

Responsive Migration Policy and Practice

**Labour Dimensions of Human Trafficking:
Understanding the Issue and Effective Responses,
Lessons from the Greater Mekong Sub-Region**

**21-25 July 2008
Bangkok, Thailand**

Migration in Asia

- ❑ The Asia-Pacific region is a major hub of global migration, and 29 million workers from Asia Pacific are currently employed outside their home countries.
 - ❑ This global movement of Asian migrants has accelerated in recent years - with the gross outflow of migrant workers from the region exceeding 3 million workers annually.
 - ❑ Labour migration has become an important feature of the region's economies, contributing economic value to both sending and receiving countries in the region.
 - ❑ Total foreign currency remittances to the region now were estimated at US\$105 billion in 2007, representing a three-fold increase from 2000.
-

Estimates

	Global	Asia	Notes
a. No. of migrant workers	117 M	29 M	25% - Asian migrants are a fourth of the world's migrants
b. No. of Asian migrant workers in Asia Pacific		12.6 M	43% of Asian migrants work within Asia itself
c. No. of Trafficked Victims (Global Report, 2005)	2.4 M	1.2 M	50% of the global number of trafficked victims in Asia
d. Incidence	2.1%	9.5%	

Protection Issues

- **Irregularity** – a third of Asian migrants do not have regular contracts or legal permits of stay
 - Uncertainty
 - Threats of Deportation and reporting to the police

 - **Indebtedness** due to high costs of recruitment
 - Salary Advances
 - Unauthorized deductions

 - Absence of **Protective Mechanisms**
 - Legal system to seek redress
 - Fear to seek redress
 - Lack of local capacity and understanding of how to address issues
 - Public acceptance of discrimination
-

Protection Issues

- The **Worst Forms of Child Labour** in the GMS
 - Increasing numbers of migrant children
 - Start working at a very early age – ages 9-11
 - Problems of extended working hours, work at night
 - Experience of violence and abuse
 - Hazardous working environments
 - Exposure to high levels of dust and smoke, noise, chemical substances, heights, underground, heavy physical work and 'moral harms'
 - No access in schools
-

Profiles of workplaces and victims

□ **Workplaces**

- Small, informal, often not covered by labor policy
- Isolated with little oversight
- Absence of organization and representation

□ **Sectors/Locations**

- Households
 - Street/child begging
 - Farming and Fishing
 - Manufacturing
-

Young migrants

- Those who cross borders with parents, or who follow parents, in migrant communities
 - Not working, not schooling
 - Minimal access to services
 - Under family protection

 - Those who move on their own, brought by family relatives, friends, or agents
 - Often slightly older children
 - Working, often irregular
 - With very little protection
-

Young migrants

- Those born in country of destination, who do not have birth registration
 - Parents may be long-time residents or recent migrants
 - Unaware of right to registration

 - Those belonging to ethnic minorities
 - Many with no birth and work documents
 - Many face the challenge of citizenship
-

Labour Migration Agreements

Can Reduce Opportunities for Traffickers ..

- With viable opportunities for legal migration, potential migrants have no need to become involved with criminal networks
 - Legal migrants are less susceptible to exploitation and abuse
 - Legal migrants are better able to have education/health/banking services
-

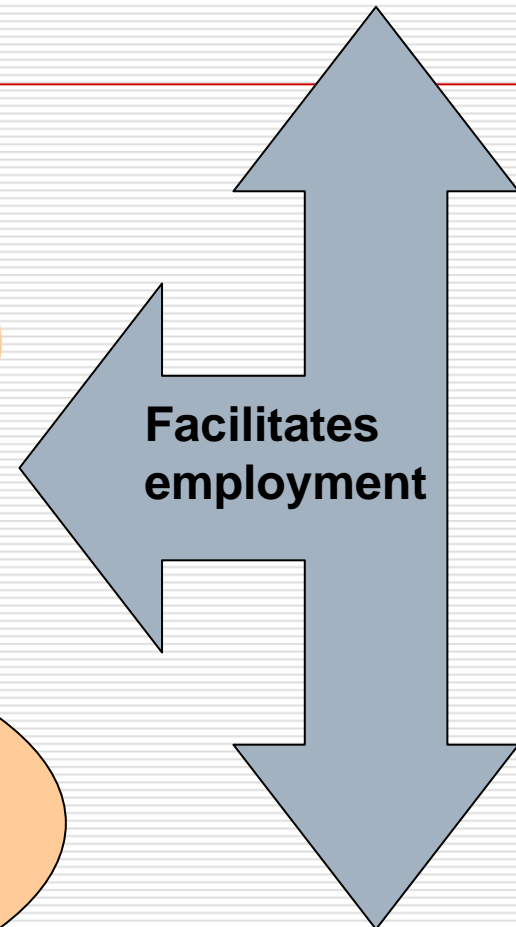
Meet economic needs

Employers

Locals not interested in short term jobs
Locals not interested in low paying jobs
Shortage of specialized skills

Workers

- Seek jobs for many reasons
 - No jobs
- Better paying jobs
- Adventure
- Family pressure



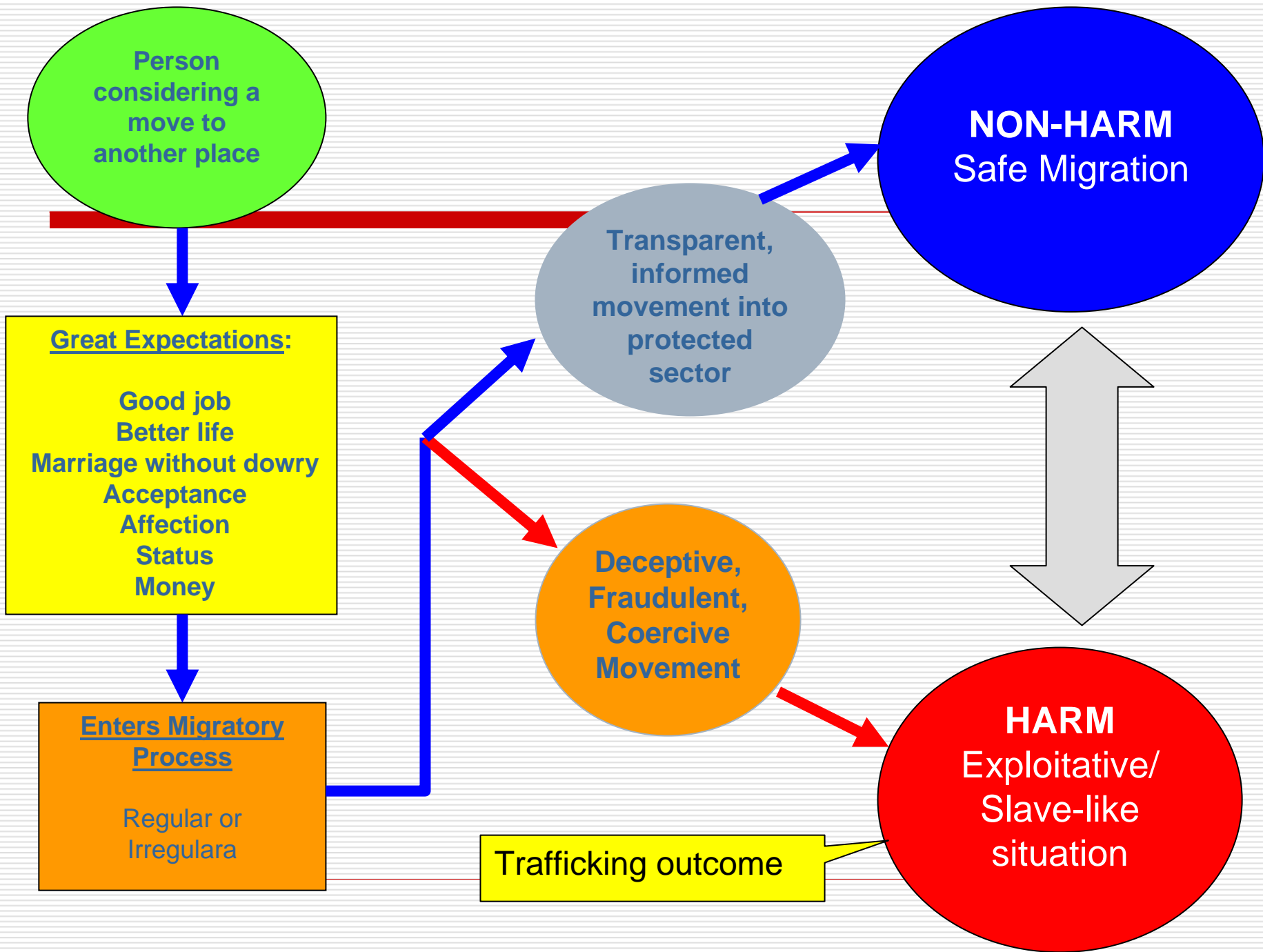
Framework Agreement

Valuable tool in advancing national policy goals and shared responsibilities of parties to the agreement

Competent Authority
Exchange of Information
Migrants without work status
Recruitment Procedures
 Employer Screening
 Selection
 Medical Exams
 Clearances
 Costs and Fees
Residence and Work Permits
Complaints Mechanisms and
 Settlement of Disputes

Employment Contracts
Grievances and Disputes
Intervention by the Foreign
 Embassy
Rights to Organize
Social Security
Remittances
Accommodation
Family Migration
Validity and Renewal
Monitoring

Minimum age?



GMS Recruitment Research

- ❑ Many migrant workers perceive **formal recruitment as too slow, expensive and complicated.**
 - ❑ Workers who migrate through **formal recruitment do not necessarily have better protection** of their rights, salaries and working hours than workers who migrate informally.
 - ❑ Many migrant workers (formal and informal) **do not receive any pre-departure training** or, if they do receive training, it is often inadequate.
 - ❑ The **unregulated system of salary deductions** exposes migrant workers to possible abuse.
 - ❑ **Not all workers' rights are adequately protected** – they're not all protected by legislation and those that are, aren't always enforced.
-

Forms of Recruitment Violations

ILO Research in the sub-region shows that recruitment abuses and labor exploitation occurs in countries of destination irrespective of the recruitment channel that migrants use.

- Excessive Fees, High Costs, and the Threat of Debt
 - Misrepresentation, deception , fraud on contracts terms
 - Failure to provide pre-departure orientation
 - Avoidance of inspection
 - Corruption and collusion with employer to place worker in hazardous occupations
 - Recruitment of underage workers**
-

Recruitment Issues

Employers too have their own complaints about the recruitment process, and as result, do not pay service fees, prematurely terminate workers' contracts, demand replacements

- Lack of worker preparation
 - Discipline, lack of skills
 - Delays in “delivery”
 - Run-away and escapes
 - Worker Complaints
-

Recommendations

- Formal recruitment needs to be a more attractive option. Need for:
 - Faster, cheaper and better services.
 - Consider alternative ways to allow workers to migrate.

 - All migrant workers' rights need to be better protected:
 - There are **gaps in the legislation** (e.g salary deductions should be regulated).
 - **Monitoring and complaint mechanisms** need to be improved.
 - **Workers need to be better educated** about their rights.
-

Mekong Recruitment Guidelines

The Coordinated Ministerial Initiative on Human Trafficking (COMMIT) has fully recognised the importance of addressing **abusive recruitment practices** in its **Sub-Regional Plan of Action Against Trafficking in Persons**.

In December 2007, the COMMIT endorsed the **Recommended Principles and Guidelines on Recruitment Practices for the GMS**.

Mekong Recruitment Guidelines

1. Guiding principles
 2. Pre-departure services
 3. Regulation of employment agencies
 4. Fees for recruitment services
 5. Working conditions & Rights
-

Mekong Recruitment Guidelines

1. Guiding principles

- The **fundamental principles and rights at work** of all migrants, regardless of their status, should be promoted and protected.
 - Establish comprehensive, consistent and **transparent policies and laws** on labour migration and recruitment
-

Mekong Recruitment Guidelines

2. Pre-departure procedures & services

- **Mandatory quality pre-departure training**
(conditions of employment, rights, obligations and protections, keeping identity documents and copies of contracts, language, culture, effective and reliable remittance channels, key contacts, complaint mechanisms and relevant laws for working and living in the destination country.)
-

Mekong Recruitment Guidelines

3. Regulation of employment agencies

- Governments should **license and regularly monitor recruitment agencies**
 - Governments should provide **information on migration options** and provide services for migrants to undertake legal employment abroad.
-

Licensing of Private Agencies

Recruitment is a professional undertaking. The State licenses agencies to maintain standards of participation and ensure accountability.

Legal Personality – License to do business. Articles of partnership, corporation

Financial Capability – Readiness to fund recruitment failures and return of recruited workers. Cash deposits, guarantee bonds.

Management Capacity – Ability to have international and domestic operations. Staff lists, management qualifications

Recruitment Capability – Ability to identify skilled staff and interview candidates. Staff experience in HRD

Marketing Capability – Knowledge of recruitment law. Ability to negotiate contracts. Staff Experience in law.

Monitoring of Performance

Means

- Agency Inspections
- Complaints mechanisms in-country
- Overseas Reports through Foreign Missions/Other Reports

Sanctions and Penalties

Administrative

- Suspension of License
- Cancellation
- Fines

Criminal Charges

- Jail Terms
- Fines and Penalties

Governments now have installed a system of awards and Incentives for agencies which perform well.

Mekong Recruitment Guidelines

4. Fees for recruitment services

- Streamline migration process to **minimise delays and cost** (passports, visas, working permits and health certificates)
 - Governments should try to **minimise the cost borne by workers**
 - Governments should **encourage employers to bear the recruitment service fees.**
 - **Fees and cost should be transparent** (workers written consent of salary deductions and ensure that workers have full access to their savings account at all times)
-

Mekong Recruitment Guidelines

5. Working conditions & Rights

- **Developed standard employment contracts**
(Contracts that reflect the minimum standards for age, wage and working conditions, procedures for termination of contracts and change of employment, reporting obligations, complaint mechanisms and avenues for redress.
 - Recruitment agencies should **ensure that workers are informed in their own language** and clearly understand and freely accept the terms and conditions of employment
-

Contract Terms and Conditions

**Establishes the ground rules in the employer-worker relationship.
Sets out rights, responsibilities and obligations of the 2 parties**

Occupation, description of duties, and length of contract

Wages – Basic pay, provision of overtime

Working Hours, rest days, holidays

Transportation and travel cost

Employment Injury, illness, death

Valid Grounds for Termination

Complaints mechanisms and settlement of disputes

Provision of food, housing or allowances

Social Security

Other Benefits

Translating Rhetoric to Action

- ❑ ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers
 - ❑ Coordinated Ministerial Initiative against Human Trafficking
 - ❑ ILO Multi-lateral Framework on Migration
 - ❑ National Legislation
 - ❑ National Plans of Action
-