early initiation and sustained large-scale labor exportation.

Policies and Legislations Related to Labour Migration

a. Migration policy of the Government of Vietnam

Since the COVID-19 pandemic was contained in 2022, the number of laborers who seek employment abroad has increased once more. During the initial 11 months of 2023, a total of 146,156 Vietnamese workers, including 50,561 females, were employed abroad, reaching 121.8% of the planned target for the year. Their primary areas of operation include industry, construction, and services. As of now, in addition to illegal and undocumented migrant workers, Vietnam has approximately 650,000 migrant workers employed under contract overseas. Laborers in South Korea earn the highest wages, approximately 1,600 to 2,000 USD per person per month. In Japan, wages range from 1,200 to 1,500 USD per person per month. In Taiwan (China) and several European countries, wages are around 800 to 1,200 USD per person per month. In the Middle Eastern and Malaysian markets, skilled labor earns between 600 and 1,000 USD per person per month, while unskilled labor earns between 400 and 600 USD per person per month²¹³. Vietnam has enacted various labor policies to enhance the quality of labor resources and safeguard the rights of migrant workers in the present context.

- (i) Promoting Vietnamese contract work aboard

²¹³ Vietnam's policy on protecting citizens working abroad, <https://www.xaydungdang.org.vn/nhan-quyen-va-cuoc-song/chinh-sach-bao-ho-cong-dan-lao-dong-tai-nuoc-ngoai-cua-viet-nam-20587> (10/1/2025).

Vietnam has enacted numerous policies to facilitate the deployment of Vietnamese workers abroad under contracts, coinciding with its international integration and socio-economic development efforts. The Department of Overseas Labor Management, Ministry of Labor, Invalids and Social Affairs reports that Vietnamese workers abroad primarily engage in manufacturing (including mechanical engineering, textiles, leather shoes, and electronics assembly), construction, agriculture, fisheries, and services (such as elderly care, nursing, and domestic assistance). Employers in receiving markets have assessed Vietnamese workers as skilled, diligent, quick learners, eager to acquire new knowledge, and productive with high-quality output. Since the implementation of the Law on Vietnamese Workers Going Abroad on Contract in 2006, about 150 firms have been authorized to provide services for sending workers abroad; now, the country has more than 500 enterprises engaged in this sector. At the moment, Vietnamese laborers are employed in over 40 markets, all of which are high-income countries with favorable working conditions, including the Czech Republic, Poland, and Germany. In traditional markets, such as Taiwan (China), South Korea, and Japan, the yearly influx of labor has been rising. Vietnam's international integration is getting more profound and extensive; the establishment of new-generation free trade agreements (FTAs) has created frameworks to facilitate labor interactions. Workers have enhanced the image and positive values of the nation, culture, and Vietnamese populace to the global community; many, upon their return, continue to engage effectively in the domestic labor market with a sense of responsibility, high competence, qualifications, and skills, contributing to the processes of industrialization and modernization, while generating substantial foreign currency for the country. Workers have enhanced the image and values of Vietnam's country, culture, and populace to the global community; many, upon returning, continue to engage effectively in the domestic labor market with a sense of responsibility, high competence, and skills, contributing to the processes of industrialization and modernization, while generating substantial foreign currency for the nation.

(ii) Promote the repatriation of Vietnamese students studying abroad

Vietnam is prioritizing the development of human resources for study and employment opportunities abroad within the framework of globalization and extensive development. In addition to labor migration, there is an increasing prevalence of studying

abroad, marriage migration involving foreign partners, and migration for the purpose of adopting Vietnamese children internationally²¹⁴. The Vietnamese Government promotes the pursuit of education abroad for its citizens by facilitating access to scholarships and opportunities provided by foreign governments. Prime Minister Nguyễn Xuân Phúc emphasized the Vietnamese government's policy aimed at encouraging and facilitating the return of Vietnamese students studying abroad after graduation, with the intention of contributing to the nation's construction and development²¹⁵.

Furthermore, Vietnam's citizen protection policy has been strengthened and received increased focus. Vietnam has formed labor management boards in six countries and territories with significant Vietnamese worker populations: Japan, South Korea, Taiwan (China), Malaysia, the United Arab Emirates (UAE), and Saudi Arabia. In other countries, diplomatic missions will represent the State in managing and facilitating the resolution of issues concerning Vietnamese workers. The agencies have successfully executed their roles and responsibilities regarding Vietnamese citizens abroad, particularly in instances of rescue and protection from the host country. In 2011 and 2014, workers were evacuated from Libya. In 2021, nearly 600 rescue flights were organized to repatriate over 130,000 citizens and workers from more than 60 countries and territories back to Vietnam due to the COVID-19 pandemic. In 2022, over 1,000 Vietnamese workers in Cambodia were rescued. Recently, nearly 800 Vietnamese citizens, including many migrant workers, were repatriated from Myanmar due to a perilous situation endangering their lives and safety. To address challenges in citizen protection, policies should be implemented in the following manner: A close connection must exist between Vietnamese law, international law, and the laws of the host country. Receiving workers through bilateral and multilateral labor export agreements enhances the legal framework for citizen protection. The protection of foreign citizens is codified in the Vietnamese Nationality Law²¹⁶. Secondly, the content of citizen protection encompasses: (1) Supporting employment, improving living conditions, and safeguarding migrant workers from discrimination and mistreatment; (2)

²¹⁴ Social Republic of Vietnam, Ministry of Labour- Invalids and social Affairs, <https://molisa.gov.vn/baiviet/242362> (10/1/2025).

²¹⁵ The Communist Party of Vietnam, Encourage and create favorable conditions for Vietnamese students abroad to start their own businesses, <https://dangcongsan.vn/thoi-su/khuyen-khich-va-tao-moi-dieu-kien-thuan-loi-cho-du-hoc-sinh-viet-nam-khoi-nghiep-481982.html> (10/1/2025).

²¹⁶ Article 6, Law on Vietnamese Nationality 2008, amended and supplemented in 2014.

Establishing and safeguarding the rights of migrant workers across civil, political, economic, social, and specific group rights (including border workers, seasonal workers, and maritime workers).

Vietnam faces challenges in ensuring safe migration, preventing illegal migration, and addressing human trafficking across borders. Vietnam, as a leading nation in the implementation of the United Nations Global Compact for Safe, Orderly and Regular Migration (GCM), showcases its commitment through the Vietnam Migration Profile 2023. This document emphasizes the importance of practical solutions for promoting safe migration and highlights the necessity of developing evidence-based policies as the primary objective of the agreement. Furthermore, the phenomenon of brain drain and the emerging challenges associated with artificial intelligence increasingly supplanting low-skilled labor are significant concerns to consider. Approximately 70-80% of self-funded students remain abroad after completing their studies, opting to work for improved income and benefits instead of returning to their home country. The government must consider linked solutions to address this situation, such as transforming challenges into opportunities by providing "mobile brain" initiatives for scholarship and self-funded international students. Individuals are not required to return to their country to contribute; they can engage in various binding or voluntary capacities.

b. Legislation on Protection Vietnamese migration

• *Protect migrant workers from International Conventions*

There are several of ILO Migrant specific instruments: Migration for Employment Convention (Revised), 1949 (No. 97); Migration for Employment Recommendation (Revised), 1949 (No. 86); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migrant Workers Recommendation, 1975 (No. 151). In 1999, the ILO Committee of Experts on the Application of Conventions and Recommendation conducted a General Survey on the application of these four instruments on migrant workers, which it submitted to the 87th International Labor Conference. The Committee also issues observations and direct requests to States parties regarding their application of Conventions Nos. 97 and 143, available from the ILO's International System on International Labor Standards – NORMLEX. In addition to international labor standards, migrant workers and members of their families are protected by the nine UN core international human rights

instruments, which apply to all persons irrespective of their nationality. One of these core instruments is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted by the UN General Assembly in 1990 and entered into force in 2003. This Convention complements the four ILO instruments on migrant workers but is broader in scope going beyond labour issues. It also set up the Committee on Migrant Workers which is responsible for monitoring the Convention's application by States Parties. The ILO participates, in a consultative capacity, in the meetings of this Committee.

Vietnam has ratified 25 Conventions on Labor Rights of the International Labor Organization (ILO) as of January 1, 2021, including 7 and 8 fundamental Conventions. Three ILO Conventions have been accepted by Vietnam in 2019: Convention 88 on Employment Service Organization; Convention 159 on Re-Adapting Jobs for People with Disabilities; and Convention 98 on Collective Negotiation Rights. Of these three conventions, the 98 Convention is the central one, serving as the ILO's pivot in terms of fundamental labor rights and principles. It has grown to be a significant part of free trade agreements, helping to shape the New System. Examples of these agreements include the Comprehensive and Progressive Partnership in the Pacific (CPTPP) and the Free Trade Area of Vietnam and the European Union (EVFTA). It is also a major component of most business responsibility policies. Conventions No. 97 and 143 are the two most significant conventions that deal with the protection of migrant workers, out of the many papers that are available. Because they address concerns that come up at every stage of the labor migration process- from the moment the worker departs until they return and continue to work in the receiving country- the ILO is a foundational body for labor migration issues. The Convention on the Rights of Migrant Workers and Members of Their Families (ICMRW), which is regarded as the most comprehensive and direct international convention on migrant workers' rights, is a further choice. Vietnam have not joined three mains Conventions about the migrant labor yet. Vietnam considers the GCM²¹⁷ as an important step forward in international cooperation on migration. Vietnam has taken specific actions: it has promulgated a law on Vietnamese workers working abroad under

²¹⁷ The Global Compact for Safe, Orderly and Regular Migration

contracts, and the Prime Minister has promulgated a plan to implement the GCM from 2020 to 2030, put into use the National Data Centre on population and consular protection activities for migrants, and effectively implement projects supporting the sustainable reintegration of returning migrant women and their families (T. A. Nguyen, n.d.).

- *Protect migrant workers from Viet Nam Labor Law.*

Employees working abroad under labor contracts: Protecting people working overseas under contract is not just a responsibility of a particular country, business, or individual, but also a constructive action on the part of the international community. In order to further promote the codification of regulations protecting Vietnamese workers working abroad under contracts dated November 13, 2020, the 14th National Assembly passed the Law on Vietnamese Workers working abroad that effecting from 1st January, 2022. There are the maximum commissions under guest worker broker agreement was promulgated by Ministry of Labor²¹⁸ which containing specific professions, sectors, and jobs are specified work aboard. In addition, the Government also issued Decree No. 28/2020/ND-CP stipulating penalties for administrative violations in the fields of labor, social insurance, and sending Vietnamese workers to work abroad replacing Decree No. 95/2013/ND-CP. Thus, it is clear that both international and Vietnamese legal provisions on workers working abroad have been integrated into a system, with revisions and supplements to improve the rights of Vietnamese workers working overseas.

Under Vietnam Labor Code: To protect the legal rights and interests of Vietnamese contract workers overseas, the law has to acknowledge both general rights and unique advantages provided by the state to Vietnamese individuals working abroad. Legalizing the rights and interests of workers working abroad indicates Vietnamese law's compliance with international law when it comes to migrant worker protection. This measure can be regarded a foundation for the development of several other protective measures.

The 2020 Law on Vietnamese Workers Working Abroad Under Contracts in Article 6 recognizes the rights of workers in this category. According to Article 6 of Vietnam Labor Code, the document workers aboard are one of following forms: (1) Contract to send workers to work aboard foreign countries with bussiness, organizations that providing

²¹⁸ Circular No. [21/2021/TT-BLDTBXH](#)

services to send workers aboard; (2) contract to send workers to work aboard with winning enterprise, organization or individual investing abroad that sends workers to work aboard; (3) Contract to send workers to work aboard as internship to improve skills with the enterprise; (4) Personal contract.

Regulating conditions for Vietnamese workers working abroad and limiting the "demand" rights of relevant entities regarding Vietnamese workers working abroad under contracts: This is a needed measure since sending employees to work abroad is a conditional sector of operation. The requirements imposed on workers should not be seen as a limitation of their rights, but rather as a minimal guarantee that allows workers to defend themselves first when working overseas, before intervening and protecting other subjects. The general rights and obligations of workers working aboard in article 44, law on Vietnamese workers working aboard under contract. Articles 46, 47, 48, 49, and regulate the specific rights of workers working aboard. Hence of newly promulgated law, the documents guiding the guild of the 2020 Law on Vietnamese workers working aboard have not been issued and updated. There are draft decrees detailing the implementation of the Law on Vietnamese workers working aboard under agreement. Meanwhile the number of undocumented workers aboard large. Vietnamese law has codified the convention regulations, but has not yet officially joined the main conventions on migrant workers such as conventions 97, 143 and ICMRW. Regulations on management and protection responsibilities of relevant entities for Vietnamese workers working abroad: Organizations and people who send workers abroad to work always have the most extensive understanding about the employer, the workers' living and working conditions. As a result, corporations, non-business groups, and people sending workers to work overseas are regarded as the ones best capable of actively and rapidly protecting workers, as opposed to governmental authorities. Articles 70 and 71 of the Law on Vietnamese Workers working abroad under contract clearly stipulate the responsibilities of agencies and organizations in protecting the legitimate rights and interests of workers.

5.6.2. Management of Labour Migration Management in Vietnam

The trend of globalization and international integration has led to a growing diversity of migrant labor in Vietnam and Southeast Asian countries (ASEAN). The number of intra-ASEAN migrants is not comprehensively captured in official statistics; however,

available data indicates a significant increase in migration to other ASEAN countries, exceeding fivefold since 1990 (Xuan Anh, 2020). Migrant workers currently experience considerably higher incomes by working abroad, with the remittances they send home enhancing their families' living conditions and contributing to poverty alleviation. Nevertheless, the regulations pertaining to migrant labor within the ASEAN region remain insufficient, encompassing aspects such as entry and exit, residence, work permit issuance, labor conditions and usage, employment, education, healthcare, trade unions, social insurance, and public order. Management methods differ based on the functions, tasks, powers, and responsibilities of each agency, unit, and organization, resulting in inconsistencies and overlaps in the management of migrant labor. Recruitment processes are characterized by significant time and cost expenditures. Regulations concerning quotas for foreign workers and stringent employment policies have historically constrained employment opportunities and adversely affected worker welfare. Consequently, numerous potential migrant workers, typically among the poorest and most vulnerable populations, are unable to exit the country. Others resort to unofficial channels, which frequently pose significant risks, in order to evade the substantial expenses associated with formal, secure migration pathways.

Research by (hàng, 2023) indicates that the management of migrant labor exhibits several shortcomings and limitations, including a lack of understanding or non-compliance with legal frameworks, the creation of employment and income pressures for local workers, an increased burden on budget balance, and cultural conflicts. Vietnam has established a system of agencies, departments, and sectors at both central and local levels to oversee the management of migrant labor. This encompasses central specialized agencies such as the Ministry of Labor, Invalids and Social Affairs, and the Ministry of Justice, as well as local entities including the Department of Labor, Invalids and Social Affairs, and the Department of Justice, alongside administrative management bodies like the People's Committees at various levels. In Vietnam, as the receiving state, MOLISA is tasked with providing directives for the execution and enforcement of law provisions concerning employment, recruiting, and oversight of foreign labor in the country. The MOLISA organizes seminars to enhance Vietnamese laborers' abilities, promotes workplace safety, and collaborates with other nations on migrant workers via MOUs. The second organization is the MOFA Affairs,

which executes two tasks pertaining to migrant workers. Primarily, it is accountable for safeguarding. Research on remittance networks for Vietnamese migrant workers is rather scarce.

Recommendations for enhancing the migration management system include refining the legal framework, establishing regulations for addressing administrative violations, augmenting regulations concerning the management of migrant workers as outlined in the 2019 Labor Code, and engaging in international conventions on migrant labor..

(i) Improving the Law

Advancing Legal Frameworks Foreign employment in Vietnam is governed by a specific chapter of the 2019 Labor Code, along with relevant decrees and circulars. Numerous aspects requiring modification have emerged that the subordinate legal documents have not adequately addressed. It is essential to explicitly delineate the subjects of management and the specific entities to be managed. Identify management actions such as reviewing cases exempt from work permits, issuing work permits for designated cases, regulating the relationship between foreign employers and employees, and enforcing sanctions for particular violations.

(ii) Enhance the regulations governing the management of administrative violations related to migrant labor activities.

The Ministry of Public Security has been tasked with implementing expulsion penalties for foreign workers; however, a specific guiding document has yet to be established. If a foreign worker is granted a work permit during the deportation waiting period, they are permitted to remain in Vietnam for employment purposes. Consequently, the expulsion penalty has yet to exhibit a demonstrable deterrent effect in practice. It is essential to augment existing penalties particularly with additional measures for addressing administrative violations. Foreign employers should face increased fines for violations concerning the improper employment of foreign workers.

(iii) Regulations supplementing the policy for managing migrant workers in Vietnam as outlined in the 2019 Labor Code.

The policy governing migrant labor significantly influences the national economy and the labor market of individual countries. It is essential to enhance the policy regarding

the management of migrant labor for foreign workers in Vietnam, particularly within the framework of the 2019 Labor Code. Vietnam has ratified 25 ILO Conventions; however, none pertain to migrant labor. Vietnam requires an evaluation of the compatibility and harmonization of national and international laws concerning migrant labor. Ratify international conventions on migrant labor to enhance the protection of migrant workers' rights.

(iv) Establishing and Managing a migration data system

The Vietnam Migration Profile acts as a significant policy instrument, enhancing Vietnam's legal frameworks regarding international migration, including labor migration, overseas education, cross-border marriage, international adoption, and the fight against human trafficking. Its objective is to establish an international migration management system that fosters effective coordination and information exchange among pertinent ministries and agencies. The Vietnam Migration Profile 2023 was compiled by the Consular Department of the Ministry of Foreign Affairs in collaboration with other entities. The Vietnam Migration Profile serves as a crucial policy instrument that enhances Vietnam's legal framework regarding international migration, encompassing labor migration, overseas education, cross-border marriage, international adoption, and the fight against human trafficking, with the objective of establishing an international migration management system. The majority of statistics about Vietnamese labor movement overseas is being gathered by the Consular Department. Vietnam may establish a platform to automate the migration procedure and facilitate the workforce supply to recruiting nations.

5.6.3. The role of origin country Vietnam as a sending country

(i) Ministry of Labour

Since the Covid epidemic, Hungary's labour market has been highly active. There are an increasing number of foreign labor employers, due not only to a shortage of domestic workers, but also to the development of the worldwide labor market. Hungary is becoming a more attractive market for foreign workers, with higher salary, better housing, and food support. Many exported workers, including Vietnamese, choose to go to Hungary instead of Korea, Taiwan, and Japan (Handfield, Robert B; n.d.). This marks a new direction for Vietnam's labor market growth in Europe. In a speech at the opening event of the Hungarian Chamber of Commerce in March, Prime Minister Viktor Orbán announced that Hungary

will need 500,000 new workers in the next 1-2 years to meet growing labor demand (Hungary, 2023). According to expert that Hungary will require an additional 200,000-300,000 migrant workers to fulfill the prime minister's expectations. In accordance to study (Szabo et al., n.d.), the battery plant for CATL and Eve Power in Debrecen will require a high number of migrant workers to satisfy labor demands.

In previous years, Vietnam has frequently sent labor exports to Japan, China, and Taiwan, but recently Vietnam has concentrated on figuring out opportunities and strengthening the labor market in Europe, such as Hungary, Poland, Slovakia, and Czechia. Vietnam has just started sending guest workers to Hungary since 2018 and the total number of workers to date is more than 2,700 people. The number of employees reaches 465 people in 2021, 775 in 2022 and 1,148 in the first nine months of 2024 (Castles, 2006). This figure is progressively developing and will increase in the future. Vietnam and Hungary are seriously considering the possibility of establishing an agreement that would authorize Vietnamese labor. This is important because it protects legal rights and interests in the market in compliance with both country's legislation. Vietnamese workers are quite suitable for Hungary's recruitment in many fields. According to (Kooijman-van Dijk & Clancy, 2010), Vietnamese workers are often recruited in a variety of areas in Hungary, including welding and metal processing, construction, manufacturing and processing, lumber, mushroom cultivation, hotels, and restaurants.

Following the Daily News, since January 1, 2023, their basic monthly salary has been not lower than 232,000 HUF (660 USD)(Hadi et al., 2023). Their working hours are 8 hours per day, 5 days per week, and any work performed beyond these hours is subject to overtime pay (as per Hungarian law, workers receive 150% of the basic salary for overtime on regular days and 200% on holidays). They are also entitled to paid holidays and annual leave in accordance with Labour Law of the host country. Compared to the life standard, this salary can be cover for living cost of workers without their family attached. Focus on recruitment process that it could be seen that Hungary is a relatively new market with high income (Glass & Fodor, 2011), good working conditions, and catching the interest of Vietnamese workers. According to surveys from 25 enterprises permitted to supply labor to Hungary since 2018, all Hungarian employers commend Vietnamese workers for their diligence, friendliness, and discipline.

The Ministry of Labor War Invalids and Social Affairs (MOLISA) has severe requirements for enterprises that are permitted to send workers to Hungary, namely that they follow legal restrictions governing their work activities. In Vietnam, the MOLISA is responsible for promulgating labour laws and policies and administering the implementation of the legislation. However, local labour offices and People's Committees at all levels also have some authority over labour issues. Although the Constitution is the 'mother' law, labour relations are mostly covered by labour laws (K.-D. Nguyen et al., 2021). There are also decrees and circulars that help to interpret specific articles of the laws. From the beginning of the recruiting process, they have to select qualified applicants—people who actually aspire to work abroad and possess the skills and language proficiency required to satisfy the receiving party. The Ministry of Labor also requires firms to efficiently arrange management, support, and protection of foreign workers' legal rights and interests in order to address and resolve relevant concerns as soon as possible. In addition, the origin country's responsible for enhancing the dissemination of information about the overseas labor markets, including Hungary, legal regulations governing the activities of sending workers abroad, information and advisory services. Beside should be also providing information about legally regulated channels for working abroad, as well as a list of businesses licensed to provide labor dispatch services, thus enabling laborers to make informed decisions. Vietnam is mentioned also increasing inspection and enforcement to strictly deal with any legal violations to develop a stable market.

(ii) *Enhance Vietnamese labor regulations regarding migrant workers' rights*

a. *Join international treaties on the rights of migrant workers.*

International treaties on the rights of migrant workers that Vietnam should consider joining are Convention No. 97 of the International Labor Organization (ILO) on Migrant Workers of 1949 (Convention No. No. 97), ILO Convention No. 143 on Migrants in Abusive Environments and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (Convention No. 143), United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

Vietnam is a member of the United Nations and a member of the ILO. Both organizations also urge countries to ratify human rights conventions, including all three: Convention No.97, No.143 and the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families (ICRMW). The International Day of Migrant Workers is marked annually by the United Nations to raise awareness among nations of the need of respecting, implementing, and defending the human rights of migrants. The Document of the 13th Party Congress in Vietnam has set out the policies for solving the problems on human right issues. Vietnam keep considering the possibility of joining the ICRMW.

b. Signing bilateral international treaties on the rights of migrant workers.

The ILO not only urges countries to join international treaties on migrant workers but also emphasizes the need for countries to sign bilateral international treaties on migrant workers. In addition, several countries have signed bilateral agreements such as: Philippines (signed a bilateral agreement with Malaysia on standards of labor contracts for Filipino workers working as domestic workers); with Thailand and Australia on combating cross-border human trafficking); Thailand (has signed many bilateral agreements on preventing human trafficking with Cambodia, Laos, and Myanmar. In addition, Thailand also signed memorandum of understanding with Laos and Myanmar on employment cooperation and legal framework for workers migration).

c. Complete legal regulations, especially documents guiding the implementation of the 2020 Law on Vietnamese Workers Working Abroad Contracts

Regulations on minimum conditions for training and educational establishments and centers aimed at Vietnamese workers working abroad, avoiding the situation of "free floating" for businesses to hire teachers themselves, resulting in failure to ensure the quality of teaching or formal training in response to State regulations. In addition, clearly stipulate the authority to inspect "output" tests for workers working abroad. Regulations on the responsibilities of relevant entities for management and regular supervision of female workers working abroad. Along with regulating the protection mechanism for female workers working overseas, the law must also address the Women's Union's role in protecting female workers working abroad which match with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Vietnam adopted on February 17, 1982.

d. Improve the quality of labor resources working abroad

One of the most important for improve quality labor supply is companionship. The state vocational training agencies and organizations must work together to analyze and predict labor market demands to determine training target. Besides, they need to coordinate closely with each other in training and developing vocational and foreign language programs to special requirements market. Studying and providing about legal of labor plays an important role, migrant workers need to know clearly about Vietnam labor law, the law of country where they go aboard for avoid breaking the rules. The workers can easy adopt requirements and information also by documents or books. By this way, those sources of information reach employees quickly and widely.

5.6.4. Trade Union in Vietnam

In Vietnam, the Soviet model was used regarding organization and social structure, leading the country to approximate a "corporatist state" until about 1988-1990 (NORLUND, 1996). Norlund's analysis identified many reasons why trade unions were a significant focal point in the development of neo-socialist nations. In the Vietnamese revolution, the workforce was the main power. The goals of trade unions changed depending on historical circumstances. During the Vietnam War (1964-75), the focus shifted to the ideological role; but after 1976, the role of trade unions was "mobilizing, organizing, educating and training workers" (Ha Nguyen Quang Tran, 2022). Since 1986 (the Doi Moi period), Vietnamese trade unions have had to change their roles and ways of operating to comply with international standards. In fact, it can be said that it has achieved considerable autonomy (Simon Clarke et al., 2007). At the beginning of the Doi Moi impact in 1988, the name of the organization was changed to Vietnam General Confederation of Labour (VGCL), which is the only trade union organization in Vietnam, the Vietnam General Confederation of Labour, which has many branches under direct control at the provincial and district levels. The name change showed that the group represented not just workers in factories but also all workers all over many sectors of the economy, as stipulated by the 2012 Constitution. Accordingly, it stated that unions must be established in all relevant organizations, entities and enterprises. Because the Communist Party of Vietnam wants unions to support its economic policies, it has limited their ability to act independently. Some studies have shown that it is easier to form unions in state owned enterprises (SOEs), because unions in SOEs are less likely to be neglected like some foreign enterprises because they are more closely

compliant with labor consultation laws (Sergio Carrera & Anjum Shabbir, 2024). This is easier for SOEs in a state-run economy, as opposed to a market economy.

(i) *The Role of Vietnam's Trade Unions*

The VGCL has dual roles that play an important positions in Vietnamese society and as part of state structure as state's arms to deliver state's and party's policies (Ngo, 2019).

Representing and protecting the legitimate and legal rights and interests of workers (Article 10, Trade Union Law): Trade unions and union members have many rights protected by law such as negotiating, signing, resolving disputes, organizing and leading strikes, etc. - In addition, VGCL has the right to submit draft laws and ordinances to the National Assembly and the National Assembly Standing Committee (Article 12, Trade Union Law). This is also one of the important roles, helping the voices and wishes of workers to be heard.

Representing the labor collective in signing collective agreements (employment, wages, working hours, social insurance, etc.). Article 76 of Vietnam Labour Code said that “ *The collective labor agreement is signed by the legal representatives of the negotiating parties. In case the collective labor agreement involves many enterprises and is conducted through the Collective Bargaining Council, it is signed by the Chairman of the Collective Bargaining Council and the legal representatives of the negotiating parties*”. The collective agreement is applicable to all employees in the enterprise, including those who will work after the date of signing, as well as to all union members, once it is signed and becomes effective. Compared to some countries, this is a relatively different point of Vietnamese law. According to German law, collective agreements are only valid for labor relations when the employer is a member of the association. However, with only one provision in Article 54 of the Labor Code on collective bargaining and signing of collective agreements. It can be said that the law is too general and lacks feasibility. Issues need to be highlighted more clearly such as who is the subject of negotiation and signing, especially from the employer's side; what are the procedures and order; what is the relationship between industry collective agreements and enterprise collective agreements, etc.

Representing the labor collective in matters related to working conditions (Articles 56, 57); Representation of labor collectives in dispute resolution and strikes (Article 158). In general, the law is consistent with the role and function of the organization. However, the fact that the Labor Code only stipulates that the right to organize and lead strikes is given to

the grassroots trade union executive committee is not really reasonable because of the limitations in the role of this trade union. Reality has shown that from 1995 to now, there have been nearly 3,000 strikes, but none of them were legal, especially all of them were not led by a trade union. In many strikes that occurred, trade union representatives fled, making the situation even more complicated (Opinion of the head of the industrial park management board, Ho Chi Minh City).

(ii) *Strategy of Vietnam Trade Union:*

At present, the priorities and goals of VGCL are as follows:

Disseminate information to workers more widely: local unions frequently give names and locations of reliable enterprises searching for workers, as well as hiring requirements and fees to pay. At the same time, workers are informed about their rights and obligations while working abroad for a short time, as well as the consequences associated with working or staying illegally in other countries.

Foreigners are allowed to join trade unions: The draft Law on Trade Unions (amended), after receiving and revising, has ensured the timely institutionalization of Resolution No. 02-NQ/TW dated June 12, 2021 on "Innovation of organization and operation of Vietnam Trade Unions in the new situation" in accordance with the 2013 Constitution, ensuring the unity and uniformity of the current legal system. The regulation of the right to join and operate trade unions of foreign workers working in Vietnam will contribute to institutionalizing the Party's guidelines on innovation of organization and operation of Vietnam Trade Unions in the new situation; international economic integration in the context of Vietnam's participation in new-generation free trade agreements; meeting the requirements for implementing Vietnam's international commitments on labor and trade unions; ensure the consistency and unity of the current legal system, especially the Labor Code. Article 5 of the current Trade Union Law stipulates that "Vietnamese workers working in agencies, organizations and enterprises" have the right to establish, join and operate trade unions. To suit the practical requirements in Vietnam and meet the requirements of international integration, similar to other countries in the world, the Draft Law is expected to amend and supplement Article 5 of the Trade Union Law in the direction: Foreign workers working in enterprises established and operating in Vietnam, with a grassroots trade union organization, if they have a work permit issued by a competent state

agency and within the term of the labor contract valid for 6 months or more, are allowed to join and operate trade unions but are not allowed to participate in the leadership of trade unions at all levels²¹⁹.

In recent years, trade unions have mostly been formed in the public sector, although there are also local trade unions that have been formed only for formal purposes, rather than promoting and safeguarding workers' rights or interests. In the non-state sector, it's hard for local trade unions to establish themselves and run in businesses, mostly because workers don't want to and make things trickier for them. When Vietnamese trade unions became stuck between the government and businesses, they had to deal with a lot of restrictions. However, as Vietnamese labor unions have become increasingly independent of the state, they have faced more pressure from society, the Party, and the state. Instead of serving primarily as a conduit for information from the Party to the workers, Vietnamese trade unions have evolved into middlemen between workers, the Party, and the management board. When workers join a trade union, they will have more protections for their basic rights. This is especially true for foreign workers in Vietnam and Vietnamese workers working abroad.

5.6.5. The UN ICRMW And The GCM: Opportunity to improve Vietnam Immigration law

The Global Compact for Safe, Orderly and Regular Migration (GCM) and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) are key documents in the field of migration labor. The ICRMW constitutes a binding legal framework for its member parties, whereas the GCM serves as a widely appealing non-binding guideline. The overlap between the GCM and the ICRMW demonstrates that the shift towards an obvious acceptance of soft law as the preferred approach for addressing migrant rights aligns closely with states' historical treatment of these rights. This paper analyzes the potential duplication or symbiosis

²¹⁹ Thuy Vinh, *Ensuring the right to join the Vietnamese Trade Union of foreign workers in Vietnam*, Financial legal information access on 14/2/2025 at https://www.mof.gov.vn/webcenter/portal/tpltc/pages_r/l/chi-tiet-tin-tpltc?dDocName=MOFUCM156560.

between soft law and hard law by examining indicators that reveal the advantages and disadvantages of these two frameworks. Vietnam exports a significant number of migrant workers, the majority of whom reside in Europe and various Asian nations. Ratifying the ICRMW and participating in the GCM process are crucial for safeguarding the rights of Vietnamese migrants. This paper comprises three sections: (i) an introduction to the two documents, (ii) a comparison of the ICRMW and GCM, highlighting their respective benefits and drawbacks, and (iii) a recommendation regarding the document best suited for the Vietnamese framework.

(i) The overlap between hard law and soft law:

The ICRMW and the GCM exhibit similarities regarding their scope, content, and potentially their structure. Both entities focus on safeguarding migration and aim to establish a rights-based framework for international migration. The recognition in both documents of states' sovereign right to define their national migration policy and set criteria for migrant admission highlights the inherent tension in discussions of migrants' rights, balancing the obligation to protect these rights against states' authority to regulate migration (Desmond, 2020). The documents emphasize the legal distinction between refugees and economic migrants (GCM, para. 4; ICRMW Art. 3) as well as the differentiation between regular and irregular migrants (GCM Objectives 7, 8, 9, 10, and 13; ICRMW, Parts III–IV). Although both documents establish a clear distinction between regular and irregular migrants, this has resulted in misunderstandings, misconceptions, and misrepresentations. The argument that the ICRMW would restrict their ability to regulate who is permitted to enter and remain in their territory is one of the many justifications that states have asserted for not ratifying it (Cholewinski et al., 2009). Similar to the ICRMW, other governments assert that they would not support the Global Compact because it may infringe upon their sovereignty and compel them to accept migrants (Hungary's Ministry of Foreign Affairs and Trade, 2018). It is ironic that some states appear to have retracted their support for the GCM, which aims to dispel misinformation about migration, in reaction to national misinformation campaigns that utilized the Compact to mitigate public concerns regarding the loss of border control and perceived “invasions” of migrants. The numerous similarities between the GCM and the ICRMW raise questions regarding the limited discourse surrounding the ICRMW before, during, and after the conclusion of the GCM. The GCM

references the ICRMW and other essential international human rights treaties, which are identified as the foundation of the GCM (GCM para. 2). Because of some overlap in analysing the distinction between regular and irregular migrants, the GCM did not include actions toward the ICRMW. The nearly complete silence surrounding the ICRMW after the conclusion of the GCM is enigmatic. It is obvious that numerous states are more interested in endorsing a soft law document than the ICRMW, a hard law that is legally binding on state parties. The ICRMW is mentioned once in the GCM, cited in a footnote with “the other core international human rights treaties”, and it makes no recommendations at all. This differs from the New York Declaration, which called on states to consider ratifying the ICRMW. This very fact also provides part of the answer as to why the international community ignored the existence of this Convention.

(ii) *The process of implementing ICRMW and GCM in Vietnam*

The majority of migrant workers in Vietnam are engaged in export-related employment. The primary destinations for Vietnam's export workers are Malaysia, Taiwan, and Korea. The aforementioned markets, while promising for Vietnamese workers, are accessible solely to skilled individuals. This presents a significant issue for nations that export labor, such as Vietnam, in the context of global competition. Consequently, numerous illegal migrant workers persist due to inadequate conditions that fail to satisfy the receiving country's criteria, including qualifications and language proficiency. Labour exploitation and mistreatment of migrant workers persist in the Association of Southeast Asian Nations (ASEAN). A significant factor contributing to this issue is that numerous ASEAN countries, including those that export labor, have not ratified international treaties aimed at protecting migrant workers. Vietnam has not ratified the ICRMW. Vietnam lacks the incentive to ratify this convention. Conversely, Vietnam views the GCM as a significant advancement in international migration cooperation. In light of the escalating difficulties, challenges, and risks associated with the COVID-19 pandemic, Vietnam proposed that nations and international organizations formulate a specific plan. Vietnam has enacted a law concerning Vietnamese workers abroad under contracts. Additionally, the Prime Minister has established a plan for the implementation of the Global Compact for Migration (GCM) from 2020 to 2030. This includes the utilization of the National Data Centre for

population and consular protection activities for migrants, as well as the effective execution of projects aimed at supporting the sustainable reintegration of returning migrant women

(iii) Recommendations for Vietnam

Building a legal system to protect the rights of migrant workers is not an easy task for many countries, including Vietnam. With the rapid economic growth exceeding the labor force, creating a labor gap in Vietnam that foreign workers will solve. In addition, the need to improve life and job development opportunities abroad is expanding, and Vietnam's labor force is also lacking due to working in other countries. Vietnam is facing both labor problems, requiring commitments to protect the rights of foreigners working in Vietnam as well as Vietnamese migrant workers abroad. In particular, in 2019 and 2020, of the 4 Conventions that Vietnam has ratified, 3 Conventions are closely related to foreign workers, including: (1) Convention No. 88 on Employment Services (1948); (2) Convention No. 98 on the Right to Organize and Collective Bargaining; (3) Convention No. 105 on the Abolition of Forced Labor¹⁴. Although Vietnam has not yet joined the two Conventions on migrant workers, Convention No. 97 and Convention No. 143, this is the content of Vietnam's accession plan in the Memorandum of Understanding on cooperation to promote international labor in Vietnam for the period 2021-2030 signed by the Government of Vietnam with the ILO.

According to current Vietnamese laws, foreign workers working in Vietnam have basic rights of workers such as ensuring minimum income, safe working conditions, hygiene and social security... The special point is that the salary stated in the labor contract and the salary paid to foreign workers can be in foreign currency, they are given an additional day off for traditional Tet and 1 National Day (according to nationality). However, based on the role and impact of foreign labor resources as well as according to some regulations of related specialized laws, foreign workers have limitations in some rights such as: (i) the right to freedom of employment, only allowed to do management, operation, expert or technical jobs that Vietnamese workers cannot meet; (ii) Not having the right to establish, join and operate in the Vietnam Trade Union as a union member; (iii) Not being allowed to participate in unemployment insurance to ensure employment and income when losing their jobs. From the above limitations, there are some recommendations to improve the effectiveness in protecting the rights of foreign workers working in Vietnam: (i) Recognize the right to

establish representative organizations of foreigners in Vietnam. (ii) Regulate employers to support travel expenses and job referral fees for foreign workers. The amount of money that migrant workers pay for travel expenses and job referral fees can be an obstacle that prevents them from leaving the country of their nationality. (iii) Study and develop an entry and exit management system for groups of workers, Vietnam can classify visas for migrant workers entering the country (such as professional occupations, seasonal employees, unskilled workers, etc.). This helps to better manage the flow of labor while minimizing and preventing human trafficking. (iv) upgrading and building a government website system to support and provide information on basic rights and legal services for migrant workers.

The issues arising from the practical application of the law as well as the management of Vietnamese migrant workers abroad show that in order to protect the rights and solve problems arising related to Vietnamese migrant workers abroad, in addition to perfecting domestic legal regulations, the law enforcement mechanism, as well as the monitoring and inspection mechanism of competent state agencies, it is also necessary to have international cooperation with countries where Vietnamese migrant workers work to effectively protect the rights of all migrant workers and their family members. I think that Vietnam's participation in the convention will solve two quite important issues as the foundation for protecting the rights of Vietnamese workers abroad. First, regarding the definition of migrant workers, Vietnamese law does not have a definition of migrant workers. When Vietnam ratified the International Convention in 1990, this was the first issue that the legal system could take over. An official and comprehensive definition of migrant workers will play an important role in establishing the scope of the law covering certain topics. In other words, an accurate description of Vietnamese workers abroad requires the support of the Vietnamese Government in case their essential legitimate rights and interests are violated as prescribed. The requirements of the laws of the host country where they reside and work will allow Vietnam to respond promptly and appropriately to individuals in need of protection, including Vietnamese people abroad. Therefore, completing the definition of migrant workers is one of the necessary requirements for the concern about “migrant workers”. A full and official definition of migrant workers will make an important contribution to clearly defining the scope of subjects considered Vietnamese migrant workers abroad in need of protection. The second step in joining ICMRW is to specify the

necessary mechanisms to protect the rights of Vietnamese workers abroad, especially specific communication channels in emergency situations. However, there are some challenges for enjoying the 1990 International Convention. First, the conflict of laws between the application of the Convention and the domestic law: Application of the Convention, pursuant to Article 6 of the International Treaty Law. Second, Conflict in analyzing “migrant workers”: Under Vietnam Labour Law, Article 3 of 152/2020/ND-CP does not mention about the nationality of migrant workers, while Article 2, ICRMW regulate that: “The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Therefore, when joining the 1990 International Convention, in case workers have two nationalities of Vietnam and the country which they will come to work, there will be conflicts in the interpretation of the language. If Vietnam joins this Agreement, Vietnam need adjust definition of “migrant worker” in the domestic law and offer an editing to United Nations Secretariat about this dispute.

5.7. Conclusion of chapter IV

The difference between the EU and the Asia-Pacific in both the levels of intent and capability in international economic policy coordination is stark. The EU is the most developed and most cohesive example of regional economic cooperation to date. Integration is a highly relevant concept. Indeed, there is a debate over whether a European State⁴ is in the making (Cooper et al., 1993). ASEAN, on the other hand is a nascent when compared to EU. And it should not be expected to follow the path followed by EU. The European Union and ASEAN are two regional organisations that were formed with the intent to avoid conflict and tension among the nations in the region and grow. EU was set up with the aim of ending the frequent wars within Europe. Extreme form of nationalism had devastated the continent. European integration was seen as the remedy to create a no war zone within European Union is the most integrated regional entity. When the ASEAN was formed where each member had a territorial dispute with at least one of their neighbours yet it kept those issues aside and focused on economic cooperation. Today it provides a successful example of regional integration in Asia. The EU's migrant labor policies mainly focus on reducing wars and conflicts between countries. Meanwhile, ASEAN is aiming for regional economic cooperation. The EU legal frameworks are formal

and put forward by national governments, while ASEAN choose for informal and consensual formats. Therefore, ASEAN can learn from the EU's implementation model.

Differential treatment based on nationality is permissible for States to regulate cross-border human mobility. However, there is a thin line between nationality restrictions based on migration management goals and those related to aspiring migrants' national origin. International labor law, as established and defined by the ILO, is applicable to all workers, regardless of migratory status, and underscores the need of ensuring equality of treatment and non-discrimination between third-country workers and domestic workers. Furthermore, EU articulated in Article 6 and Article 7 of the ICESCR are applicable to all individuals, including migrant workers. These articles delineate the 'minimum core' obligations associated with the right to work, which encompasses the freedom to select and engage in decent employment that aligns with one's physical and mental well-being. Additionally, they establish safeguards for 'steady economic, social, and cultural development,' ensure 'just and favorable conditions of work,' particularly for those workers at risk of exploitation, and prohibit discrimination in employment access. The EU policy under examination does not consistently provide effective access to procedures that facilitate transitions in EU statuses. This inadequacy risks TCNs becoming irregular or undocumented, and it does not support those in irregular status in transitioning to regularity without exiting the EU territory . This is especially true in the case of TCNs who are not perceived or framed as "wanted," "financially useful," or "talented" in the context of the economies and labor markets of the EU and Member States. This opposes the obligation to guarantee decent work for all workers and their families as mandated by international labor and human rights law, and to uphold the human dignity of every individual regardless of migration status.

The GCM agreement has had specific impacts on Vietnam, as previously noted. From an international perspective, the GCM serves as a metaphorical instrument for advocating on behalf of countries that have not ratified the ICRMW. Vietnam's lack of concrete action to ratify the ICRMW is unlikely to change in the foreseeable future, given its positive steps toward the GCM compact. Despite the presence of some redundant duplicate fields, both documents have achieved notable successes. The ICRMW is a treaty that establishes legally binding principles for certain international migrants, whereas the

CMR functions as a soft mechanism within a broader public context, garnering interest from various states that are not parties to the ICRMW. Nevertheless, the GCM is concerned that the child-rights approach in the context of migration is untenable, as I previously stated. The GCM's lack of mention of immigration detention suggests an implicit endorsement of the ongoing practice of detaining children for immigration purposes. The GCM conflicts with the positions articulated by the CMW and the Committee on the Rights of the Child, which advocate for a complete prohibition on the immigration detention of children. Vietnam should also ratify labor conventions, including ILO Convention No. 97 on Migrant Workers, 1949, and ILO Convention No. 143 on Migrants in Abusive Environments and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975. Accession to conventions aimed at protecting the rights of migrant workers is likely to diminish illegal immigration, as it will enhance workers' confidence in their rights and encourage them to pursue authorized pathways for employment.

6. Conclusion

Labor migration has always been, and will continue to be, a topic of discussion and improvement. Migrant laborers exist in both regular and irregular forms. Some argue that the phrase "illegal immigration" should not be used since illegality refers to behaviors and activities that are restricted by law, not humans. Furthermore, I do not disagree with this viewpoint since I think everyone should have their fundamental rights guaranteed by law. Long-term migration and seasonal labor migration are the two forms of legitimate labor migration, which are defined as having valid residence and work permits. The European Union has created and implemented particular legislation for these two categories of migrant labor, although ASEAN has less commonly addressed irregular migration. Migrant workers are classified into two categories: regular and irregular since many nations continue to recruit undocumented migration with relatively minimal standards and lower salaries for workers. Despite the known risks and limitations of working in such environments, workers continue to accept those positions due to the rapid job opportunities and the higher earnings compared to their present living and working conditions. There are other occasions when individuals are compelled to migrate due to disasters or war. According to International Labor Standards, migrant workers' fundamental rights include nondiscrimination or fair treatment, social security rights, healthcare rights, and the freedom to join a union. Some

nations have included these essential rights in their national legislation, whilst others in ASEAN do not recognize irregular migrants.

I have examined the concepts of migration, valid and invalid labor migration, legal documents regarding the protection of migrant workers' rights, and trade union rights in Chapter I. I reference theoretical concepts found in dictionaries, legal documents, and research theories. Migrant workers and their family members possess the right to access fundamental rights as defined by international labor standards. To improve working conditions for workers, both sending and receiving nations must ratify International Labour and Human Rights Conventions. The ability to unionize is a fundamental basic right that helps safeguard workers' rights against infractions. At the international and regional levels, the International Trade Union Confederation (ITUC) and the World Federation of Trade Unions (WFTU) are accountable for the prevention of trade union rights violations for all workers worldwide. Regional integration also provides sending and receiving countries with a legal framework to adhere to, as well as reasonable policy proposals to ensure the security of migrant laborers while they are working.

Employment is one of Europe's most pressing economic challenges, and economists advocate for increased spending on active labor market policies (ALMP), which might contribute to improved short- and long-term employment rates (Olaf van Vliet, 2011). Furthermore, the effect of the crisis on the job market has underlined the value of talents, qualifications, and work experience. Young and unskilled workers suffer the brunt of the issue. ALMP can be instrumental in overcoming the primary obstacles that prevent these target groups from securing employment by providing them with access to work experience and skills. The single market gives people the chance to travel and work around the EU and allows goods, services and money to move around almost as freely as within a single country. When it comes to harmonizing national laws, social security rights are very important, and attempts have been undertaken to alter national labor laws. Current social security rules include Regulation No. 883/2004, Regulation No. 987/2009, the European Code of Social Security (ECSR), the European Social Charter, and the Community Charter of the Fundamental Social Rights of Workers. Regulation 1213/2010 extends Regulation Nos. 883/2004 and 987/2009 to all migrant workers from third countries, providing them with social security entitlements. The European Social Charter also includes social security

entitlements, with the exception of survivor and death payments, family allowances, and unemployment benefits. In my perspective, the EU's social welfare legislation target various kinds and circumstances, resulting in a complete legal framework for workers. For example, old regulations can be created to change old regulations, or to replace standards such as Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

Since the Covid epidemic, the ETUC has prioritized chances that benefit workers above a hasty return to economic development. The last ETUC Congress in Berlin in May 2023 adopted a Manifesto²²⁰ that lays out demands including a ban on public funding for companies. The full and fast implementation of the Equal Pay Directive; ensuring no workers are left behind in the transition to a green and digital economy; increasing trade union membership as a bulwark against the rise of the far right. The ETUC's primary objective is to safeguard employment and defend workers most adversely affected by the epidemic, particularly those in precarious positions, self-employed individuals, and younger worker (Carr, 2024). Building labor migration policies can be developed through six stages including²²¹: Decision to develop labour migration policy is taken; Situational analysis and review of implementation capacity; Participatory approach to develop key priorities, guiding principles, overall vision and mission; Develop policy, action plan and M&E framework in line with international standards; Obtain political validation; Implement, monitor and evaluate. Additional EU policies include taxation, unemployment assistance, employment protection, and minimum wage regulations. It is essential to highlight the privilege of unemployment benefits given to guest workers in the EU, a right that is not available to workers who are residents of ASEAN member nations. The requirements for unemployment do this if: wholly unemployed (not partially or intermittently), unemployment benefit for at least 3 months from the EU country where you were last working - and up to a maximum of

²²⁰ Berlin Manifesto, <https://www.etuc.org/sites/default/files/2023-06/Berlin%20Manifesto.pdf>

²²¹ Practical Guide on Developing Labour Migration Policies, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_832194.pdf

6 months, depending on the institution paying your benefit. and entitled to receive unemployment benefits in the country where you became unemployed.

Hungary Policies on Migration: The current Hungarian migration policy includes three primary characteristics: it supports free movement within the EU and follows to Schengen regulations; enforces a stringent and unaccommodating stance towards third-country nationals of non-Hungarian descent; and explicitly advocates for the immigration of ethnic Hungarians based on close nations. Hungary functions as a transit, source, and destination country of both regular and irregular migration. The new law establishing general criteria for the admission and residency of third-country nationals is an unprecedentedly strict piece of legislation designed to govern the hiring of workers from outside the European Union, not just in Europe but also internationally. Lawmakers have implemented a number of assurances to ensure that workers cannot stay in Hungary after their job contracts expire and cannot bring their families with them. While the Act protects workers' human rights in accordance with European standards, it also imposes harder procedures than in other countries on various issues. In the process of international economic integration, which develops deeply and widely on many levels and in diverse forms, Vietnam's legal and policy system continues to be improved in accordance with the requirements of building a market economy. Especially for migrant workers in Hungary, there have now been changes in procedures to make labor export easier. Vietnamese personnel must properly comprehend the modifications described by the author above. Furthermore, Vietnam's involvement must be on reducing "bottlenecks" in the legal system, which is now completed. Furthermore, increase the effectiveness of legal adjustments to the Law for Vietnamese workers working abroad. It is necessary to pay attention to the close connections in the law, such as: bilateral cooperation agreements on labor between Vietnam and other countries, completing the agreement, Vietnam needs to join a number of multilateral and labor conventions. Within the ILO framework, complete regulations to strengthen the capacity of institutions to protect Vietnamese workers when working abroad, and build a database on migrant workers

Chapter III analyzes ASEAN labor migration policies, including national policies as well as the evaluation of policy effectiveness in the ASEAN market. The rights to join trade unions in member countries as well as the challenges in the ASEAN labor market. Protecting the rights of migrant workers does not seem to have achieved strong consensus, as workers

and their families do not have sufficient basic rights according to ILO standards and human rights standards. Moreover, undocumented workers have no protection in the region. One of the important issues is that member states cannot interfere in the internal affairs or sovereignty of another member state. Member countries rely heavily on the remittances of migrants to boost economic growth, therefore protecting migrant workers is a priority and ensuring the absolute rights of migrant workers is essential. ASEAN truly needs to build a regional systematization, where there are common laws binding on the countries (for example, direct regulations on protecting basic human rights, or a common minimum wage among countries so that migrant workers can be assured of a decent life). Typically, transitioning to a common agreement or bilateral agreements among member countries for recruitment systems will be the main move in the region due to the lack of many laws. Migrant labor in ASEAN is often prioritized for skilled workers rather than low-skilled workers. Except for being exempt from visa requirements in ASEAN countries, ASEAN member workers still need work permits (this is completely different from the EU market). Trade union rights remain weak in member countries, even for regular migrant workers. Established in late 2015 by the Association of Southeast Asian Nations (itself founded in 1967), the AEC has been seen as a way to promote economic, political, social and cultural cooperation across the region. Cooperation among member nations is based on the ASEAN Forum on Migrant Labor (AFML), a forum whereby governments, businesses, and workers may all come together to negotiate. The ASEAN Summit is a biannual meeting held by the members of the Association of Southeast Asian Nations (ASEAN) in relation to economic, political, security, and socio-cultural development of Southeast Asian countries.

In all AMS host countries, the labor market remains dual in nature, with disparities in rights and opportunities between resident and migrant laborers. Despite their major contributions to the region's economic growth, many migrant workers continue to face a shortage of good employment, including low wages and insecure and hard working conditions. Although legal avenues for temporary labor movement including Memorandums of Understanding (MOUs), Bilateral Labor Agreements (BLAs), and recruiting programs, a substantial amount of labor migration transpires via informal routes. The ASEAN Declaration on the Mobility of Social Security Welfare Systems for Migrant Workers and the ASEAN Declaration on the Protection of Migrant Workers and Their Families in Crisis

Situations serve as significant policy frameworks for this matter. The general agreements seek mutual acceptance of their workers but do not address the need for improved regulations to safeguard migrant workers across the area.

With the exception for the ASEAN Consensus, which guarantees the right to organize for migrant workers, ASEAN does not enforce trade union rights through specific regulations and laws. ASEAN does not have any explicit regional provisions or regional conventions that incorporate the protection of labor rights. Furthermore, the ASEAN Consensus fails to implement preventative actions for unlawful migrant labor and safeguard their fundamental rights. ASEAN is dealing with numerous challenges posed by unlawful immigrants, and its member countries are endeavoring to formulate solutions through bilateral agreements. Because ASEAN has no provisions for illegal migrant labor, national policy harmonization is inefficient, forcing member nations to depend on general accords. ASEAN prioritizes the execution of various projects, seminars, and initiatives aimed at safeguarding the rights of migrant workers. Despite regional agreements and rules being classified as soft law, minimum policies and regulations are deemed to be established within the area. Consequently, member nations must depend on bilateral agreements with other member nations. The standardization of national labor regulations is essential for fostering more collaboration within the area.

In ASEAN, there is ASEAN Consensus on the Protection of the Rights of Migrant Workers and Their Families that is the principal protocol intending to protect the ASEAN citizen workers. According to the available information, until this date there are only 58 States which have ratified the Convention, 11 signatories, and 129 no action, and Vietnam has not joined. This low ratification record shows that most governments do not consider the rights of migrants as 'real' human rights that should be guaranteed by international law. Sự không đồng thuận đã phần nào làm cho việc đảm bảo các quyền lợi tối thiểu cho lao động di trú và thành viên của họ càng khó khăn hơn. An important thing to note is that ASEAN nations have no restrictions on the enjoyment of workers' rights by regional and non-regional workers, implying that every worker is equal. As a result, we may deduce that ASEAN collaboration is weakening because, although being regular workers, ASEAN citizen workers do not fully enjoy social rights, trade union rights, and collective bargaining. Regional laborers are in an unlawful position due to a lack of strong and supporting laws in

the area. Unauthorized status is imposed on regional workers due to a lack of effective and flexible laws in the area. ASEAN discriminates against migrant workers, even if they are ASEAN members, unlike the EU. Conversely, the regulations inside the EU are more strict, and member states represent more integration, resulting in a reduced likelihood of labor rights violations for migrant workers in the EU. My hypothesis suggests that the safeguarding of migrant workers' rights will be suitably ensured when EU and ASEAN legislation conforms to international norms.

Chapter IV presents a comparison between the European Union and the Association of Southeast Asian Nations. The EU limits the labor market participation of workers from other countries, while ASEAN welcomes EU nationals and others but imposes restrictions on freedom of movement. The management of migration is essential to the continued existence of the Schengen region and poses a problem for the European Union as a normative authority. The EU has been notably affected by irregular migration due to the existence of a system for legalizing irregular migrant laborers, whereas ASEAN lacks such a system. ASEAN follows the principle of non-interference and strongly thinks that sovereignty must be fiercely defended. On the other hand, the EU sees the transfer of sovereignty to the global level and the unity of its member states as two of its most important ideas. After the pandemic covid-19, both EU and ASEAN wants to make it easier for foreign workers to obtain combined work and extend work's permit. The single Permit significantly reduces the waiting time for a decision from the current four months. When comparing labor market regulations of the two regions, it is clear that the ASEAN labor market does not depend on laws but solely on the social dialogue of AFML. This is truly too flexible and lacks rigor, especially in ensuring laws that protect workers and in controlling the management of undocumented migrants. ASEAN only focuses on high-skilled workers, while the EU offers benefits for the unemployed or facilitates job opportunities for students after graduation by granting residency permits. Trade unions in ASEAN often use a soft approach (regular and honest social dialogue) and rely on bilateral agreements, while the EU has a regional system and legal framework. Regarding the issue of protecting the fundamental rights of migrant workers, the EU is making significant efforts to protect the basic rights of illegal workers in social security and healthcare systems. However, ASEAN has not taken any steps in this regard, as it does not find guarantees for the fundamental

rights of illegal workers. ASEAN concentrates only on highly qualified workers, while the EU provides subsidies to the jobless or improves employment options for students after graduation by offering prolonged residence permits. Trade unions in ASEAN often use a conciliatory approach via consistent and transparent social engagement and depend on bilateral agreements, while the EU operates within a regional structure and legal framework. The EU is making substantial efforts to safeguard the fundamental rights of migrant workers, particularly those who are undocumented, inside social security and healthcare systems. Nevertheless, ASEAN has not initiated any actions in this matter, since it does not see assurances for the basic rights of undocumented workers.

Chapter IV also addresses the issue of migrant workers in Vietnam, the management methods, as well as the issues concerning the labor force coming to and going from Vietnam. Although there is a significant amount of international migration, most migrants are still moving within the country of Vietnam. Vietnam has a rapidly increasing number of incoming migrants, which is why the country has expanded and paid attention to the rights of foreign workers, such as the right to join trade unions. According to the revised Immigration Law 2019, Vietnam provides two business visa types for foreigners, namely DN1 and DN2. Visa DN1 is a business visa for Vietnam designed for foreign nationals entering Vietnam to work in an enterprise or organization with legal status. Visa DN2 is issued to foreigners who enter Vietnam to promote services, establish companies, or do other business activities under international agreements with Vietnam's participation. To work in Vietnam, a foreigner needs a business visa, work permit, and temporary residence card. A Business Visa Category DN allows a foreigner to work for a Vietnamese entity for up to 12 months. After receiving a Temporary Residence Card (TRC) from the Ministry of Public Security which can be valid for up to 3 years, a foreigner is not required to renew their visa, and a TRC acts as an official ID and a multiple-entry visa when traveling outside Vietnam. Chapter IV also addresses the issue of migrant workers in Vietnam, the management methods, as well as the issues concerning the labor force coming to and going from Vietnam. Although there is a significant amount of international migration, most migrants are still moving within the country of Vietnam. Vietnam has a rapidly increasing number of incoming migrants, which is why the country has expanded and paid attention to the rights of foreign workers, such as the right to join trade unions. Vietnam is also a country that

focuses on investing in education and skilled labor, offering incentives for students returning home after studying abroad, as well as many structured training programs for skilled workers before sending them to other countries.

Reality shows that Vietnamese migrant workers play an important role in the economy financial resources of the country. In order to manage Vietnamese migrant workers abroad. For Vietnam, the optimal solution to this problem is to join multilateral international conventions related to the protection of the rights of migrant workers, of which the 1990 International Convention is a fully governing convention and comprehensive: (i) Completing the definition of migrant workers: A full and official definition of migrant workers will make an important contribution to clearly defining the scope of subjects considered as Vietnamese migrant workers abroad that need to be covered. Therefore, Vietnam has a plan of ensure and response to the object that needs protection because the Vietnamese are abroad. (ii) The issue of concretizing necessary mechanisms to protect the rights of Vietnamese workers abroad, especially specific communication channels in emergency situations. The process of handling the case of 39 illegal Vietnamese workers in the UK as well as many other cases has shown the need to establish an international coordination mechanism to intervene quickly when problems arise. issues related to migrant workers occur in practice. The ICJ will be an International Court for solving conflict, under Article 92 : “Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court”.

7. Result of research

After comparing the EU and ASEAN, I found that the ASEAN region still has limitations in protecting the rights of migrant workers. With the analysis and experience of the EU, ASEAN can consider policies for low-skilled workers instead of focusing only on high-skilled workers. Due to the combination of the proactive integration of European countries and the attempts to safeguard the rights of migrant workers, EU and non-EU workers have almost identical opportunities and benefits. I propose that non-European

workers should be granted the same rights as European workers, with the exception of special rights such as the right to unrestricted movement with the same identity card or active labor market policies for youth. The ASEAN Consensus on the Protection of the Rights of Migrant Workers and Their Families is the primary protocol for safeguarding ASEAN people. Unfortunately, the consensus cannot tie the members together. ASEAN countries should establish a legal framework to ensure the basic rights of migrant workers, especially in protecting the basic rights of illegal workers. Vietnam needs to focus on two branches: improving the legal framework at the regional level by showing its move to join the ICMRW convention; and improving the Trade Union Law in allowing foreign workers the right to participate as well as the basic rights to trade union activities.

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