

# NTS ISSUES BRIEF

**Managing cross-border movements of people in Southeast Asia: Promoting capacity and response for irregular migration in Southeast Asia**

**Abstract:** This NTS Issues Brief outlines themes highlighted at the roundtable workshop on Managing Cross-Border Movements of People in Southeast Asia: Promoting Capacity and Response for Irregular Migration held in November 2012. The limitations of state-centric, law enforcement-oriented approaches were a key area of concern, and alternative approaches were explored. Other prominent issues identified were climate change-induced migration and the need for stronger regional frameworks.

## Introduction

Globalisation, coupled with exponential growth in communication and transportation technologies, has contributed to an acceleration of migratory movements. The total number of international migrants as of 2010 is estimated to be 214 million or 3.1 per cent of the world's population. This is projected to increase to 405 million by 2050. While most migration takes place within official legal and policy frameworks, between 10–15 per cent of all international migration is believed to be irregular (or undocumented), that is, they occur outside the regulatory structures of countries of origin, transit or destination.

Irregular migration covers a broad range of situations. A migrant may be in an irregular situation because his or her visa or residence permit has expired, or because the employer has arbitrarily withdrawn an authorisation to work that is tied to immigration status. The term is also used for situations where migrants are deceived by recruiting agents, smugglers or traffickers into believing that they are entering a country in a regular manner. Asylum seekers denied refugee status may also end up staying in a country irregularly.

There is general consensus that irregular migration needs to be carefully managed as it could threaten the security of states as well as migrants. When destination countries tolerate high levels of irregular migration, they undermine their own legal immigration systems. Also, irregular migration, if unchecked, could lead to public perception that the government has no control over who is admitted into the country, creating resentment not just against irregular migration but also against regular migration. Migrants themselves are also put at risk: since irregular workers are unlikely to complain to the authorities, unscrupulous employers may violate labour laws with relative impunity.

Such problems have led to irregular migration being increasingly presented as a threat to peace, harmony and economic progress on the national and international fronts. Recognising this, the Centre

for Non-Traditional Security (NTS) Studies at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, organised a closed-door roundtable discussion on Managing Cross-border Movements of People: Promoting Capacity and Response for Irregular Migration. Held on 19–20 November 2012, the workshop brought together researchers, policymakers and representatives of international and regional organisations as well as civil society from across the Asia-Pacific region for wide-ranging discussions founded on research as well as on-the-ground experience. The following are the major themes that emerged over the course of the meeting.

- ***Responses to migration should move from a state-centric approach emphasising law enforcement to a framework based on human security that upholds the principles of development and human rights.***

Migration, when carefully managed, brings important benefits to countries. It is a powerful force for economic growth in destination countries, helping them to overcome human resource shortfalls. Origin countries benefit from the inflow of remittances from their citizens overseas. As such, responses that rely primarily on law enforcement and criminalisation of irregular migrants are no longer suitable. What are needed are solutions that leverage on the benefits of migration for countries of origin and destination (a development-friendly approach) while also upholding the human rights of migrants, both regular and irregular (a rights-based approach).

The development-friendly approach sees migration as a phenomenon whose positive impacts in development terms can be substantial, provided that appropriate policies are in place. Although the specific conditions under which migration has positive or negative effects on development remain a matter of dispute, there is broad agreement and evidence that migration does on balance have a positive impact on development. For example, there is growing evidence that migration, and particularly low-skilled migration, can help reduce

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poverty. Thus, it could be argued that insofar as migration policies help determine migration flows, these policies also affect development.

Development-friendly approaches to managing migration include measures that enable faster, cheaper and safer remittance transfers through cooperation between banks of both origin and destination countries. Those who have migrated could also be encouraged to invest in the home country. This could be done through extending financial and technical assistance to diaspora organisations and businesses. The growing demand for highly skilled migrants by destination countries may lead to a brain drain from countries of origin. This could be mitigated through, among others, ethical codes of conduct to limit active recruitment, joint migration management through bilateral agreements between origin and destination countries, and institutional partnerships in the area of higher education.

The rights-based approach to migration takes on the issue of the tension between the sovereign rights of states and the human rights of migrants, irrespective of whether they are regular or irregular. States as sovereign authorities have the right to control their borders. This includes the right to determine who may reside within their borders, under what conditions they may reside and what rights they may enjoy. Within this context, those without citizenship or other legal residence status often find their basic human rights – freedom of movement, association, speech, etc. – not recognised by states.

The rights-based approach argues that immigration policy ought to respect the human rights of migrants. The portable and transcendent nature of these rights implies that when migrants cross borders, destination states are obliged to protect their rights. The rights-based approach thus suggests the need to shift mindsets from a strictly state-centric approach, to one that is migrant-centric and rights-based.

- ***Greater priority must be given to climate change-induced migration, particularly since migration could itself be a key adaptive response to climate change.***

The impact of climate change on population distribution and mobility is attracting growing interest, as well as heated debate. According to the International Organization for Migration (IOM), environmental or climate change-induced migrants are ‘persons who, for compelling reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad’.

The Intergovernmental Panel on Climate Change (IPCC) noted as far back as 1990 that the greatest single impact of climate change could be on human migration. There are no reliable estimates of climate change-induced migration but 200 million environmental migrants moving either within their countries or across borders, on a permanent or temporary basis by 2050, remains the most widely cited estimate.

Despite such dramatic projections, international capacity for, and interest in, dealing with the problem continues to be limited; and there is a lack of structural capacity in the international system to support climate change-induced migration. Such type of migration is not recognised as an issue in any binding international treaty, nor is there an international body charged with providing for those who migrate due to climate change-related factors or, for that matter, counting them. This is because ‘climate refugee’ remains a problematic and controversial notion – problematic because it has no legal standing under existing international refugee and asylum law, and controversial because there is little agreement as to what to do about the problems it presents.

The need to conceptualise climate change as an additional factor among an array of existing factors driving migration (wars, internal conflicts and poverty for example) was highlighted; as was the observation that migration can be a key adaptive response to, and a principal method for coping with, climate change. It was argued that migration can help reduce risks to livelihoods, contribute to income diversification and enhance the overall capacity of households and communities to cope with the adverse effects of environmental and climate change. Recognising these would be important, as they imply the need for policies that integrate migration into national development frameworks, urban planning and disaster risk reduction; and also a need to boost assistance for populations of vulnerable countries.

New Zealand’s policy on migration from the Pacific island states warrant attention. The Pacific region is without a doubt one of the world’s most vulnerable regions when it comes to risk of disaster due to climate change. While all Pacific island states are expected to lose land, states like Tuvalu and Kiribati, which are made up entirely of atolls, face possible extinction. Some components of New Zealand’s immigration policy could be leveraged to assist with the climate change adaptation needs of its neighbouring Pacific countries. For example, New Zealand has a yearly allocation for citizens of Kiribati, Tuvalu and Tonga (including their partners and dependent children) to settle in the country under the Pacific Access Category. It also offers them temporary work visas through the Recognised Seasonal Employer (RSE) Work Category. Furthermore, New Zealand’s refugee

and asylum policies are increasingly being adapted to cater to those migrating owing to climate change-induced environmental damage.

- ***The various regional instruments have been largely ineffective, suggesting the urgent need to review them and address their shortcomings.***

Southeast Asia has a number of instruments to address irregular migration. The key ones are the 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children and the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which calls for origin and destination states to cooperate to resolve cases of migrant workers who become undocumented and to initiate the regularisation of such workers.

Also noteworthy is the 2002 Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process). The aims of the Bali Process are broad. It promotes improved cooperation among regional law enforcement agencies to deter and combat people smuggling and trafficking networks. States are also encouraged to cooperate on border and visa systems to detect and prevent illegal movements. The Bali Process also focuses on the need to provide appropriate protection and assistance to victims of trafficking, particularly women and children. It suggests that it is important to tackle the root causes of illegal migration, and that part of the solution could be to increase opportunities for legal migration between states. The Bali Process also advocates assisting countries to adopt best practices in asylum management in accordance with the principles of the 1951 Convention Relating to the Status of Refugees.

The subregional Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) – made up of countries of the Greater Mekong Subregion (GMS), namely, Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam – is another major mechanism. It typically implements its plans through partnerships between relevant government departments and non-governmental entities, whether UN agencies or non-governmental organisations (NGOs). A wide range of multisectoral partners also contribute to the COMMIT process, including intergovernmental organisations, donor organisations and academia.

While there are many regional instruments, they have thus far not been very effective. Their operationalisation has proceeded at a slow pace, with observers pointing out that states often fail to live up to their obligations. An important constraint on the ability of these instruments to tackle the various forms of irregular migration has been the fact that they are not legally binding. New migration trends such as mixed migration flows – a situation where refugees and other migrants move

alongside each other, making use of the same routes and means of transport and engaging the services of the same smugglers – increase the complexity of the task at hand, and also affect the effectiveness of the various instruments.

## Conclusion

Migration, and irregular migration, will not disappear. To the extent that wealth and economic opportunities are unequally distributed and that environmental and other forms of insecurity persist, migration will continue to occur. However, to deal with the problem, governments have increasingly turned to criminal law – which imposes fewer responsibilities on states to protect non-citizens – to provide a framework within which to control or manage migration. This NTS Issues Brief suggests that this approach is not optimal for countries in the region, as they in fact benefit from migrant flows in various ways. Thus, there is a need for a shift from a state-centric, law enforcement-oriented approach to a human security approach based on the principles of development and human rights.

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## About the RSIS Centre for Non-Traditional Security (NTS) Studies

The RSIS Centre for Non-Traditional Security (NTS) Studies, Nanyang Technological University, was inaugurated by ASEAN Secretary-General Dr Surin Pitsuwan in May 2008. The Centre maintains research in the fields of Food Security, Climate Change, Energy Security, Health Security as well as Internal and Cross-Border Conflict. It produces policy-relevant analyses aimed at furthering awareness and building capacity to address NTS issues and challenges in the Asia-Pacific region and beyond. The Centre also provides a platform for scholars and policymakers within and outside Asia to discuss and analyse NTS issues in the region.

In 2009, the Centre was chosen by the MacArthur Foundation as a lead institution for the MacArthur Asia Security Initiative, to develop policy research capacity and recommend policies on the critical security challenges facing the Asia-Pacific.

The Centre is also a founding member of and the Secretariat for the Consortium of Non-Traditional Security (NTS) Studies in Asia (NTS-Asia). More information on the Centre can be found at [www.rsis.edu.sg/nts](http://www.rsis.edu.sg/nts).