



Going straight (Legal labour migration)

Background and context

Historically, people have always moved to where there is work and a livelihood, mostly within countries but also across borders and continents. Usually the movement has been voluntary or necessary for survival - the push factors may have been anything from drought or famine, to human rights violations or war, and the pull factors improved agricultural opportunities, labour intensive industries, or the promise (according to local information) of a better life somewhere else.

Trafficking needs to be seen in the context of increasing migration flows around the world. This movement is partly explained by population dynamics in combination with perceived economic disparity, economic globalisation, and the growth of electronic communications. Though trafficking (which necessarily involves exploitation) is part of broader migration dynamics, it should not be confused with migration: Not all migration is trafficking.

Until recently, trafficking has tended to be treated as an illegal migration issue where victims – of sexual exploitation - were punished for illegal entry. If it can also be seen as a human rights and labour exploitation issue, new ways of tackling the problem emerge, for example social mobilisation, an area where trade unions and employers can become involved.

In trafficking in children and women, pressure and deception are common, but some people move voluntarily and/or with the blessing of their own families, who see it as a necessary evil. Movement can actually be legal with deception and exploitation – and therefore trafficking - taking place later on in the process. Statistics are scarce and unreliable. Quantitative information is largely collected from sporadic studies and surveys, and extrapolated on the basis of approximations. There is a large amount of anecdotal information especially regarding trafficking for commercial sex work. For formal sector labour migration, government departments have figures, but most labour migration is undocumented, as legal channels are limited.

One of the strategies of the ILO project to combat trafficking in children and women in the Greater Mekong sub-region, together with awareness raising, has been the attempt to provide means to rural people at risk of trafficking by which they can gain a decent livelihood at home. Participatory methods have been used to identify relevant small scale self-employment activities (e.g. animal husbandry, cash crop or handicrafts production, rice banks, small trading) and processes have been supported to realise these (e.g. market surveys, savings and micro-credit, technical skills development). By all accounts, most of these activities have been popular and successful. However, the project can only reach a limited number of people in selected areas, and has to operate within a wider framework where labour migration (including trafficking) is

going on and will continue to do so, in particular in places with high birthrates and a high percentage of the population under the age of 15 such as Cambodia and Lao PDR – which will result in additional pressure on the labour market.

Proportion of the population under 15 years of age (Source: World Population Prospects)

	1990	2000
Cambodia	39.4	40.8
Lao PDR	43.6	43.9
Thailand	32.0	25.3
Viet Nam	38.8	33.2
Yunnan Province of China	n.a.	n.a.

Such population dynamics in combination with unequal economic development will continue to force many into illegal migration (often resulting in trafficking) simply because adequate channels and systems do not exist in the Greater Mekong sub-region for it to take place legally.

In addition, because of 'certain sensitivities', little has yet been done to address the demand side of the trafficking equation. Without demand for cheap labour, there would be no supply. Trafficking takes place because of this unmet demand. Who are the employers of trafficked people? What is known about the industries or businesses seeking cheap labour that is also docile, powerless and usually female? How can employers and their associations be approached to help combat trafficking? Do they really want to help or are the stakes too high for some of them? Can steps be taken to ensure better and safer conditions of work for migrants, especially for children and women workers?

“.....unless more channels are opened to facilitate the legal movement of greater numbers of people, the issue of trafficking cannot be adequately addressed.”¹

Because labour migration has to be accepted as a normal phenomenon with long term demographic and economic underpinnings, the trafficking issue must be clearly positioned within the general framework of labour migration. The ILO-TICW project has discussed with government departments in five countries ways by which such migration could take place legally and legitimately, as part of wider national migration and immigration policies. If comprehensive norms and procedures were to be set in place, those currently at risk of trafficking and exploitation could be better protected, they could obtain safe work with reasonable pay and working conditions and be able to provide support to their families left behind.

ILO-TICW interaction with governments and some employers' organisations has been generally fruitful, though much remains to be done to develop proper systems and procedures for the successful processing and protection of migrant workers. There is a need to then develop integrated labour strategies through regional associations such as ASEAN, with a view to

¹ R. Skeldon: Irregular Migration in the Greater Mekong subregion: policy dimensions of a growing issue, in ILOTICW-project working paper entitled: Labour migration and trafficking within the greater Mekong sub-region (2001).



identifying legal labour migration which can benefit both sending and receiving countries, with the knowledge that (contrary to a common misconception that migrants are scroungers), migrants actually contribute more to economic wealth than they consume.

The human rights approach to trafficking is now widely accepted by governments and international organisations. The ILO's core labour standards are generally accepted as the code for human rights at work.²

Only with sound legal systems in place can the scourge of trafficking be effectively reduced. If labour could be obtained legally and quickly, there would be no need to traffic people. However, for some employers, or for people eager to migrate, no procedures will ever be good or quick enough. The TICW project can only hope to campaign for and eventually see the beginnings of improvements to legal labour migration systems in the countries where they are working.

Implementation

At a recent regional planning meeting held in Hanoi, legal labour migration was identified as a key issue and challenge to be addressed during the second phase of the TICW project 2003-2008. It was agreed that much more needs to be done to link up with government departments and employers' and workers' associations. The latter are all needed as allies to combat trafficking in children and women.

In *Yunnan* province of China, so far the Labour Bureaus at different levels have been active partners with the TICW project in promoting legal migration, as well as the Industry and Commercial Federation, which provides vocational training and advice on the establishment of small businesses. However, working conditions for women migrants still cannot be guaranteed (written contracts, standard hours, holidays, sick leave etc).

In *Cambodia* the government is trying to negotiate legal labour migration agreements with countries in need of domestic, agricultural and construction workers such as Malaysia. The TICW project is in dialogue with the government counterpart on how it might contribute to improving legal labour migration alternatives for populations at risk of trafficking.

For the next phase, a survey on labour migration in Cambodia is proposed, with ILO facilitation. Meetings and workshops on existing labour law and workers' rights need to be organised in order to combat, for example, the nefarious practice by which job seekers are required to pay several hundred dollars for "registration", the sum not being refunded even to applicants who never get a job.

In *Viet Nam* some employer surveys have been conducted in the formal sector and statistics generated. However, little is known about how migrant labourers are used at destination in the informal sector, about the migration processes (push/pull factors, individual decision-making) and the integration of migrants (does "chain migration" develop?). A mapping needs to be conducted about the risks and vulnerabilities of migrants and their coping mechanisms.

² ILO Conventions 87 and 98 on freedom of association and collective bargaining. Conventions 29 and 105 on the elimination of all forms of forced or compulsory labour. Conventions 100 and 111 on the elimination of discrimination in employment. Convention 138 on the minimum age for entry into work. Convention 182 on the elimination of the worst forms of child labour. Though not core conventions, ILO Conventions 97, 143 and 181 are also relevant as they focus on migration for employment and migrant workers.

When such information is available, appropriate modifications will need to be made to policy and action, legal frameworks and law enforcement, as well as in communication mechanisms, preferably in collaboration with other countries.

In *Thailand*, being the main destination country for all types of labour migration, including sexual exploitation, there exists more community activism, researched information and statistics than elsewhere. There are promising lessons to be learned for neighbouring countries in how to support trafficked or illegal workers (community watch dog schemes, newsletters, health advice especially on HIV/Aids). However there remain large information gaps concerning domestic, fishing, agricultural and other illegal workers, many of whom come and go for short periods of time.

In the next phase of the TICW project, important issues to be addressed by partners include getting workers' and employers' associations to run awareness raising activities on reproductive health, women's rights, basic law, and labour and welfare law, as well as continuing to raise awareness on trafficking itself. Action research is to be conducted and case studies developed, as well as work with employers in a campaign to promote good employment practice.

In *Lao PDR*, formal sector labour statistics are available, with the pattern rural → urban → abroad (usually Thailand) well established. Informal sector information is less clear, but a tradition exists of temporary labour migration across the Mekong to Thailand during the dry season. Many Lao head for North-east Thailand, where the predominant ethnic Lao population allows them to disappear into the crowd.

Lao PDR has clear labour laws, minimum wages, but a growing and mainly young population (43.9 % under 15 years of age). Around 200,000 new workers will come on to the labour market over the next three years, but with a tiny industrial base and limited rural opportunities, the numbers simply cannot be absorbed into the local economy. Following a publication on legal labour migration as an alternative to trafficking and a subregional experts meeting on labour migration and trafficking (in September 02 in Bangkok), the TICW project has contributed to the promotion of a recent legal labour migration Decree in Lao. The decree, which was signed by the Prime Minister in July 2002, allows Lao people to work overseas. It aims to set up a management unit in the Ministry of Labour and Social Welfare to manage migrant worker flows abroad.

Following this Decree, in October 2002 the Ministry of Labour and Social Welfare of Lao PDR and the Ministry of Labour of Thailand signed an MoU for Collaboration on Labour Employment, with an emphasis on preventing illegal migration, illegal labour trade, child labour and trafficking. It allows for thousands of illegal Lao labour migrants currently working in Thailand to register³ and be formally legalised to work for 2 to 4 years – with proper protection and repatriation funds. In addition to the existing State Employment Enterprise, two private employment agencies were established under the recommendation of the MoLSW to implement the decree. In following up the MoU with Thailand, project staff are working closely with the Lao MoLSW and the National Statistics Centre to collect data about registered migrant workers in Thailand. At the same time a survey is being conducted to collect information and develop a data-base on labour migration in the three target provinces of Khammouane, Savannakhet and

³ 42,186 Lao workers registered in Thailand from 24 Feb 2002 to 25 March 2002, MoL of Thailand Statistics.



Champassak which covers nearly half of the population. An analysis of the magnitude of labour migration and alternative solutions will form the basis for a National Workshop on Legal Labour Migration, and similar workshops will be held at provincial level. Outputs from these workshops will be fed into the dialogue between the senior officials of the MoLSW of Lao PDR and Thailand. The close working relationship with the Ministry of Labour and project staff inputs were instrumental in addressing 'trafficking' within the frame work of labour migration included in this agreement, with legal labour migration listed as an alternative.

To date, the state and private employment enterprises have contacts for labour demand of more than 50,000 placements from Malaysia, Brunei and Taiwan.

During the ASEAN meeting of Ministers of Labour in Vientiane (May 2002) publication TIA-1 on legal labour migration was shared with all participants. The Joint Communiqué stated in paragraph No. 7 *“The ASEAN Labour Ministers welcomed the formulation of a Work Plan to realise closer regional integration as called for by the Initiative for ASEAN Integration (IAI)...The Ministers expressed their confidence that the projects on labour and employment to be implemented under the IAI framework would facilitate a smooth integration of Cambodia, Lao PDR, Myanmar and Vietnam (CLMV) into the regional labour market...”*⁴

Achievements

Generally, after 3 years of project implementation, there is much better understanding about the detailed processes involved in migration and trafficking and this new knowledge is becoming the basis for different aspects of programming, especially for the next phase. It has been learned that most trafficking cases start as normal or voluntary migration in search of work, and deception leading to exploitation occurs later on in the majority of cases. Kidnapping is actually quite rare in relative terms, but dramatic events tend to be more widely reported, thus considered to be more typical.

Given the nature of the problem, namely that trafficking is interwoven with prevalent social practices, economic diversity and powerful criminal networks, the project recognises that it will never be easy to find the “right way” to address it.

- **Innovative/creative**

The TICW-project has engaged with some degree of success with the authorities in five countries. Trafficking, although a sensitive issue, now features higher on the agenda when it comes to labour migration. The project can demonstrate appropriate (though small scale) remedial action in all countries, but more government leadership and backstopping will be required to make a bigger difference.

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Meeting with government officials in Lao PDR to map out in a participatory manner 'threats' and 'opportunities' in terms of setting up a legal labour migration management system.

*Photo by HvdG
(November 2002)*

In Lao PDR, as a result of the project, the Ministry of Labour and Social Welfare has come to an agreement with its counterpart in Thailand on legal labour migration flows from Lao PDR into Thailand. The agreement provides assurances that migrant workers will have decent jobs, pay and conditions with responsible employers, and not be exploited or prostituted, nor punished if they are caught without correct documentation. The Prime Minister of Lao PDR has also signed a decree concerning the establishment of norms for the registration and management of Lao people migrating to Thailand for work.

- **Sustainability**

Once legal migration is extended, its procedures and legally binding instruments ensure sustainability. Awareness raising and dissemination to the public about the (new) law will also be essential.

- **Relevance/responsiveness**

If legal channels for labour migration are adequately extended, trafficking should gradually be reduced until the money to be made from it eventually becomes negligible.

Also, from the villagers' perspective, legal labour migration opportunities provide additional alternatives to finding 'jobs' and this is essential given current and prospected pressures on labour markets.

Lessons learned

- There is far more internal migration than cross-border migration. More is heard about undocumented cross-border migration because it is illegal, and thus involves police, immigration and other public institutions, and the cases are more widely reported in the media. Internal migration is entirely legal, and therefore can pass unnoticed, even when trafficking (exploitation) occurs. Trafficking has been found to occur quite commonly within the village itself.



- The promotion of more channels for legal labour migration is a new challenge for the TICW project, which will constitute an important part of the second phase 2003-2008. Lessons so far are that more extensive legal channels are essential if trafficking is to be effectively addressed on a larger scale. The TICW project has the resources to pilot work only in a few selected areas of five countries. The need is vastly larger than this, making official legal channels one of the necessary requirements if trafficking is to be reduced.
- The current major problem with legal migration for most people is that it costs too much and it takes too long.
- “Blind” migration implies vulnerability, as ignorance about where s/he is going and how to prepare for that can easily lead a young girl or boy to exploitation. In Yunnan, information from control villages in target areas where there are Women’s Homes shows that those who do decide to leave now do so better prepared for what they might find at destination.
- The project has sometimes been understood to be trying to prevent migration *per se*. Migration, including seasonal migration, is often confused with trafficking. It needs to be made clearer to people that migration, legal or illegal, is only considered to be trafficking if there is exploitation involved, and that is the focus of the project.
- Responsible employers requiring migrant labour (both local and foreign) are unwilling to invest in the training and preparation costs involved unless workers are willing to stay long enough to amortise such investments. For this reason, girls in Cambodia for example have been obliged to pay up front some USD 200 for training, travel and other costs, without the guarantee of a job at the end. This is a huge amount for rural people, and ways need to be found so that the costs incurred can be managed through advanced subsidies and repayment through monthly salary deductions. Such a scheme is being discussed currently in Cambodia, China, and Lao PDR.
- Migration policies should aim at regularising migration, and should be linked to labour market policies and frameworks, including the human rights and child rights dimension.
- Labour migration will continue in situations of economic disparity in the region, especially to low fertility (less than replacement birth rate) countries like Taiwan, Singapore, Malaysia, South Korea and Thailand, where there is demand for “3D” workers in dirty, dangerous and demanding jobs. ILO can help sending countries to negotiate deals with third countries.
- Cheap migrant labour can benefit both sending and receiving countries.
- Some existing migration policies seem to be more aimed at controlling people than on the facilitation of the transfer of workers. Other policies are focused on repatriation.

Conditions for replicability

- Legal instruments can be shared and used for the generation of ideas among countries and to establish regional norms, for example through ASEAN.

References

Proceedings of Mekong sub-regional experts meeting and exploratory policy paper, ILO TICW project, 2001.

Legal labour migration and labour markets: alternatives to trafficking in children and women, ILO TIA –1.

Presentation on labour migration & trafficking at a regional symposium on international migration, by Hans van de Glind, at the Asian Research Centre for Migration (June 2002).

ILO Conventions 138 & 182; 87 & 98; 29 & 105; 100 & 111; and 97, 143, and 181.

Mission reports by sub-regional project staff.

For detailed information on the TICW project see: www.ilo.org/asia/child/trafficking

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