



# SAFE FROM THE START

THE ROLES OF COUNTRIES OF  
ORIGIN IN PROTECTING  
MIGRANTS





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IN PROTECTING MIGRANTS**

Safe from the Start: The roles of countries of origin in protecting migrants

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The Mekong Migration Network (MMN), founded in 2003, is a subregional network of migrant support NGOs, migrant grassroots groups and research institutes. The central goal of MMN is to promote the welfare, well-being, dignity and human rights (especially labour, women's and family rights) of migrants in the GMS, and to build mutual support and solidarity among migrants and advocates within the GMS. To achieve this goal, MMN jointly carries out research, advocacy, capacity building and networking.



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Mekong Migration Network  
July 2017

# List of Acronyms

ACRA	Association of Cambodian Recruitment Agencies	NCCT	National Committee for Counter-Trafficking
AFML	ASEAN Forum on Migrant Labour	NEA	National Employment Agency
ASEAN	Association of Southeast Asian Nations	NGO	Non-governmental Organisation
BNP2TKI	National Board for the Placement and Protection of Indonesian Overseas Workers	NPA	National Plan of Action
CIMW	Centre for Indonesian Migrant Workers	NLRC	National Labour Relations Commission
CSO	Civil Society Organisation	NRCO	National Reintegration Centre for Overseas Filipino Workers
CWCC	Cambodian Women's Crisis Center	OFW	Overseas Filipino Workers
DOLE	Department of Labour and Employment (Philippines)	OWF	Overseas Welfare Fund
EPS	Employment Permit System	OWWA	Overseas Workers Welfare Administration
Garda BMI	Buruh Migran Indonesia	PAOS	Post-Arrival Orientation Seminar
GMS	Greater Mekong Sub-region	PDOS	Pre-Departure Orientation Seminar
IDWF	International Domestic Workers Federation	PDT	Pre-departure training
IGO	Intergovernmental Organisation	PEOS	Pre-employment orientation seminar
ILO	International Labour Organization	POEA	Philippine Overseas Employment Administration
IOM	International Organization for Migration	POLO	Philippines Overseas Labour Office
JBM	Jaringan Buruh Migran (Migrant Workers Network)	SBMI	Serikat Buruh Migran Indonesia (Indonesian Migrant Workers Union)
LEO	Labour Exchange Office	SSS	Social Security System
Lao PDR	Lao People's Democratic Republic	TESDA	Technical Education and Skills Development Authority
LROE	Law Relating to Overseas Employment	TFAIR	Task Force Against Illegal Recruitment
LSCW	Legal Support for Children and Women		
MD	Migration Division		
MMN	Mekong Migration Network		
MOEAF	Myanmar Overseas Employment Agencies Federation		
MOFA	Ministry of Foreign Affairs		
MOI	Ministry of Interior		
MOLIP	Ministry of Labour, Immigration and Population		
MOLVT	Ministry of Labour and Vocational Training		
MOMT	Ministry of Manpower and Training		
MOU	Memorandum of Understanding		
MRC	Migrant Resource Centre		

# Executive Summary

The Mekong Migration Network (MMN) is a network of migrant support Non-governmental Organisations (NGOs), grassroots movements, and research institutes working together to promote and protect the rights of all migrants in the Greater Mekong Sub-region (GMS). The comparative research presented in this report comes at a time when formal systems of labour migration are taking shape in several GMS countries. The report focuses on the role that countries of origin should play in protecting their nationals migrating abroad from pre-departure, through overseas assistance, to return and reintegration. Through a case study of the measures taken by the governments of the Philippines and Indonesia to protect their nationals migrating to Hong Kong, the report takes stock of the lessons to be learned from the experiences of these longstanding countries of origin. Through the lens of this case study, the report examines the shortcomings and gaps that exist in the current policy and practice of Myanmar and Cambodia, the two main labour surplus countries in the GMS. This comparative analysis is instructive as it has allowed us to develop recommendations aimed at protecting the rights and well-being of migrants within the framework of the sub-region's nascent migration governance systems.

Despite the pivotal role played by migrants in the economic development of the GMS, filling labour shortages and sending substantial remittances home, migrant workers continue to live a precarious existence where exploitation and abuse is commonplace throughout the migration cycle. While destination countries must rightly bear the responsibility for the protection of migrant workers within their territory, countries of origin, nonetheless, have a crucial role to play by ensuring that their nationals are protected abroad and that they receive adequate pre-departure and reintegration assistance. This holds true for both documented and undocumented migrants.

In order to examine the various approaches of countries of origin, this study focuses on the following areas of policy and practice: (1) establishing migration mechanisms; (2) information dissemination; (3) regulation of recruitment agencies; (4) provision of overseas assistance; (5) international co-operation; (6) provision of overseas welfare funds and social security; and (7) facilitating reintegration.

Through key informant interviews and migrant worker consultations, this research has found that various lessons can be taken from the Philippines and Indonesia's experience of managing labour migration and applied to Cambodia and Myanmar as they develop their own law and policy frameworks. These include:

- The importance of effective pre-departure training (PDT) and information dissemination within communities where migration is common;
- Clear mandates and co-ordination among responsible agencies;
- Genuine monitoring, enforcement, and sanctions for rule violations;
- Provision of comprehensive overseas assistance;
- Not overly relying on migration as a long-term poverty reduction strategy; and
- Provide domestic livelihood opportunities so that migration is an option among many rather than a survival necessity.

For the purpose of this study, MMN project partners organised four consultations with migrants currently working in Thailand, one consultation with migrant returnees in Myanmar and one consultation with migrant returnees in Cambodia. Overall, a total of 162 migrants and returnees participated in the consultation exercise: 27 Cambodian and 19 Burmese returnees, and 35 Cambodian and 81 Burmese migrants currently in Thailand. Each consultation lasted a day during which participants shared their migration experiences, learnt about international standards and the measures other countries such as the Philippines and Indonesia take in protecting their nationals overseas, were updated on current migration governance policies and practices of their own countries and discussed recommendations for their governments. The analysis and recommendations contained in this report reflect the outcome of these consultations while many are also supported by our key informant interviews, consultations with Civil Society Organisations (CSOs) and other studies in the literature. Drawing lessons from the Philippines and Indonesia's experiences to reflect on current practices by Myanmar and Cambodia provides timely reference for policy debate as well as advocacy in the region.

This study makes the following recommendations to relevant authorities:

1. Institute migration mechanisms through which prospective migrants can obtain necessary documents for migration without excessive bureaucracy, cost, or travel.
2. Establish effective complaint mechanisms which are accessible to all migrants both in destination countries and upon return, and facilitate the use of local complaint mechanisms where appropriate.
3. Negotiate with and advocate to destination countries to improve conditions for migrant workers.
4. Make greater efforts to disseminate information on safe migration, migration options, and alternatives to migration throughout the country.
5. Provide meaningful regulation of recruitment agencies; not merely through the passing of laws and regulations, but effective monitoring and enforcement, including sanctions for non-compliance.
6. Improve the quality and expand the delivery of pre-departure training so that all formal migrants go through effective and thorough training before deployment.
7. Improve overseas assistance.
8. Negotiate with the Thai government to develop a process whereby migrants can receive a lump sum payment for their retirement fund at the Social Security Office in Thailand.
9. Assist migrant worker returnees with social and economic integration, including making alternatives to re-migration available; assisting with processes such as household registration and registration for identity cards; and supporting returnees who have suffered occupational injuries or diseases.

# Introduction

Migrant workers have long been a fundamental part of the economy of the Greater Mekong Sub-region (GMS), filling labour shortages in destination countries while sending remittances home. Despite their importance, migrants in the GMS often work and live in precarious situations. The region is notorious for labour exploitation with migrant workers in extreme cases being deceived, trafficked and suffering forced labour.

While destination countries should rightly bear much of the responsibility for the protection of migrant workers inside their territory, countries of origin must also play a proactive role in ensuring that their nationals migrating abroad are protected. This holds true for both documented and undocumented migrants. The development of formal labour migration systems offers new opportunities to ensure the protection of workers who, until very recently, had little alternative but to migrate across borders through informal channels. In recent years, however, there have been concerted efforts towards establishing mechanisms for formal migration, most notably in Thailand, but also more recently in Burma/Myanmar,<sup>1</sup> and Cambodia, where efforts are now afoot to develop regular migration channels and to encourage nationals to use recruitment or government agencies when migrating abroad.

It is often assumed that moves towards a formal migration process will automatically lead to better protection for migrants, including the prevention of trafficking. However, this is not necessarily so. If recruitment or government agencies are not properly regulated and monitored, and if the authorities do not introduce rights respecting measures, migration through formal channels may simply lead to higher costs and forced dependency on agencies with little or no benefit to migrants.

It is therefore essential that the relevant agencies in countries of origin have a full understanding of the issues at play, including potential successes and pitfalls, when developing policy and legislation in this area. Countries of origin in the region have a valuable opportunity to develop labour migration processes in a way which offers meaningful rights protection to workers, while simultaneously delivering benefits to domestic development. By establishing these standards now, there is a greater chance of establishing a fair, transparent, and effective system with high standards of welfare for workers. Such measures should involve not only the development of domestic policy but the co-operation and collaboration of origin countries, which have greater bargaining power when acting in concert.

Governments should have in mind not only the implementation of formal systems and regulation of recruitment. Beyond these elements, there are still crucial roles for countries of origin to play including overseas assistance, information dissemination, and the effective reintegration of returnees in ways which contribute to improving migrants' life chances and overall national development. Such initiatives will have a broader scope, benefiting informal as well as formal migrants.

This research report examines in detail the roles of countries of origin in protecting their nationals employed abroad. It aims to be a resource for researchers and policymakers on how to ensure labour migration governance systems both fulfil the practical purpose of facilitating the movement of people, while safeguarding migrants' rights and well-being.

For the purposes of examining labour migration governance in countries of origin, this report begins by providing an overview of the laws and regulations, institutions and mechanisms, and policies and practices that contribute towards both the facilitation of labour migration through formal channels and the promotion and protection of all migrant workers' rights, regardless of their immigration status.

The report sets out the roles of countries of origin generally, including common practices and international standards. It takes a closer look at the measures put in place by the Philippines and Indonesia to highlight practices with different impacts, both good and bad. In order to provide a case study on the implementation of these regimes, the report examines the situation of Filipino and Indonesian workers in the Hong Kong Special Administrative Region of China. Hong Kong was selected as a case study for the following reasons: (1) Hong Kong is a major destination

<sup>1</sup> This report hereafter uses the name 'Myanmar' to designate the country also known as Burma, and the generalised term 'Burmese' to describe the country's multi-ethnic population.



for Filipino and Indonesian migrant workers, including a large number of domestic workers from both countries; (2) Hong Kong's law and policy in the area of migration are relatively clear and transparent; (3) as Hong Kong is geographically small there is little regional variation; and (4) there are a number of Civil Society Organisations (CSOs)<sup>2</sup> in Hong Kong with longstanding experience engaging the Philippine and Indonesian consulates. Lastly, the report describes the current frameworks in Myanmar and Cambodia, incorporating critique from migrants and key informants, to develop recommendations for both governments to consider as they move forward.

The Mekong Migration Network (MMN) has been working on issues of migrants' rights in the region since 2001. MMN members operate in both countries of origin and destination and have unique expertise in the field and close contact with migrant workers at a grassroots level. Accordingly, this research is informed by extensive knowledge of the issues and a strong commitment to prioritising the voice of migrant workers on issues which affect them. Prior to this project, MMN has been in regular dialogue with government stakeholders in Myanmar and Cambodia. This dialogue has prompted the present in-depth study on the roles of countries of origin.

Whilst there are signs of progress, there remains much that Myanmar and Cambodia may do to improve their systems to better protect migrant workers. Likewise, Lao People's Democratic Republic (PDR) and Vietnam may learn valuable lessons from the experiences of their Mekong neighbours. It is vital that this opportunity to establish fair, efficient labour migration frameworks is not lost. Doing so is not only an urgent task in itself, but would deliver positive improvements to the lives of migrants, as well as intangible benefits to their home communities and countries.

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<sup>2</sup> This report uses the term CSO as an umbrella term for civil society organisations including bodies such as trade unions and research institutes. A non-governmental organisation (NGO) as a subset of CSOs refers to a more traditional service-providing non-governmental organisation.

# Objectives and Methodology

## Objectives

The objectives of this research project were as follows:

1. To examine the roles that can be played by countries of origin<sup>3</sup> in protecting migrant workers;
2. To identify good and bad practices in migrant worker protection, including in the use of recruitment agencies, in the Philippines and Indonesia;
3. To examine current policy and practice in Myanmar and Cambodia and identify shortcomings and policy gaps;
4. To develop recommendations for Myanmar and Cambodia based on the above research in order to strengthen the protection and promotion of workers' rights abroad.

## Methodology

This project was conducted through a combination of primary and secondary research methods. The data was collected between April 2015 and October 2016. The report was compiled during this period through to May 2017 and some of the information was updated during the later stage of the project.

### *Desk Research*

A literature review was conducted examining international laws and standards, as well as country practices. Background research was carried out on the labour migration governance systems of the Philippines and Indonesia, as well as the experiences of migrant workers from these countries in Hong Kong. Detailed research was then carried out on the development of migration governance systems in Myanmar and Cambodia.

### *Research Partner Meeting, July 2015*

In July 2015, MMN researchers and project partners met in Bangkok, Thailand. MMN researchers shared the results of their initial research into international standards and current practices in the Philippines and Indonesia. Project partners from Cambodia and Myanmar provided input on key issues in migration policy development in their respective countries. A resource person from the International Labour Organization (ILO) also presented on the initial findings of their feasibility study on overseas welfare funds for Mekong countries. MMN project partners then discussed various elements of the roles of countries



The facilitator explained the key issues for participants to discuss in the group. Consultation meeting with migrant workers in Phang Nga, Thailand.

*Photo: Foundation for Education and Development (FED)*

<sup>3</sup> This report uses the term “country of origin” and “country of destination” rather than “sending country” and “receiving country”. The latter, traditionally used terminology implies that governments actively send and receive migrants, which is often not the case. It further suggests that migrants do not make their own decisions, when in fact migrants commonly take decisions to migrate autonomously. For more information on migration terminology, see: Mekong Migration Network, “Speaking of Migration”, September 2011. The online interactive version can also be accessed: <http://www.mekongmigration.org/vocab/index.html>.

of origin, and collectively developed a research design including plans for the subsequent migrant worker consultations that would inform the research.

*Key Informant Interviews, July 2015 (Hong Kong), November 2015 (Philippines), December 2015 (Indonesia), January 2016 (Cambodia), and May 2016 (Myanmar)*

In-depth interviews were conducted with various key informants in Hong Kong, the Philippines, Indonesia, Cambodia, and Myanmar. Informants included representatives of the Philippine and Indonesian consulates in Hong Kong, CSO representatives in the Philippines, Indonesia, and Hong Kong, and government, Intergovernmental Organisation (IGO), and recruitment agency representatives in Myanmar and Cambodia. A list of interviewees along with dates of interviews is contained in Annex 1 of this report.

*Migrant Worker Consultations, November 2015 to March 2016*

Consultation meetings were held by MMN's research partners with migrant workers in Thailand and returnees in Cambodia and Myanmar. In Myanmar, a consultation with 19 migrants was held in Hpa An. All but one of the participants had returned from working in Thailand, with a sole participant having returned from Malaysia. Only two of the returnees had migrated to Thailand legally through a formal process while others migrated through informal channels. In Cambodia, the consultation was held in Poipet with 27 migrant workers who had recently returned from working in Thailand's construction, agriculture and service sectors. All participants at this consultation had migrated through informal channels, with six having returned as deportees by the Thai authorities. One of the participants had been recognised as a trafficked person and was receiving assistance from the Cambodian Women's Crisis Center (CWCC). In Thailand, consultations were held with 35 migrants in Rayong, 27 in Phang Nga, 33 in Mae Sot, and 21 in Chiang Mai. All but one of the migrants involved in the consultations migrated through informal channels. Migrants who joined the consultation in Rayong were Cambodian nationals, while those who joined in Phang Nga, Mae Sot and Chiang Mai were from Myanmar. Two participants stated that they were trafficked into the fishing industry in Indonesia and Mauritius before returning to Thailand and Cambodia respectively.

Overall, a total of 162 migrants and returnees participated in the consultation exercises: 27 Cambodian and 19 Burmese returnees, and 35 Cambodian and 81 Burmese migrants currently in Thailand. The participants included 83 men and 79 women, ranging in age between 18 and 72 years old with the vast majority in their 20s, 30s and 40s, their prime working years. Participants were both longer-term migrants and those who had migrated more recently; and whose migrant work experience included varied sectors such as fisheries, agriculture, factories, construction, domestic work, and the service sector more generally.

The meetings were interactive in nature, with the intention of obtaining qualitative information and ensuring that our research incorporated the voices of migrant workers and was grounded in their lived experiences. Each consultation was run slightly differently, but at all consultations migrants were given information about the type of services, programmes, and policies that countries of origin utilise to promote the welfare of their migrant workers,



Representatives from a group presented their group's outcomes to other participants. Consultation meeting with migrant workers in Rayong, Thailand.

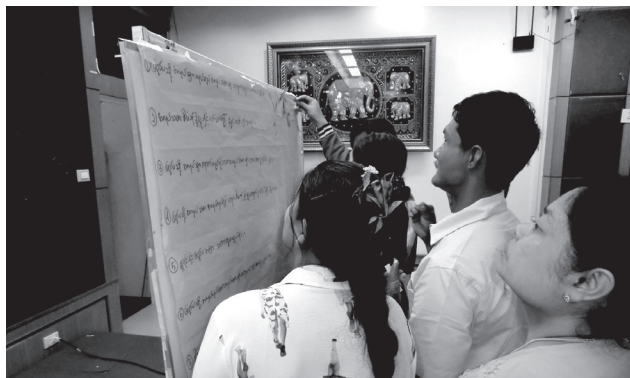
*Photo: Foundation for AIDS Rights (FAR)*



The project partner, 88 Generation Peace and Open Society provided an overview of the project and the objectives of the meeting to participants. Consultation meeting with migrant returnees in Hpa An, Myanmar.

*Photo: Mekong Migration Network (MMN)*

using specific examples from the Philippines and Indonesia. Participants discussed the systems and policies of their own countries and were encouraged to share their experiences of migration, both positive and negative, including their knowledge of migration channels and the reasons behind their migration choices. Participants then made suggestions as to how their governments could make migration a safer and more positive experience.<sup>4</sup>



Participants identified their experiences with the key roles played by their countries of origin. Consultation meeting with migrant workers in Mae Sot, Thailand.

Photo: Foundation for Education and Development (FED)



Participants shared their experiences in a small group discussion. Consultation meeting with migrant workers in Chiang Mai, Thailand.

Photo: MAP Foundation

### *CSO Consultations, December 2015 (Cambodia) and June 2016 (Myanmar)*

In Myanmar and Cambodia, MMN researchers held day-long consultation meetings with local CSOs who work on migrant labour rights issues. There were 25 attendees in Cambodia and 21 in Myanmar. At these meetings, MMN shared the initial research findings on labour migration governance in their countries, to which participants provided feedback. At the CSO consultation in Myanmar, a resource person from the ILO also presented on current migration policies and practices in Myanmar. Participants then discussed together what they considered to be the most important policy gaps from the perspective of migrant workers. Collectively, they formulated recommendations and identified key policy areas, which have informed the recommendations at the end of this report.

### *Research Partner Meeting, July 2016*

In July 2016, MMN researchers and project partners met in Chiang Mai, Thailand, to share research results and collectively analyse research data. Lastly, we identified which issues should be highlighted, and formulated recommendations for the governments of Myanmar and Cambodia based on the most crucial policy gaps as revealed through our secondary research and the migrant worker and CSO consultations.

### *Research Limitations*

Due to the nature of the populations that our research partners work with, not to mention the sheer number of undocumented migrants in comparison to documented migrants, we received input from only three migrants who had migrated through formal processes. Accordingly, the research does not allow for any comparison to be made between the experience of documented and undocumented migrants from Myanmar and Cambodia. Furthermore, the research concentrated on Thailand rather than other destination countries. Likewise, the situation of the Philippines and Indonesia was largely examined with reference only to Hong Kong as a destination country.



Participants broke into small group to discuss gaps in Cambodian policies and practices and to generate recommendations. Consultation meeting with CSOs in Phnom Penh, Cambodia.

Photo: Cambodian Women's Crisis Center (CWCC)

<sup>4</sup> For details of these consultative meetings please see Annex 2 of this report.



There are also limitations to the comparisons that can be made between migration from Indonesia and the Philippines to Hong Kong and migration from Cambodia and Myanmar to Thailand. In the first place, migration from these island countries to Hong Kong is almost entirely through a formal process, whereas migration from Cambodia and Myanmar to Thailand is overwhelming informal and largely involves crossing the border by land. Secondly, Indonesian and Filipino migrant workers usually come to Hong Kong to perform domestic work, rather than the varied industries occupied by Cambodian and Myanmar workers in Thailand.

Nevertheless, the use of these countries as a comparison provided a useful lens through which to examine Myanmar and Cambodia. Their established systems incorporate a number of practices that are not yet feasible in Myanmar and Cambodia, and the benefits and disadvantages can provide valuable lessons for these origin countries, which are, at present, only at the initial stages of building such systems. Certain lessons, such as those relating to the regulation of recruitment agencies and overseas assistance, remain applicable in different contexts. Lastly, the framework provided a means through which we could provide information to, and discuss with, migrant workers the ways in which governments can be actively involved in the labour migration process, and ways in which they hold obligations towards their citizens.



Group discussion on recommendations. Consultation meeting with migrant returnees in Poipet, Cambodia.

*Photo: Cambodian Women's Crisis Center (CWCC)*

## 1.

# Labour Migration Governance: Lessons from the Philippines and Indonesia with regards to Hong Kong

Labour migration has the potential to benefit both countries of origin and destination by promoting economic development and increasing individual well-being. However, in practice, migrant workers often encounter exploitation and abuse at the hands of unscrupulous brokers and agents in their country of origin, exploitative employers in their country of destination and corrupt government officials along the way. Both regular and irregular migrants are at risk of such mistreatment.

This research has identified seven broad areas of policy where countries of origin have a crucial role to play in making the migration experience safer and fairer. These are: (1) establishing migration mechanisms; (2) information dissemination; (3) regulation of recruitment agencies; (4) provision of overseas assistance; (5) international co-operation; (6) provision of overseas welfare funds and social security; and (7) facilitating reintegration. Relevant international standards and common practices relating to each of these areas are summarised in box articles that appear throughout the text.

## 1.1 Background

The Philippines and Indonesia both have longstanding labour migration policies,<sup>5</sup> with large numbers of their nationals employed as domestic workers in Hong Kong. As of 2015, there were 181,861 Filipino and 150,239 Indonesian domestic workers employed in Hong Kong.<sup>6</sup>

It is commonly acknowledged that Filipino and Indonesian migrants have dissimilar experiences working in Hong Kong. The consensus from different studies suggests that Filipino workers generally have greater awareness of their rights, are more likely to be paid at or above the minimum wage and be given their compulsory rest days, and less likely to be overcharged or suffer contract violations.<sup>7</sup> Although these differences cannot be attributed entirely to the migration policies of their home countries, it nevertheless warrants closer examination of their comparative strengths.

While the experiences of migrants from these countries in Hong Kong may not be directly comparable to the present situation in the GMS, this section draws out the strengths and weaknesses of the Philippine and Indonesian migration models so as to enable policymakers in Mekong countries to replicate good practice and avoid repeating mistakes made elsewhere.

<sup>5</sup> Mendoza, Dovelyn, "Shortage amid Surplus: Emigration and Human Capital Development in the Philippines", Migration Policy Institute, Issue in Brief No. 15, December 2015.

<sup>6</sup> HKSAR Census and Statistics Department, "Labour Force Characteristics", [http://www.censtatd.gov.hk/hkstat/sub/gender/labour\\_force/](http://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/).

<sup>7</sup> Ignacio, Emily, & Mejia, Yesenia, "Managing Labour Migration: The Case of the Indonesian and Filipino Domestic Helper Market in Hong Kong", ILO Asian Regional Program on Governance of Labour Migration, Working Paper No. 23, March 2009.



## Establishing Migration Mechanisms

Legislation and institutions are necessary to facilitate large scale overseas labour deployment. Different government agencies may co-operate in this enterprise or, alternatively, specialised agencies may be involved. These are often under the auspices of the Department of Labour,<sup>i</sup> while some governments employ a ministerial model with a dedicated Ministry.<sup>ii</sup>

Legislation governing labour migration can cover practical matters such as facilitation and administration of migration and also include provisions to protect migrant workers on issues such as information dissemination, the regulation of recruitment agencies, the use of standard contracts or minimum terms, and the provision of welfare services.<sup>iii</sup> There may be certain requirements imposed on agencies, employers, destination countries, and migrants themselves with a view to ensuring migrant welfare. This may include minimum welfare standards for destination countries, leading to temporary or permanent bans, or skills and age requirements for migrants.<sup>iv</sup> In imposing restrictions on migrants, care must be taken to ensure the restrictions are truly protective, and not merely an interference with an individual's rights to freedom of movement. Studies show that deployment bans, including age restrictions, do not prevent migrants going to such countries, but rather leave them unprotected and at risk of trafficking if there is no formal scheme available.<sup>v</sup>

Much labour migration is facilitated through private agencies, though there are examples of state mechanisms such as the Employment Permit System (EPS) implemented by South Korea. The countries sending workers to South Korea through the EPS mechanisms includes the following Mekong countries: Thailand, Vietnam, Myanmar and Cambodia, while Lao PDR will commence sending their workers in 2017.<sup>vi</sup> There have been some calls for the abolition of recruitment agencies and an increase in government involvement. However, organisations such as the ILO and International Organization for Migration (IOM) have expressed the view that government managed migration can be difficult to scale for large numbers.<sup>vii</sup>

There are often considerable bureaucratic hurdles involved in preparing for deployment, including the acquisition of multiple documents and certifications. Migration mechanisms which are quick, low-cost, and easy to access are typically the most attractive to migrants. Thus, lower fees, fast-tracked processing, and one-stop service centres are often welcomed by prospective migrants while high costs and burdensome bureaucracy may result in migrants choosing irregular channels.<sup>viii</sup>

Another key component of migration processing mechanisms is its capacity to provide an effective means of redress, particularly where the repayment of fees or unpaid salary are an issue, but also where a claim of compensation has been made. The 6th AFML focused partly on complaint mechanisms, and one of its key recommendations was for the promotion of effective grievance handling mechanisms. The ILO Multilateral Framework on Labour Migration also calls for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels to do so. The ability to file a complaint can be made possible in both country of destination and country of origin, and the mechanism may be set up so as to enable it to accept complaints not only from the affected worker, but the worker's family, and even CSOs.

<sup>i</sup> Anderson, Kathryn, and Barbone, Luca, "International Experience on Protection of Labor Migrants' Rights and Its Application to Kyrgyzstan", 2013, American University of Central Asia, [http://www.ucentralasia.org/downloads/IPPA\\_WP22\\_International-Experience-Eng.pdf](http://www.ucentralasia.org/downloads/IPPA_WP22_International-Experience-Eng.pdf), p. 21.

<sup>ii</sup> Anderson and Barbone, see above, p. 23; IOM, "Labour Migration from Colombo Process Countries: Good practices, Challenges and Ways Forward", 2011, [publications.iom.int/bookstore/free/ColomboProcessStudy\\_final.pdf](http://publications.iom.int/bookstore/free/ColomboProcessStudy_final.pdf), ("Colombo Process").

<sup>iii</sup> ILO, "Recruitment Monitoring and Welfare Assistance: What Works", 2015, <http://apmigration.ilo.org/resources/recruitment-monitoring-and-migrant-welfare-assistance-what-works>, ("Recruitment Monitoring and Welfare Assistance"), p. 48.

<sup>iv</sup> Anderson and Barbone, see above, pp. 25-26.

<sup>v</sup> Anderson and Barbone, see above, p. 8; See also a study by GAATW for the ILO which demonstrates that bans have no deterrence effect, and cause unintended negative consequences, such as reliance on traffickers: ILO, "No Easy Exit: Migration Bans Affecting Women from Nepal", 2015, [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---/wcms\\_428686.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---/wcms_428686.pdf), pp. 40-45.

<sup>vi</sup> Laos Prepares to Send 500 Workers to South Korea, in *Lao New Agency*, 7 February 2017.

<sup>vii</sup> Colombo Process, p. 56.

<sup>viii</sup> ILO, IOM and OSCE Handbook, p. 92.

## 1.2 The Philippines

### Migration Mechanisms

The primary statute governing overseas deployment is the Republic Act 8042 and its amendment the Republic Act 10022 (together, “the Republic Act”).<sup>8</sup> While there are a number of provisions within the legislation that focus on migrant protection, the overall approach, as May-An Villalba of the NGO Unlad-Kabayan remarked, was that the Philippines government follows an “unarticulated policy encouraging people abroad”.<sup>9</sup> Many studies indicate that the country is overdependent on remittances, and has also used migration as a strategy to tackle domestic unemployment. Critics also point out that reliance on remittances generates inequality in society and postpones policy reforms towards sustainable growth that would serve to reduce the need for Filipinos to migrate as a basic survival strategy.<sup>10</sup> All key informants stated that more government initiative was needed to encourage domestic development and job creation.

The Philippines has specialised agencies to oversee labour migration. The primary agency is the Philippine Overseas Employment Administration (POEA), who “facilitates the generation and preservation of decent jobs for Filipino migrant workers, promotes their protection and advocates [for] their smooth reintegration into Philippine society”.<sup>11</sup> The complex process of migration is made easier by the existence of one-stop offices in POEA buildings across various provinces and the introduction of online services.

The Philippines utilises standard country and skill-specific employment contracts for all workers deployed overseas. These contracts incorporate certain minimum standards with regards to working conditions and help provide a degree of certainty to overseas workers. Many key informants cited standard contracts as one of the Philippines’ policy successes.<sup>12</sup>

In addition, the Philippines requires that prospective migrant workers obtain certain skill certification before deployment overseas. These are issued by the Technical Education and Skills Development Authority (TESDA), which also offers training in relevant skill sets for workers. Such requirements may be necessary for health and safety reasons. However, interviews with NGOs in the Philippines suggest that the skill certification process is costly and often fails to offer any tangible benefit.<sup>13</sup>

Finally, in terms of providing means of redress, the Philippine Consulate offers mediation and conciliation services and also directs workers to the Labour Tribunal to resolve disputes in Hong Kong. The POEA has a mandatory conciliation process, after which, if no settlement is reached, the dispute is referred to the National Labour Relations Commission (NLRC).<sup>14</sup> In general, the Philippine CSOs surveyed said that the government was generally responsive to complaints. However, there is a low processing rate, suggesting insufficient capacity.<sup>15</sup>



In Cotabato City, Mindanao, a Pre-Departure Seminar was conducted for women traveling to the Middle East for work. It included a video on self-defence as well as a discussion on work-appropriate clothes and demeanour. Most employers from the Middle East and Indonesia prefer to employ ethnic Moro women from Mindanao, who are also Muslim.

Photo: Aljazeera (<http://www.aljazeera.com/indepth/inpictures/2012/12/20121217981786357.html>)

<sup>8</sup> “Migrant Workers and Overseas Filipinos Act of 1995: Republic Act No. 8042”, June 1995; “An Act Amending Republic Act No. 8042: Republic Act No. 1022”, July 2009; It should also be noted that Republic Act 7157 (1991) (also known as the “Foreign Service Act”), provides a mandate to the Department of Foreign Affairs to protect the rights and promote the welfare and interests of *Filipinos* overseas.

<sup>9</sup> Interviews with Unlad-Kabayan, Scalabrini Migration Center (SMC) and Center for Migrant Advocacy (CMA), November 2015.

<sup>10</sup> Basa, C., de Guzman, V. & Villamil, L., “Migration, Local Development and Governance in Small Towns: Two Examples from the Philippines”, International Institute for Environment and Development, 2009, p. 12.

<sup>11</sup> “POEA Homepage”, <http://www.poea.gov.ph/programs/programs&services.html>.

<sup>12</sup> Interviews with SMC and CMA, November 2015.

<sup>13</sup> Interviews with CMA, Unlad-Kabayan, SMC, International Domestic Workers Federation (IDWF), November 2015.

<sup>14</sup> “Migrant Workers and Overseas Filipinos Act of 1995: Republic Act No. 8042”, Section 10; “National Labour Relations Commission FAQ”, <http://www.dole.gov.ph/pages/view/30>.

<sup>15</sup> UN Women, “Managing Labour Migration in ASEAN: Concerns for Women Migrant Workers”, 2013, <http://asiapacific.unwomen.org/en/digital-library/publications/2013/1/managing-labour-migration-in-asean-concerns-for-women-migrant-workers>, p. 20.

## Information Dissemination

An important role of governments in ensuring that their nationals are protected when migrating abroad is through the dissemination of information. The International Labour Organization (ILO) has emphasised that “the best line of defence and protection before the decision [to migrate] is made is to provide realistic and accurate information”.<sup>i</sup>

Information campaigns through various media can target potential migrants before they make the decision to leave, ensuring they have accurate information about the risks and rewards of migration. Those intending to migrate require information on how to migrate safely, migration and recruitment procedures, and how to avoid exploitation. With this information, prospective migrants can make informed decisions and be aware of their rights and how to assert them.<sup>ii</sup> Information campaigns are more effective when they provide impartial and balanced information rather than operate to discourage any particular group to avoid migration altogether.<sup>iii</sup> In countries where rural communities are isolated from world affairs and have less general access to information, Ministries of Labour should consider partnering other Ministries and CSOs to disseminate migration-related information. In this way information on international labour rights and standards, the rights of migrants living abroad, empowerment and life skills for migrants, and strategies to avoid exploitation can be communicated to hard-to-reach populations.

Some countries have well-established information services provided by a variety of actors aimed at migrants and potential migrants. These include Migrant Resource Centres (MRCs), which provide a focal point for activities including responding to specific questions from prospective migrants, and providing information about the costs and procedures of migration, and country-specific information. Many migrant countries of origin require that migrants undergo some form of Pre-Departure Training (PDT) before deployment. PDT may include information on the destination country, workers’ rights and obligations, how to access services in the destination country, health information, how to send remittances, and even financial literacy.<sup>iv</sup> It is commonly provided by Non-governmental Organisations (NGOs), government agencies, or recruitment agencies.

Many ILO Conventions and Recommendations, including the ILO Migration for Employment Convention,<sup>v</sup> and its adjunct Recommendation,<sup>vi</sup> call for countries of origin to provide accurate information to migrants and take steps against the distribution of “misleading propaganda”,<sup>vii</sup> which may include things such as deceptive advertisements or, incorrect information about job terms and conditions.

The right of migrant workers to information on their rights and obligations is reflected in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,<sup>viii</sup> and has been the topic of numerous recommendations from the ASEAN Forum on Migrant Labour (AFML), notably those from the 3<sup>rd</sup> and 4<sup>th</sup> AFML.<sup>ix</sup>

<sup>i</sup> ILO, “Protecting the Rights of Migrant Workers: A Shared Responsibility”, 2009, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_180060.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_180060.pdf), (“Protecting the Rights of Migrant Workers”), p. 7.

<sup>ii</sup> ILO, IOM, and OSCE, “Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination”, 2006, <http://www.osce.org/eea/19242?download=true>, (“ILO, IOM, and OSCE Handbook”), p. 53.

<sup>iii</sup> Global Alliance Against Traffic in Women, “Exploring Links between Trafficking and Migration”, GAATW Working Papers Series, 2010, [www.gaatw.org/publications/WP\\_on\\_Migration.pdf](http://www.gaatw.org/publications/WP_on_Migration.pdf), p. 9.

<sup>iv</sup> ILO, IOM, and OSCE Handbook, p. 56; Aaserad, Julie, *et al.*, “The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait”, Johns Hopkins School of Advanced International Studies, 2013, [http://www.protectionproject.org/wp-content/uploads/2013/11/Domestic-Workers-Report-2013\\_Electronic-Version.pdf](http://www.protectionproject.org/wp-content/uploads/2013/11/Domestic-Workers-Report-2013_Electronic-Version.pdf), p. 105.

<sup>v</sup> ILO Migration for Employment Convention (Revised), 1949, (No. 97).

<sup>vi</sup> ILO Migration for Employment Recommendation (Revised), 1949 (No. 86).

<sup>vii</sup> ILO Migration for Employment Convention, articles 2 and 3.

<sup>viii</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.

<sup>ix</sup> For further information on the implementation of these recommendations, see ILO, “Background Paper: Progress on the Implementation of the Recommendations Adopted at the 3<sup>rd</sup> and 4<sup>th</sup> ASEAN Forum on Migrant Labour”, 2013, [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_219040.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_219040.pdf).

## Information Dissemination

Pre-Employment Orientation Seminars (PEOS) are information sessions that prospective migrants can join to learn more about labour migration, including opportunities, avoiding illegal recruitment, and conditions abroad. PEOS are also available online for Overseas Filipino Workers (OFWs) residing far from POEA offices with orientation modules available to all workers any time.<sup>16</sup> A review of the Colombo Process country practices cited PEOS as one of the most valuable initiatives pursued by the Philippines.<sup>17</sup> As of 2016, PEOS has been expanded to become compulsory for all applicants for work overseas, and in the case of domestic workers, for their family members also.<sup>18</sup>

Pre-departure training, known as Pre-Departure Orientation Seminars (PDOS) is mandatory, free of charge, and offered by various service providers. Although the curriculum claims to be comprehensive, reports from CSOs interviewed for this study indicate that in practice delivery often falls short, which indicates that more robust monitoring is needed.<sup>19</sup> Post-Arrival Orientation Seminars (PAOS) could supplement information given in PDOS and is available in some destinations, including Hong Kong, but is not formalised or compulsory.

## Regulation of Recruitment Agencies

The Philippines imposes stringent requirements on recruitment agencies within 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers. These rules set out the fees that OFWs are required to pay and limit placement fees which recruitment agencies can charge to one month's salary.<sup>20</sup>

Under the same rules, certain people cannot be licenced, including those convicted of illegal recruitment or with a criminal record. Those who own travel agencies also cannot be involved with recruitment, since they can be a source of abuse within the process. This is because there is a possible conflict of interest, whereby travel agents may wish to promote certain profitable destinations to the detriment of migrants' working conditions in that place. Most significantly, in order to reduce corruption, government employees who work on migration matters, and their family members, are strictly prohibited from owning or having any associations with recruitment agencies.<sup>21</sup>

In order to monitor the behaviour of recruitment agencies, the Task Force Against Illegal Recruitment (TFAIR) was established by Executive Order No. 548 under the supervision of the Commission on Filipinos Overseas.<sup>22</sup> TFAIR is composed of members from different government agencies who are tasked to develop and execute strategies against the modus operandi of illegal recruiters and syndicates responsible for tampering with travel documents. The TFAIR coordinates with local government units in awareness raising campaigns and are also granted access to databases on illegal recruitment monitoring system. As a member of the task force, POEA is responsible for information dissemination among OFWs, and banning illegal recruitment agencies. Illegal recruitment includes acts such as operating a recruitment agency without a licence, the overcharging of fees, providing misinformation, and contract substitution. The penalty for engaging in such acts is imprisonment or a fine, and POEA Rules set out in detail the prescribed penalties for different offences.<sup>23</sup> While a 2011 study indicated that many operators evade arrest and prosecution and that in practice there is little proactive monitoring of agencies.<sup>24</sup> However, this situation may be improving.

<sup>16</sup> The online modules can be accessed from: <http://peos.poea.gov.ph/>.

<sup>17</sup> IOM, "Labour Migration from Colombo Process Countries: Good practices, Challenges and Ways Forward", 2011, [publications.iom.int/bookstore/free/ColomboProcessStudy\\_final.pdf](http://publications.iom.int/bookstore/free/ColomboProcessStudy_final.pdf), ("Colombo Process"), p. 43.

<sup>18</sup> "Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016", ("POEA Rules"), 2016, Section 221.

<sup>19</sup> Interviews with Unlad-Kabayan, SMC, and CMA, November 2015.

<sup>20</sup> "POEA Rules", Section 51.

<sup>21</sup> Those excluded include any official or employee of the Department of Labour and Employment, POEA, OWWA, Department of Foreign Affairs, Department of Justice, Department of Health, Bureau of Immigration, Insurance Commission, National Labor Relations Commission, TESDA, Commission on Filipinos Overseas, National Bureau of Investigation, Philippine National Police, Civil Aviation Authority of the Philippines, international airport authorities, and other government agencies directly involved in the implementation of RA 8042, as amended, and/or any of his/her relatives within the fourth civil degree of consanguinity or affinity. See "POEA Rules", Section 3.

<sup>22</sup> Official Gazette, Republic of the Philippines, 2006-10-02, Vol. 102, No. 40, pp. 6639-6640. Executive Order No. 548 creating a Task Force against Illegal Recruitment under the Commission on Filipinos Overseas.

<sup>23</sup> "POEA Rules", Rule III.

<sup>24</sup> Agunias, Dovelyn, & Ruiz, Neil, "Protecting Overseas Workers: Lessons and Cautions from the Philippines", Migration Policy Institute, September 2007, [http://www.migrationpolicy.org/pubs/MigDevInsight\\_091807.pdf](http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf), p. 17.



## Regulation of Recruitment Agencies

The regulation of recruitment agencies is one of the most effective ways in which origin countries can protect their nationals from abuse and exploitation. This is because the vast majority of migrant workers are compelled to use a recruitment agency in order to work abroad. Much of the harm suffered by migrants comes through illegal or substandard recruitment practices, such as overcharging through illegal fees or unfair cost structures; offering illegal loans at exploitative interest rates; job advertisements which misrepresent wages, work, or conditions; and taking fees and failing to deploy workers.<sup>i</sup>

States usually require recruitment agencies to be licensed or registered, and meet certain conditions to obtain their registration.<sup>ii</sup> Their conduct is regulated, often with regards to fees payable, and other obligations to workers. Laws may specify acts that constitute illegal recruitment, and set out penalties for such acts, which may include administrative or criminal sanctions.<sup>iii</sup> Monitoring and enforcing these regulations and the activities of recruitment agencies is also key to ensuring that legislation is meaningful.<sup>iv</sup>

Considerable attention is paid to the regulation of recruitment agencies in International Conventions and by international processes. The Migrant Workers Convention,<sup>v</sup> and ILO Migration for Employment Convention,<sup>vi</sup> both also anticipate the operation of recruitment agencies which are permitted and subject to regulation by the state. The ILO has a specific Private Employment Agencies Convention,<sup>vii</sup> with accompanying Recommendations,<sup>viii</sup> which set out standards including a prohibition on placement fees, and clear specifications of any costs; penalties for unlawful practice; ensuring workers understand their contract; and combating misleading advertisements.<sup>ix</sup>

The ILO Domestic Workers Convention is even more specific,<sup>x</sup> requiring that states must institute adequate procedures for the investigation of complaints, take all measures necessary to provide adequate protection and prevent abuse, consider bilateral agreements to reduce fraud and abuse, and ensure fees are not deducted from domestic workers' salaries.<sup>xi</sup>

The Special Rapporteur on Migrant Rights prepared a report in 2015 focused specifically on the behaviour of recruitment agencies. In this report, it stated that recruitment agencies “can be a legitimate form of support within the migration process but all too often they ruthlessly exploit and abuse the migrants' precarious situation”.<sup>xii</sup> Among other measures, it called for an abolition of all fees, strong monitoring and enforcement, effective licensing, and implementing the practice of ranking and blacklisting agencies.<sup>xiii</sup>

<sup>i</sup> Agunias, Dovelyn, “What We Know About Regulating the Recruitment of Migrant Workers”, Migration Policy Institute, August 2012, [www.migrationpolicy.org/pubs/Migration-Development-WhatWeKnow.pdf](http://www.migrationpolicy.org/pubs/Migration-Development-WhatWeKnow.pdf).

<sup>ii</sup> ILO, IOM, and OSCE Handbook, pp. 46-47.

<sup>iii</sup> ILO, IOM, and OSCE Handbook, pp. 46-47.

<sup>iv</sup> ILO, IOM, and OSCE Handbook, pp. 48-49.

<sup>v</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

<sup>vi</sup> ILO C097, Migration for Employment Convention (Revised), 1949.

<sup>vii</sup> ILO C181, Private Employment Agencies Convention, 1997.

<sup>viii</sup> ILO R188, Recommendations on Private Employment Agencies, 1997.

<sup>ix</sup> ILO C181, Private Employment Agencies Convention, articles 4-8.

<sup>x</sup> ILO C189, Domestic Workers Convention, 2011.

<sup>xi</sup> ILO C189-Domestic Workers Convention, 2011, article 15.

<sup>xii</sup> UN General Assembly, “Report of the Special Rapporteur on the Human Rights of Migrants: Note by the Secretary-General”, 11 August 2015, A/70/310, <http://www.refworld.org/docid/55f2cb0d4.html>, (“Report of the Special Rapporteur”), para. 12.

<sup>xiii</sup> Report of the Special Rapporteur, para. 55.

The POEA Annual Report of 2014 indicated that a total of 3,896 cases against illegal recruitment were disposed of and 63 agencies had their licenses cancelled in that year.<sup>25</sup>

One noteworthy element of the Philippine regulations is that recruitment agencies are jointly and severally liable with employers for certain claims and liabilities arising from the employment contract. This means that the grievances of workers relating to their overseas employment can be redressed in the Philippines.<sup>26</sup>

Although an emphasis on regulation is laudable, some key informants suggested that an excess of regulations may in some instances be counterproductive as excessively complicated laws can lead to lower compliance across the board. Instead, efforts might be made to streamline current laws and rules to those that are most essential, and devote more energy into enforcement.<sup>27</sup>



Dr. Orteza of Noble Life International provided a health awareness seminar to Filipino migrant workers. This is a quarterly event at the Philippine Consulate General in Hong Kong.

*Photo: Philippine Consulate General in Hong Kong*

## Overseas Assistance

Dedicated Welfare Officers and/or Worker Resource Centres are stationed at selected Philippine embassies and consulates around the world. They are tasked with assisting migrant workers in collaboration with labour attachés and other consular staff.<sup>28</sup> Services involve both direct assistance to workers and monitoring and oversight mandates.

Philippines Overseas Labour Offices (POLO) has been established at many embassies and consulates. They are responsible for inspecting and accrediting overseas employers, and verifying and approving employment contracts. They also issue warnings to, or blacklist, recruitment agencies which breach regulations.<sup>29</sup> However, it has been reported that many OFWs find POLO unhelpful, as when they request assistance they are often simply told to file claims once they have returned to the Philippines.<sup>30</sup>

In Hong Kong, as in many other destinations with large numbers of Filipino migrants, the Philippines government operates a shelter, as well as a 24-hour helpline. For migrants who have ongoing claims or criminal cases pending in a destination jurisdiction, they may stay at the shelter free of charge with their living expenses covered. Legal assistance can also be provided on a case-by-case basis.<sup>31</sup> In addition, the Philippine Consulate General in Hong Kong runs a Facebook page, which currently has more than 45,000 followers. It is aimed at keeping Filipino migrants working in Hong Kong informed of essential information and policy changes that may affect them, both in the Philippines and Hong Kong. Migrants can also send comments and questions to the Consulate through the Facebook page, which the site declares are “typically answered within a few hours”. This is one practical and effective way of making the service of the Consulate accessible while at the same time allowing migrants to contact them anonymously.<sup>32</sup>

Other activities include cultural and social events, and also training programmes and classes. Asian Migrant Centre, a regional NGO based in Hong Kong stated that the classes offered were useful for workers from a personal well-being perspective but that they largely failed to expand their opportunities at home, as the skills taught, such as hair dressing, were not carefully tailored to meet the demands of the Philippines’ domestic labour market and failed to help migrants pursue their individual talents.<sup>33</sup>

<sup>25</sup> Department of Labour and Employment, “POEA Annual Report”, 2014, <http://www.poea.gov.ph/annualreports/annualreports.html>, p. 19.

<sup>26</sup> “Migrant Workers and Overseas Filipinos Act of 1995: Republic Act No. 8042”, Section 10.

<sup>27</sup> Interview with SMC, November 2015. Interview with LDS Recruitment, November 2015. Interview with Apostleship of the Sea, November 2015.

<sup>28</sup> Anderson, Kathryn, & Barbone, Luca, “International Experience on Protection of Labour Migrants’ Rights and Its Application to Kyrgyzstan”, American University of Central Asia, 2013, [http://www.ucentralasia.org/downloads/IPPA\\_WP22\\_International-Experience-Eng.pdf](http://www.ucentralasia.org/downloads/IPPA_WP22_International-Experience-Eng.pdf), p. 27.

<sup>29</sup> Orbeta, Anecito, & Abrigo, Michael, “Managing International Labour Migration: The Philippine Experience”, Philippine Institute for Development Studies, Discussion Paper Series No. 2011-33, p. 13.

<sup>30</sup> Ambito, Julyn & Banzon, Melissa, “Review of Philippine Migration Laws and Regulations: Gains, Gaps, Prospects”, Philippine Institute for Development Studies, Discussion Paper Series No. 2011-37, 2011, p. 7.

<sup>31</sup> Agunias & Ruiz, p. 15.

<sup>32</sup> Interview with the Philippine Consulate, July 2015; see <https://www.facebook.com/PCGHK/> to access the consulate’s Facebook page.

<sup>33</sup> Interview with Reiko Harima, April 2016.



## Provision of Overseas Assistance

In addition to the services provided for the protection and assistance of all their nationals abroad, embassies and consulates of origin countries may provide additional support and services to migrant workers. Many countries employ dedicated labour attachés or welfare officers and establish specialised migrant welfare centres.<sup>i</sup>

Labour attachés may verify contracts to ensure that they meet any nationally legislated standards, verify that the employer and job are genuine, monitor employment agencies, and suspend or blacklist those found to be engaging in abusive or exploitative conduct.<sup>ii</sup> They can also mediate in disputes between employers and employees on request.<sup>iii</sup> Although resource intensive, consular officials may also monitor workplaces by conducting physical inspections to check that accommodation and conditions meet applicable standards.<sup>iv</sup>

Many countries provide shelters for their distressed migrants abroad, which can provide a site for seeking assistance for those facing physical abuse or any kind of labour or other exploitation. 24-hour helplines that offer advice and assistance are another common service provision. Such helplines may be run by embassies or are sometimes outsourced to NGOs.<sup>v</sup>

<sup>i</sup> Anderson and Barbone, see above, p. 45.

<sup>ii</sup> Protecting the Rights of Migrant Workers, p. 11.

<sup>iii</sup> Colombo Process, p. 62.

<sup>iv</sup> Colombo Process, p. 62.

<sup>v</sup> Colombo Process, p. 64.

CSO representatives in Hong Kong stated that migrant workers were generally willing to go to the consulate for assistance, or use their shelter, even if they often turned first to friends or NGOs, given the large number of established community organisations in the city.<sup>34</sup> However, both CSOs and consular staff said that the sheer number of migrant workers in Hong Kong meant that there were not always enough staff to deliver the best possible assistance. Although CSO respondents in Hong Kong stated that the attitude and services provided by consular staff were usually good, some informants in the Philippines reported that migrants sometimes complained that staff had treated them poorly.



Ms. Cecile Morais, a financial consultant from Enrich-HK, gave one-on-one financial consultation to OFWs. This is a monthly event.  
Photo: Philippine Consulate General in Hong Kong

## International Co-operation

In Hong Kong, consular staff conduct low key diplomacy and advocacy efforts. The Hong Kong Department of Labour meets regularly with representatives of the Philippine Consulate to discuss issues relating to Filipino workers in Hong Kong. Such meetings provide an opportunity for consular staff to make representations on the application of specific Hong Kong law and policy that impacts Filipino workers, such as the “two week rule” and “live in rule”.<sup>35</sup>

<sup>34</sup> Interviews with Wesley Man, December 2016, Progressive Labour Union (PLU), March 2016, and IDWF, November 2015.

<sup>35</sup> The “two week rule” refers to the Hong Kong immigration regulations that require domestic workers who finish their contract of employment to obtain a new one within two weeks in order to remain in Hong Kong. The “live in rule” refers to the requirement that domestic workers must reside in their employers’ home.

## Overseas Welfare Fund and Social Security

The Philippines has a long established welfare fund for migrants. The Overseas Workers Welfare Administration (OWWA), a sister agency of POEA under the Department of Labour and Employment (DOLE), is tasked to facilitate repatriation of distressed migrants and to provide a contributory insurance scheme to migrant workers.<sup>36</sup>

While there is generally a consensus that OWWA makes a positive contribution to the welfare of migrants, some studies point out that OFWs' access to benefits is hampered by its heavy bureaucracy, inadequate information provided to members, and lack of transparency in decision making.<sup>37</sup>

In addition, OFWs also have the option to pay into the national Social Security System (SSS) in the Philippines for pension funds and other benefits. The SSS has a two-layered programme called SSS Flexi-Fund Scheme specifically for OFWs which allows OFWs to set aside part of their earnings and save it in their SSS account so it functions like a savings account which OFWs can use in times of need. However, due to the tedious process of applying for loans and other SSS benefits, few OFWs enrol themselves to this programme. Currently, only 10% of documented OFWs are members of the SSS.<sup>38</sup>

## Facilitating Reintegration

The National Reintegration Centre for Overseas Filipino Workers (NRCO) offers assistance in such areas as entrepreneurship, savings and investment, and financial literacy. However, key informants in both the Philippines and Hong Kong agreed that reintegration was the weakest aspect of the Philippines' programme, and that the issue should be addressed much earlier. Furthermore, some suggested that the deficiencies in this area might be systemic, noting that the NRCO suffered from a high staff turnover, a lack of direction, and sometimes impractical or piecemeal programmes.<sup>39</sup>

## 1.3 Indonesia

### Migration Mechanism

Law No. 39/2004 concerning the Placement and Protection of Indonesian Workers Abroad is the primary piece of legislation governing labour migration under Indonesian law, although at the time of writing a draft amendment was currently under review in Parliament. There are few protective measures in this law, and although advocates are pushing for more safeguards, the International Organization for Migration (IOM) informed MMN that the current draft amendment provides little in the way of further protections.<sup>40</sup>

There are two primary agencies involved in the deployment of Indonesian workers overseas. The Ministry of Manpower and Transmigration (MOMT), which is predominantly responsible for policy and oversight,<sup>41</sup> and The National Board for the Placement and Protection of Indonesian Overseas Workers (*Badan Nasional Penempatan dan Pelindungan Tenaga Kerja Indonesia*; BNP2TKI), which is primarily responsible for implementation and direct services.<sup>42</sup> The work of BNP2TKI is intended to be carried out in coordination with the MOMT.<sup>43</sup>

<sup>36</sup> Migrants can become OWWA members by paying a USD 25 membership fee. Membership benefits include medical care, disability and death payments, education and training, scholarship for dependents of OFW and social and family welfare assistance. See: OFW Guide, "Benefits and Services of OWWA for OFW Members", February 2015, [http://www.ofwguide.com/article\\_item-1516/Benefits-and-Services-of-OWWA-for-OFW-Members.html](http://www.ofwguide.com/article_item-1516/Benefits-and-Services-of-OWWA-for-OFW-Members.html).

<sup>37</sup> Center for Migrant Advocacy, "Policy Monitor on the OWWA Charter", September 2011, <https://centerformigrantadvocacy.files.wordpress.com/2014/04/policy-monitor-of-owwa-charter-2011.pdf>, pp. 13, 21.

<sup>38</sup> Estimo, Rodolfo C., "Slow process of pension papers irks Filipinos", *Arab News*, January 2014, <http://www.arabnews.com/news/516481>.

<sup>39</sup> Interviews with SMC and Unlad-Kabayan, November 2015.

<sup>40</sup> Interview with IOM Indonesia, February 2016.

<sup>41</sup> ILO, "Chapter 3: Department of Manpower and Transmigration and Regional Manpower Offices", 2006, [http://staging2.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms\\_120305.pdf](http://staging2.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_120305.pdf).

<sup>42</sup> Farbenblum, Bassina, *et al.*, "Migrant Workers' Access to Justice at Home: Indonesia", Open Society Foundation, 2013, <https://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf>, p. 43.

<sup>43</sup> "Interview: Mr. Erman Suparno, Indonesian Minister of Manpower and Transmigration", *The World of Parliaments Quarterly Review*, Issue No. 25, April 2007, <http://www.ipu.org/news-e/25-5.htm>.

## International Co-operation

A binding bilateral treaty or non-binding Memorandum of Understanding (MOU) between origin and destination countries may facilitate migration and recruitment procedures, specify each country's responsibilities and obligations, and also set minimum standards for the welfare and treatment of migrant workers.

Workers' welfare can be promoted through provisions relating to overseas services, maximum fees, minimum wage, days off, occupational health and safety, maternity leave, health care provisions, and the transferability of social security benefits or pensions.<sup>i</sup> Formal agreements can also contain dispute settlement procedures and remedies in the event of rights violations.<sup>ii</sup> However, in practice, a lack of monitoring regarding the application of agreements can prove problematic, and such agreements only cover workers who migrate through formal channels.<sup>iii</sup>

Origin states may also carry out negotiations and engagement with host countries in less formal ways. The ILO's Multilateral Framework on Labour Migration, which contains principles and best practice guidelines, emphasises the principle of international cooperation, with the suggestion to develop intergovernmental dialogue and cooperation in consultation with civil society and migrant workers, and promote bilateral agreements where appropriate.<sup>iv</sup>

The Colombo Process, a series of ministerial consultations between the governments of migrant sending countries, was established in order to discuss issues, policies, and practices through which they can further enhance the protection of their citizens abroad. One of the foundation documents of the Colombo Process is the Dhaka Declaration of 2011. This codifies suggestions and discussions of previous years. Key recommendations include strong regulation of recruitment agencies, strengthening of advocacy and information campaigns, and promoting further cooperation among origin countries.<sup>v</sup> Such co-operation also has the potential to increase the collective bargaining power of origin countries to ensure better standards for their workers, rather than each competing against each other in a "race to the bottom" to provide low-wage migrant labour. Origin countries may also enter into bilateral agreements with each other in order to collaborate. The Special Rapporteur on Human Rights of Migrants has warned that "host States will play one country against another in order to obtain the least constraining labour conditions possible",<sup>vi</sup> and that international and regional co-operation is essential to achieving an ethical system.<sup>vii</sup> Similarly, the ILO has suggested that ASEAN member states could in the future establish a regional common code of conduct for recruitment agencies.<sup>viii</sup>

<sup>i</sup> Protecting the Rights of Migrant Workers, pp. 10-11.

<sup>ii</sup> Protecting the Rights of Migrant Workers, pp. 10-11.

<sup>iii</sup> Anderson and Barbone, see above, p. 27.

<sup>iv</sup> ILO Framework, guidelines 2.2 and 2.3.

<sup>v</sup> Dhaka Declaration of the Colombo Process Member Countries, 2011, [http://www.colomboprocess.org/posters/141010151054dhaka\\_declaration.pdf](http://www.colomboprocess.org/posters/141010151054dhaka_declaration.pdf).

<sup>vi</sup> Report of the Special Rapporteur, para. 32.

<sup>vii</sup> Report of the Special Rapporteur, paras. 62-64.

<sup>viii</sup> ILO, "Managing Labour Mobility: Opportunities and Challenges for Employers in the ASEAN Region", 28 March 2016, [www.ilo.org/asia/whatwedo/publications/WCMS\\_464049/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_464049/lang--en/index.htm), p. 41.

However, in practice there is little guidance on the division of tasks and responsibilities, and even where tasks are divided, it can simply cause inefficiencies, excess bureaucracy, and confusion. The lack of clear division and mandate has been strongly criticised by key informants for this study as well as other commentators.<sup>44</sup>

The vast majority of the administration related to overseas employment is based in Jakarta.<sup>45</sup> Decentralisation of services to local and village authorities was strongly recommended by the CSOs in Indonesia that were interviewed.<sup>46</sup>

In terms of redress mechanisms, the Indonesian government presently outsources responsibility to recruitment agencies to resolve disputes with overseas employers. In the event of a conflict involving an agency, the authorities will attempt to negotiate a resolution. In Indonesia, although BNP2TKI runs a dispute resolution centre in Jakarta, there are no regulations establishing clear operational details or even specifying which agency is responsible.<sup>47</sup> In practice, workers can file cases with BNP2TKI, MOMT or the Ministry of Foreign Affairs (MOFA).<sup>48</sup> All key informants interviewed by MMN in Indonesia found that in practice BNP2TKI was the least effective agency and appears indifferent to migrants' welfare. In all cases it was extremely difficult to obtain the redress sought, which was typically the partial repayment of lost costs.

## Information Dissemination

Pre-departure training is compulsory and is provided by the government. However, it is inadequately monitored and often of poor quality. Informants remarked that they tend to focus on "obedience to their employer, to the detriment of their ability to stand up for their rights".<sup>49</sup> The IOM has assisted in developing a curriculum for pre-departure training, however it has not yet been widely implemented. The IOM representative interviewed by MMN also suggested that the methodology should be revised to be more interactive and engaging, and should involve migrant worker returnees.<sup>50</sup>

The Indonesian Consulate in Hong Kong also provides a "welcoming programme" to supplement information imparted in pre-departure training. The Indonesian Consulate informed MMN that attendance was compulsory, although CSOs working with Indonesian domestic workers in Hong Kong said there was no effort to enforce this rule.



Information seminar conducted by Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI) for Indonesian workers who are interested in working abroad on 13 June 2017, in Subang Province, West Java, Indonesia.

Photo: Jawa Pos Group, Karawang Bekasi Express

## Regulation of Recruitment Agencies

The law places few restrictions on owning and operating a recruitment agency in Indonesia. Many unlicensed firms and brokers exist, and recruitment agencies often exploit workers.<sup>51</sup>

Although fees have been regulated since 2008, workers pay a flat fee and are largely unaware of the cost structure. As a result, many are charged for additional items or charged twice for things which have already been covered by the flat fee. Making the cost structure itemised and transparent would help prevent overcharging.<sup>52</sup>

<sup>44</sup> Interviews with Garda Buruh Migran Indonesia (Garda BMI), Migrant Institute, Serikat Buruh Migran Indonesia/Indonesian Migrant Workers Union (SBMI), IOM Indonesia, Jaringan Buruh Migran/Migrant Workers Network (JBM), December 2015.

<sup>45</sup> Farbenblum, B. *et al.*, p. 44.

<sup>46</sup> Interviews with Migrant Institute and JBM, December 2015.

<sup>47</sup> Farbenblum, B. *et al.*, p. 75.

<sup>48</sup> *ibid.*

<sup>49</sup> Interviews with SBMI, December 2015, Centre for Indonesian Migrant Workers (CIMW), December 2015, and IOM Indonesia, February 2016.

<sup>50</sup> Interview with IOM Indonesia, February 2016.

<sup>51</sup> Kuncoro, Ari, *et al.*, "Indonesian Cross-Border Labour Migration: Structure, Institutions and Governance", University of Indonesia, Faculty of Economics, Working Paper in Economics and Business Vol. III No. 6/2013, July 2013, p. 5.

<sup>52</sup> Amnesty International, "Exploited for Profit, Failed by Governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong", 2013, pp. 19, 24.

## Provision of Overseas Welfare Funds and Social Security

A number of Asian countries, including Thailand, India, Bangladesh, Pakistan, the Philippines, Sri Lanka, and Nepal, have set up welfare funds and/or compulsory insurance schemes to support migrants both at home and abroad. Such schemes differ and are funded through various forms of migrant, employer, and government contributions. Common services include death and disability insurance and repatriation costs, but they can also serve as sources of funds for programmes such as pre-departure training, overseas services, reintegration services, and scholarship programmes.<sup>i</sup>

Alternatively or in addition, some countries require that recruitment agencies take out insurance for their workers.<sup>ii</sup> With regards to social security, the ILO Framework encourages states to adopt measures to ensure that all migrant workers recover outstanding remuneration and benefits, and enter into agreements which provide social security coverage and portable social security not only to regular migrants but also to irregular migrants as far as possible.<sup>iii</sup>

<sup>i</sup> Colombo Process, p. 57; Recruitment Monitoring and Welfare Assistance, p. 125.

<sup>ii</sup> Colombo Process, p. 58.

<sup>iii</sup> ILO Framework, principle 9.

Indonesian law provides for the suspension and cancellation of licences, fines, and criminal sanctions for certain violations.<sup>53</sup> However, there are no mechanisms for oversight and inspection which is reportedly haphazard and ineffectual. CSOs all stated that regulations were insufficient and also suggested that monitoring needed to be decentralised to be more effective.<sup>54</sup>

## Overseas Assistance

Embassies and consulates are mandated to make assessments as to the quality of recruitment agencies and employers seeking Indonesian workers, approve placement documents, record details relating to the arrival and departure of migrant workers, and cancel licences.

Services provided overseas were criticised by key informants, who reported that staff abroad were often unhelpful, had poor attitudes, and refused to assist those who were undocumented.<sup>55</sup> CSOs reported that migrants were generally unwilling to approach the consulate in Hong Kong for assistance.<sup>56</sup>



Consultation seminar organised by the Consulate of Indonesia in Hong Kong for migrant workers about the services offered by the Consulate.

*Photo: Consulate of Indonesia in Hong Kong*

## International Co-operation

Representatives from the Indonesian Consulate meet with the Hong Kong authorities on a regular basis. Disappointingly, staff interviewed at the Indonesian Consulate appeared disinterested in advocating for policy changes, simply deferring to the policies of the Hong Kong government.<sup>57</sup>

<sup>53</sup> "Law on Placement and Protection of Indonesian Workers Abroad: Law 39/2004", Articles 100, 102, and 104.

<sup>54</sup> Interviews with Migrant Institute, JBM, SBMI, December 2015.

<sup>55</sup> Interview with JBM, December 2015.

<sup>56</sup> Interview with IDWF, November 2015, and Wesley Man, December 2015

<sup>57</sup> Interview with Indonesian Consulate, Hong Kong, July 2015.



## Facilitating Reintegration

Enabling migrant returnees to successfully reintegrate, both economically and socially, is an important part of both maximising the benefits of migration and preventing a cycle of migration forced by necessity rather than choice.

Reintegration programmes can provide financial assistance and other support and be delivered directly through governments or through partnerships with NGOs. Some countries have specialised agencies to co-ordinate and administer programmes. Most reintegration efforts are directed at economic reintegration. Such programmes commonly offer training in skills such as business development, financial planning, and entrepreneurship, or offer credit schemes or preferential access to goods and imports.<sup>i</sup> However, these programmes only benefit a relatively small proportion of returnees, since establishing a business is inherently risky and requires particular skills.

The ASEAN Declaration calls for countries of origin to institute reintegration policies.<sup>ii</sup> It has also been a recurrent theme at the AFML and in the Colombo Process recommendations. However, despite the importance of reintegration for migrants, both financial and social integration programmes are relatively underdeveloped throughout migrant countries of origin.<sup>iii</sup> Successful reintegration policies must be part of broader economic development and job creation programmes.

<sup>i</sup> Colombo Process, p. 66.

<sup>ii</sup> ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007, article 16.

<sup>iii</sup> Colombo Process, p. 15.

## Overseas Welfare Fund and Social Security

There is presently no Indonesian migrant welfare fund or social security provision. Although an insurance scheme exists, most migrants are not aware of it or do not know how to make claims, meaning the scheme provides little benefit in practice.<sup>58</sup>

## Facilitating Reintegration

All key informants strongly asserted that reintegration was managed poorly and that it should be incorporated into pre-departure training or even general information campaigns, and prioritise financial literacy.<sup>59</sup>

## 1.4 Conclusion

While some of the comments and critiques of the Philippines and Indonesian systems are specific to their context and relate to the nuts and bolts of the migration process, certain general themes arise. In particular, the need to avoid policies that lead to countries of origin becoming increasingly dependent on migration for the employment of their populations. Policies that facilitate the deployment of workers abroad must therefore form part of wider macroeconomic development strategies that over the long term serve to generate domestic growth and job creation.

Taking the Philippines and Indonesian systems side-by-side, it is evident that certain elements are relevant and replicable in other migrant countries of origin. Such elements include the need for effective pre-departure training,

<sup>58</sup> Farbenblum, B. *et al.*, p. 90; Interviews with IOM Indonesia, February 2016, and CIMW, December 2015.

<sup>59</sup> Interviews with Ms. Wesley Man, December 2015, and IDWF, November 2015.



stringent recruitment agency regulations, clear demarcation of administrative roles and responsibilities, and meaningful consular assistance overseas. An examination of the present Cambodian and Myanmar systems, which are described and critiqued in the next chapter, must keep in mind these lessons.

**Table 1. Lessons from the Philippines and Indonesia  
Good Practices and Shortcomings in the Protection of Migrant Workers**

	Good Practices	Shortcomings
Migration Mechanisms	<ul style="list-style-type: none"> <li>• One-stop service centres</li> <li>• Clear agency responsibilities with defined mandates</li> <li>• Standard contracts</li> <li>• Fee regulations</li> <li>• Legislation that incorporates clear protective elements, and a reliable, efficient complaints procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Not carrying out impact assessments and evaluations of different measures and initiatives</li> <li>• Large cumbersome bureaucracy</li> <li>• Insufficient delineation of responsibilities, leading to inter-agency squabbling and inefficiency</li> </ul>
Information Dissemination	<ul style="list-style-type: none"> <li>• Extensive pre-employment/pre-decision education to help people make informed decisions</li> <li>• Effective implementation of pre-departure training with a curriculum that emphasises rights and redress, and financial literacy</li> <li>• Post-arrival training</li> </ul>	<ul style="list-style-type: none"> <li>• Not providing information on alternatives to migration</li> <li>• Insufficient monitoring of quality and content of training</li> </ul>
Regulation of Recruitment Agencies	<ul style="list-style-type: none"> <li>• Protective regulations, effective monitoring and prohibitive sanctions</li> <li>• Strict licensing requirements, including those that seek to avoid corruption and conflict of interest</li> </ul>	<ul style="list-style-type: none"> <li>• Poor monitoring and enforcement</li> <li>• Regulations must not drive recruiters underground</li> <li>• Too much responsibility left in the hands of agencies</li> </ul>
Overseas Welfare Funds/Social Security	<ul style="list-style-type: none"> <li>• Effective overseas welfare fund</li> <li>• Access to social security</li> </ul>	<ul style="list-style-type: none"> <li>• Workers not clearly informed about mandate and purpose of OWF, or their entitlements</li> </ul>
Overseas Assistance	<ul style="list-style-type: none"> <li>• Labour office overseas</li> <li>• Dedicated welfare officers</li> <li>• Cultural and community events</li> </ul>	<ul style="list-style-type: none"> <li>• Understaffing</li> <li>• Poor training</li> <li>• Poor staff attitudes</li> </ul>
International Co-operation	<ul style="list-style-type: none"> <li>• Bilateral agreements</li> <li>• Ongoing low-level diplomacy with destination governments</li> <li>• Co-operation with other origin countries</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to monitor or enforce compliance with MOU terms</li> <li>• Failure to advocate for migrants' rights within destination countries</li> <li>• Deployment bans (for any reason) are counter-productive</li> </ul>
Reintegration Services	<ul style="list-style-type: none"> <li>• Early reintegration education and planning</li> <li>• Skills training available overseas that meets the needs of home labour market</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient attention to reintegration generally</li> <li>• Piecemeal approach, insufficient attempts to consider practical realities (e.g. difficulty of entrepreneurial enterprises)</li> <li>• Provision of training with no practical use</li> </ul>

## 2.

# Cambodia's Labour Migration Framework

## Migration from Cambodia

*"I want [the government] to protect the rights of Cambodian migrants working abroad, especially to protect migrants from abuse and being cheated by employers." – Male Cambodian migrant returnee, 28 years old, former construction worker in Thailand*

There are currently an estimated 650,000 to 700,000 Cambodians working abroad sending more than USD 1 billion a year in remittances.<sup>60</sup> The majority of these migrants are in Thailand, working in industries including fisheries, agriculture, construction, and domestic work. As of May 2017, there were 160,881 Cambodians in Thailand with work permits issued under the process following the Memorandum of Understanding (MOU), and 84,599 workers who had completed the Nationality Verification process. In addition, as of 2016, 385,829 Cambodian nationals had registered for permission to work at One-Stop Service Centres in Thailand.<sup>61</sup> Including undocumented workers, there are an estimated 400,000 to 500,000 Cambodians working in Thailand.<sup>62</sup> It is, however, difficult to accurately ascertain exact numbers given the fluid movement of people across the border and as migrants fall in and out of documented status for reasons including change of employer or work location.<sup>63</sup> Other destination countries for Cambodian migrants include South Korea, Malaysia, Japan, and Singapore, where they work in domestic work, agriculture, and manufacturing. While formal deployment to Malaysia, Japan, and Singapore are facilitated by private recruitment agencies, deployment to South Korea is done by way of a government-to-government arrangement following the requirement set by South Korea for accepting workers through their Employment Permit System (EPS).

## Establishing Migration Mechanisms

### Legislation and Policy

Formal labour migration in Cambodia is governed by Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies (17 August 2011) and regulations (or *prakas*) issued by the Ministry of Labour and Vocational Training (MOLVT). Relevant *prakas* include:

<sup>60</sup> "Migrant workers send home \$1 billion a year", *The Phnom Penh Post*, February 2016, <http://www.phnompenhpost.com/business/migrant-workers-send-home-1-billion-year>.

<sup>61</sup> Office of Foreign Workers Administration, Department of Employment, Ministry of Labour, Thailand, [https://www.doe.go.th/prd/assets/upload/files/alien\\_th/792945dd0ecdeebc225a6addeaf2f0f5.pdf](https://www.doe.go.th/prd/assets/upload/files/alien_th/792945dd0ecdeebc225a6addeaf2f0f5.pdf).

<sup>62</sup> The Economist Intelligence Unit, "Cambodian Exodus from Thailand", July 2014, <http://country.eiu.com/article.aspx?articleid=972098881&Country=Cambodia&topic=Politics&subtopic=Forecast>.

<sup>63</sup> ILQ, "Review of the Effectiveness of the MOUs in Managing Labour Migration between Thailand and Neighbouring countries", GMS Triangle Project, 2015, [www.ilo.org/wcmsp5/groups/public/---/wcms\\_356542.pdf](http://www.ilo.org/wcmsp5/groups/public/---/wcms_356542.pdf), p. 25.

- Prakas 45/13 on the Use of Terms (13 February 2013);
- Prakas 46/13 on Recruitment Process and Pre-Departure Orientation Training (13 February 2013);
- Prakas 47/13 on Private Recruitment Agency (13 February 2013);
- Prakas 249 on Complaint Receiving Mechanism for Migrant Workers (23 September 2013);
- Prakas 250 on Inspection on Private Recruitment Agency (23 September 2013);
- Prakas 251 on Penalty and Reward to the Private Recruitment Agency (23 September 2013); and
- Prakas 252 on Onsite service of the Private Recruitment Agency and repatriation (23 September 2013); and
- Prakas 253 on Promulgation of Minimum Standards of Job Placement (23 September 2013).

As of June 2017, a *prakas* on the use of recruitment agency deposits to compensate workers has been drafted but not yet passed.

Overall, labour migration policy is governed by the Policy on Labour Migration for Cambodia 2015-2018. This states its aim as “governance which protects and empowers women and men throughout the migration cycle, ensures that migration is an informed choice, and enables a positive and profitable experience for individual workers, their families and communities, that also contributes to the development of Cambodia”.<sup>64</sup> The 2015-2025 National Employment Policy also contemplates the development of labour market governance including the protection of migrant workers’ rights and finding decent work.

Another piece of legislation related to migration governance is the Law on Suppression of Human Trafficking and Sexual Exploitation which was passed in 2008. The Law replaced the 1996 Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons, and punishments have become more severe, especially for crimes involving children, and trafficking incidents involving torture, murder and ransom are amenable to life imprisonment.<sup>65</sup>

### *Institutions*

The Ministry of Labour and Vocational Training (MOLVT) is the ministry with primary responsibility for overseeing labour migration, including the regulation and oversight of recruitment agencies. Among other tasks, they are mandated to authorise and monitor recruitment agencies, regulate pre-departure training, certify employment contracts, and resolve disputes between workers and employers, and workers and agencies. The MOLVT also cooperates with the Ministry of Foreign Affairs and International Cooperation (MOFA) to negotiate and prepare agreements or MOUs between the Cambodian government and destination countries, and the Ministry of the Interior (MOI), which has a mandate to work on illegal recruitment and human trafficking.<sup>66</sup>

There is an Inter-ministerial Working Group for Implementation of the MOU with Thailand, as well as an Inter-Ministerial Taskforce for Migration, which is supposed to co-ordinate migration issues and provide recommendations to the government. In addition, a National Committee for Counter-Trafficking (NCCT) has its own working group on migration.

The overlap between these working groups, and between some agencies, is cause for concern. There is reportedly little cooperation or communication between the ministries. Ms. Chou Bun Eng, Chairperson of the NCCT stated that among the government ministries, “everyone has capacity, but lacks collaboration”.<sup>67</sup> It is important not only that cooperation is encouraged but also that the mandate and powers of each player, while there is not one single institution responsible, be clearly delineated.



Cambodian daily workers pay for their day passes to cross the border in Poipet, Cambodia, to work in Thailand.

Photo: MMN/John Hulme

<sup>64</sup> “Labour Migration Policy for Cambodia 2015-2018”, December 2014, p. 9.

<sup>65</sup> “Law on Suppression of Human Trafficking and Sexual Exploitation”, 2008.

<sup>66</sup> “Sub-Decree #190 on The Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies”, August 2011, Article 14.

<sup>67</sup> Interview with H.E. Ms. Chou Bun Eng, NCCT, January 2016.

Other relevant bodies include the Manpower Training and Overseas Sending Board which oversees government-to-government deployment of Cambodian workers to Korea, and the Association of Cambodian Recruitment Agencies (ACRA) which is a voluntary private sector association that tries to model best practice. ACRA was registered in 2007 and as of June 2017 had 28 members out of 77 recruitment agencies.

### MOU Process

The main difficulties with the present migration process through MOU channels relate to the time and cost of the exercise to individual migrants. The process is lengthy and can take 3-4 months from the time the worker approaches the agency to actual deployment. The majority of this time is simply spent processing documents.<sup>68</sup> Documentation is especially difficult to obtain for those who live in rural areas. Migrants consulted by MMN in the course of this study stated that they would like to be able to obtain passports at provincial offices.

*“Coming to work in Thailand through the MOU was such a complicated process, it required too much paperwork and was even more expensive than paying a broker.”* – Female Cambodian migrant worker, 38 years old, currently employed in a factory in Rayong, Thailand

Cambodian CSOs also noted that local staff from the MOLVT and other government authorities were often unaware of current practices and legislation, or if they were, the budget allocated to them had not been disbursed. All the Cambodian CSOs interviewed called for better informed government officials at the provincial and commune level so they could provide clear information on labour regulations, as well as for greater decentralisation of the recruitment process to make it easier for migrants in the provinces to obtain necessary documentation should they choose to use a recruitment agency to migrate, and be informed of the exact requirements and cost.

*“The location for applying for all legal documents should be near migrants who are in the provinces, and it should be cheap and fast.”* – Male Cambodian migrant worker, 18 years old, former sugarcane worker in Thailand, currently in Poipet, Cambodia

The Cambodian government has at times attempted to address these issues but failed to follow through to ensure their interventions were effective. Following the exodus of migrant workers from Thailand to Cambodia in 2014, the government issued a *prakas* lowering the cost of passports for migrant workers to USD 4.<sup>69</sup> However, informants indicated that the “4-dollar passport” is almost impossible to get in practice, and takes much longer than the already lengthy time that workers endure for the normal, more expensive process.<sup>70</sup> The Cambodian government also indicated that it would set up passport offices at the provincial level, however this development has yet to come to pass.<sup>71</sup>

MMN's 2014 report on the migrant exodus found that the majority of migrants would prefer to migrate legally, but the time and, most importantly, cost perturbed them from doing so.<sup>72</sup> A report by the IOM released in August 2016 indicated that there had indeed been no additional uptake of formal channels since the 2014 exodus.<sup>73</sup> Migrants who participated in MMN consultations in 2015-2016 also shared their general lack of faith in formal migration channels.

In order to make formal migration channels a more attractive option for migrants, costs must be reduced across the board, and a clear cost structure must be implemented and enforced so that migrants know what they are

<sup>68</sup> Interview with ACRA, January 2016.

<sup>69</sup> In June 2014, the Thai military government initiated a crackdown on irregular migrant workers and deported large numbers of Cambodian workers. Subsequent fear among the migrant population led to a simultaneous mass exodus, resulting in over 200,000 migrants leaving Thailand in a matter of weeks. Most returned within a short space of time. For more information, see: Mekong Migration Network, “The Precarious Status of Migrants in Thailand: Reflections on the Exodus of Cambodian Migrants and Lessons Learnt”, December 2014, <http://www.mekongmigration.org/wp-content/uploads/2014/12/FINAL-REPORT-The-precarious-status-of-migrants-in-Thailand.pdf>.

<sup>70</sup> Interview with ACRA, January 2016; See also: ILO, “High Rise, Low Pay: Experiences of migrant women in the Thai construction sector”, 2016. In that report one Cambodian recruiter is quoted as saying: “Yes, [Cambodian Prime Minister] Hun Sen said there would be \$4 passports, but when we go [to apply for passports] they say that the \$4 machine is not yet ready, so it is \$120 for a passport”.

<sup>71</sup> Interview with ILO Cambodia, January 2016.

<sup>72</sup> MMN, “The Precarious Status of Migrants in Thailand”.

<sup>73</sup> Koenig, Andrea & Dickson, Brett, “Assessment Report: Profile of Returned Cambodian Migrant Workers”, IOM Cambodia, August 2016.

paying for and what they are entitled to. The current situation is leading to many migrants becoming indebted through usurious loans or illegal costs. In addition to transparency, CSOs working in Cambodia suggested making low-interest loans available to migrants who wish to pursue this avenue.<sup>74</sup>

The Cambodian migrants and returnees consulted over the course of this study shared their lack of confidence that migrating through a formal channel would necessarily guarantee protection of their rights and benefits in destination countries. They expressed their hope that the Cambodian government will pressure their Thai counterparts to ensure compliance with laws in Thailand such as minimum wage. For those who migrate formally, standard contracts may help in this regard.

### *Deployment Bans*

In the past, the Cambodian government has relied on deployment bans to protect migrant workers from abuse in destination countries. Between 2011 and 2015, a ban was put in place preventing Cambodian nationals from migrating to Malaysia as domestic workers. However, this ban was largely ineffective and simply led to workers migrating illegally or being more vulnerable to deception by unlicensed agencies and being left without protection.<sup>75</sup> Cambodia and Malaysia signed an MOU to lift the ban in December 2015 and in May 2017 they reached an agreement to resume deployment. They also agreed that all domestic workers must undergo a one-month training before being deployed to Malaysia.<sup>76</sup>

### *Complaints Mechanisms*

Recruitment agencies bear the responsibility for resolving disputes submitted to them for conciliation abroad. If this is unsuccessful, they must report the matter to the Cambodian Consulate or Embassy.<sup>77</sup> Agencies must also assist workers who submit complaints to local authorities.<sup>78</sup>

In Cambodia, complaints can also be lodged directly at the MOLVT Migrant Resource Centres (MRC) in Phnom Penh, or at any provincial MRC.<sup>79</sup> If the MRC does not succeed in resolving the dispute, it will be referred to the Provincial Departments of Labour and Vocational Training and, failing that, the Department of Employment and Manpower.<sup>80</sup> All agreements made in this formal conciliation process are binding.<sup>81</sup> According to the ILO, most complaints through this mechanism are from people complaining they paid fees but were never deployed overseas, or from those returning who were not paid the wages owed to them.<sup>82</sup>

The complaints process is still new and a review of the system in 2016 noted gaps including deviations from official procedures, inability of migrants to recover all of their losses, low capacity at the provincial level to run dispute resolution, and a possible reluctance to award compensation in addition to fees lost. Some workers also reported they were reluctant to make complaints due to fear of repercussions. Many migrants who joined MMN consultations for this study shared their concerns that bringing complaints to official mechanisms would further



A Cambodian migrant returnee at the Poipet Transit Center (PTC) is interviewed about the screening process to identify victims of human trafficking or labour exploitation.

Photo: MMN/John Hulme

<sup>74</sup> MMN Consultation with CSOs, Phnom Penh, January 2016.

<sup>75</sup> VOA, "Despite Ban, Cambodian Maids Still Being Sent to Malaysia", October 2011, <http://www.voanews.com/a/despite-ban-cambodian-maids-still-being-sent-to-malaysia-131977668/168113.html>; Meta, Kong, "Firm denies circumventing Malaysia maid ban", *The Phnom Penh Post*, March 2016.

<sup>76</sup> Yeo, YH, "Cambodian maids are coming back", *The True Net*, May 2017, <http://www.thetrue.net.com/news/cambodian-maids-are-coming-back/>.

<sup>77</sup> "Prakas 252", September 2013, Article 4.

<sup>78</sup> "Prakas 249", September 2013, Article 10.

<sup>79</sup> For further elaboration on the role and functioning of MRCs see the next section on information dissemination.

<sup>80</sup> "Prakas 249", Article 9.

<sup>81</sup> "Prakas 249", Article 8.

<sup>82</sup> Interview with ILO Cambodia, January 2016.



complicate the situation.<sup>83</sup> Some of the remedies suggested by the ILO include more capacity building among staff across all levels about the law and regulation, and the dedication of more staff and resources to complaints resolution, including at embassies.<sup>84</sup> Nevertheless, a survey conducted by the ILO found that 90% of those who have gone through the process were content with the outcome, despite the fact that none received full repayment.<sup>85</sup> Despite the *prakas* on agency deposits not yet being passed, the deposits are reportedly already being used when agencies refuse payment.<sup>86</sup>

## Information Dissemination

One of the primary means employed by the Cambodian government to disseminate information at the pre-migration stage is through the use of the MCRs, which were established with the assistance of the ILO and IOM. The MCRs established with the assistance of the ILO are located in Battambang (established in collaboration with the National Employment Agency, NEA), Kampong Cham (established in collaboration with the Phnom Srey Organization for Development), Prey Veng (established in collaboration with the Cambodian Labour Confederation), and in Phnom Penh, run by the MOLVT and based within the government compound.<sup>87</sup> Another MRC was set up in collaboration with the IOM in Poipet. The centres have four objectives: (1) counselling prospective migrants; (2) receiving and resolving complaints; (3) training and capacity building for local commune leaders and family members; and (4) general information dissemination on migration.



Community-based information dissemination on legal and safe migration by CWCC.

Photo: Cambodian Women's Crisis Center (CWCC)

A recent ILO study indicated that these MRCs have been somewhat successful. Knowledge among users of safe migration steps had increased, and they are handling a number of complaints, which indicates a high degree of trust from within the community.<sup>88</sup> However, despite the MRC initiative, overall, migrants still possess limited knowledge on avenues of legal migration.

The Cambodian migrants and returnees consulted by MMN overwhelmingly stated that they wish to receive information about safe migration and working conditions in the destination country. They said they were not aware of any information provided by the government on these issues, while they observed that prospective migrants frequently receive information from brokers. They called for more and better quality information via a variety of different media sources so as to have greater reach.

## Regulation of Recruitment Agencies

### *Licensing Conditions*

The pre-requisites to become a licenced recruitment agent in Cambodia include the possession of an office together with sufficient staff and resources, a training centre with adequate facilities for skills and pre-departure training, and the deposit of a guarantor. The deposit of USD 100,000 is held to be used to compensate workers where conciliation fails, and can be used (and replenished) by the state for repatriation in cases of emergency.<sup>89</sup> Prakas 047/13 provides

<sup>83</sup> MMN consultation meeting with migrant returnees, Poipet, Cambodia, November 2015.

<sup>84</sup> ILO, "Assessment of the Complaints Mechanism for Cambodian Migrant Workers", 2016, [www.ilo.org/asia/whatwedo/publications/WCMS\\_466494/lang-en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_466494/lang-en/index.htm), pp. 12-14, 17.

<sup>85</sup> Interview with ILO Cambodia, January 2016.

<sup>86</sup> Interview with ACRA, January 2016.

<sup>87</sup> ILO, "Concept Note Study visit to Migrant Resource Centres", September 2013, [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-hanoi/documents/meetingdocument/wcms\\_220501.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-hanoi/documents/meetingdocument/wcms_220501.pdf).

<sup>88</sup> Interview with ILO Cambodia, January 2016.

<sup>89</sup> "Sub-Decree #190", August 2011, Articles 7, 8 and 10.



additional conditions which include, *inter alia*, that the agency must be at least 51% Cambodian owned; and that it establishes a permanent representative in destination countries.<sup>90</sup>

### *Obligations of Recruitment Agencies*

Recruitment agencies are made responsible for verifying working conditions and living conditions before recruiting workers, including details such as types of work, workplace, working hours, skills, salary, benefits, health insurance, accommodation, transport, and security and safety.<sup>91</sup> Job advertisements placed by recruitment agencies must be “comprehensive and accurate”.<sup>92</sup> However, false information from agencies and illegal brokers was identified by ACRA and migrants in Rayong as one of the biggest problems. Cambodian migrants who joined our consultation in Rayong told MMN that they find that many job advertisements contain misleading or false information, and that they would like the authorities to properly regulate this part of the recruitment process. Furthermore, at present, there are no limits on the fees that can be demanded by recruitment agencies.<sup>93</sup>

It is the obligation of recruitment agencies to enter into and implement contracts between themselves and the MOLVT, the prospective migrant worker, known as a Job Placement Service Contract, and with the foreign employer and migrant employee, known as an Employment Contract. Employment Contracts between workers and employers must specify, *inter alia*, working conditions, job status, types of work, benefits, and key addresses where they can be contacted.<sup>94</sup> There is currently no standard employment contract in general use, however, the recently concluded MOU with Malaysia on recruitment and employment of workers has a standard contract of employment appended.<sup>95</sup>

### *Monitoring and Enforcement*

Prakas 250 requires that the MOLVT inspect all agencies and their training centres to ensure compliance with the law, and that special inspection must be conducted after any complaint is received.<sup>96</sup> Penalties for violations of regulatory requirements may include licence suspension and cancellation. All CSOs and key informants interviewed noted that the most urgent priority in regards to recruitment agencies is stricter and more comprehensive monitoring and enforcement, to ensure that the regulations, which are generally considered fairly comprehensive, are actually implemented and violations punished. The IOM, ILO, and ACRA interviewees all noted that worker exploitation often occurs at the hands of sub-licensees and brokers. Sub-licensing is illegal but common, and difficult to monitor, especially in provincial areas.<sup>97</sup> The ILO and IOM noted that training facilities themselves are easier to monitor, and there is some ongoing inspection occurring, but it is not standardised. At the time of the interview, the IOM was assisting the government in developing a standard process and objective criteria to use for inspection.<sup>98</sup>

### *Industry Self-regulation Initiatives*

ACRA has a code of conduct for its own members but, as earlier stated, membership of this association is voluntary. ACRA monitors its own members and can refer agencies to MOLVT for investigation.



On 20 April 2017, Mr. PIN VIREAK, Executive Director of ACRA has provided the pre-departure orientation to Cambodian workers to work in Kingdom of Thailand under UNG RITHY GROUP CO., LTD. on 20 April 2017, at UNG RITHY GROUP CO., LTD., Phnom Penh, Cambodia.

Photo: Association of Cambodian Recruitment Agencies – ACRA

<sup>90</sup> “Sub-Decree 47/13”, Article 2.

<sup>91</sup> “Sub-Decree #190”, Article 21.

<sup>92</sup> *ibid.*, Article 22.

<sup>93</sup> Interview with MOLVT, January 2016.

<sup>94</sup> “Sub-Decree #190”, Article 15.

<sup>95</sup> For further discussion on the Cambodian-Malaysia MOU see section on international cooperation below.

<sup>96</sup> “Sub-Decree #250”, Articles 2 and 3.

<sup>97</sup> Interview with ILO Cambodia, January 2016.

<sup>98</sup> *ibid.*

### *Pre-departure Training*

Pre-departure training (PDT) is compulsory and provided by recruitment agencies. The ILO has assisted in the development of a curriculum for migrants destined for Thailand and Malaysia and has conducted trainings for trainers. The ILO noted a high level of commitment to the curriculum from ACRA, but lamented a failure on the part of the government to disseminate and implement the curriculum universally. There is also little or no monitoring of the PDT that takes place.<sup>99</sup> In addition, PDT is given the day before deployment, which can make it difficult for migrants to retain and process the information. CSOs also report that in practice PDT is often not given to those going to Thailand.

There has been widespread documentation of abuse at training centres, where agencies are obliged to accommodate workers before their departure. Regulations now contain stipulations that require certain standards to be met, including adequate accommodation that ensures good hygiene and health for workers.<sup>100</sup> Importantly, workers cannot have their freedom of movement curtailed and can choose to live either in or out of the training centre.<sup>101</sup> While some training centres have been closed by the government for their illegal recruitment and training centre operation, systematic monitoring remains a challenge. The government has adopted a regulation on labour inspection of private recruitment agencies in Cambodia and set up an institutionalised monitoring procedure. However, very few inspections have thus far been carried out and not all agencies have been inspected.<sup>102</sup>

### **Overseas Assistance**

Cambodia currently has no specialised welfare officers abroad, but as of December 2016 “labour counsellors” had been deployed to consulates and embassies in Thailand, Malaysia, and South Korea. It is expected that their role is to respond to migrants in distress or when complaints are received. However, their exact role and function, as of yet, remain unclear. The MOLVT representative suggested that they would not be empowered to screen workplaces or employment contracts.<sup>103</sup> They would, however, be empowered to assist all migrant workers, regardless of their immigration status. The provision of adequate assistance overseas is one of the most urgent gaps in Cambodia’s current system.

This accords with the experience of those migrants consulted who had attempted to seek help through embassies or consulates. Cambodian returnees in Poipet and migrants in Rayong reported problems contacting the embassy or not receiving help when they approached them. Some of the migrants in Rayong were reportedly asked to pay fees in each process but did not receive proper assistance in the end. Migrant returnees in Poipet said that most migrants would not dare to seek support from the embassies when they had a problem because: (1) they did not have legal documents; (2) they did not want to make the problem bigger; (3) they were afraid of their employer; and (4) they did not know how to contact the embassies.

The MOLVT representative stated that the government would welcome help from NGOs on reporting mistreatment as they often cannot gain access to workplaces or to migrant communities. CSOs likewise called on the government to conduct more outreach and proactively invite collaboration and input from local CSOs in destination countries. Institutionalised collaboration with embassies also gives CSOs additional authority, thus increasing their capacity to advocate on behalf of workers. Cooperation with CSOs could also enable embassies to have more reach to spread information and raise awareness among migrant communities.



Female Cambodian migrant workers on their day off, Rayong, Thailand.

Photo: MMN/John Hulme

<sup>99</sup> *ibid.*

<sup>100</sup> “Sub-Decree #46”, Article 12.

<sup>101</sup> *ibid.*, Article 8.

<sup>102</sup> Interview with Legal Support for Children and Women (LSCW), June 2017.

<sup>103</sup> Interview with MOLVT Cambodia, January 2016.

Recruitment agencies are given a great deal of responsibility for protecting and assisting workers, and are obliged to have representatives in each destination country. Their obligations include inspecting employers, monitoring workers' conditions, providing administrative assistance such as helping them enrol in the social security system, and informing them of work conditions and occupational health and safety risks.<sup>104</sup> However, unless workers are fully informed of the obligations owed to them by recruitment agencies and how to submit complaints, these obligations may not be met, especially since government monitoring of agency behaviour is lacking. Furthermore, they can only assist a fraction of the workers in Thailand since most do not use agencies.



A Cambodian fisherman repairs nets for his next trip out to sea, in Rayong, Thailand.

Photo: MMN/John Hulme

## Migrant Welfare Fund and Social Security

There is no welfare fund in Cambodia. However, it has agreed to “support measures that will lead to the establishment of migrant welfare funds or their equivalent”.<sup>105</sup> Furthermore, there are no provisions for portability of social security earned in Thailand. While Thailand's Social Security Act allows non-Thai nationals who cease to be insured and do not wish to stay in Thailand to receive pension funds, there is no practical mechanism in place for migrants to access their entitlement.<sup>106</sup> Returnees who paid into social security in Thailand report difficulty in receiving the money they are owed once they return to Cambodia.

## International Co-operation

Cambodia has signed a number of MOUs with destination countries. The content of the MOUs for Thailand and Malaysia have recently been revised and the new MOUs were signed in December 2015. The new MOU with Thailand was regarded by most informants as an improvement. It explicitly states that migrant workers are entitled to local labour protections. Significantly, it is now easier for workers to change employers, as they are entitled to change jobs without losing status if working conditions are “abusive, exploitative, or become untenable”.<sup>107</sup> In addition, whereas workers previously had to wait three years between each two-year MOU deployment (of which they are entitled to a maximum of two), they now need to return to Cambodia for only 30 days.

Key informants such as the ILO stated that there were still important measures missing from the MOU, in particular a standard contract and the portability of social security/access to such in the destination country.<sup>108</sup> However, the ILO representative also noted with approval that Cambodia has become more consultative while negotiating, and conducts tripartite consultations on all MOUs.<sup>109</sup>

The MOU with Malaysia stipulates that the employer must abide by the national laws of Malaysia, and specifically mentions laws and policies pertaining to minimum wage, working hours, leave, medical insurance, and temporary employment passes.<sup>110</sup> The MOU, however, does not mention anything about a complaints mechanism if a breach of contract occurs. The MOLVT representative interviewed by MMN also stated that some aspects of worker protection in the MOU with Malaysia are less than what they had hoped to achieve in negotiation.<sup>111</sup>

<sup>104</sup> “Sub-Decree #252”, Article 3.

<sup>105</sup> ILO, “Cambodia, Lao PDR and Myanmar Agree to Take Actions to Develop Migrant Welfare Fund Programmes”, May 2015, [http://wcq1.ilo.org/manila/eventsandmeetings/WCMS\\_384761/lang--en/index.htm](http://wcq1.ilo.org/manila/eventsandmeetings/WCMS_384761/lang--en/index.htm).

<sup>106</sup> “The Social Security Act (No. 4) 2015 (B.E. 2558)”, [http://www.sso.go.th/wpr/uploads/uploadImages/file/PRB\(1\).pdf](http://www.sso.go.th/wpr/uploads/uploadImages/file/PRB(1).pdf), Section 36.

<sup>107</sup> “Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Labour Cooperation”, December 2015, Article 5, Section 5.

<sup>108</sup> Interview with ILO Cambodia, January 2016.

<sup>109</sup> *ibid.*

<sup>110</sup> “Memorandum of Understanding between the Government of Malaysia and the Government of Kingdom of Cambodia on the Recruitment and Employment of Workers”, December 2015.

<sup>111</sup> Interview with MOLVT, January 2016.



In May 2016, the Philippines and Cambodia held the first of a series of roundtables on the protection of migrant workers. They issued a joint declaration setting out principles for closer collaboration and engagement in the promotion and protection of the rights of migrants and migrant workers.<sup>112</sup>

In terms of negotiation and advocacy, the majority of the complaints from migrant workers at MMN consultations concerned lack of any support in ensuring Thai employers adhered to the law. They called for more involvement from Cambodian authorities in advocacy in Thailand to try to push for better working conditions and benefits.

### Facilitating Reintegration

There is almost no official attention paid to the problems related to the reintegration of migrant workers to Cambodia. There is some assistance given to trafficking victims. The MOLVT representative agreed that there were few services for returned migrants and much work was needed in this area. The MOLVT noted that NEA is aiming to provide information to job seekers (not only migrant workers) including on which sectors are expected to expand, and develop curriculums for those areas.

*“We never want to leave our country for work. If we earned fair wages for fair work and it’s enough to support our family, who would want to go abroad?” – Male Cambodian migrant fisherman, 35 years old, Rayong, Thailand*



A Cambodian worker drying squid, in Rayong, Thailand.

Photo: MMN/John Hulme

In terms of practicalities, migrants noted that at border crossings, some Cambodian authorities illegally extorted money from them, and they were anxious for this practice to stop. They would also like practical support such as transportation to home provinces, and a programme to certify and utilise workers who have obtained skills abroad.

<sup>112</sup> Lee-Pisco, Cristina, “Manila, Phnom Penh boost cooperation on migration, labour”, *Journal Online*, May 2016, <http://www.journal.com.ph/news/nation/manila-phnom-penh-boost-cooperation-on-migration-labor-issues>.

## 3.

# Myanmar's Labour Migration Framework

## Migration from Myanmar

There are a considerable number of Myanmar nationals working abroad with estimates that up to 10% of the country's population resides overseas, the vast majority within other Asian countries. Thailand is the most popular destination country for Burmese migrants. Other destinations include Malaysia, Singapore, South Korea, Japan and Bangladesh.<sup>113</sup>

The exact number of migrants from Myanmar in Thailand is difficult to verify due to the porous borders and large numbers of undocumented workers. As of May 2017, 202,932 Burmese migrants in Thailand had migrated under the MOU process, and 711,987 had completed Nationality Verification. In 2016, 723,360 migrant workers and 11,157 migrant workers' dependents registered at one-stop service centres.<sup>114</sup> Estimates suggest there are at least as many undocumented workers in the country. Migration to Malaysia, home to the second largest overseas Burmese population, is currently banned. However, there are a significant number of Burmese migrants that continue to live and work in the country.

## Migration Mechanisms

### *Legislation, Policies, and Institution*

The two guiding instruments governing labour migration in Myanmar are the 1999 Law Relating to Overseas Employment (LROE) and a National Plan of Action (NPA) for the Management of International Labour Migration for 2013-2017.<sup>115</sup> The LROE creates an Overseas Employment Central Committee and Overseas Employment Supervisory Committee, both comprising of members from various government agencies,<sup>116</sup> to perform various functions related to creating and implementing policy.<sup>117</sup> In its current form, the LROE is relatively sparse in content and lacks many of the necessary implementing regulations. It is currently under review with technical assistance from the ILO and a draft amended law has been prepared.

The NPA covers four specific areas of focus: (1) the governance of migration; (2) the protection and empowerment of migrant workers; (3) the inclusion of migration in the national development agenda; and (4) data collection and management. It also specifies that at the national level, the newly formed Migration Division (MD) within the Ministry of Labour, Immigration and Population (MOLIP) would be the focal point within the government for managing labour migration.

<sup>113</sup> MMN, "Migration Resource Book: Border Economic Zones and Migration", 2013, [www.mekongmigration.org/finalised%20BEZ%20pdf%20file.pdf](http://www.mekongmigration.org/finalised%20BEZ%20pdf%20file.pdf), p. 82.

<sup>114</sup> Thailand Office of Foreign Workers Administration, [https://www.doe.go.th/prd/assets/upload/files/alien\\_th/792945dd0ecdeebc225a6addeaf2f0f5.pdf](https://www.doe.go.th/prd/assets/upload/files/alien_th/792945dd0ecdeebc225a6addeaf2f0f5.pdf).

<sup>115</sup> Another relevant piece of legislation is the Anti-Trafficking in Persons Law adopted in 2005. This lays out criminal sanctions, ranging from fines to life imprisonment, for sex and labour trafficking offences.

<sup>116</sup> Although the 1999 law stipulates that a seat can be taken by a NGO representative, the working committees as they stand right now solely contain government officials.

<sup>117</sup> "Law Relating to Overseas Employment", July 1999, Articles 7 and 8.



The MD, created in 2012, is a technical actor tasked with contributing expertise to all components of international labour migration, from policy development to implementation. In practice, the MD oversees the revision of the LROE, participates in discussions regarding Memorandums of Understanding, and helps review recruitment agencies' employment arrangements with overseas employers. In the last role, the MD is authorised to suspend and blacklist recruitment agencies which exploit workers.<sup>118</sup>

In addition to government agencies, the Myanmar Overseas Employment Agencies Federation (MOEAF) is a non-governmental industry group created with the support of the Ministry and tasked with monitoring and supervising agencies to ensure they comply with the law, assisting and protecting workers abroad, and assisting to resolve complaints. It is compulsory for recruitment agencies to be a member of MOEAF.<sup>119</sup> Over 100 MOEAF members signed a voluntary Code of Conduct in August 2016 regulating recruitment agency practices.

### MOU Process

Like Cambodia, the vast majority of labour migration from Myanmar is through informal channels. For Thailand-bound workers in particular, migrating is often a simple matter of crossing a nearby border or using a local broker. The formal recruitment process for Thailand is expensive and time consuming, with relatively few benefits. Furthermore, accurate and updated information about the formal recruitment process for Thailand is not readily available, and many migrants consulted by MMN indicated that they knew very little about the formal channels.

For those who do choose to migrate formally, obtaining the necessary identification documentation is a difficult and confusing process. Long passport application processing times, unclear costs and other complications make formal migration burdensome. Recruitment agencies add to the burden with their exorbitantly high fees and failure to be forthright about jobs and working conditions. Many migrants are promised a certain job by a recruitment agency but find themselves working in a completely different and often less appealing job. Migrants consulted for this study also stated that it is difficult for them to know who, among various brokers coming to the villages, work for licenced recruitment agencies.

Furthermore, migrants consulted by MMN felt that many employers still violated labour laws even if they employed workers who came legally through the MOU process. They also felt that there was little assistance provided to workers even if they migrated through MOU processes. Thus, some migrants who knew about the formal recruitment process told MMN that they chose not to participate in it because they did not see any benefit.

*"I had to sign a contract but the agency did not show it to me. In Thailand, the agency deducted 2,000 Thai baht (USD 60) per month from my salary while I also still had to pay 600,000 Myanmar kyat (USD 440) to my agency. I had to engage in work different from what the agency promised me back in Myanmar. When I was sick and admitted to a hospital, I was informed that I would be reimbursed the expenses within three months, but after six months I still did not receive it. I went to a labour office, but could not actually use my social security card."* – Female Burmese migrant returnee, former migrant worker in Thailand, participated in an MMN consultation meeting in Myanmar

### Deployment Bans

In response to widespread concern about the abuse of an Indonesian domestic worker in Hong Kong, a ban on sending domestic workers to the territory was instituted in 2014. Subsequently the Myanmar government instituted a ban on women from Myanmar migrating for domestic work in any location. Moreover, a country-specific ban on all workers migrating to Malaysia was put in place in late 2016 following a diplomatic row regarding the treatment



Prospective Malaysia-bound migrant workers attend a pre-departure orientation held by the Myanmar Overseas Employment Agencies Federation.

Photo: MMN/John Hulme

<sup>118</sup> ILO, "Building Labour Migration Policy Coherence in Myanmar", 2017.

<sup>119</sup> MOEAF, "Rules and Regulations for Myanmar Overseas Employment Federation", 2014.

of the Rohingya. However, as has been previously noted, deployment bans are an ineffective means of worker protection given workers are likely to migrate anyway. Firstly, it is unrealistic to assume that people will stop migrating for work simply because there is a ban in place when they have few employment opportunities domestically. As a result, bans often push people to migrate illegally. The number of Burmese domestic workers in Singapore, for example, still increased by 50% despite a ban between 2013 and 2015. As a result of bans and irregular migration, migrant domestic workers are left outside legal protection. Recruitment fees that workers pay have reportedly increased to “doctor” documents and pay bribes. MOEAF was quoted as saying that the facilitation of people’s movement is now done by traffickers instead of recruitment agencies and it is harder for authorities to regulate them.<sup>120</sup> Moreover, domestic workers already deployed when the ban took place remain in those countries and, with suspended/cancelled agencies, they now have fewer protections. Responding to these concerns, the Myanmar government announced in June 2017 that it planned to lift the ban on domestic workers traveling to Hong Kong, Singapore and Thailand and that it would make efforts to register those who had travelled illegally during the ban.<sup>121</sup>



Migrant workers reporting to the “Myanmar Migrant Workers’ Reporting Counters” at the Yangon International Airport in Myanmar before leaving the country to work. Myanmar

Photo: MMN

### Complaints Mechanisms

To resolve complaints from formally deployed workers, MOEAF has offices in Yangon and Bangkok, as well as a 24-hour hotline.<sup>122</sup> Staff at these offices negotiate in the first instance with the employer or agency, and in Thailand sometimes cooperate with labour attachés.<sup>123</sup> If MOEAF fails to resolve the issue, the complaint is referred to the government mechanism.

If the complaint goes unresolved, MOEAF can facilitate the return of the worker to Myanmar and the agency must repay fees.<sup>124</sup> However, an ILO Briefing Paper on complaints mechanisms indicates that agencies are usually unwilling to provide compensation and will reimburse only the legally allowed fee, even if the worker has paid more than that or is owed unpaid wages.<sup>125</sup>

In discussing avenues for redress, MOEAF staff interviewed by MMN took the position that in the case of disputes, “the worker is only correct 5% of the time, [and] in 95% of the cases the workers are wrong”.<sup>126</sup> Furthermore, they stated that they prefer workers to contact MOEAF directly in Thailand rather than approach NGOs, which can “agitate the migrant workers”, whereas they can handle the problem easily.<sup>127</sup> The government complaint mechanism is run through the MD within the Department of Labour in Nay Pyi Taw and Yangon. Complaints can be submitted by telephone, in writing, or in person at a Labour Exchange Office (LEO). All complaints are then forwarded to Nay Pyi Taw for an inquiry team to investigate. Workers and third party representatives may submit complaints.<sup>128</sup>

Again, negotiations between the agency and worker are the first means of attempting to resolve any dispute. If necessary, the worker can be reimbursed from the recruitment agency’s deposit. This is successful sometimes but migrants are rarely paid compensation. In cases of severe or habitual abuse, MOLIP can suspend or cancel the agency’s licence.

<sup>120</sup> Katie Arnold, “Myanmar women put in danger by ban on maids working overseas”, *The Guardian*, June 2016, <https://www.theguardian.com/global-development/2016/jun/06/myanmar-women-put-in-danger-by-ban-on-maids-working-overseas>.

<sup>121</sup> Nyein Zaw Lin & Myo Min Htet, “Overseas maids to be registered”, *Eleven Myanmar*, June 2017.

<sup>122</sup> Interview with MOEAF, May 2016.

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> ILO, “Country of origin complaints mechanisms for overseas migrants from Myanmar”, 2016.

<sup>126</sup> Interview with MOEAF, May 2016.

<sup>127</sup> *ibid.*

<sup>128</sup> ILO, “Country of origin complaints mechanisms for overseas migrants from Myanmar”, 2016.

In terms of responses to complaints, the actions of representatives abroad and indeed of the Myanmar government to significant problems was described by the IOM informant as reactive. Rather than have standardised responses, the government responds in an ad hoc manner when labour attachés report any serious case of exploitation. Furthermore, the Director General of the Labour Department himself travels to engage in all major disputes and cases which is inefficient and a waste of resources.<sup>129</sup> It would benefit migrants far more if there were formal procedures to follow which could be dedicated to specific staff, thereby increasing the capacity and predictability of the system.

## Information Dissemination

Myanmar is making efforts towards providing greater public information on labour migration. There are currently 11 MRCs throughout the country. The ILO has supported the establishment of MRCs with LEOs in Dawei, Meiktila, Myingyan, Kyaukse, Chan Aye Tha San, and with Mawk Kon Local Development in collaboration with the LEO in Kyaing Tung, Shan State. IOM supports MRCs with LEOs in Mawlamying, Magway, Hpa An, Myawaddy, and Yangon.<sup>130</sup> In addition, any of the 96 LEOs across the country can also provide information to potential migrants about migration.

However, there are some doubts that these MRCs are achieving their purpose. Many of those interviewed suggested that due to the recent history of the country, workers were unlikely to approach government facilities for information about migration.<sup>131</sup> A male Burmese migrant worker who joined an MMN consultation for this study stated:

*“We need to build trust between citizens and the government.”* – Male Burmese migrant worker, employed in the fishing industry in Phang Nga, Thailand



88 Generation Peace and Open Society provided pre-departure and safe migration training to Thailand- and Malaysia-bound migrants at Thayatkone Village, Phayargyee Township, Bago Division.  
Photo: MMN/John Hulme

This accords with an ILO study on knowledge of safe migration practices in Myanmar, indicating that only 1% of 625 potential migrant workers in the Mandalay Region, Tanintharyi Region and Shan State considered local labour authorities to be a dependable source of information on migration.<sup>132</sup>

Secondly, staffing remains an issue, with a need for the MRCs to have permanent staff with good knowledge and links to local organisations.<sup>133</sup> Lastly, the information offered by MRCs is primarily directed at how to get a job, rather than providing a more holistic, community-development approach to elucidating migration and work options, and considering long-term plans and the social impact of migration abroad.

The ILO study found that “awareness of critical information on how to migrate safely, the rights to which they are entitled and the working conditions they can expect is dangerously low”. Moreover, the study found that women and ethnic minority groups were disproportionately disadvantaged in terms of access to information.<sup>134</sup>

*“I did not get any information before I came to Thailand. Most migrant workers leave without getting information, since they have heard there are plenty of good jobs here that are well paid.”* – Male Burmese migrant worker, Mae Sot, Thailand

<sup>129</sup> Interview with IOM Myanmar, May 2016.

<sup>130</sup> *ibid.*

<sup>131</sup> Interview with ILO Myanmar and IOM Myanmar, May 2016.

<sup>132</sup> ILO, “Safe Migration Knowledge, Attitudes and Practice in Myanmar”, March 2015, p xiii.

<sup>133</sup> Interview with ILO Myanmar, May 2016.

<sup>134</sup> ILO, “Safe Migration Knowledge, Attitudes and Practice in Myanmar”, p 51.



Both CSOs and migrants called for more information dissemination on migration which, to be effective, should be delivered through a diverse range of means and media sources and be offered in local and ethnic languages.

### *Pre-decision Making Workshops*

Several CSOs also provide pre-decision making workshops and training programmes to potential migrants and workers. These programmes provide basic information about migrants' rights and in particular about the most immediate issues of concern for migrants in the recruitment process. Some of the programmes are carried out in collaboration with the ILO and others, such as those organised by Foundation for Education and Development, Yang Chi Oo Workers Association, and Migrant Workers' Rights Network, are carried out on their own. Programmes are offered once or twice a month and reach out to those who are interested in migration. They also target community leaders because they can effectively share the information with members of their community who trust them.

### *Pre-departure Training*

Workers traveling to Japan, Singapore and South Korea through legal channels are required to participate in PDT. After completion of the training, migrants are issued foreign labour cards, which must be produced at immigration control when they depart.<sup>135</sup> Training is run by the MOLIP according to agreements with the governments of these destination countries and focuses primarily on language skills. Workers formally migrating to Thailand are also required to participate in PDT, but given the close proximity, requirements for such trainings are not strictly enforced.

Previously, from August 2014 to November 2016, the MOLIP had delegated the responsibility of training Malaysia-bound migrants to MOEAF. These trainings were run over two days and often trained upwards of 300 migrant workers at a time. Key informants, however, stated that the content, methodology and oversight of the trainings were inadequate.<sup>136</sup> Pre-departure training also imposed financial burdens on many migrants. Although MOEAF indicated that recruitment agencies “mostly” paid for the training, migrants were still responsible for the cost of travel to the training centres, as well as food and lodging costs for the programme's duration.<sup>137</sup> In December 2016, however, the Myanmar government banned migration of its nationals to Malaysia. The ban remained in place at the time of writing.



Foundation for Education and Development (FED) held a pre-departure training at a church in Bago Region, Myanmar, for migrant workers seeking work in Thailand.

Photo: Foundation for Education and Development (FED)

MOEAF had also previously provided one-hour briefing sessions to migrants traveling to Thailand, according to an MMN interview with a MOEAF representative.<sup>138</sup> Since November 2016, however, the MOLIP has resumed responsibility for all official PDT programmes.

In 2015, the ILO responded to concerns about the quality of training by creating a standardised pre-departure training curriculum for migrants traveling to Malaysia and Thailand, which the MOLIP has approved, and running training-for-trainer programmes according to this curriculum.<sup>139</sup> The curriculum includes information about the culture of destination countries, employment conditions, validity of contracts, occupational hazards, health, migrant workers' rights and employer obligations. The curriculum for Thailand-bound migrants has also been distributed to recruitment agencies, trade unions and CSOs.

<sup>135</sup> Interview with MOEAF, June 2017.

<sup>136</sup> Interview with ILO and IOM Myanmar, May 2016.

<sup>137</sup> Interview with MOEAF, June 2017.

<sup>138</sup> *ibid.*

<sup>139</sup> ILO, “TRIANGLE II Quarterly Briefing Note”, December 2016, p. ii.

Many of the CSOs providing pre-decision making workshops, as mentioned above, also provide PDT. These mainly focus on migration to Thailand and Malaysia. Training covers information concerning: safe migration (such as how to access documents and passports); the culture of destination countries; practical information on how to travel and pass immigration; labour rights and migrant rights; methods for sending remittances; budget management; and contact details of the Myanmar embassy and labour attaché. These training sessions conducted by CSOs reach more people than the PDTs conducted by MOLIP as they are facilitated in remote areas where many people migrate from, whereas the trainings conducted by MOLIP are in Yangon and Mandalay.<sup>140</sup>

## Regulation of Recruitment Agencies

The primary legislation governing regulation of recruitment agencies is the aforementioned LROE. More specifically, the 2014 Rules and Regulations for Overseas Employment Agency License, released by MOLIP in 2014, set out that license holders must be Myanmar citizens or Myanmar-owned companies.<sup>141</sup> Those who have previously been sanctioned for sending workers abroad unlicensed, or who have been blacklisted, are barred from holding a license.<sup>142</sup> In addition, potential license holders must submit various documents including proof of no criminal convictions, evidence of investment, proof of sufficient office facilities, a budget, and demonstrate ownership of land worth a minimum of 100 million Myanmar kyat (USD 77,700).<sup>143</sup> They must deposit 50 million Myanmar kyat (USD 39,000) into a government account as insurance which is forfeited if their license is cancelled for any fault of their own.<sup>144</sup>

The regulations specify that sanctions can be imposed for violations of any rule or regulation, which range from a warning and a fine, to temporary license suspension for various durations, cancellation, forfeit of their deposit, and any other charges according to law.<sup>145</sup> The Rules and Regulations for License Holders of Overseas Employment Agencies set out the procedure for recruiting and deploying workers, including arranging documentation and health checks, having job orders approved and recruiting in accordance with job orders. Fees are capped at four times a worker's monthly salary. However, CSOs informed MMN researchers that it is more common for workers to pay 400,000-500,000 Myanmar kyat (USD 310-390).

The regulations give agencies significant responsibilities and stipulate penalties for non-compliance. Their obligations include explaining the content of the employment contract, rights and responsibilities, cultural information, protection procedures, labour laws, and working and living conditions abroad. They are also required to keep in contact with workers, take responsibility for workers from point of departure to return, co-ordinate with employers and not send them to areas or worksites where they would be in danger or have their rights infringed.

MOEAF is tasked with the supervision of recruitment agencies, although only the Ministry has the power to sanction them. MOEAF representatives informed MMN that agencies that have mistreated workers or were found to have breached conditions were suspended or had their licences revoked. In August 2016, eight recruitment agencies reportedly had their licences suspended.<sup>146</sup> However, there is no formal investigative branch or monitoring system, and agencies which close can easily re-open under new names.



A Burmese migrant workers at a small-scale furniture factory in Mae Sot, Thailand.

Photo: MMN/John Hulme

<sup>140</sup> Interview with Thet Thet Aung, 22 June 2016.

<sup>141</sup> Article 1.

<sup>142</sup> Article 2.

<sup>143</sup> Article 3.

<sup>144</sup> Article 4.

<sup>145</sup> Article 6.

<sup>146</sup> Consult-Myanmar, "Eight overseas employment agencies face legal charges", August 2016, <https://consult-myanmar.com/2016/08/08/eight-overseas-employment-agencies-face-legal-charges/>.



In March 2017, as a protection mechanism for workers, MOLIP ordered recruitment agencies to pay a 50 million Myanmar kyat deposit in order to create a fund for workers in the event that the agency abandoned them or the workers encountered other problems while abroad.<sup>147,148</sup> However, it is unclear whether this fund has materialised as MOEAF appealed the decision, arguing that the fee was too high, and the MD director stated that the labour ministry was still reviewing the decision.<sup>149</sup>

In practice there is minimal adherence to rules, and little monitoring and enforcement. A number of news reports and studies found that migrant workers who migrated through recruitment agencies experienced widespread abuse,<sup>150</sup> which is consistent with reports from CSOs presented at MMN's consultation meeting. There is consistent overcharging of fees, increasing of expenses, debt bondage, underpayment, and exploitative conditions. Burmese migrants who joined the MMN consultation in Mae Sot, Thailand, all urged the Myanmar government to talk with recruitment agencies and reduce agency fees.

*"The Burmese government should ensure enforcement of policies so that they are not just on paper, but applied in practice."* – Male Burmese migrant worker, 31 years old, employed at a chicken factory in Thailand

### *Voluntary Code of Conduct*

In August 2016, a voluntary Code of Conduct developed through collaboration between MOLIP and MOEAF with input from the ILO was launched.<sup>151</sup> So far over 100 recruitment agencies out of 226 registered have signed on to the Code of Conduct.<sup>152</sup> The Code contains a number of undertakings regarding best practice that signing agencies agree to adhere to. It specifies what should be contained in the agreement between a migrant worker and a recruitment agency, including a breakdown of fees. As hidden fees and lack of transparency of fee schedules often contribute to overcharging, such a measure would be highly beneficial. Signatories also agree to enter workers only into contracts that strictly comply with local labour laws; inform them of any additional costs in advance; provide workers with in accommodation and detailed pay slips; and allow them to exercise their right to form a union.

Those who sign the Code of Conduct will also be subject to monitoring and ranking by a gender-diverse monitoring committee comprising of experts including a migrant representative, and agree to subject themselves to complaint mechanisms, and the ratings will be made publicly available.

## **Overseas Assistance**

Myanmar currently employs five labour attachés in Thailand, two in Malaysia, and one in Korea.<sup>153</sup> Their role is to verify job orders from recruitment agencies, respond to complaints from migrant workers, including negotiations with employers to resolve disputes, assist in the Nationality Verification process and issue Certificates of Identity.

However, their current number is insufficient to service the needs of all the migrant workers in these countries, and their exact powers, functions, and mandates are not properly specified. A MOLIP representative admitted that the labour attachés' "phones are never free as they are continuously called by migrant workers".<sup>154</sup> Migrants consulted by MMN also expressed a desire for the government to expand outpost consular offices in areas where migrants live.

Migrants who joined the MMN consultation said that they generally found it difficult to contact the embassies, partly due to their immigration status, and partly due to lack of information as to how to contact them and what assistance is available. However, the MOLIP representative informed MMN that embassies abroad are mandated to help both documented and undocumented workers.<sup>155</sup> Migrants consulted by MMN were generally unaware that the embassies' mandate includes helping undocumented workers and assumed that contacting embassies would not do them any

<sup>147</sup> Htwe, Zaw Zaw, "Overseas employment agencies could face 10-fold hike in fees", *The Myanmar Times*, January 2017.

<sup>148</sup> Htwe, Zaw Zaw, "Overseas employment agencies to pay new deposit fee", *The Myanmar Times*, March 2017.

<sup>149</sup> Htwe, Zaw Zaw, "Labour ministry reviewing agencies deposit fee order", *The Myanmar Times*, May 2017.

<sup>150</sup> Finnwatch and Swedwatch, "Trapped in the kitchen of the world: The situation for migrant workers in Thailand's poultry industry", November 2015, [www.swedwatch.org/sites/default/files/tmp/76\\_thaikyckling\\_151123\\_ab.pdf](http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf).

<sup>151</sup> MOEAF, "Code of Conduct for the Members of Myanmar Overseas Employment Agencies Federation", August 2016.

<sup>152</sup> ILO, "Building Labour Migration Policy Coherence in Myanmar", 2017.

<sup>153</sup> Interview with ILO Myanmar, May 2016.

<sup>154</sup> Interview with MOLIP, May 2016.

<sup>155</sup> Interview with MOLIP, May 2016.

good if they are undocumented. There is an urgent need to ensure that the assistance available to undocumented migrants becomes widely known. Workers from Myanmar consulted by MMN expressed a strong desire for more support from their government abroad.

In addition to responding during problems and crises, migrants and CSOs expressed a desire to see more outreach from embassies and consulates. Programmes to keep migrants informed of changes in regulations or provide ongoing education about their rights and available remedies would also ensure migrants are kept up to date. This will go some way to filling in gaps for migrants who do not receive adequate information at pre-departure training. They can also benefit the broader migrant population including undocumented migrants. In a recent attempt to send accurate and up-to-date information to migrants, the Myanmar labour attachés have started a Facebook page.

### Migrant Welfare Fund and Social Security

Similar to Cambodia, there is currently no migrant welfare fund in Myanmar. However, the government has agreed to “support measures that will lead to the establishment of migrant welfare funds or their equivalent”.<sup>156</sup> Furthermore, there are no provisions for portability of social security earned in Thailand. As explained earlier, while Thailand’s Social Security Act allows non-Thai nationals who cease to be insured and do not wish to stay in Thailand to receive pension funds, there is no practical mechanism in place for migrants to access their entitlement.<sup>157</sup> It is urgent that the Myanmar government develops a mechanism in coordination with the Thai government by which migrant workers leaving Thailand can access social security benefits accrued. Similarly, those who receive compensation for injuries should have a simple and straightforward means of accessing financial compensation without delay.

### International Co-operation

With an aim to enhance the establishment of formal migration channels, Myanmar signed a new MOU on Labour Cooperation and Agreement on Employment of Workers with Thailand in June 2016. The new MOU with Thailand contains some improvements for migrant workers over the old agreement. For example, under the new agreement it is easier to change employers, and for those who have renewed their visas the maximum number of times, it is easier to re-migrate.

Migrants consulted by MMN called on authorities to engage more with Thailand to ensure that Thai employers adhered to local labour laws. They also expressed a strong wish for the government to negotiate with Thailand to continue to improve conditions and offer better alternatives. For example, workers desire greater flexibility and more options in migration schemes, and more rights afforded to those with a “pink card” (which offers semi-legal status but does not enable the holder to receive benefits such as social security, and imposes travel restrictions).



Burmese workers on their way home after their work shifts, in Yangon, Myanmar.

Photo: MMN/John Hulme



A Burmese migrant community in Mae Sot, Thailand.

Photo: MMN/John Hulme

<sup>156</sup> ILO, “Cambodia, Lao PDR and Myanmar Agree to Take Actions to Develop Migrant Welfare Fund Programmes”, May 2015, [http://wcq1.ilo.org/manila/eventsandmeetings/WCMS\\_384761/lang--en/index.htm](http://wcq1.ilo.org/manila/eventsandmeetings/WCMS_384761/lang--en/index.htm).

<sup>157</sup> “The Social Security Act”, Section 36.

## Facilitating Reintegration

*“After I came back from Thailand I thought I would have more job opportunities in Myanmar but when I arrived there I had none. Myanmar should create job opportunities.”* – Female Burmese migrant returnee, 27 years old, a former garment factory worker in Thailand

There is little attention given to the reintegration of migrant workers. CSOs in Myanmar suggested there is a need to improve services to those who returned with health-related illnesses (directly or by referral) and to ensure that benefits can be received.

MMN's 2016 study on the impact of social exclusion also found that migrant returnees and migrant children born outside Myanmar frequently face difficulty in registering for household registration and applying for national identification documents upon return. The lack of full citizenship rights means that migrant returnees face restrictions on their freedom of movement, access to education, and ability to vote in national elections. These limitations ultimately exclude migrants from fully reintegrating and participating in Myanmar society. The study urged Myanmar to simplify the requirements and process to secure national identity cards.<sup>158</sup>

Migrants consulted by MMN regarding the roles of countries of origin did not refer to reintegration per se, but there was a clear desire for the Myanmar government to pursue development at home. In this way, migration can be a tool for raising standards of all its citizens, rather than lock workers into a cycle of migration for minimal wages.



Burmese migrant children at the village grocery store after school in Mae Sot, Thailand.

Photo: MMN/John Hulme

<sup>158</sup> MMN, “Permanently Temporary: Examining the Impact of Social Exclusion on Mekong Migrants”, 2016, <http://www.mekongmigration.org/wp-content/uploads/2016/10/Permanently-Temporary-Eng-mmn-printed-version.pdf>, p. 30.

# Conclusion

Migration from Cambodia and Myanmar to neighbouring Thailand continues apace through predominantly informal channels. This study has found that many would-be migrants from these countries are discouraged from taking more formal routes by the associated costs and the fact that they do not necessarily guarantee better rights protection. Indeed, existing migration mechanisms often leave migrant workers open to extortion, exploitation and abuse throughout the migration cycle. While much attention is rightly given to destination countries' responsibilities with regards to safeguarding the welfare of migrants in their territory, this study has illustrated how countries of origin have a crucial role to play in promoting and protecting the rights of their citizens abroad. Ensuring that prospective migrants have sufficient, reliable information to make well-informed migratory decisions; that there is stringent regulation of the recruitment industry; and that effective assistance abroad exists are all significant ways in which origin countries can help make migration safer for their nationals. In all of our consultations with migrants and migrant returnees, participants in this study expressed their desire to see their countries of origin play more pro-active roles in protecting their rights.

The Philippines and Indonesia's experience of labour migration governance, while not exactly analogous to the situation in the GMS, provides some salutary lessons that apply to the situations of Cambodia and Myanmar as they develop their own institutions. These include:

- The importance of information dissemination and effective PDT;
- Clear mandates and co-ordination among responsible agencies;
- Genuine monitoring, enforcement, and sanctions for rule violations; and
- Provision of comprehensive overseas assistance.

Moreover, the Philippines and Indonesia's experience provides a cautionary tale about the dangers of overly relying on migration as a poverty reduction strategy and the need for development models that provide real livelihood opportunities so that migration is just one option among many, rather than a survival necessity.

Myanmar and Cambodia's nascent systems demonstrate that some efforts have been made towards implementing a system of governance that protects its workers abroad. However, it is crucial that the intent and purpose of these systems centre on the protection of migrant workers and their families, while the effectiveness and value of labour migration systems depends on the extent to which it fulfils this goal, for both documented and undocumented migrants.

# Recommendations for Cambodian and Myanmar Authorities

## 1. Institute migration mechanisms through which prospective migrants can obtain necessary documents for migration without excessive bureaucracy, cost, or travel

In both Cambodia and Myanmar opportunities to migrate through formal channels require individuals to secure multiple types of documentation, which are often costly or difficult to obtain. In addition, to go through the formal migration process, they must obtain documentation from Yangon or Phnom Penh. Similarly, some systems or government offices are too centralised to offer much benefit to migrants, such as Myanmar's complaint mechanism. Decentralising relevant government offices and agencies to provide greater reach throughout provinces, establishing one-stop service centres, removing bureaucracy, reducing costs, and enabling migrants to obtain documents from rural offices would improve the system.

## 2. Establish effective complaint mechanisms which are accessible to all migrants both in destination countries and upon return, and facilitate the use of local complaint mechanisms where appropriate

While complaint mechanisms do exist in both countries and are operational, there is room for improvement. The administration of Myanmar's system, in particular, is inefficient and has little capacity, since complaints must go through Nay Pyi Taw. Many workers do not report issues or are not aware of how to seek remedies. Complaint mechanisms should address both issues in illegal recruitment and labour conditions. Similarly, systems should be in place to ensure any compensation awarded to workers injured in destination countries can be accessed easily and without delay. Authorities must also make efforts to educate workers both at home and in destination countries about avenues of redress open to them. This includes educating workers, including undocumented workers, about remedies available to them in the destination country, and assisting them in that process if necessary.

## 3. Negotiate with and advocate to destination countries to improve conditions for migrant workers

Negotiate with destination countries for better terms and conditions for migrant workers, including more beneficial terms to MOUs and bilateral agreements, but also better conditions, expanded work sectors and labour protections, greater flexibility including job mobility, the right to visit home, etc. Negotiations can be formal (as in the case of MOU) or ad hoc discussion with authorities in destination countries through labour attachés, to either improve laws relating to migrant workers or improve enforcement of and compliance with current rights.

## 4. Make greater efforts to disseminate information on safe migration, migration options, and alternatives to migration, throughout the country

Although there are some efforts at information dissemination on safe migration and migration options, such as migrant resource centres, this study found that prospective migrants have little knowledge on safe migration or their rights. Myanmar and Cambodia should expand their current efforts, using different media, co-operating with CSOs, and ensuring information is translated into local languages. It is important that communities in Cambodia and Myanmar receive comprehensive and accurate information about labour migration so that those who choose to migrate can make informed decisions. Equally as importantly, this information must be neutral and unbiased, and aim to present clear and comprehensive information so that migrants can make a choice, rather than try to discourage or stop certain people from migrating.



Such contextualisation will not only be of value in itself but will also enable prospective migrants to ask informed questions of brokers and agencies so as to contribute to their decision making. Those from traditional migrant sending communities should be informed about the history of migration; advantages and disadvantages of migration; options for migration processes; likely jobs, conditions and culture in the destination country; and alternative employment opportunities at home. For families of migrants, this information dissemination can also include information on remittance management and financial planning.

## **5. Provide meaningful regulation of recruitment agencies; not merely through the passing of laws and regulations, but effective monitoring and enforcement, including sanctions for non-compliance**

Cambodia's regulations on recruitment agencies are relatively comprehensive. However, at present, monitoring and enforcement of these regulations is sorely lacking. Those who do not comply with regulations must face sanctions. Monitoring should also be proactive, rather than merely reactive to problems as they occur.

Myanmar's regulations are developing, but again, at the moment there is little active enforcement.

In both countries, standard fees should be introduced and strictly monitored, as well as standard contracts. Licensing and ownership laws as they currently exist could be expanded further to prevent opportunities for exploitation, such as preventing those who are involved in associated industries or government offices from operating recruitment agencies. Our case study on the Philippines has demonstrated that such regulations reduce the chance of corruption and has been an effective way to minimise potential conflicts of interest among industries or government and agencies.

## **6. Improve the quality and expand the delivery of pre-departure training so that all formal migrants go through effective and thorough training before deployment**

Once individuals have elected to migrate, the pre-departure training they receive through recruitment agencies or their government should be effective, thorough, and useful. In both Cambodia and Myanmar, some efforts have been made, but pre-departure training is still not compulsory for all destinations, and although the ILO has assisted both countries to develop a standard curriculum, oversight of training is minimal.

The training should utilise effective methodology and teaching styles, be at a point in the deployment process where prospective migrants are most likely to retain information, and contain genuinely useful content. Information about labour rights in the destination country, how to get help, and OHS and skills training for specific jobs is crucial.

## **7. Improve overseas assistance**

### **7.1 Allocate sufficient budget and staff to embassy and consular services, including labour attachés, to ensure that swift and meaningful assistance is available to migrants regardless of their immigration status**

There is currently little overseas assistance available to Myanmar or Cambodian migrant workers. Myanmar currently has two labour attachés in Thailand, while Cambodia has deployed labour counsellors to those countries with the most migrants. However, the service provided to migrants currently appears limited and participants at the migrant consultations held in relation to this study reported that when they have approached embassies for help, they were not given assistance. Furthermore, undocumented migrant workers are turned away.

Embassies and consulates have significant work to do in becoming more responsive and helpful to migrant needs in destination countries. Staff should be able to respond effectively and rapidly to requests for assistance, including in emergency situations.

Labour attachés should facilitate employer verification, which ideally could be extended to include monitoring of working conditions, employers' reputation, past history etc.

Embassies should be properly staffed with welfare officers and labour attachés who must be appropriately trained, and have a clear mandate. They should be empowered to extend the same help to undocumented as well as documented migrants. In addition, embassy and consular staff should take gender issues into account and hire more female staff members.

## **7.2 Establish consular offices in provincial areas to service the needs of large migrant populations**

Many migrants live in provincial or border areas from which capital cities are not easily accessible. As a result, it would be helpful to establish consular offices in provincial areas where many migrants live. The existence of consular services, even for basic services such as documentation, in areas with large populations of migrants would be extremely beneficial.

## **7.3 Provide ongoing information dissemination and on-site orientation where possible**

While destination countries tend to focus their efforts on disseminating information to prospective migrants before departure, it is also critical to provide migrants with information about their rights and how to get help on the ground in destination countries. This will enable not only documented migrants but also undocumented migrants to receive much needed information. Migrants are also more likely to be able to digest and make use of the information if it is provided in-situ.

## **7.4 Engage in greater collaboration with CSOs on migrant worker needs**

Embassies should engage with CSOs in destination countries to ensure they remain up to date with issues facing workers and so that CSOs can raise issues embassy staff may not be aware of. Similarly, embassies can be made aware of the services offered by CSOs that may fill gaps that the origin country is not yet equipped to provide; or collaborate with CSOs in provision of services and to facilitate greater outreach. Collaborating with CSOs may also help build trust with migrant communities.

# **8. Negotiate with the Thai government to develop a process whereby migrants can receive a lump sum payment for their retirement fund at the Social Security Office in Thailand**

This study found that Burmese and Cambodian migrants leaving Thailand experience difficulty securing the social security benefits that they are entitled to, as there is no practical mechanism for the transfer of money. For migrants leaving Thailand permanently, their home governments must assist them by negotiating with the Thai authorities for a simple means for them to receive their accrued benefits in person before leaving, or a simple means of transferring money.

# **9. Assist migrant worker returnees with social and economic integration, including making alternatives to re-migration available; assisting with processes such as household registration and registration for identity cards; and supporting returnees who have suffered occupational injuries or diseases**

Reintegration can be particularly difficult for migrants who have been abroad for an extended period of time and lost their household registration or national ID documents. Countries of origin should ensure that migrants can re-register with minimal difficulty.

Although destination countries should be working towards ensuring equitable access to health care for all its citizens, additional support should be extended to migrants who have suffered/contracted occupational injuries or diseases. Returned migrants with these needs should be assisted to obtain all benefits due to them, including compensation through complaint mechanisms, and referred to any programmes that may benefit them.

## **Longer-term Recommendations for Cambodia and Myanmar**

In addition to specific steps described above, the experiences of the Philippines and Indonesia, and the needs of Burmese and Cambodian migrants, suggest that both Mekong countries should also be conscious of the following overarching or long-term goals:

**10. Facilitate the successful reintegration of migrants and encourage domestic development to ensure that migration does not become the sole focus of development policies**

Countries of origin should not overly rely on labour migration as a development strategy, but focus on providing better opportunities, better conditions, and fairer wages at home. Attention should also be paid to skills development. This applies to the general population but also ensuring migrants can utilise skills they have developed abroad to seek better opportunities, not just at home but in other countries.

**11. Pursue the goal of portable social security for migrants, and establish a migrant welfare fund**

In the long term, countries of origin should make it a goal to ensure access to domestic social security systems to migrants abroad, as well as expanding the ability to access benefits accrued in the destination country once they have returned. The establishment of a migrant welfare fund for welfare activities, insurance, and emergency situations should also be further pursued.

# Annex

## Annex 1: List of Key Informant Interviewees

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### Hong Kong

Ms. Elsy, SBMI, 16 April 2016  
 Ms. Shiella Estrada, Progressive Labour Union, 10 March 2016  
 Ms. Reiko Harima, Asian Migrant Centre, 4 April 2016  
 Ms. Fish Ip, IDWF, 24 November 2015  
 Ms. Wesley Man, Social Worker, 9 December 2015  
 Ms. Lenlen Messina, Enrich, (by written questionnaire), October 2015  
 Representatives of the Philippine Consulate, 14 July 2015  
 Representatives of the Indonesian Consulate, 13 July 2015

### Philippines

Ms. Marla Asis, SMC, 12 November 2015  
 Mr. Isabelo Samonte, Apostleship of the Sea, 11 November 2015  
 Ms. Ellene Sana, CMA, 10 November 2015  
 Mr. Loreto Soriano, LBS Recruitment, 16 November 2015  
 Ms. Mayan Villalba, Unlad-Kabayan, 13 November 2015

### Indonesia

Migrant Institute, 3 December 2015  
 Ms. Erna Murniaty, SBMI (Indonesian Migrant Worker Union), 1 December 2015  
 Ms. Savitri Wisnuwardhani and other representatives of JBM, 1 December 2015  
 Representatives of CIMW, 2 December 2015  
 Mr. Miftah Farid and other representatives of Garda BMI, 2 December 2015  
 Ms. Siti Badriyah and other representatives of Migrant Care, 3 December 2015  
 Ms. Nurul Qoiriah, IOM Indonesia, 22 February 2016

### Cambodia

Mr. Guénolé Oudry, IOM Cambodia, 20 January 2016  
 H.E. Ms. Chou Bun Eng, National Committee for Counter-Trafficking, 19 January 2016  
 Ms. Jane Hodge, ILO, 20 January 2016  
 Mr. Choup Narath, MOLVT, 20 January 2016  
 Mr. Vireak Pin, ACRA, 21 January 2016  
 Mr. Sokchar Mom, Legal Support for Children and Women (LSCW), 17 June 2017

## Myanmar

Ms. Michiko Ito, IOM, 16 May 2016

U Thein Win (Director, MOLIP), Daw Khin Nway Oo (Deputy Director General, MOLIP), Daw Myat Mon Hlaing (Labor Officer, MOLIP), Daw Nyae Myar (Assistant Labor Officer, MOLIP), MOLIP, 17 May 2016

U Win Tun, MOEAF, 16 May 2016

Daw Wain Hnin Po, ILO, 18 May 2016

U Kyaw Htin Kyaw, MOEAF, 20 June 2017

Thet Thet Aung, 22 June 2017

## Annex 2: List of Consultation Meetings

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### Migrant consultation meetings:

Mae Sot, facilitated by MAP and FED, 15 November 2015

Poipet, facilitated by CWCC, 12 December 2015

Chiang Mai, facilitated by MAP, 17 January 2016

Phang Nga, facilitated by FED, 24 January 2016

Hpa An, facilitated by 88 Generation and BWU, 9 February 2016

Rayong, facilitated by FAR, 20 March 2016

### CSO consultation meetings:

Phnom Penh, Cambodia, 21 January 2016

Yangon, Myanmar, 25 June 2016







Mekong Migration Network  
[www.mekongmigration.org](http://www.mekongmigration.org)  
Email: [info@mekongmigration.org](mailto:info@mekongmigration.org)