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Review of labour migration management, policies and legal framework in Cambodia

Chan Sophal
May 2009

ILO / Japan Project on Managing Cross-border Movement of Labour in Southeast Asia

ILO Regional Office for Asia and the Pacific

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Preface

International labour migration is a complex phenomenon which affects countries of origin, transit and destination. Nationally, labour migration involves a diverse range of stakeholders, from the lowest echelon administration at the village level to the highest central government agencies in the capital city, that have different and sometimes conflicting interests. Globally and regionally, international labour migration also links to critical issues such as poverty reduction, trade, development, regional cooperation, human rights and security. Notably, migration as it happens today may not be an individual's true choice, but a remedy people seek to escape poverty, and deprivation. Thus, policy makers should consider the impacts of the range of intertwined policies that may positively or negatively affect the push and pull factors for migration. To ensure that people migrate according to their own will and not out of necessity, concerted action should be taken to address the push factors that force individuals into migration.

Migration for employment in cities or abroad provides a way out of chronic poverty, particularly for vulnerable groups of workers. In Cambodia, international labour migration has been one of the primary coping strategies for those living in poverty. The increasing demand for low-skilled workers in the international labour market, and particularly in countries like Thailand and Malaysia, has become a pull factor for unemployed and underemployed Cambodians. Despite risks such as labour exploitation and human trafficking, these migrant workers are enticed by the higher wages they can earn in a foreign country. Cambodian migrant workers make up the second largest group of foreign workers in Thailand, behind the Burmese.

Aside from the higher wages, Cambodian workers are drawn to Thailand because of the poverty, landlessness and debt they may face in Cambodia. For example, the minimum wage in Thailand is about \$4.60 per day compared with the average \$2 per day wage garment workers earn in Cambodia (2008). In other words, many of these Cambodian migrants come to Thailand out of necessity rather than out of choice. It is reasonably believed that Thailand's statistics understate the total number of Cambodian migrant workers because the figure does not account for newly arrived and still undocumented workers nor for those who commute to Thailand each day or for short periods to work on farms and in paddy fields.

Migrant workers continue to report complaints and incidents of exploitive labour abroad. Among these are non-payment and underpayment of wages, substitution of contracts upon arrival in the country of destination with much less favourable terms for wages and conditions of work, long hours, confinement to the workplace, physical violence, sexual abuse and problems of communications due to differences in language and culture. Those who enter through irregular channels or lose their legal status in foreign countries are especially vulnerable to exploitation. Many have been misinformed about their work in destination countries and become victims of trafficking for forced labour and sex work. Currently, there is no compliant mechanism in either home or host countries for migrants to access legal justice in these cases. In Cambodia, the critical issues that require special attention are the high cost of formal work migration to Thailand (about \$700 per person) and the complex recruitment procedures in both home and host countries. Passport fees and other hidden costs are the major cause of these issues.

I would like to express our appreciation to the author, Mr. Chan Sopha, Cambodia Development Resource Institute for conducting this study and Mr. Seng Sakda, Director-General, General Department of Labour, Ministry of Labour and Vocational Training, Government of Cambodia for hosting the consultative meeting to discuss the outcomes of the study. The study has been carried out under the supervision of the Mr. Pracha Vasuprasat, Chief Technical Advisor, ILO/Japan Project on Managing Cross-border Movement of Labour in South-East Asia, with the resource provided by the Ministry of Health, Labour and Welfare, Government of Japan.

Sachiko Yamamoto
Regional Director
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Abstract

This review of labour migration management, policies and legal framework in Cambodia is an attempt to understand the underlying factors inhibiting the promotion of orderly labour migration flow from Cambodia to Thailand. The study points to the weaknesses in the institution entrusted to manage labour migration, the legal framework governing the migration process, the labour migration policy, and the bilateral cooperation between the labour sending and the receiving countries. These are the main factors contributing to the growing irregular cross-border labour migration. The long porous border and the cultural affinity between people of the two neighboring countries make it even difficult for the States to have absolute control over the movement of national persons. The study offers solutions for better management of labour migration. These are the formulation of clear migration policy and legal framework, streamlining the migration administration, creation of specialized organization, reduction of the cost of migration, raising awareness on legal channel for migration, improvement in inter-ministerial coordination, and negotiation with labour receiving country to establish standard employment contract and to protect the rights of migrant workers.

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Executive Summary

Cambodia has recently promoted overseas labour migration as one of the measures to alleviate unemployment, underemployment, and poverty, especially among its young labour force. This is because the creation of productive jobs has not kept pace with the growth in the annual labour force of 250,000-300,000. To cope with the emigration pressure, Cambodia is developing a system for ensuring orderly labour migration and protection of migrant workers. The movement of labour from Cambodia to Thailand has long been characterized by the irregular migration as the legal channel for going abroad is relatively new, costly and inconvenient for most of the workers. Since labour emigration from Cambodia is expected to rise due to a number of internal and external reasons, the government is faced with the challenge to develop and strengthen its legal framework and institution to manage it.

While it is generally preferable to create jobs and development within a country, it is essential for the government to formulate sound management, policy and a legal framework to govern labour migration. Labour migration can contribute significantly to poverty alleviation by providing employment and income needed in the short and medium terms. Remittances to Cambodia were estimated at US\$ 200 million or 3.23 percent of GDP in 2005. It is estimated that remittances could grow to as much as US\$ 500 million if labour migration were better promoted.

There are basically two types of migrant workers from Cambodia: legal and illegal. Between 1998 and the end of 2007, 20,630 legal Cambodian migrants went to Malaysia, South Korea and Thailand: 10,532 to Malaysia, 3,984 to South Korea and 6,114 to Thailand. Approximately 180,000 legal and irregular Cambodian migrant workers are in Thailand, of which some 110,000 were granted work permit by the Thai government in 2004 and about 50,000 were provided with a Certificate of Identity (CI) by the Cambodian government.

Thailand has been a major destination for migrant workers from Cambodia since 1994, mostly undocumented or irregular. The official admission of migrant workers started only in 2006, following the signing of a Memorandum of Understanding (MOU) between Thailand and Cambodia in May 2003. Cambodian migrant workers are typically confined to 3-D Jobs (dirty, difficult, dangerous) in Thailand, mostly in the fishing, construction and farming sectors. The majority of workers sent to Malaysia were females who work as domestic workers or housemaids, while South Korea has admitted most of the male migrant workers.

As labour migration is a relatively recent phenomenon in Cambodia, the country faces a challenge to create policies and legislation to protect its migrant workers. The Sub-decree 57 on Sending Khmer Migrants to Work Abroad issued in 1995 is considered outdated and needs amendments. In addition to Sub-decree 57, there are Prakas 108, May 2006, on “Education on HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad” and Sub-decree 70, July 2006, on “The Creation of the Manpower Training and Overseas Sending Board”.

Since migration is a complex issue, many countries have established the specialized institution specifically charge with managing labour migration. In Cambodia, the management of labour migration has been vested with the General Department of Labour providing services for both domestic and overseas employment. This Department has not been initially mandated to regulate the overseas employment. Thus, there is a consensus among experts that a new department for overseas employment administration is to be established in the Ministry of Labour and Vocational Training (MoLVT) and equipped with more competent officials and resources capable to address the many acute problems arising from labour migration.

There is a steep financial requirement for operating a labour sending agency in Cambodia. The Sub-decree 57 requires private recruitment companies to deposit US\$100,000 with the MoLVT. This places a great financial burden on the agency. Of twenty-six agencies approved by the government, currently only 12 recruitment agencies remain operational, when the guarantee deposit has been enforced.

It has been proven that reducing the cost of labour migration is possible. For instance, the cost of sending migrant workers to South Korea decreased from as high as US\$ 3,000 per worker, when private companies were processing the application, to US\$ 892 when the Manpower Training and Overseas Sending Board (MTOSB), a government agency, was mandated the sole charge of the task in January 2007.

The average cost of sending migrant workers to Thailand is about US\$ 700. In comparison, the fee charged by smugglers is about US\$100 per person, and the workers do not have to wait long. In this circumstance, it is not surprising that most workers choose to migrate illegally. While it comes at the risk of arrest and deportation, it is worth going clandestinely than paying a hefty cost for a job in Thailand. Many experienced migrants can re-enter Thailand independently and pay only about US\$ 50 in transportation costs.

Because of the long porous border between the countries, it is difficult for Cambodian and Thai authorities to deter the irregular migration. It is therefore important that legal migration should be more affordable and timely for the prospective workers. It has been proposed to the governments of Cambodia and Thailand to streamline the recruitment system and to cut the overall costs of migration from US\$ 700 to US\$ 300. Currently, it costs migrant workers US\$ 480 in Cambodia. If the passport cost is reduced from US\$ 150 to US\$ 50 and “other expenses” is brought down from US\$ 220 to US\$ 40, the cost incurred in Cambodia would be reduced from US\$ 480 to US\$ 200. The “other costs” tend to be hidden oiling costs for processing of the documents, especially when the workers do not possess the required identification card, family registration, etc. In December 2008, following the pressure by many migration advocates, the government decided to reduce cost of passport for the approved migrant workers to US\$ 24. Moreover, it will be issued to the migrant worker within 20 days. It is proposed that there should be more offices to process the passports in both Phnom Penh and in provinces such as Battambang, Banteay Meanchey and Prey Veng. To facilitate the migration process, the government should consider establishing “One-stop service office” in these provinces. In the meantime, the Thai government should also reduce the fee for a two-year work permit from US\$106 (3,500 baht) to US\$30 (1,000 baht) and the visa fee from US\$59 (2,000 baht) to US\$15 (500 baht) so that the total cost in the labour receiving side would decrease from US\$ 220 to US\$ 100.

In Cambodia, the government should train labour attachés and post them in the labour receiving countries. The labour attaché will be responsible for protecting the rights of migrant workers, coordinating with the host government, monitoring working conditions, providing legal assistance, promoting foreign labour market, collecting labour market information, etc.

The Cambodia government should formulate the labour migration policy and the law to regulate the recruitment, placement, and protection of migrant workers. The required guarantee deposit for a recruitment agency, currently US\$ 100,000, should be reduced in order to minimize the burden on the existing recruitment agencies and to lower the barrier to entry into the overseas job recruitment industry. The recruitment agencies should meticulously screen and test the prospective workers for job abroad so as to avoid runaway problems. The information about working conditions, terms of contract, nature of the work, other obligations, etc should be clearly explained to the workers. To ensure the commitment of the prospective migrant workers, they should bear the initial cost of migration, such as passport, certifications and documentations.

The Cambodia government should negotiate with the government of Thailand to adopt a standard employment contract for all migrant workers. This is aimed at preventing any disputes and inconsistency in the terms of contract between the employer and the migrant workers. A pre-departure training package should be provided to all migrant workers before sending them abroad. The MoLVT should monitor the quality of the pre-departure and skilled training administered by the employers and undertake its own the final debriefing with the workers.

As Thailand stands to benefit from migrant workers, it should continue to legalize the existing irregular migrant workers, while the avenue of illegal employment of migrant workers should be closed. Strict legal enforcement should be implemented and the Labour Protection Act, especially, should be seriously enforced without discrimination. There should be incentives designed for employers employing legal migrant workers and disincentives imposed in the form of penalty or fine for illegal employment of migrant workers.

1. Introduction

Cambodia is a latecomer in the area of promotion of orderly international labour migration. Most migrants travel by informal means, mostly to Thailand, because the legal option is relatively new, costly and inconvenient for most. The concerned government agencies are faced with an increasing challenge in managing labour migration, which is expected to rise because of both internal and external pull and push factors. Since the creation of productive jobs in Cambodia does not keep pace with the annual entrants of some 250,000 to 300,000 into the labour force, the emigration pressure is likely to increase. Higher wages in destination countries such as Thailand, Malaysia, Korea, Japan, and Singapore are also a factor. From 1998 to the end of 2007, about 20,000 workers have been officially sent overseas, according to official statistics from the Ministry of Labour and Vocational Training (MoLVT). However, approximately 180,000 Cambodian workers are in Thailand, many of whom are undocumented (IOM, 2006). Thus, the migration of Cambodian workers to Thailand deserves special attention.

In particular, there is a pressure from the Thai government to legalize the irregular migrant workers who illegally worked in Thailand and to strengthen the legal channel for recruitment and placement of workers. As a result, the governments of Thailand and Cambodia signed a Memorandum of Understanding (MOU) in 2003. The MOU requires all future migrant workers to be recruited through the approved agencies and to have proper legal documents before entering Thailand. The mandates set in the MOU come with a huge burden to both private and public institutions in Cambodia. Currently, there are only 16 recruitment agencies in Cambodia to process the large number of prospective migrants. These agencies will either need to expand or new ones need to be added. In addition, the Department in charge of processing application of passport will need to expand their services to keep up with more workers who are looking for job in Thailand.

While it is generally preferable to create jobs and accelerate development within a country, labour migration is considered a safety valve for the chronic un/underemployment. It is therefore advisable to have sound management, policy and a legal framework to govern labour migration. Labour migration can contribute significantly to poverty alleviation by providing employment and income needed in the short and medium terms. Remittances to Cambodia, which include non-migrant remittances, are estimated at US\$ 200 million or 3.23 percent of GDP in 2005. By comparison in the same year, Thailand and Vietnam respectively received remittances of US\$1.2 billion and US\$ 4 billion, according to the World Bank (2007)¹. The Philippines and Bangladesh received US\$ 13.5 billion and US\$ 4.2 billion, respectively. A recent study by the International Fund for Agriculture Development (IFAD) and the Inter-American Development Bank found that there are 150 million migrant workers around the world, who sent home US\$ 300 billion in 2006. This figure surpassed the amount of development aid and foreign direct investment.²

This study provides an overview on trends, characteristics and issues surrounding labour migration in Cambodia based on existing data, reports and interviews. It examines the institutional, legal and regulatory framework for labour migration and analyzes the consistency between migration practices, economic policies and national development plans and strategies. In particular, the study examines the implementation of the MOU on Cooperation in Employment of Workers, assesses the institutional structure established to support the execution of the MOU, evaluates achievements, identifies lessons learned and proposes solutions to improve the effectiveness of the bilateral agreement. The study also discusses a number of current issues in labour migration management and attempts to project emigration pressure in Cambodia in the medium and long-terms.

¹ World Development Indicators 2007

² IFAD (2007) Sending Money Home: Worldwide Remittance Flows to Developing Countries, <http://www.ifad.org/events/remittances/maps/>

Following the Introduction in Part I, Part II highlights the labour migration trends from Cambodia. Part III reviews Cambodia's labour migration policies, legislations and regulations, and Part IV discusses labour migration administration and management. Then, Part V assesses the implementation of MOU between the Governments of Cambodia and Thailand. Part VI aims to project the medium-term and long-term labour emigration pressure. Finally, Part VII comes up with conclusion and recommendations.

2. Background: Labour migration trends

2.1 Rationale

Globalization, increasing economic interdependence among countries, regional economic disparity, demographic change, and improved communications have accelerated the movement of people across boundaries of sovereign states. It is anticipated that the movement of people from developing countries to high-income countries will rise over the next two decades. About 31 percent of developing countries' population is below the age of 14, compared with an 18 percent rate in high-income countries. It is expected that most of the youth in developing countries will migrate in search of better-paying jobs during their early working years. The need for migrant workers coupled with the influx of irregular migration and the frequent exploitation of migrant workers has prompted many high-income countries to review their immigration policy and regulations.

Migrant workers are still gravely vulnerable to exploitation in both their home and destination countries. Irregular migration has rapidly risen due to lack of economic alternatives, restrictive migration policy and misinformation in home countries. Because these workers have no legal status in their host countries, they are subject to frequent abuse and are at the mercy of unscrupulous agents, employers and officials. The most vulnerable category of migrant worker in Asia is the female domestic helper.

2.2 Evolution of labour emigration in Cambodia

Over the last two decades, there has been a shift from forced emigration due to civil wars and political instability to the voluntary migration of individuals searching for work outside of the country. A new wave of Cambodians migrating to work in Thailand has especially emerged in the last decade. This movement has been driven both by the lack of jobs in Cambodia and the relatively high wage available to migrant workers in Thailand. There are basically two types of labour migrants: temporary and long-term migrants or those who work and stay for years in Thailand, and seasonal migrants or those who work in the farming sector, in areas near the border. The latter group commutes across the border daily or for short periods. The long-range Cambodian migrants are normally engaged in construction, factory, plantation, household services and fishing sectors, mostly low skilled 3D (dirty, difficult and dangerous) work.

With high economic growth in recent decade, the fast developing countries tend to generate excess demand for low-skilled labour due both to economic expansion and to occupational mobility among a relatively well-educated workforce. The availability of low skilled jobs and high wage draws workers from other countries. As a result, the low skilled migrant workers in countries of the Greater Mekong Sub-region (GMS) moves to Thailand, while the semi-skilled workers from Thailand travel to richer East Asian nations (World Bank, 2007). The strong economic growth is not the only condition generating demand for foreign workers. Migrants are also found in developing countries with low growth rates, such as Cambodia and Lao PDR. Wage differential, shortage of necessary skills and high mobility of workforce have caused imbalance in the labour market. The distortion in labour market has generally contributed to high demand for foreign workers in the countries. Hence, Cambodia, Lao PDR and Thailand are becoming both labour sending and receiving countries, partly due to the inefficiency in their labour market.

Cambodia's labour migration has picked up momentum in recent years. Initially the sending areas were limited to Banteay Meanchey and Battambang provinces, which historically received Cambodian refugees returning from Thai border camps. Migrant workers now come from other provinces across the country, with the fewest coming from rural and remote areas where communications and poor infrastructure are underdeveloped. Thailand is the main destination for Cambodian migrants, though Malaysia, South Korea, Saudi Arabia, Taiwan, Singapore and Japan draw increasing numbers. This trend has accelerated particularly since the mid 1990s, a period which was marked by peace in Cambodia but also a series of natural disasters such as drought and flood, which served as push factors (CDRI, 2007b, Chan and So, 1999).

Table 1 shows the differential level of development reflected in the national income and labour migration position among countries. Low-income countries such as Cambodia, Lao PDR, and Vietnam are the net labour sending countries, while high-income countries such as South Korea, Singapore and Japan receive foreign workers to meet their demands for unskilled or low skilled workers. Oddly enough, a few poor, labour-sending countries like Lao PDR, Cambodia and Nepal also receive scores of legal and illegal migrant workers from the neighboring countries (Vietnam, China, and Thailand).

It should be noted that Thailand and Malaysia, the higher middle-income countries, send and receive migrant workers, while the Philippines, a lower middle-income country, is the largest sending country in Asia. It is also interesting to note that the labour sending countries generally have higher population growth rate than receiving countries.

Table 1. Population and GDP data of selected countries in 2005

	Position in labour migration	Population (million)	Population Growth (%)	GDP per capita (USUSD, constant 2000)
Cambodia	Sending country	14.1	1.96	402
Lao PDR	Sending country	5.9	2.26	396
Vietnam	Sending country	83.1	1.16	538
Philippines	Sending country	83.1	1.75	1,129
Thailand	Sending country to higher income countries but receiving country from lower income countries	64.2	0.84	2,441
Malaysia	Sending country to higher income countries but receiving country from lower income countries	25.3	1.80	4,437
Korea, Rep.	Receiving Country	48.3	0.44	13,210
Singapore	Receiving Country	4.3	2.39	25,845
Japan	Receiving Country	127.8	0.01	39,075

Source: World Development Indicators 2007, World Bank

Godfrey et al. (2001), Maltoni (2006) and CDRI (2007) highlighted a number of push factors that result in emigration. These include chronic poverty, landlessness, lack of employment, inability to access markets, materialism, debt and natural disasters such as drought and flood. The cross-border movement of labour is also facilitated by other factors which include improved communication and infrastructure, and an increase in demand for low skilled labour in many countries with strong economic growth.

In many countries, environmental degradation has contributed to a rising of number of internal and external migrants. In Cambodia, which used to have 70 percent of forestland, deforestation has led to the creation of many land clearing and farming jobs. This has ironically mitigated emigration, but increased internal migration.

In Thailand, there were negotiations involving government agencies, and businesses in an effort to arrive at a rational way to manage the flow of migrant workers without unduly affecting the economic prospects. (Paitoonpong and Chalamwong 2007). In 2005, the quota for admission of workers from Myanmar, Laos and Cambodia was 1,086,653, 198,659 and 227,275, respectively. However, the percentage of work permits issued against the set quota was just 58 percent, 53 percent and 48 percent, respectively (Table 2). This indicates that the quota setting and issuance of work permits were problematic.

Table 2 also suggests that Cambodian migrant workers are quite dispersed in Thailand, though there is relatively high concentration of them in the Eastern region, Central region and Bangkok. The quota provided for the Eastern region was much higher than the number of work permits actually granted. This means the demand for Cambodian workers in this area is rather high. During a field investigation conducted by the author in collaboration with the Thailand Development Research Institute (TDRI), Cambodia workers in Thailand expressed their interest in obtaining work permits at the required costs. However, workers did not avail of the services provided partly because the timing set for annual extension of work permit was unknown to them.

Table 2. Distribution of quota and work permits granted by region in Thailand in 2005

Region	Quota				Work Permit			
	Myanmar	Laos	Cambo.	Total	Myanmar	Laos	Cambo.	Total
Bangkok	166,138	63,365	33,037	262,540	105,771	40,177	17,709	163,657
Central	265,509	46,647	49,859	362,015	156,874	24,815	23,840	205,529
East	71,758	25,885	110,315	207,958	34,965	15,272	53,781	104,018
West	101,652	11,629	5,547	118,828	46,685	3,850	2,105	52,640
North	226,189	7,532	1,099	234,820	129,904	3,110	944	133,958
Northeast	6,159	30,145	5,440	41,744	2,832	11,595	1,464	15,891
South	249,248	13,456	21,978	284,682	155,423	6,315	10,199	171,937
Total	1,086,653	198,659	227,275	1,512,587	632,454	105,134	110,042	847,630

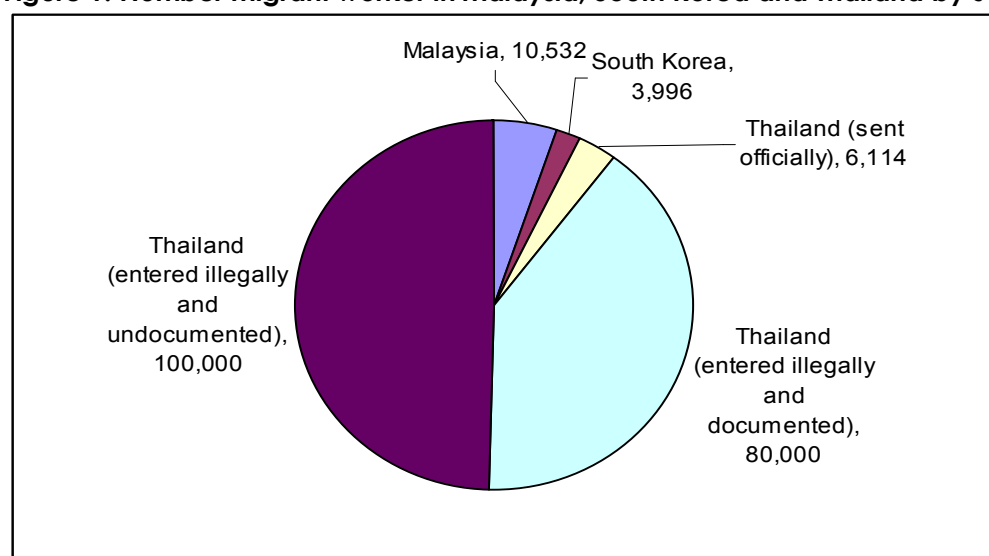
Source: Thailand's Ministry of Labour, Data up to May 31, 2005 in (Paitoonpong and Chalamwong 2007).

2.3 Legal migration and remittances

There are basically two types of migrant workers from Cambodia: legal and illegal. Table 3 below provides the number of Cambodian migrant workers officially sent since 1998 to three countries. Between 1998 and the end of 2007, there were 20,630 workers legally recruited for Malaysia, South Korea and Thailand. Of this total, 10,532 have been sent to Malaysia, 3,984 to Korea and 6,114 to Thailand (Figure 1). The majority of migrant workers sent to Malaysia were female domestic helpers or housemaids, while most of the males were sent to Korea for factory jobs. Although Thailand has received migrant workers from Cambodia since 1994, most of them are undocumented or irregular. Official recruitment only started in 2006 following the inception of an MOU between Thailand and Cambodia signed in May 2003.

Under the MOU arrangement, there were only 6,114 Cambodian workers officially admitted with two years work contract. There are also about 100,000 who received Thai work permits in 2004, a large number of them have been recently legalized and received the Certificate of Identity (CI). These workers are eligible to work in Thailand with work permit for two years. For those who could not be regularized through the nationality verification programme, the Cambodian MoLVT proposed that the Thai government deport them so that they could be sent back again to Thailand through legal means. However, this proposition is questionable as the legal recruitment process would cost about US\$ 600 per worker, which is too expensive for many of migrant workers.

Figure 1. Number migrant worker in Malaysia, South Korea and Thailand by January 2008



Source: Ministry of Labour and Vocational Training (official statistics), UNIFEM (2006), IOM (2006)

Table 3. Number of Cambodian migrant workers sent “officially” since 1998

	Malaysia			Korea			Thailand*			TOTAL		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F
1998	120	0	120	..	..	..	..	..	..	120	0	120
1999	86	0	86	..	..	..	..	..	..	86	0	86
2000	502	307	195	..	..	..	..	..	..	502	307	195
2001	846	342	504	..	..	..	..	..	..	846	342	504
2002	1049	246	803	..	..	..	..	..	..	1049	246	803
2003	573	73	500	756	638	118	..	..	..	1329	711	618
2004	809	105	704	674	519	155	..	..	..	1483	624	859
2005	1776	467	1309	468	432	36	..	..	..	2244	899	1345
2006	1690	231	1459	1501	1341	160	445	219	226	3636	1791	1845
2007	3081	174	2907	584	499	85	5669	3913	1756	9334	4586	4748
Total	10532	1945	8587	3983	3429	554	6114	4132	1982	20630	9506	11123

* It should be noted that Thailand is by far the largest destination of Cambodian migrant workers. In total, about 180,000 workers are estimated to have worked in Thailand so far although there are new workers all the time.

Source: Ministry of Labour and Vocational Training (official statistics)

Elsewhere in the region, workers’ remittances and compensation are becoming a big portion of national foreign currency reserve. About 400,000 of Vietnamese are currently working in 40 countries and sending home about US\$ 2 billion per annum, according to Dang (2007). The World Bank (2007) reports much larger amounts of remittances as can be seen in Table 4. Vietnam is reported to have received US\$ 4 billion in 2005, similar to that in Bangladesh, while the Philippines received US\$ 13.5 billion.

Likewise, Thailand had 160,000 migrants working abroad and received remittances of US\$ 1.6 billion per year before it dropped to US\$1.2 billion in 2005. Remittances from labour migration constituted about 13.7 percent of GDP in the Philippines and 7 percent of the GDP in Bangladesh. Cambodia has also benefited of US\$ 200 million per annum from workers’ remittances and compensation, according to the World Bank (2007), which is equivalent to 3.23 percent of GDP in 2005.

This is, however, by no means advocating for Cambodia to specialize in or rely on sending workers overseas for its long-term economic development. Rather, it suggests that well managed overseas employment can mitigate demographic and employment pressures until job creation in the country can keep pace with rapid increase in the labour force. The Cambodian work force grows by about

300,000 per year, while the total number of jobs in Cambodia's largest industry, garments, is currently stuck at 350,000 positions. There has been slow progress in the creation of jobs in the garment industry, which began with about 200,000 workers in 2000. It is very unlikely that this sector will be able to employ more workers given that it will soon face competition from China and other countries as the favorable market access concession to the US and EU provided to Cambodia is due to expire in 2008. Hence, there is a need for expansion of industrial base and jobs in other sectors. This issue will be discussed in Section 6.

Table 4. Workers' remittances and compensation of employees

Country	1996	1998	2000	2002	2003	2004	2005
Million of US\$							
Philippines	4,875	5,130	6,212	9,735	10,243	11,471	13,566
Bangladesh	1,345	1,606	1,968	2,858	3,192	3,584	4,251
Vietnam	..	..	..	2,714	2,700	3,200	4,000
Thailand	1,806	1,424	1,697	1,380	1,607	1,622	1,187
Cambodia	12	120	121	140	138	177	200
Lao PDR	45	50	1	1	1	1	1
As percent of GDP							
Philippines	5.88	7.87	8.24	12.75	12.66	12.65	13.70
Bangladesh	3.31	3.64	4.18	6.02	6.16	6.32	7.08
Vietnam	..	..	..	7.74	6.81	7.08	7.63
Thailand	0.99	1.27	1.38	1.09	1.12	1.00	0.67
Cambodia	0.34	3.85	3.31	3.27	3.01	3.37	3.23
Lao PDR	2.40	3.91	0.06	0.05	0.05	0.04	0.03

Source: World Development Indicators 2007, World Bank

3. Labour migration policies, legislations, and regulations

3.1 Legal framework on labour migration

As labour emigration is a relatively recent phenomenon for Cambodia, the Cambodian government has struggled in formulating policy, legislation and regulations to deal with the outflow of migrant workers. The country was plunged into civil war and isolation until 1993 when the newly democratic government was formed following a UN-organised election. The coalition government represented by the Co-premiers then issued a legal document called **Sub-decree 57**, in 1995, to regulate the sending of Cambodian workers overseas (See Annex A). Aside from this legal binding document, there are no other laws to specifically regulate migration. Known as "Sub-decree 57 on Sending Khmer Migrants to Work Abroad", the document was drafted by the then Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MoSALVY)³ in collaboration with the Ministry of Interior and Ministry of Foreign Affairs. The sub-decree recognised the lack of employment opportunities in the domestic market and stated the objective of improving the standard of living through income generation and skills to be acquired by workers from working overseas. The Sub-decree considers the ministry in charge (now MoLVT) as the *providing party* and a recruitment company/agency as the *receiving party*. In addition to the Sub-decree 57, there are two legal documents related to labour migration: Prakas 108 issued in May 2006 on "Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad" and Sub-decree 70, issued in July 2006 on "The Creation of the Manpower Training and Overseas Sending Board". The latter is designed to specifically regulate sending workers to Korea.

³ MoSALVY in 2005 was divided to Ministry of Labour and Vocational Training (MoLVT) and Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY). The Veterans Affairs component changed place from MoSALVY to Ministry of Women Affairs in 1999 and then to MoSAVY in 2005.

3.2 Inconsistency in Sub-decree 57

The Sub-decree 57 rightly points to the problem of unemployment and under-employment and the benefits from labour migration for improving the living standards of Cambodian citizens (Article 1). However, a number of points suggests that the government's intentions and policies are inconsistent.

Article 1- *In order to access the higher standard of living and to upgrade vocational skills, and generate the national revenue the Royal Government allows the sending of Khmer workers to work abroad while the domestic labour market is unable to absorb totally the unemployed and under employed persons.*

Sub-decree 57. p1

To meet the objective of sending workers overseas, the institutional set up for both the government and the private sectors involved in the migration process must be sufficient and strong. Currently, the government units still lack capacity to handle labour migration issues and the private agencies do not have adequate experience to recruit, train, send and place workers overseas. In addition, the requirements for large amount of guarantee deposit and the costs of sending worker abroad to be initially borne by the recruitment agencies are few major constraints to promoting orderly migration.

If all 180,000 Cambodia migrant workers in Thailand were to be sent through legal means, it would require far more recruitment agencies to process the applications. For example, if one agency can manage up to 1,000 workers, there would be a need for 180 companies.⁴ Currently, there are only 18 recruitment agencies, but some of them are not fully operational. It should be noted that 26 companies were forced to close down in July 2006 when the guarantee deposit requirement was enforced, leaving only 12 agencies to continue operations. Recently four more agencies were set up and two have been trying to obtain NGO status so as to avoid the required deposit of US\$100,000. As of January 2008, this brings the total number of agencies to 18, which is too few (See Table 5 below). Compared to countries with long records of sending labour overseas, this number of companies is too small. In Bangladesh and the Philippines, there are about 800 and 1,000 recruitment companies, respectively.⁵

One barrier to entry for new firms is the US\$100,000 deposit required by Sub-decree 57. This deposit rests with MoLVT and yields no interests to the company. The purpose of the deposit is not clearly stated in the sub-decree. It stipulates that “*the providing party can use the deposit to pay workers instead of the receiving party in the event that latter does not comply with conditions stated in the employment contract.*” Officials of MoLVT interpret this as a fund to repatriate workers if things go wrong. If this is the reason, to repatriate a worker from Thailand by land where they are sent, it would cost less than US\$ 30 per person. Thus, if a company sends 1,000 workers, the guarantee deposit should not exceed US\$ 30,000. In Thailand, the new Foreign Workers Employment Act (2008) has established a repatriation funds deducted from the salary of migrant workers. Hence, there is a good argument for the Cambodian government to reduce the amount of the deposit requirement so as to lower the barrier to entry into the recruitment industry, and to promote legitimate competition among the agencies.

Article 7- Within 7 days after receiving official permission the receiving party shall deposit the guaranty money amount of US\$ 100,000 in the account of the proving party. If the money has not been deposited, the permission shall be null and void.

⁴ Currently, to send 1,000 workers costs US\$ 600,000 as it costs US\$ 600 each.

⁵ The number must be much higher in Thailand and Vietnam where labour migration is substantial. According to Dang (2007), there seems to be no such deposit required for licensed recruitment enterprises in Vietnam.

The providing party can use the deposit to pay workers instead of the receiving party in the event that the latter does not comply with conditions stated in the employment contract.

During the implementation of the employment contract, if the deposit is partly withdrawn to pay workers, the receiving party shall reimburse in full amount.

The receiving party can take the deposit back when the employment contract is achieved definitively.

The deposit in pursuit of this article can be reduced for the employer who personally needs a small number of workers to work in his/her own workshop or cottage industry.

However, the employer shall discuss with the Ministry of Social Affairs, Labour and Veteran affairs to make an individual contract with those workers.

Sub-decree 57. p3

As the recruitment agencies need some capital funds for their usual business, the sizeable amount of the required deposit would prevent many potential entrepreneurs from entering this sector.⁶ One possible alternative is to require a smaller deposit for agencies that send workers to Thailand only. This is because the situation in Thailand is very different from that of other receiving countries in terms of distance and managing the disputes. If necessary, workers can easily return or be repatriated without much costs. Another option would be to allow the deposit to vary according to the number of workers each company sends overseas.

There could be some form of financial guarantee when companies fail to comply with the law or when they cause damages to the workers. Establishment of a strong government monitoring and reporting mechanism can ensure that the agencies abide by the rules as well. At this stage, it is more efficient to improve government institutions to regulate labour migration than to impose heavy financial constraints at a time when capital is hard to mobilize or opportunity cost is high. The operational cost of such government institution can be financed from a small part of the fee collected from document processing for the workers and the recruitment agencies.

The Sub-decree, however, stipulates that “*the receiving party can take the deposit back when the employment contract is achieved definitively.*” This can be interpreted to mean that after the workers fulfill their contract and return home, the recruitment companies can withdraw their deposit. However, this has not been the practice. The amount of US\$ 100,000 is deposited with MoLVT all the time regardless of the operations, which does not make much sense. The deposit should be returned when the workers complete their contracts successfully. However, monitoring the returned migrant workers and the extension of their work contract in the destination country, after expiration of the one under responsibility of the agency, can further complicate the matter and is difficult to monitor.

Table 5. Labour recruitment agencies as of January 2007

No	Name of Company	Country to send workers			
		Thailand	Malaysia	Korea*	Japan
1	Cambodia Labour Supply TPY Ltd	√	√	√	√
2	Human Resource Development Co. Ltd	√	√		
3	Philimore Cambodia Co. Ltd	√	√		
4	Human Power Co. Ltd	√	√		
5	Mey Yorn Service Co. Ltd	√			
6	Top Manpower Co. Ltd	√			
7	CDM Trading Manpower Co. Ltd	√			
8	Chhun Hong Manpower Co. Ltd	√	√		√

⁶ It should be noted that a deposit for a Micro Finance Institution (MFI) to get a license is only US\$ 70,000.

No	Name of Company	Country to send workers			
		Thailand	Malaysia	Korea*	Japan
9	Ung Rithy Group Co. Ltd	√	√		
10	STP International Cambodia Public Co. Ltd	√			√
11	(Cambodia) Victory Cooperation Co. Ltd	√			√
12	C-Pro Co. Ltd		√		√
13	VC Manpower Co. Ltd				
14	PRO CAST (Cambodia) Co. Ltd				√
15	MALCAM Human Resource Management & Consultant Co. Ltd	√	√		
16	T & P Co. Ltd	√	√		
17	NGO ALC				√
18	NGO GCHCC				√

* Since late 2006, Korea has a policy to receive workers only recruited under the supervision of the Cambodian government and not by the private companies

Source: Ministry of Labour and Vocational Training

The second impediment to current and potential recruitment agencies is the required advance expenses to be borne by them for sending workers overseas, which is tantamount to providing a loan by the agencies to the migrant workers. Although Sub-decree 57 does not clearly stipulate this requirement, it has been implemented as a binding condition (Article 8).⁷ If the costs of sending workers overseas are initially to be borne by the agency, an agency which sends 2,000 workers at a time will need to advance US\$ 1,200,000, assuming the cost of sending each worker is about US\$ 600 as reported at present. This probably involves a lot of financial risk, especially for small companies.

Article 8- *In accordance with the agreement stated in the contract the receiving party shall pay for services and the preparation of relevant documents to the providing party.*
Sub-decree 57

In practice, this financial burden has been temporarily passed on to employers in Thailand, who make payment in two or three installments to Cambodian companies to process the workers for them, which costs about 10,000 - 20,000 baht for each worker recruited. The employers will later recoup the recruitment costs from the salary of migrant workers within 10-12 months once they are employed in Thailand. In case migrant workers runaway, the Cambodian companies are obliged to replace with the new recruited workers. The recruitment expenses associated with the new replacement will be borne by the agency in Cambodia. With such a great risk of runaways, the agency is faced with a potential for financial loss. Because of this risk of desertion in Thailand, the business viability of these agencies is threatened.

The advance payment for recruitment costs required of these agencies can raise a moral hazard to some migrant workers as well. Some workers may use this funding facility as a means to get to Thailand only to temporarily work in the designated job, and then flee to join the cadre of the irregular migrant workers, which account for 95 percent of Cambodians workers in Thailand. This practice may certainly appeal to some legally recruited workers who are compelled to work for 10-12 months repaying back the debt to the agency/employer. To cope with this risk, the companies recently raised the recruitment fee, which in turn increased the total cost for legally sending migrant workers to Thailand, US\$ 600 – US\$700 and US\$ 800 –900 for those bound for Malaysia.

Having recognized this burden, the government now allows agencies to require applicants to bear the cost of their own passport and medical examination. At present, each applicant is required to pay between US\$ 50 to US\$150 for a passport. Generally, this could be a good step towards sharing

⁷ There is understanding that this requirement is in fact to follow the suggestion by the Prime Minister who was sympathetic with workers who are generally short of cash.

responsibility. The agencies would seek the prospective migrant workers to put US\$100 as guarantee, if they are initially selected for job in Thailand. However, recruitment agencies still bear the rest of other costs. As discussed, if workers are to be responsible for funding their migration, they will be more committed to fulfill their obligations in working overseas. The government may provide them with credit facility so that they will not be a victim for financing migration loan from the informal money lenders or the loan shark.

3.3 National development agenda and labour migration programme

Labour migration has not been consistently outlined in the national policies, strategies and development plans. The Socioeconomic Development Plan 2001-2005 (SEDP II), primarily supported by the ADB for its loan requirements, did not mention a word on labour migration issues. While the Plan pointed to the growth of labour force at 3.2 percent per annum as a great challenge for productive employment creation, nothing was discussed on overseas employment as a short- and medium term strategy to cope with the potential unemployment among these young additional labour force.

The importance of labour migration was stressed in the National Poverty Reduction Strategy (NPRS) 2003-2005, which was developed with the support of the World Bank as a PRSP requirement for a loan programme to Cambodia. Under the sub-heading of “Labour and Vocational Training” there is a striking paragraph highlighting the importance of contributions from migrant labour and suggesting development of government policies, regulations and bilateral agreements to protect the interests of migrant workers. The paragraph reads:

“Labour export has been an important option for reducing poverty in several of Cambodia’s Asian neighbours, such as the Philippines, Sri Lanka, Thailand and Vietnam. The Royal Government policy is to encourage official labour exports to increase welfare, enhance skills, reduce unemployment and increase state revenues. Constraints to increased exports of workers include low education and limited foreign language skills, an increasingly competitive market for export labour, and complex regulatory and administrative requirements. Developing appropriate government policies and regulations and bilateral arrangements, which do not prohibitively raise costs yet adequately protects the interests of export workers, poses a challenge. Technical assistance is needed in these areas and should draw on the considerable regional experience in developing labour markets and regulations.”

RGC, National Poverty Reduction Strategy 2003-2005, pp. 80-81

The NPRS implementation period was problematic. There was about one year of political paralysis following the elections in 2003. Then RGC issued its Rectangular Strategy (RS), which overshadowed the NPRS, in 2004. The RS was seen as better owned by the Cambodian government. Then, the National Strategic Development Plan (NSDP) for 2006-2010 was formulated to follow the above mentioned NPRS and SEDP II as well as the RS. Under both the RS and NSDP, there is no mention of labour migration as an issue that should be better managed. To date, labour migration is a major issue and continues to play an important role in tackling the unemployment problem and in reducing poverty. On economic development perspective, it will also help countries to accumulate foreign exchange to fund its development programmes.

For instance, if the outflow of workers is not regulated or known to the planners, it could negatively impact the implementation of new development programmes and projects that are part of Cambodia’s agricultural intensification strategy. Recently, the RGC in collaboration with key donors produced a number of key sector strategies and programmes aimed at, among other things, raising the livelihoods of rural residents. These efforts are integral to the National Strategic Development Plan 2006-2010, Strategy of Agriculture and Water 2006-2010, Agriculture Sector Development Strategy 2006-2010, and the National Programme on Household Food Security and Poverty

Reduction. At the moment, because of the lack of local employment opportunities, many young workers migrate out of their villages to work in urban areas or other countries. This trend may threaten the viability of these plans for local development.

3.4 International Conventions ratified by Cambodia

Cambodia is a signatory to the “Convention on the Protection of All Migrant Workers and Members of Their Families”, which is one of the most significant Conventions relating to labour migration issues. Also of relevance are the 12 ILO Conventions that Cambodia has ratified. According to UNIFEM (2006), eight of these are fundamental to the rights of persons at work. These eight Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). Cambodian laws do not seem to be in conflict with any of these international Conventions. However, Cambodia has not ratified any of the ILO Conventions relating to labour migration.

The Cambodian labour law follows the spirits of these conventions. These laws are, however, more relevant to issues of domestic labour and employment. When Cambodians migrate to work overseas, they are subject to the laws of the host countries. For instance, in Thailand, foreign workers are not allowed to form unions. There is no way for Cambodian workers to form officially recognized unions in Thailand. However, this should not prevent them from loosely organizing diaspora associations or clubs in the host country to look after the interest of Cambodia workers. This practice has been widely adopted among migrant workers in Hong Kong, and Singapore.

3.5 The need for migration policy or migration law

Many labour migration advocates point out that Cambodia lacks migration policy and specific laws on migration. In their opinion, Sub-decree 57 is outdated and needs to be reviewed. Cambodia’s Labour Law cannot be applied in receiving countries when it comes to dealing with labour migration. With this regard, MoLVT officials determine to formulate the employment policy in the near future.⁸ Cambodia also lacks legislation to regulate the overseas employment of Cambodian migrant workers, to punish persons who exploit and deceive the workers, and to support those who may face problem overseas.⁹

The government has also considered posting Labour Attachés in Cambodian Embassies of countries where there are large numbers of Cambodian migrant workers. The role of the labour attaché is to handle the contract disputes and the complaints of migrant workers overseas. Currently, these problems have been dealt with on ad hoc basis.

4. Labour migration management

4.1 International labour migration management institutions

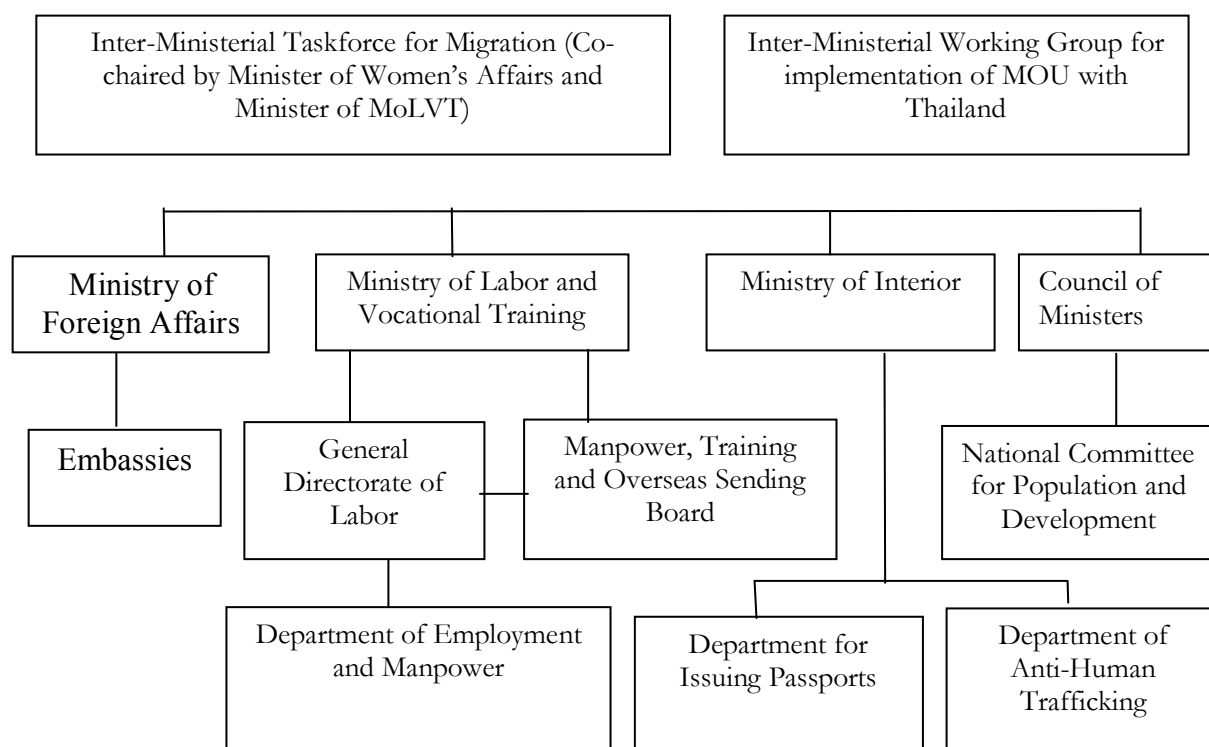
Four ministries are involved in the management of international labour migration of Cambodian workers. They are the Ministry of Labour and Vocational Training, Ministry of Interior, Ministry of Foreign Affairs and International Cooperation, and the Council of Ministers (Figure 2). There are

⁸ According to interview with HE Seng Sakda on 16 July 2007.

⁹ According to interview with Mr Khoun Bunny on 19 June 2007.

also two Inter-ministerial Committees involving in labour migration issues. The Inter-Ministerial Working Group for Implementation of MOU with Thailand is a body formed to oversee the MOU, and the Inter-Ministerial Taskforce for Migration (IMTM) is to coordinate on migration issues and provide recommendations to the RGC. A brief description of roles of each ministry is highlighted below:

Figure 2. Institutions involved in management of international labour migration



4.1.1 The Ministry of Foreign Affairs and International Cooperation

The Ministry of Foreign Affairs and International Cooperation has only a minor role in the management of international labour migration. Its main function is to channel information through the Cambodian Embassies overseas. However, the ministry also takes part in inter-ministerial task forces to provide technical guidance in negotiation with foreign countries. Recently, there is a request to establish labour attaché posts in the Cambodian Embassies in South Korea, Malaysia and Thailand, which are the major destinations of Cambodian migrant workers. The labour attaché positions would be filled by officials from the MoLVT.

4.1.2 The Council of Ministers

Under the Council of Ministers, the National Centre for Population and Development is responsible for formulating the policies to manage both internal and international migration and population issues. The Centre, which is supported by UNIFEM and IOM, is small with a few staff. The office has produced some publications on the subject of population and migration and a policy brief on labour migration, which draws heavily from a 2006 IOM report. The Centre has the potential to play a more active role in migration issues but, like most government institutions, it lacks the budget to carry out major activities.

4.1.3 The Ministry of Interior

The Ministry of Interior is critically involved in the international labour migration of Cambodian workers. The ministry issues passports, which Cambodian workers need in order to migrate abroad as

well as receive Cambodian workers who have been deported from other countries. The Department of Statistics and Passports under the Ministry of Interior is charged with issuing passports to all Cambodian citizens, except civil servants whose passports are provided by the Ministry of Foreign Affairs and International Cooperation. Under the Department of Statistics and Passports, the Bureau of Passports manned with 75 officials in one building is responsible for processing the passport applications for the non-civil servants in Cambodia.

Within the Ministry of Interior, the Department of Anti-Human Trafficking is also closely associated with international labour migration and trafficking in human. The Department primarily works on issues with Taiwan, which does not have diplomatic relations with Cambodia but has received a number of Cambodian workers through cases of both genuine and fake marriage. It also monitors and investigates irregular migration cases in Malaysia and Thailand.

4.1.4 The Ministry of Labour and Vocational Training

The Ministry of Labour and Vocational Training (MoLVT), which was separated from the formerly Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MoSALVY) in 2005, is the main agency responsible for managing labour migration. The Sub-decree no. 52 issued on 1 April 2005 and signed by Prime Minister Samdech Hun Sen spells out the objectives of the organization and functions of MoLVT. The MoLVT focuses on the areas of labour and vocational training. Of the 10 tasks related to labour, two explicitly touch upon labour migration. These are: (i) promotion of employment of Cambodian labour in-country and overseas, and management of foreigners working in Cambodia, and (ii) coordination with other ministries, especially the Ministry of Foreign Affairs and Cooperation, and other regional and global organizations to promote cooperation in the field of labour.

As of December 2007, the Ministry had about 1,110 staff on its payroll. This includes 658 individuals in central offices, some 300 in the 24 provinces and municipalities and 137 in vocational training centers and colleges. MoLVT has three General Departments: (i) General Department of Administration and Finance, (ii) General Department of Labour, and (iii) General Department of Training, Vocational Education and Training. The General Department of Labour is the prime body dealing with labour migration. The Department has 56 staff members working in six sub-departments: (i) Labor Inspections, (ii) Labour Disputes, (iii) Employment and Manpower, (iv) Social Security, (v) Child Labour, and (vi) Occupational Health.¹⁰ Of these sub-departments, the Department of Employment and Manpower oversees labour migration in addition to their mandate in setting labor standards and interact with trade unions, which are mostly comprised of garment workers (Box 1).

Box 1: Responsibilities of the Department of Labour and Manpower

- 1) Study and propose measures to develop and protect employment
- 2) Manage, issue work permit, work book, and provide working visa to Cambodian workers in-country and overseas
- 3) Check and issue work permit, work book, to foreigners working in the Kingdom of Cambodia
- 4) Prepare legal procedure on all measures to be implemented and monitored
- 5) Set up Employment Offices in Provincial/Municipal Departments of Labour and Vocational Training
- 6) Develop statistics on employment and manpower in-country and overseas by all level of economic activities
- 7) Prepare regulations on management of foreigners working in the Kingdom of Cambodia and on management of Cambodian labour and workers who migrate to work overseas
- 8) Manage foreigners working in the Kingdom of Cambodia and Cambodian workers overseas in cooperation with concerned ministries in the case that many Cambodian workers request for labour assistance

¹⁰ According to the Sub-decree 52 and MoLVT's Declaration No 062/07

- 9) Seek employment markets for Cambodian labour to work overseas
- 10) Implement other duties given by the Ministry.

Source: Sub-decree 52 on Organisation and Functioning of the MoLVT

As stated in Box 1, the Department of Employment and Manpower (DEM) is mandated to oversee both out- and in-labour migration as well as employment in the country. It manages the registration and sending of Cambodian migrant workers and issues work permits to foreign workers in Cambodia. There are 57 officials in DEM, including one Director and six Deputy Directors. It has six bureaus responsible for six areas: (i) Public Relations, (ii) Placement, (iii) Alien Control, (iv) Alien Management, (v) Khmer Employee Control, and (vi) Employment and Manpower Statistics. Among all the six bureaus, only the Placement Bureau is clearly mandated in the Ministry's Prakas to manage Cambodian labour migrants to work overseas. The Statistics Bureau is also engaged by keeping statistics of migrant workers.

The six bureaus and a summary of their respective functions are as follows.

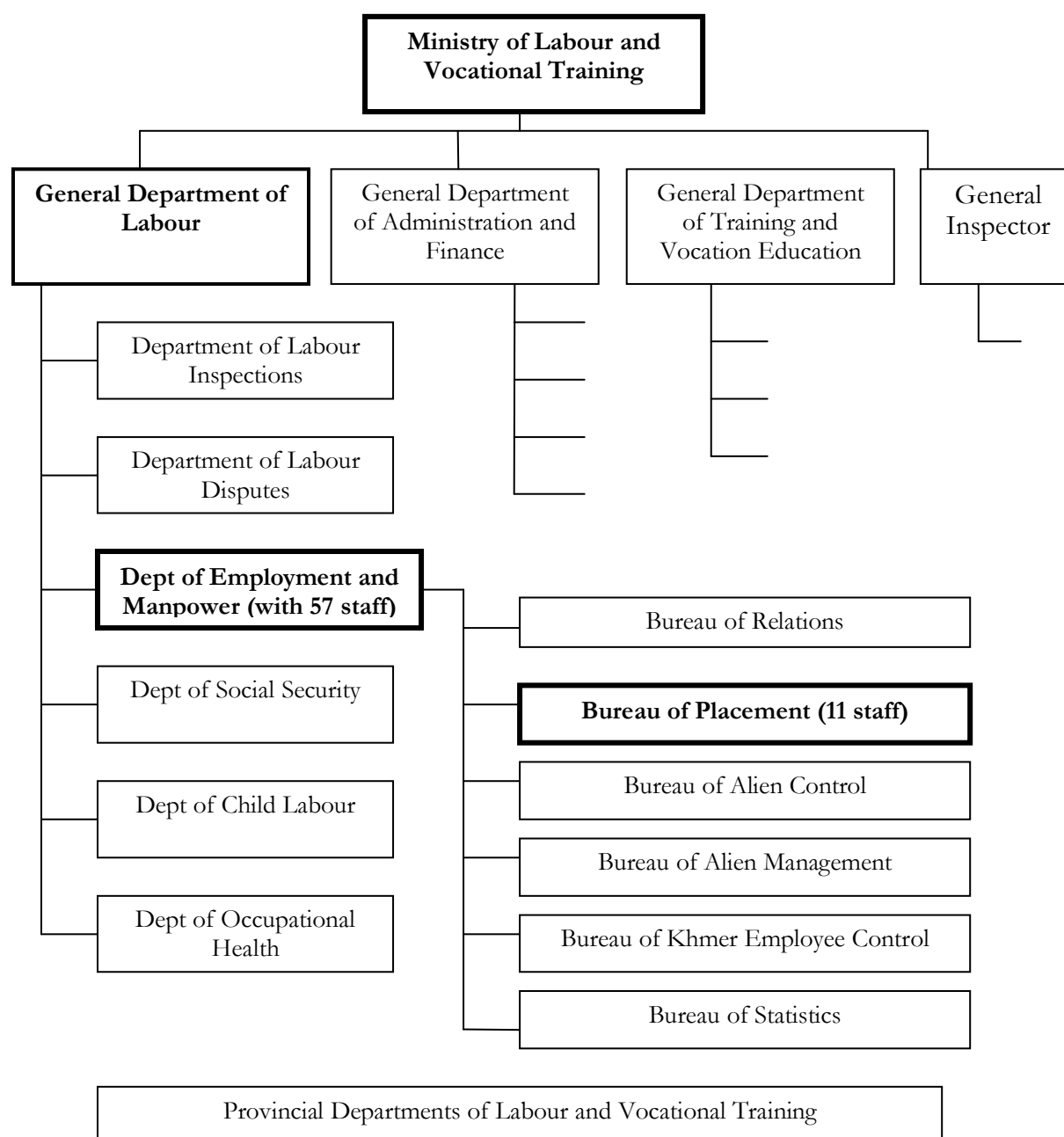
1. Bureau of Public Relations: Handling of public relations and external affairs with other countries of destination and sending.
2. Bureau of Placement: Placing Cambodian workers in receiving countries. It is this Bureau that receives and process applications of migrant workers. There are 11 officials in this Bureau (Figure 3).
3. Bureau of Alien Control: Issuing work visa, work permits, identification papers and other relevant legal document for foreign workers in Cambodia.
4. Bureau of Alien Management: Managing foreign migrant workers in Cambodia.
5. Bureau of Khmer Employee Control: Managing and protecting Cambodian workers in Cambodia.
6. Bureau of Statistics: Managing data and statistics of the ministry as a whole.

The Director General of the General Department of Labour is in charge of the labour migration component along with a Deputy Director General, Director of DEM, and a Deputy Director of DEM. The Secretary of State is primarily responsible for overall labour migration management. It should be noted that there is no department or bureau mandated to exclusively deal with overseas labour migration. All these existing units already have to deal with both domestic and international affairs in relation to labour and employment.

There are supposed to be Provincial Departments of Labour and Bureaus in every province but only a few major provinces have this structure. Since MoLVT is new, the institutions at the provincial level are either absent or insignificant. There are only about 12 officials in each major province and in many cases, they are not active. Provincial offices of DEM are supposed to play a key role to facilitate labour migration, as most workers are coming from the provinces. The decentralization of services and provision of adequate staff, knowledge and budget to these provincial offices are crucial for improvement in management of labour migration at the provincial level. In general, the government offices are short of the budget needed to carry out activities. MoLVT received only about US\$ 7 million from the annual RCG budget. There should be a greater allocation of the budget for MoLVT to expand and improve its service, and deal with the acute problem of labour migration.

Since labour migration involves multiple ministries, the **Inter-Ministerial Taskforce for Migration (IMTM)** was established. It is co-chaired by the Minister of Women's Affairs and Minister of MoLVT. The initiative followed from the advocacy of UNIFEM, an organization that promotes the right of female migrants. The IMTM comprises members from key ministries but has met only twice since its inception in October 2006. It is still very new and driven by the availability of resources provided by UNIFEM. It is a forum for government agencies to coordinate on labour migration issues and to reach consensus in drafting policy and coordinating policy implementation. The IMTM is also expected to develop additional policy and regulations as needed.

Figure 3. Organizational setup in MoLVT s on management of labour migration



At the consultative meetings, there is a consensus among those involved in the policy study that an adequate number of competent officials are needed for the General Department of Labour, and the Department of Employment and Manpower to effectively extend protection to migrant workers as well as to manage labour migration. There is also perhaps a need to create a separate Department under the MoLVT that is specially mandated to oversee the recruitment, placement and protection of migrant workers. Obviously, this will require a larger sum of government budget to support the complex undertakings. In the short-term, it is essential to build the institutional capacity of the concerned units responsible for management and protection of migrant workers through provision of training, technical advice, and study visit in the neighboring countries.¹¹

¹¹ Based on small meetings with MoLVT team dealing with labour migration issues on 30 May 2007 and 16 August 2007

The Inter-Ministerial Working Group for implementing the MOU on employment cooperation with Thailand has been established and chaired by the Director-General of the General Department of Labour. The Committee comprised of member of four ministries involving in labour migration management meets at least once a year with the similar Committee led by the Ministry of Labour, Thailand. Thus far, the annual discussion has been focused on nationality verification and admission of new Cambodian workers under the MOU.

The NGO community is very active in dealing with migration and human trafficking issues. Migration NGO Network (MNN), which comprises 30 member organizations, was created with support from UNIFEM. The network meets every two months to pursue five areas covering (i) advocacy and awareness raising, (ii) investigation, (iii) legal aspects, (iv) research and database, and (v) capacity building and public relations. The network is led by a steering committee composed of organizations most active in labour migration and human trafficking issues.¹²

4.2 Major issues related to policy and institutions

4.2.1 Recruitment of migrant workers

Due to lack of information flows, public relations and awareness raising campaigns on the migration process, there are not many qualified prospective migrant workers recruited through authorized agencies. In response to the demand for migrant workers from Thailand, the agencies have hastily recruited workers in order to meet the quantity needed at the cost of quality. As a result, a number of recruited migrant workers run away from their designated employers in Thailand. Some remain working clandestinely with other irregular migrants from Cambodia, while others choose to return home. Most of the workers are not mentally prepared for the types of job and work discipline required in the destination country. In addition, many feel that they could not reap the full benefit from their labour as their wages are being deducted by the employers who are trying to recoup the cost of recruitment. While there are no statistics on runaways, a source in Thailand reported that one Cambodian recruitment agency had 40 percent of its workers desert jobs in Thailand. In effect, the recruitment agencies have been saddled with large amount of debts owed to Thai employers and are responsible to recruit the new workers to replace the runaway workers at their own costs.

4.2.2 The costs of sending migrant workers

In January 2007, the cost of sending Cambodian migrant workers to South Korea was decreased from US\$ 3,000 per worker to merely US\$ 892 when the special government agency, the Manpower Training and Overseas Sending Board (MTOSB), has been mandated to oversee the recruitment of workers in place of the private companies. This reduced cost of migration to Korea is considered a major success as it directly benefits the workers. The MTOSB has sent about 500 workers since it assumed the task and has proven that reducing the cost of labour migration is a feasible undertaking.

Table 6. Breakdown of estimated costs of sending a worker to South Korea (US\$)

#	Description	By MTOSB	By Private (CLS)	Payment to
Total Fee		US\$ 892	US\$ 2,955	
1	Korean Language Proficiency Test	30	-	HRD-Korea (1 month before KLT-Test date)
2	First Medical Checkup (1)	42	180	Dept. of Occupational Safety and Health (1 week after KLT-Test's result announcement)
3	Second Medical Checkup	25		Dept. of Occupational Safety and Health (1 week before departure)

¹² Based on MNN members meeting on 16 July 2007

#	Description	By MTOSB	By Private (CLS)	Payment to
Total Fee		US\$ 892	US\$ 2,955	
4	Passport	50	200	Dept. of Statistics and Passport (after test announcement)
5	Visa Issuance	50	50	Korean Embassy (after receiving CCVI "Certificate of Confirmation for Visa Issuance")
6	Pre-departure Training at NPIC	120	-	NPIC (after signing labor contract)
7	Letter of inquiry	35	40	Ministry of Justice (after signing labor contract)
8	Airfare	420	460	Travel Agent (5 days before departure)
9	Airport tax	18	18	Airport Authority (on departure date)
10	Cambodian Style Uniform & Name Tag Kit	20	-	Private company (5 days before departure)
11	Accompany and guiding	27	-	MTOSB (5 days before departure)
12	Application	5	-	MTOSB (5 days before departure)
13	Education and Orientation fee (2)	-	180	Company (CLS)
14	Government tax	-	150	Partially to the Directorate General of Labor
15	Accidental Insurance	-	30	Korean insurance company
16	Dispatch Fee	-	575	Company (CLS)
17	Dispatch Expenditure	-	1,072	Company (CLS)
18	Other (3)	50	-	Other parties

Note:

(1) For private companies, the medical checkup is made at a private clinic.

(2) The education is made at the school run by the company (CLS).

(3) This can be expenditure on telephone, transportation, and accommodation during the training.

Source: Ministry of Labour and Vocational Training

The cost of sending migrant workers to Thailand is currently about US\$ 700. The prospective migrant worker is required to put US\$ 100 to an agency as advance payment for processing documents, while the employer or recruitment agency intrinsically lends US\$ 600 (or about 20,000 baht) to the workers, which will later be deducted in 10 installments from migrant workers' salary, at about 2,000 baht per month during the first 10 months. As the recruitment cost also includes profit and fee taken by agency, the actual amount of the loan should hypothetically be less than \$600. With the loan repayment burden, migrant workers have to work longer hours in order to accumulate enough earnings for daily living and sending remittances home. On the other hand, if the workers choose to work in Thailand through smuggling network, they have to pay the carrier only about US\$ 100 per person. Above all, they do not have to wait long to journey to the destination country. Given the wide gap between the costs of legal and illegal recruitment, it is not surprising that most workers choose to migrate illegally. While they may come at the risk of arrest and deportation, the experienced migrants can re-enter Thailand through the porous border and pay only about US\$ 50 for transportation costs.

With the long border and many natural entry points between Thailand and Cambodia, it is difficult for the authorities of both countries to control and stop illegal border crossing. It is therefore important that both countries reduce the cost of legal migration to a level more affordable to the workers. Roughly, the overall cost may be reduced from US\$ 700 to US\$ 300. Currently, US\$ 480 of the US\$ 700 is incurred in Cambodia. If the cost of passport is reduced from US\$ 150 to US\$ 50, and "other expenses" from US\$ 220 to US\$ 40, assuming the placement fee earned by agency remains at \$70, this would make the cost of migration incurred in Cambodia at US\$ 200.

At the same time the Thai government should reduce the work permit fee from US\$106 to US\$ 30 (1,000 baht) and the visa fee from US\$ 59 to US\$ 15 (500 baht) so that the total costs incurred in Thailand will be decreased from US\$ 220 to US\$ 100. The proposed cost structure and reduction is shown in Table 7. If the costs and time required to process legal migration between Cambodia and Thailand have been drastically reduced, it will likely serve as incentive for most of migrants to use the formal migration channel, which will in turn generate revenues to both governments to cover the costs for facilitating the migration and protection of migrant workers, not to mention the spill over effects from migrants' remittances.

Table 7. Breakdown of costs of sending workers to Thailand

Expenditures Item	Current Cost	Proposed cost
Total cost in Cambodia	480	200
Passport	150	50
Medical Checkup	10	10
Exit fee	5	5
Training	15	15
Travel	10	10
Recruitment agency income	70	70
Other expenses*	220	40
Total cost in Thailand	220	100
Work permit	106	30
Application form	3	3
Medical Checkup	18	18
Visa fee	59	15
Travel to site	20	20
Other expenses	14	14
TOTAL	700	300

* It is calculated by subtracting the known expenses from the total cost, which should include fees paid to the local brokers who assist in the migration process at the commune and provincial level.

Source: Calculation based on interviews with recruitment agencies and workers

4.2.3 The passport issue

In Cambodia, passport for civil servants is issued by the Ministry of Foreign Affairs, while passports for other general public are administered by the Ministry of Interior. The processing of ordinary passports is with the Bureau of Passports under the Department of Statistics and Passports. The Bureau of Passports has only one office with about 75 officials to process passport applications for the entire country. The General-Director of the National Police signs the passports to validate them. Passports are required for visa application and for international travel, yet because the process is costly and time-consuming; many people adopt a fast track method, and are compelled to pay a special fee to the Passport Bureau of about US\$ 80-100 so as to obtain the book within one week.

In March 2007, the fee has increased by US\$ 20 to cover the cost of an “e-passport” microchip.¹³ An “informal” fee of US\$ 19 is also added making the total cost US\$ 139 for ordinary citizens in Cambodia. Under the normal track, the passport is supposed to be issued within two months. Those who need a passport within a week will have to pay a special processing fee, which also applies to migrant workers, if they wish to do so.

In comparison to other countries in the region, the passport fee in Vietnam is US\$ 12, and is issued within five working days. In Thailand and Laos, the fee is about US\$ 30 and it is issued in three to five working days. Moreover, these countries have many offices located across the country, except Lao PDR, whereas Cambodia has only one small office in Phnom Penh. It is unclear whether the

¹³ Cambodia decided to switch to e-passports so quickly—perhaps the first country in the region to do so—without considering the added cost. A Malaysian team of six persons were hired to implant the chip.

processing time is intentionally kept at two months so that people who need passports sooner has to pay additional fee.

As one of the measures to promote labour migration, and because many migrants are among the poor population, the government grants a special fee of US\$ 40 for a passport issued to migrant workers. The MoLVT will approve the list of eligible migrant workers and submit it to the Ministry of the Interior. Before 5 March 2007, the official charge for a passport was US\$ 20. In practice, however, it is US\$ 50 for a migrant worker, and takes at least two months for the passport to be issued. As most workers do not want to wait for a long time to be qualified for overseas employment, they are compelled to pay additional fee (US\$100) so as to obtain the book in a week's time.

It is worth noting that since March 2007, the implanting of microchips to the production of e-passports has increased the processing time to around 2.5 months. This has become a major issue for recruitment agencies. As a result, many applicants have shunned away from legal recruitment and opted for irregular migration, which can be done with US\$ 100 and in a few days. In response to this dilemma, the MoVLT sent a request letter to H.E. Sar Kheng, Deputy Prime Minister and Minister of Interior, for the passport to be issued in one month or less.

It should be noted that the Passport Bureau, which is about the size of a small house, is always overcrowded with about 500 people a day waiting for processing and receiving the passport.¹⁴ At the National Workshop on Foreign Employment Administration in Cambodia at the Sunway Hotel from 26-27 July 2007, a representative from the Ministry of Interior (MOI) responded to the appeal for faster processing. He explained that the MOI had introduced e-passports, which require the addition of a chip and therefore takes a longer time to process. He cited lack of capacity both in terms of human resources and facilities to process passports. Regarding reducing the cost of the passports, he referred to the Ministry of Economy and Finance (MEF), which sets the price of passport.

It is recommended that the total passport cost should be US\$ 50 for either migrant workers or ordinary citizens and be delivered in 2 weeks (10 working days). To cope with the rising demand for passports, the Ministry of the Interior should expand its office to other provinces with high concentration of potential migrant workers, e.g. Banteay Meanchey, Battambang and Prey Veng. In December 2008, following the pressure by many migration advocates, the government decided to reduce cost of passport for the approved migrant workers to US\$ 24. Moreover, it will be issued to the migrant worker within 20 days.

4.2.4 Visa application

Once a passport is issued, the recruitment company needs to obtain a letter of commitment from employers in the receiving country. This is done through the Ministry of Labour in the host country. Then, application is made to the Thai Embassy in Phnom Penh for issuance of a working visa. Complaints have been raised by recruitment agencies in Cambodia that it takes one month to obtain visa from the Thai Embassy in Phnom Penh. The Thai Embassy accepts visa applications only two days a week. The cost of the non-immigrant visa was 2,000 baht (or US\$ 59), which was quite high for migrant workers. According to the Ministry of Labour, there has been negotiation to bring down the visa fee to 500 baht as part of an effort to reduce the cost of migration.¹⁵

4.2.5 No standard work contract established between migrant workers and employers

The common recruitment practice in Cambodia, migrant workers have to sign three contracts arranged by the agency: first the recruitment service contract delivered by the agency to migrant workers; second the loan contract for the cost of recruitment; and third the employment contract between the worker and the employer in the receiving country.

¹⁴ Personal communications with officers in the office in late November 2007

¹⁵ Meeting with the Ministry of Labour, Thailand on 15 November 2007

There is no established agreement between the Cambodia government and the labour receiving countries on a standard work contract for migrant workers. As part of protection of migrant workers, it is essential to have a standard work contract so as to prevent inconsistency and controversy in interpretation of duties and responsibilities of the workers and employers with respect to working conditions and treatments. Migrant workers are rarely given a chance to study the work contract before departure for work in the foreign country. The government of Cambodia should negotiate with the labour sending countries at the MOU consultation or the bilateral meeting with respect to the contents of the standardized work contract. The ILO's Recommendation (No.86) concerning Migration for Employment (Revised 1949), Article 22: Contracts of Employment outlines the necessary contents of the employment contract.

There are a number of cases when the employment contract of the migrant workers has been unduly replaced with one of inferior terms and conditions when they arrive at the country of employment.

Sub-decree 57 mentions specifically the requirements for employment contract with broad contents (Box 2). However, this sub-decree is binding only in Cambodia, and implementation has been stymied due to the lack of information provided by the receiving countries or employers.

Box 2. Excerpt from Sub-decree 57

Article 8- In accordance with the agreement stated in the contract the receiving party shall pay for services and the preparation of relevant document to the providing party

Article 9- The employment contract shall be mentioned clearly:

- The name and address of each party;
- The date of the commencement and the termination of the contract;
- The place of work and job specification;
- The skills of workers;
- The salary and allowances;
- A part of salary and other allowances which shall be sent to the workers' family;
- Hours of work and day-off and annual leave;
- Accommodation, meals, clothing and medical care;
- Social security contributions for each worker;
- Delivery and receiving of workers to and from;
- Salary for transportation of workers to and from
- In the event of the workers shall be sent back to their country before the termination of the employment contract.

Sub-decree 57

4.2.6 Inadequate pre-departure training for migrant workers

It is important to prepare workers to avoid cultural shocks and to familiarize them with the laws and norms in the receiving countries. Currently, there is no systematic pre-departure training for migrant workers. Only the CARAM, and NGO,, provides specific training to workers on health, HIV/AIDS, and human rights before they migrate. Recruitment agencies also provide their own pre-departure training with varying contents according to the destinations of the workers. However, there has been a call for a standardized package of training modules. The MoLVT should organize its own one-day orientation programme and closely monitor the pre-departure training for all migrant workers delivered by agencies and NGOs.

As pre-departure training may be used as a tool for monitoring and regulating labour migration, the MoLVT should issue a regulation to make it compulsory for migrant workers to complete the pre-departure training before leaving abroad. The pre-departure training curriculum should be made suitable to the educational background of the audience.

4.3 Weak institution for management of migration and protection of migrant workers

The MoLVT, with only a few years of experience and is entrusted to be responsible for protecting migrant workers, is to deliver its mandates with inadequate human resources and institutional capacity to supervise the recruitment agencies and to protect the rights of migrants workers before and after departure. For instance, a number of Cambodian workers interviewed in Samutsakorn province, Thailand reported that they had been misinformed about their wages and salaries. They were told that they would earn 10,000 – 12,000 baht per month, while they actually earned only 5,500 baht. One worker left a decent job at a spa in Siem Reap because she was told of a better salary in Thailand. However, the higher income can only be realized through long overtime working hours.¹⁶

At the Provincial level, the branch offices of the Department of Labour and Vocational Training have been operating with under-staff and under-resource to facilitate labour migration and to protect the rights of migrant workers. The MoLVT will need to decentralize and strengthen the capacity of its provincial departments to raise awareness and disseminate information regarding policies, regulations, and labour recruitment process. This should be immediately taken before the unauthorized local brokers gain ground and strength to illegally recruit and smuggle workers abroad as has been the case in Indonesia, a country with long experience in sending workers abroad.

4.4 The problem of desertion and runaways

The recruitment of migrant workers from Cambodia and Lao PDR to Thailand is unique in that employers in Thailand advance the recruitment expenses, normally in two installments to the agencies in sending countries. Under this arrangement, the prospective migrant workers sign the loan and the service contracts with the agencies. Once they are successfully recruited and sent to employers in Thailand, migrant workers have to work out from their debt. The employers will recover the loan from migrant workers by deducting in installments from their wage/salary for a period of 10-12 months. To ensure that the migrant workers will stay in their jobs and pay their debt, some recruitment agencies send a staff to stay with the workers, provide them with necessary assistance, and hold their passport. Generally, the employer will withhold the passport, which serves as collateral to prevent the runaway. Since it is not difficult to cross the Thai-Cambodian border, workers wishing to break the work and loan contracts may leave their passport behind and travel back home. In this case, recruitment agencies are required by the employers in Thailand to recruit new workers replacing the runaways at no charge. This puts the recruitment agencies at great risk of financial loss, even though Thai employers are the ones to advance the workers' fees. To guard against the possible loss from runaway workers, the recruitment agencies raise their fee and require the upfront payment of US\$ 100 from the prospective migrant workers. Since most of the workers are poor and can not afford financing their migration, the government may have to arrange credit facility through Bank or micro credit institutions to provide some loan with low interest rate to the prospective migrant workers.

Another problem of runaway is that migrant workers have not been mentally prepared for structured work with close supervision, fixed working days and working hours, which are not practiced in the farming sector. Often the workers, who are largely farm labourers, find the job in labour receiving countries too difficult and want to return home. Many break the contract because the working conditions and pay are not according to what they have been told.

The agencies are partly to be held accountable for the runaways as they fail to properly screen, inform and train the prospective migrant workers in similar manner that most professional recruitment companies do. The agencies often want to send as many workers as quickly as possible, regardless of their qualifications and mental preparedness, in order to collect the fees.

¹⁶ Based on field trip to Thailand from 12-16 November 2007

It is difficult for recruitment agencies to settle cases of runaways and recoup the expenses from deserting workers. In some cases, they request the Thai Embassy to block the runaways from obtaining visa to enter Thailand in the future, though this is an imperfect solution, unlike the case of South Korea or Malaysia, where migrant workers cannot easily fly back home without passport. Because of the geographical proximity and the loose border control between Cambodia and Thailand, it is not difficult for people to cross-border in and out between the two countries without passing through the official check points.

4.5 Alternative to advance payment by recruitment companies

If the governments of Cambodia and Thailand aim to send migrant workers through the recruitment agencies, the number of agencies should be much higher. If most workers were to return home after 2 or 4 years as stated in the MOU, then there will be a need to serve the estimated 180,000 workers currently in Thailand. At the same time, it is assumed that there is no perfect system to prevent people from illegally crossing borders in search of employment in Thailand. Given the present circumstance, if the formal MOU channel can serve even 50 per cent of workers, we may say that it is a huge success. Ideally, all migrant workers will eventually be re-sent legally to Thailand. Currently, there is a staggering demand for 20,000 - 30,000 Cambodian labourers in Thailand, yet the efforts to capitalize on this demand have been very few.

The problem of workers running away can be dealt with by finding a way for the determined workers to obtain a special loan either with or without interest. It could be through banks, Micro-Finance Institutions (MFIs), NGO credit programmes, community saving schemes or their relatives. Competent workers seeking benefits from working overseas would have to pay cash or get a loan to pay the recruitment agency. Such a loan should be endorsed by the local authority or someone who knows the applicants well.

In this arrangement, recruitment agencies should be monitored closely by the agency of MoLVT. This is to avoid potential misuse of money paid by workers, although payments could also be made once employment is secure and workers are ready to make the trip. However, this arrangement may be biased against the poor and vulnerable workers who do not have cash or cannot obtain a loan. Generally, only determined and competent workers are able to become successful overseas migrant workers.

4.6 Working conditions and welfare in receiving countries

Migrant workers are confronted with particular difficulties in obtaining the rights to social security, which are usually related to periods of employment or contributions or residency. In addition, they risk the loss of entitlements to social security benefits in their country of origin due to their absence, and may at the same time encounter restrictive conditions in the host country with regard to their coverage by the national social security system.

These difficulties are due to a number of factors, such as the principle of *territoriality*, which limits the scope of application of social security legislation to the territory of a country, with the consequence that its nationals working abroad are not covered by such legislation and therefore not entitled to benefits. Migrant workers' rights can also be affected by the principle of *nationality*, the application of which may result in the exclusion of foreigners from coverage or entitlement to benefit.

One exception, however, can be found in ILO Convention No. 143, which stipulates that irregular migrant workers shall have the same rights as regular migrant workers concerning social security. Within this context, it appears that the wording "past employment" refers to past periods of legal as well as illegal employment.

Only recently the social security in Thailand has been extended to cover establishments/ enterprises with one employee and above, except workers in agriculture, fishing, forestry, animal husbandry, including domestic helpers and seasonal workers. This extension has exerted huge administrative burdens to the Social Security Office in extending coverage to small and micro enterprises. Thus far, the social security system covers about 9 million insurers (under articles 33 and 30), of 37 million employed workers, in which 23 million workers are in the informal sector where most of the migrant workers have been employed. In principle, legal migrant workers are entitled to joint the national social security, but in practice the employers and host government are hesitant to include them in the scheme as they have to contribute to the social security as well. For migrant workers, due to the constraint in terms of their employment tenure, they can not really reap the benefits from the scheme once their work contract expired.

Most of migrant workers have therefore been included in the universal health insurance scheme run by the Ministry of Public Health. Migrant workers have to pay the annual contribution of 1,300 baht for the insurance and pay 30 baht for each visit to the public hospital. This scheme covers only health related sickness, not work related sickness or accidents. Still, migrant workers are faced with difficulty to access health services in public hospitals, which tend to be very crowded and far away from their workplace. Communication with the hospital officials and doctors regarding their illness is also a major constraint. Hence, most of the migrant workers end up purchasing their own medicines from the local pharmacy.

In case of disputes on working conditions between the workers and the employers, in some cases the immediate person who assists migrant workers to arbitrate the problem is the representative of the agency who is posited to ensure workers will follow the contract and pay back the debt to the company. There has been a proposal for the government to create Labour Attaché posts in the Cambodian Embassy of countries where a large number of Cambodian migrant workers are significantly large. However, it remains to be seen whether the labour attaché will be equipped with capacity and resource to tackle the many problems faced by tens of thousands of migrant workers in foreign countries.

To date, there is hardly any measure adopted to systematically monitor and audit the working conditions of migrant workers by both authorities in Cambodia and Thailand. Due to budgetary constraint, government officials rely on recruitment agencies to bear the cost for monitoring the working conditions and well-being of migrant workers in the labour receiving country.

4.7 Bilateral agreements with other countries

Following the success of Government-to-Government recruitment modality with South Korea, the RGC has been negotiating with Japan and Singapore to establish a similar bilateral agreement for sending Cambodian workers to these countries. Japan has strict requirements for migrant workers. To be accepted as trainee, the worker must complete lower-secondary education, be currently employed and sign the agreement to return back to the same company after completion of the training.¹⁷

Recently the Cambodian Embassy in Singapore notified the MoLVT that Singapore had granted some quota for Cambodian workers.¹⁸ It has been reported that Singapore does not require an MOU for admission of Cambodian workers.

¹⁷ According to interviews with officials of MoLVT

¹⁸ The information was forwarded to MoLVT on 16 August 2007

5. Assessment of the MOU between the Governments of Cambodia and Thailand

There are different types of foreign workers in Thailand, i.e. those with life-long permits, temporary permits, investment promotion permits, registered quasi-legal, and illegal migrant workers (Paitoonpong and Chalamwong 2007). Over the past decade, there has been increasing in the amount of irregular migrant workers from neighboring countries to Thailand. This is because there are a wide job opportunities available for them, following a large unfilled demand for low skilled workers in Thailand. The influx of illegal workers into Thailand has resulted in both economic gains and social problems. The Thai Government therefore signed MOUs with Myanmar, Laos and Cambodia to better manage the cross-border movement of labour.

The MOU spells out the agreement to regularize the existing undocumented workers in Thailand and the procedures for sending legal migrant workers. The two processes deserve discussion in the following section.

5.1 Process to regularize the registered irregular migrant workers in Thailand

As part of the implementation of the MOU, the Cambodian government issued a decision on 10 January 2005 to set up an Inter-ministerial Committee to identify the nationality of Cambodians working in Thailand. The Committee comprises members from MoLVT, Ministry of Interior, Council of Ministers, and Ministry of Foreign Affairs. Chaired by the Director General of the General Department of Labour, MoLVT, the Committee traveled to Thailand to verify the nationality and provide the Certificate of Identity (CI) to Cambodian migrants who used to clandestinely work in Thailand. The Committee worked alongside the Thai Inter-ministerial Taskforce (comprising responsible officials from the Ministry of Labour, Ministry of Interior and Ministry of Public Health). The Committee interviewed Cambodian workers and issued the qualified ones the CI for which they have to pay 1,500 baht. In turn, the Thai Committee provided these workers with visa (500 baht) work permits (1,800+100 baht) and medical check up and health insurance (600+1,300 baht). In summary, the total cost for obtaining CI, work permit, visa and annual health insurance is about 5,700 baht per migrant worker.

The interview with some of these workers revealed that the total expenses for nationality verification were between 6,000 and 8,000 baht.¹⁹ This includes traveling costs and other expenses. In many cases, employers would pay the cost for the workers and later deduct it from their wages for a period of 6 months or so. The total cost for this process was quite high compared to migrant workers' savings of about 1,500 baht per month, which has discouraged many migrant workers from seeking the CI document, and led them to remain undocumented.

Most workers interviewed reported that, to their knowledge, less than 30 percent of the Cambodian workers on their same work site (about 30-50 Cambodian workers work at each site) had work permit and CI. This is actually quite consistent with the report from MoLVT that only about 50,000 workers came forward and were qualified for the CI as of 2007. There are about 14,000 irregular migrant workers have yet to be regularized, which led the Thai government (in the annual bilateral meeting in November 2007) to extend the verification for the last time in 2008.

The low turnout for nationality verification was either due to inadequate publicity in Thailand or the inability of Cambodian workers to access information or understand it. The Ministry of Labour, Thailand requested the employers bring the workers to register at the designated centers. This was perhaps the only and most effective way to reach Cambodian workers, but it heavily relies on the

¹⁹ Fieldwork was conducted by CDRI as part of another research project on economic costs and benefits of migration

cooperation of Thai employers. If employers fail to inform their migrant workers, they will not be able to register for verification. It has been claimed that certain employers prefer hiring undocumented workers because there are certain benefits for them in doing so.

The other issue with the process is that application for work permits and CIs are not open on continuous basis. They are issued only at specific times of the year, sometimes as infrequent as every two years. For those who entered Thailand after 2004 and wanted to obtain a CI and work permit, it may not be feasible to do so, unless there is a Cabinet Resolution providing an exception under Article 17 of the Immigration Act. Thus, the process of documenting and regularizing Cambodian migrants who were in Thailand before 2004 has been only partially successful. This is largely due to the high cost of the process, and perhaps because of the lack of information and mechanisms to encourage the employers to cooperate in the nationality verification process.

During the field investigation in Thailand in November 2007 conducted by the author in collaboration with the Thailand Development Research Institute (TDRI), Cambodian workers expressed their interest in nationality verification. However, in an effort to discourage new wave of irregular migrants, the partial amnesty programmes should be discontinued. If the new group of irregular workers entering Thailand could expect to be granted quasi-legal status for temporary staying and working in Thailand, then this may defeat the primary purpose of the legal channel for admission of foreign workers under the MOU. This clearly points out that at specific points in time, say from 2009, the nationality verification and partial amnesty programmes needs to be shut down if the legal admission to employment in Thailand is to be effective. At the same time, the legal channel for admission of workers needs to be less expensive and expedient. As of August 2007, there were only 5,282 workers admitted under the MOU.

As part of the agreement between Thailand and Cambodia, a Border Pass system, valid for two years, has been piloted in Poi Pet, Cambodia for seasonal labour migration. The holders of the Border Pass have to return to the border to obtain the stamp every week and pay 20 baht per time. The pass may cost 1,040 baht per year if it is stamped every week, though the costs of traveling and time could be higher. The Border Pass can be obtained at the border checkpoint in Poi Pet, and is provided only to residents of districts along the Cambodian-Thai border. This arrangement is eligible for workers engaged in seasonal migration in the specific border province.

5.2 Recruitment practice in Cambodia

The MOU stipulates the agreement for sending migrant workers legally to Thailand (see Annex B). In practice, the recruitment and placement of workers procedure is too complicated as summarized in Figure 4. Many problems critical to this process have been discussed in detail above. Chief among them are the recruitment practice and costs.

After obtaining job order which have been approved by the MoLVT, the recruitment agencies will place job advertisements in the radio, local newspapers, or disseminate information about job opportunity through their networks to draw interest among potential workers. When the workers appear in their office to apply for job abroad, they have to submit documents such as an identity card, birth certificate and family registration book for processing their application with the authority. Not all applicants have all the necessary documents to support their applications. This causes some delay and incurs extra costs for producing official documents. In the district or province, some agencies use the services of local brokers who will assist in recruiting workers from the villages or communes. The recruitment companies pay them about US\$ 40 per each applicant. This practice has now been widely used, and thus raised the cost of sending workers overseas. In some cases the local teachers or commune councilors act as sub-local brokers who fill in the application form and arrange necessary documents for the prospective migrant workers. They will receive about US\$ 5 to US\$ 20 for each application, depending on the level of documentations required to be processed. They will then send

the documents and the potential workers to another broker in the province, who will later send these workers to the agencies in Phnom Penh and receive the commission.²⁰

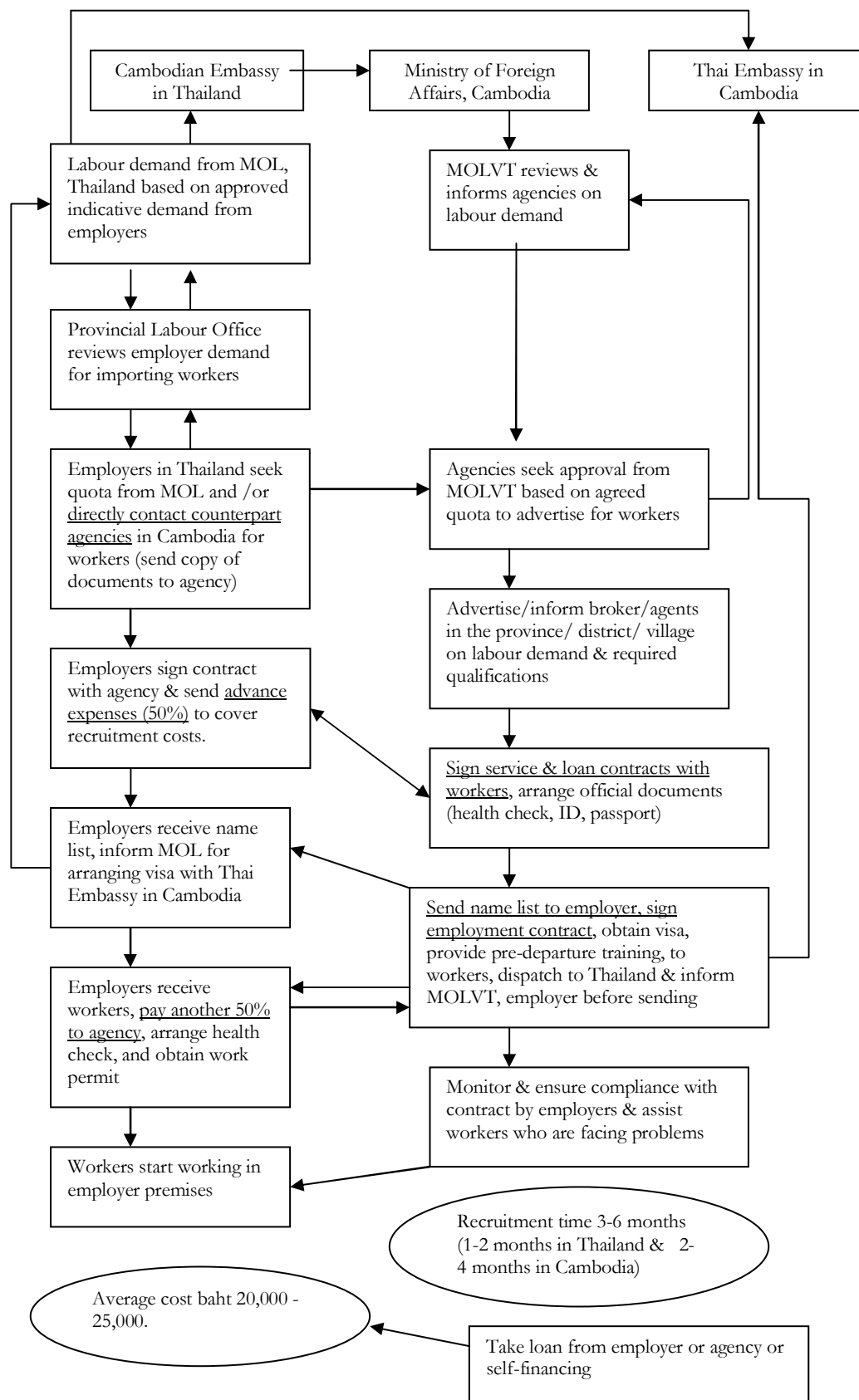
The applicants are required to prove their physical competency and pass medical examination at the public hospital in Phnom Penh. Applicants are responsible for paying the costs of the medical examination, which is about US\$ 10. It is widely believed that medical examination is just a formality. The next step is to obtain approval from the MoLVT's Department of Employment and Manpower, which also charges the fee for paper work. The MoLVT then sends a letter with the list of approved workers to the Ministry of Interior to request for issuance of their passports at the reduced cost, which is US\$ 40 (normally an additional US\$15 has been added as an informal fee). In principle, it would take up to three weeks or a month for the Department of Statistics and Passports to approve the passports for the workers at a reduced cost. In reality, it will take two to three months, compelling the recruitment agencies to opt for the one week fast track, which costs about US\$150. Inevitably, this has raised the cost of sending workers considerably.

After receiving clearance from MoLVT and visa from Thai embassy, workers are transported by bus to their workplace in Thailand through the border checkpoint at Poi Pet. Most of the workers are briefly provided with pre-departure orientation about work conditions in the host country. Recruitment agencies complain that workers hardly pay attention to the information given to them during the training. At the border in Poi Pet, the broker/agency in Thailand will receive the migrant workers and take them on the bus to various workplaces. It costs about \$10 on average to transport each worker from Poi Pet to the workplace inside Thailand.

Consideration should be given to the creation of "one-stop-service center" to handle the recruitment process. The service could be set up in areas such as Banteay Man Chey and Battambang, where many workers migrate to work in Thailand. The recruitment agencies, MoLVT, and the Passport Office should locate at the one-stop-service center to process the applications and provide information to workers. This will save the time and transportation cost required for the workers to travel from their home villages to Phnom Penh.

²⁰ Three brokers at the village level and provincial town level in Prey Veng province were interviewed.

Figure 4. Recruitment flow chart



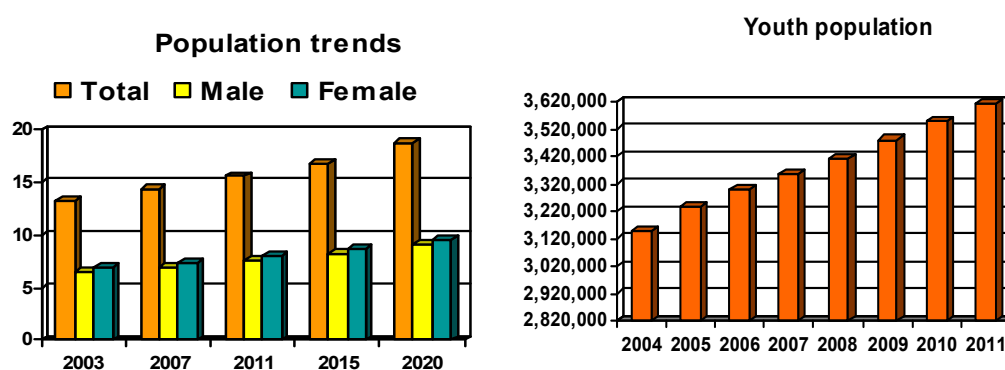
6. Medium-term and long-term labour emigration pressure

This section examines the extent of labour emigration pressure based on the analysis of the national economic development, labour market conditions, demographic trend, potential for increased demand for labour as a result of foreign investment, and labour demand from destination country like Thailand.

6.1 The push factor

Cambodia's population is growing at 1.96 percent, and the youth population at a much-higher 3.2 percent. In 2020, Cambodia's population is projected to be 18.7 million, compared to 14.4 million in 2007. Youth population (15-24) will be 3.6 million in 2011, compared with 2.35 million in 2007 (Figure 5). This suggests that Cambodia will need to create employment to mitigate demographic pressure, especially among the youth.

Figure 5. Trends in total population and youth population in Cambodia



Source: National Institute of Statistics, Statistical Yearbook 2006

Cambodia's economy continues to grow rapidly, averaging 7 percent between 1994 -2004. In 2007, the GDP grew at an estimated 9.6 percent, easing somewhat from the double-digit growth of the preceding 3 years but in line with the 2000–06 growth of 9.5 percent. The high growth is largely in (i) the industry sector, supported by substantial increases in the garment and construction sub-sectors, and (ii) services, underpinned by significant increases in tourism, real estate and other services. The agricultural sector has also played an important role in growth over the past few years, though it is bound to fluctuate with annual rainfall (Figure 6).

Looking forward, economic growth is forecasted to slow down from 9.5 percent in 2007 to 7.2 percent in 2008 and 7.0 percent in 2009, according to the IMF (2008). This is still a favorable outlook for the Cambodian economy. However, inequality remains high and the results of this growth are unlikely to be distributed evenly. Job creation is unlikely to keep pace with the steep rise in the labour force. Additionally, growth has been urban centric, and so opportunities are harder to access for the poorest and most rural of communities. According to EIC (2005) and Morris (2007), the agricultural sector may create 78,000 jobs per year while the industry sector could generate 36,000 jobs. These two sectors would create a total of 114,000 jobs (table 7), leaving the remaining job opportunities to be generated in the service or other sectors. On average, there are about 250,000 additional new entrants to the labour force per annum. In 2004, the labour force was 7.6 million (NIS 2006). It has been projected that the annual growth in labour force is expected to increase from 250,000 to 300,000 in the coming years. Whether or not employment creation will be sufficient to absorb the new labour force depends critically on the level of economic growth and the domestic and foreign investment.

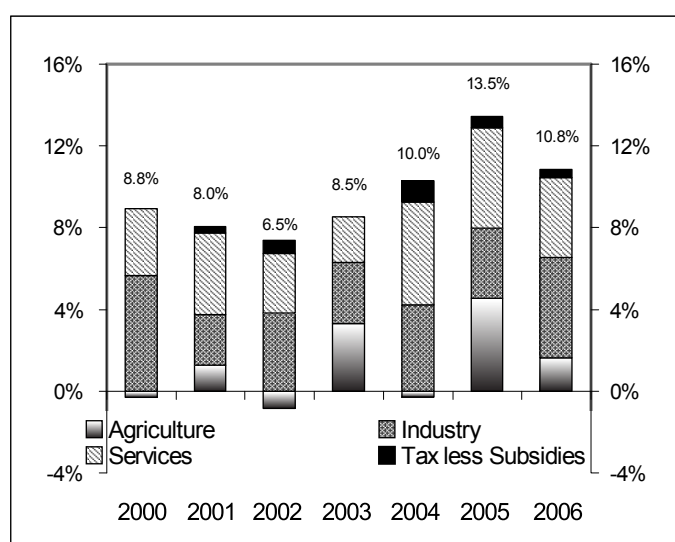
Table 7. Estimates and projections of employment by sector by EIC (thousand)

Sectors	2005	2008	Annual increase
Agriculture	4,135	4,445	78
Paddy	2,936	3,162	57
Other crops	511	554	11
Livestock	398	430	8
Fisheries	256	262	2
Rubber and forestry	34	37	1
Industry	568	713	36
Garment	271	355*	21
Food, beverages, and tobacco	86	90	1
Other manufacturing	58	58	-
Electricity, gas and water	9	10	0
Construction and mining	144	200*	14
	4,406	5,158	114

* Adjusted by author for actual data of 355,000 workers in garment industry and estimated number of construction workers in 2008

Source: Economic Institute of Cambodia, Cambodia Economic Watch, April 2005, p. 254 in Morris (2007)

There is a good potential for employment generation in the agricultural sector. So far growth in this sector has been characterized by seasonal pattern (Figure 6). Efforts to expand and intensify aquaculture would not only augment rural household income but would also help the country cope with the increasing population. Value added in forestry may have also been underestimated due to illegal logging and subsequent undervaluation of non-timber forest products. A significant number of people living in poverty depend on forests and non-timber products for both income generation and nutritional intake as well as firewood. Community pressures on forests, in the form of fuel wood collection, swidden agriculture and permanent land conversion, are also important causes of deforestation and forest degradation. However, this may be conducive to employment generation, in the short-term, if the degraded land is used for cultivating cash crops. Thus, job creation in the agricultural sector could reduce the pressure to migrate.

Figure 6. Cambodia's GDP growth and composition

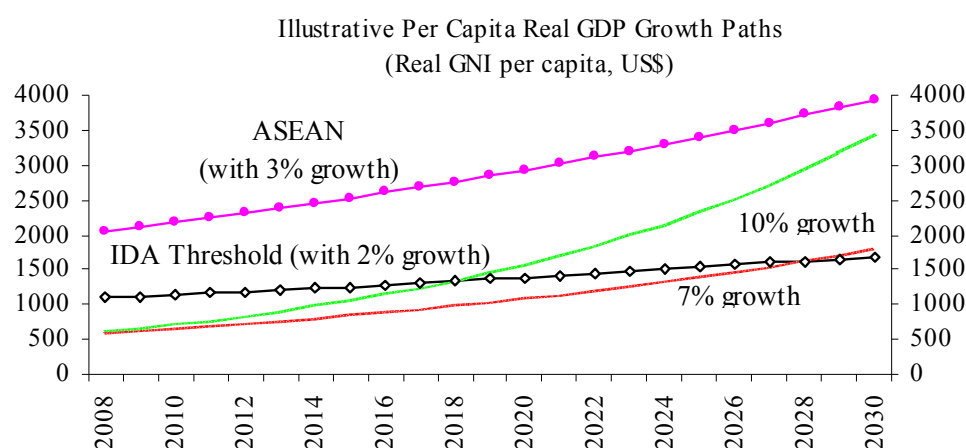
Source: National Institute of Statistics 2007

Textile and apparel production continued to grow substantially (by about 13 percent) in 2006. This has been the main driver of growth since the late 1990s, thanks to favourable trade conditions. After

the MFA was phased out in January 2005, some experts predicted that Cambodia's economy would be hit hard, but the latest figures belie these dire predictions. Cambodia's post-MFA garment exports have not yet been affected by the textile giant, China, as some predicted. This was partly due to the additional garment import restrictions imposed by the United States and the European Union in May 2005. These safeguard measures will expire in 2008, and Cambodia will need to make further efforts to enhance the competitiveness of the industry. Moreover, Cambodia's garment industry has earned a reputation for high labour standards, which provides a niche market. It is important that Cambodia maintain these standards, as 70 percent of Cambodia's garment products overlap with those of China under safeguard measures. The future prospects for further growth in the garment industry are not promising.

For long term prospects, the IMF (2008) presents two scenarios, one with 10 percent growth and the other with 7 percent growth over the next 22 years, suggesting Cambodia can achieve an average of 10 percent growth provided that it sets good policy. However, even with 10 percent growth for the next two decades, Cambodia's GDP per capita will still not match that of the ASEAN average (Figure 7). Cambodia's poverty rate, last estimated at 35 percent in 2004, will likely remain the highest in the region. Even if Cambodia can achieve high growth, there will still be incentive for labour migration, namely higher incomes in neighboring countries.

Figure 7. Cambodia's GDP trends in high and low case scenarios



Source: IMF (2008)

Note: IDA Threshold refers to the poor countries eligible for assistance from the International Development Assistance of the World Bank. It is projected that they will grow by 2 percent per annum on average.

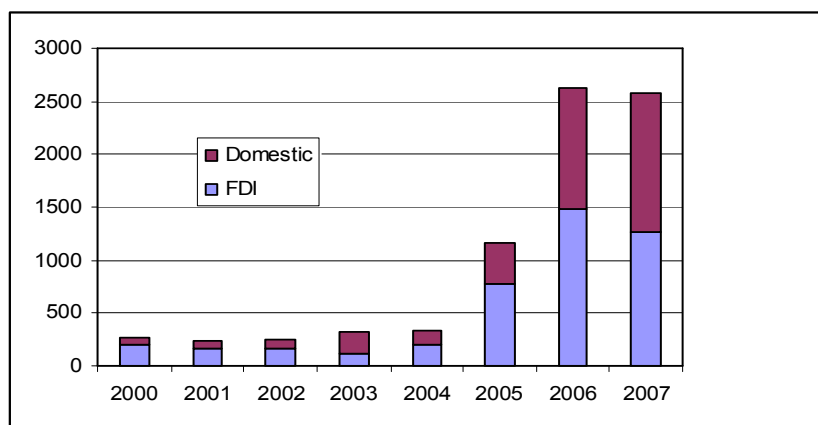
Investment approvals

Approvals of new investment continued at a record pace in 2006 and 2007. According to the Council for the Development of Cambodia (CDC), the value of total investment project approvals in 2006 amounted to US\$ 2633 million and in 2007 of US\$2587 million in fixed assets, more than double the US\$ 1162 million in 2005. Both domestic investment and foreign direct investment rose dramatically, to US\$1,145 million and US\$1,488 million, respectively, up from US\$384 million and US\$778 million in 2005 (Figure 8). Investments are considered the most critical factor in creating employment, and thus, reducing emigration pressure.

China remained Cambodia's top foreign investor in both 2006 and 2007. The CDC statistics also show that investments were mainly in construction, mining, garments, energy and cement. While energy and cement industries are capital intensive, the construction and garment sectors have potential to create many jobs. In the past, not all approved investments have been realized and these figures should be taken with some caution.

Cambodia is facing the challenge of spreading economic development to rural areas, where 90 percent of the poor (or 4 million) reside. Infrastructure and information flow in these areas are still very poor, and the poorest tend to follow their neighbors to find opportunities. Most of Cambodia's economic development has taken place in urban areas, and thus had little impact on the country's rural and remotes areas. Until these communities experience similar levels of prosperity, labour migration will likely remain a dominant issue.

Figure 8. Investment approval in Cambodia (USD million)

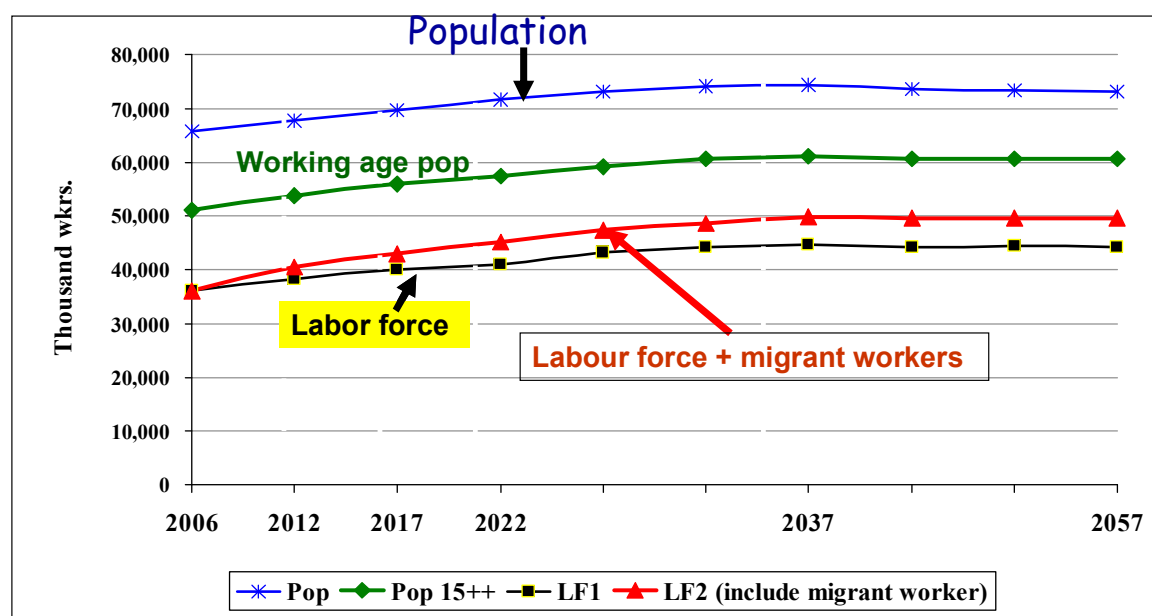


Source: CDC (2008)

6.2 The pull factor

There is a pull factor linked to labour migration to Thailand. The Thai economy sorely needs low skilled workers to propel its growth and development, which will continue for many years to come. Dr Paitoonpong, Senior Research Specialist of the Thailand Development Research Institute has projected that the need for unskilled migrant workers will continue for 50 years more. He expects the demand will grow as large as 7 million, and that a few million migrant workers will be needed within the next few years (Figure 9).

Figure 9. Thailand's long term employment forecast



Source: Paitoonpong (2007) Thailand's demand for labour in the next 50 years

Box 2: Demand for Foreign Workers in Thailand

The Department of Employment, MOL, Thailand conducted a survey of industrial manpower and found that:

- Manpower in Thailand industrial sector is predominantly unskilled.
- Though there is a statutory minimum wage, there are a number of violations of it.
- There are many cases of 3 D work in the industrial sector (Night shift, deep sea, forest, dirty).
- About 12,053 firms or 38 percent of those surveyed need additional workers in the surveyed year.
- The industry requires 445,683 additional workers (17 percent of current employment in 14 industries, 71 percent for replacement)
- Industries that require more workers are electrical appliances and electronics (130,710 workers), textile and garments (116,752), and food and animal feed (76,449).
- Production workers 145,887 (32.7 percent of total requirement)
- Skilled workers 106,054 (23.8 percent of total requirement)
- General workers 60,670 (13.6 percent of total requirement)
- The majority (67 percent) of the required workers are those with low educational levels, secondary education or lower.

Source: Paitoonpong (2007) Thailand's demand for labour over the next 50 years

Paitoonpong (2007) offers four possible policy options to the Thai government.

1. To increase participation rates by mobilizing workers from sectors with labour surpluses, including part time workers;
2. To supplement native labour with migrant workers (by facilitating labour migration);
3. To increase the productivity of Thai labour through better technology, better management, increased training; and
4. To combine both approaches

The second option, which is quite likely, has important implications on labour-sending countries like Cambodia, Lao PDR, Myanmar and Vietnam.

7. Conclusions and recommendations

Cambodia needs to formulate a sound legal framework to govern the process of recruitment and placement of labour abroad. Some call for “Labour Migration Law” and “Labour Migration Policy”. While these may be important tools, it would take sometime to materialize. In the short term, Sub-decree 57 should be updated and amended. There are inconsistencies in Sub-decree 57 as discussed in the report. Notably, there is inconsistency between Cambodia's objective to promote legal migration and the restrictive measure imposed on the recruitment agencies. The non-interest earned guarantee deposit of US\$ 100,000 and the advance expenses for recruitment of the potential migrant workers make it difficult for the agencies to compete with the illegal channel of migration where the cost is very low.

Labour emigration as measure to promote employment and to reduce poverty has not been consistently included in the national development agenda. Aside from the NPRS 2003-2005, the national development plans including the NSDP 2006-2010 do not mention labour emigration issues. Efforts should be made to ensure that the next five-year national development plan (2011-2015) will adequately address the need to better manage labour emigration. Even the more advanced economy

in the region like Thailand still sends a large number of migrants overseas. These workers significantly remit annual remittances of US\$ 1.6 billion.

The institution in Cambodia responsible for management of international labour migration is relatively new. It is necessary that a separate department or unit be established within the MoLVT to specifically oversee, monitor, coordinate and implement labour migration policies and programmes. However, this institution needs to be equipped with adequate human resource, capacity and budget. This could be established by a sub-decree signed by the Prime Minister. Since labour migration will generate millions of dollars for workers and bring foreign currency to the nation, the Cambodian government should place special attention in promoting orderly labour migration and the protection of the rights of migrant workers at home and abroad.

The Cambodian government should seriously resolve the undue high cost of migration to Thailand as it has done in the case of sending workers to South Korea. This should not require the government institution to assume responsibility of sending workers to Thailand as has been the case for South Korea. Given a large demand for Cambodian workers in Thailand, it is necessary to promote more private companies in recruitment, training and placement of workers. The government may lower the amount of guarantee funds required for the agencies to deposit with the authority, or change the conditions of the deposit, e.g. with interest earned, so that it will not serve as barrier to entry. The roles of the government agency will be to regulate, monitor and sanction the recruitment agencies and the unauthorized local brokers who violate the law and regulations pertaining to the recruitment and protection of migrant workers.

In summary, it is recommended that:

- (i) Consideration should be place on the reduction of the guarantee deposit, which is currently \$100,000 per company or change in the deposit conditions. The rationale for this deposit is for government to use it to compensate the workers who have been the victim of fraud by agencies or employers. It is suggested that the tripartite forum comprising government, representative of trade union and the recruitment agency (representing employers) should critically assess the extent of the risk associated with sending workers to Thailand and the obligations of the agency in providing protection of wages and income of the migrant workers while living abroad.
- (ii) The compulsory insurance for the unforeseen calamity, loss of life or injury sustained to migrant workers may be introduced. While claim for insurance may take some time, a welfare fund should be established as additional tool for relief the hardship incurred by the migrant workers or their families.
- (iii) The RGC should charge only \$40 for a passport and issue it within a maximum period of 10 working days, this will indirectly induce more people to use legal channel for migration and thus will increase the revenue to the State. This policy will especially benefit the poor and contribute significantly to the reduction of the migration cost from US\$ 700 to US\$ 300 per worker. In addition, the RGC should set up satellite offices to process the passport applications in major provinces such as Banteay Meanchey, Prey Veng and Battambang.
- (iv) The RGC should negotiate with the Thai's government to reduce the visa fee from 1,500 to 500 baht and the work permit fee from 1,800 to 1,000 baht, so as to reduce the cost of migration and promote orderly labour migration. In addition, the Thai Embassy should extend the number of days for receiving visa application and expedite the issuance of visa to the workers.
- (v) A standard work contract between Cambodian workers and employers in receiving countries should be established and enforced. The RGC should negotiate with the Thai counterpart at the Senior Official Consultation of the MOU. This will help protect the workers from exploitation by the employers and prevent any controversial clauses in the contract that are

unfavorable to the migrant workers. The standard work contract should be applied to all types of workers, including those in the informal sector and domestic workers. The standard employment contract will not only legitimize the protection of migrant workers, it will also make more attractive legal migration vis-à-vis the irregular migration.

- (vi) A standard package for pre-departure training and basic skill training should be designed and applied to all migrant workers before departure. The training curriculum should be interesting and able to draw the intention of the workers throughout the training course. A personal booklet containing important information about the destination country should be designed and given to migrant workers after completion of the training.
- (vii) A measure to cope with the runaway problem is to provide accurate information to the potential migrant workers about the working conditions, work culture, life in foreign countries, including the pains and gains from migration. It is the responsibility of recruitment agencies to properly screen the application, interview and test the skill of the workers, and if necessary, interview the relatives of the workers so as to determine the intention and assess the risk. Largely, the runaway is a result of any disputes on wages, overtime, working hours, and the promised welfare facilities. Payment of debt arising from recruitment is also another reason that triggers runaways. A package of credit facility with reasonable interest rate from the bank and other financial institutions may be provided to the potential migrant workers to finance their own migration.
- (viii) In order to ensure the success of the legal channel of labour migration, the conditions conducive for irregular migration should be discontinued. Both labour sending and receiving countries should streamline their migration procedure with low cost, less bureaucracy, and better coordination at all levels, internally and externally. In the labour receiving country, protection of the rights of migrant workers, strict enforcement of laws against illegal employment, provision of legal and welfare services, facilitation of the integration of migrant workers in the host society, access to financial services, and support the formation of trade union/association/club are the main ingredients for promoting orderly legal labour migration.

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Appendix

KINGDOM OF CAMBODIA Nation Religion King

ROYAL GOVERNMENT OF CAMBODIA
No 57 SDC

SUB-DECREE

On
The sending of Khmer worker
To work abroad



The Royal Government

- Having due regard for the constitution of the Kingdom of Cambodia
- Having due regard for the Labour Law promulgated by the decree No 99 DC dated 13 October 1992;
- Having due regard for the Law on Organizing and Functioning of the council of Minister promulgated by the Royal decree dated 20 July 1994;
- Having due regard for the Royal Decree of H.M Norodom Sihanouk Varman, the King of the Kingdom of Cambodia dated 1 November 1993, on the nomination of the Royal Government of Cambodia;
- Having due regard for the Royal Decree of H.M Norodom Sihanouk Varman, the King of the Kingdom of Cambodia dated 24 September 1994, on the modification of the composition of the Royal Government of Cambodia;
- In accordance with the proposal of the secretary of state for Social Affairs Labour and Veterans Affairs

DECIDED

Article 1- In order to access the higher standard of living and to upgrade vocational skill, and generate the national revenue the Royal Government allows the sending of Khmer workers to work abroad while the domestic labour market is unable to absorb totally the unemployed and under employed persons.

Article 2- The sending of Khmer workers to work abroad and the management these workers is under the competence of the Ministry of Social Affairs, Labour and Veterans Affairs.

The Ministry of Social Affairs, Labour and Veterans Affairs can permit through the ministerial order (PEAKAS), any company to take Khmer workers for working overseas.

If necessary, the Ministry of social Affairs, Labour and Veterans Affairs shall issue furthermore the rule implementing in questions.

The Ministry of Social Affairs, Labour and Veterans Affairs shall cooperate with the Ministry of Interior in complying with formalities such as issuing passports for the workers, and with the Ministry of Foreign Affairs and International Cooperation in monitoring them.

Article 3- Khmer workers of both sexes and at least 18 years of age, who have submitted their application forms for the job to the Ministry of Social Affairs, Labour and Veterans Affairs, are considered to be candidates for selecting and sending to work abroad.

Article 4- The Ministry of Social Affairs, Labour and Veterans Affairs is hereafter called the party providing workers (PROVIDING PARTY). The company making the proposal for recruiting worker is hereafter called party receiving workers (RECEIVING PARTY).

Article 5- All proposals of the receiving party shall be clearly mentioned the main criteria such as:

- The date of the commencement and termination of the job;
- The job specification;
- The place where the job is applied;
- The number of the workers and the skill required;
- The salary and other benefits including accommodation, meals, clothing, medical care and other needs for daily living;
- The transportation of workers forth and back;

After receiving the proposal, the providing party shall reply to the receiving party within 45 days stating whether the workers can be totally or partly provided or cannot provided, or it is need to discuss anymore.

The receiving party shall reply to the providing party within 30 days stating whether all or a proportion of the workers are needed. If the deadline of 30 days is exceeded and there is no further discussion, the providing party considers that the receiving party is no longer interned in those workers.

Article 6- The sending of the workers abroad can be carried out only if there is the permission from the providing party and the employment contract between workers and receiving party.

Article 7- Within 7 days after receiving official permission the receiving party shall deposit the guaranty money amounted to USD 100,000 in the account of the proving party. If the money has not been deposited, the permission shall be null and void.

The providing party can use the deposit to pay workers instead of the receiving party in the event that latter does not comply with conditions stated in the employment contract.

During the implementation of the employment contract, if the deposit is partly withdrawn to pay workers, the receiving party shall reimburse in full amount.

The receiving party can take the deposit back when the employment contract is achieved definitively.

The deposit in pursue of this article can be reduced for the employer who personally needs a small number of workers to work in his/her won workshop or cottage industry.

However, the employer shall discuss with the Ministry of Social Affairs, Labour and Veteran affairs to make an individual contract with those workers.

Article 8- In accordance with the agreement stated in the contract the receiving party shall pay for services and the preparation of relevant document to the providing party.

Article 9- The employment contract shall be mentioned clearly:

- The name and address of each party;
- The date of the commencement and the termination of the contract;
- The place of work and job specification;

- The skills of workers;
- The salary and allowances;
- A part of salary and other allowances which shall be send to the workers' family;
- Hours of work and day-off and annual leave;
- Accommodation, meals, clothing and medical care;
- Social security contributions for each worker;
- Delivery and receiving of workers to and from;
- Salary for transportation of workers to and from
- In the event of the workers shall be send back to their country before the termination of the employment contract.

Article 10- All workers shall have the rights of annual leave paid by receiving party. The number of leaves shall be calculated on the basis of, at least, one and a half working day for one consecutive work month.

Article 11- The employment contract shall be written in two languages (in Khmer and in French/English) and both of the texts are equally authoritative. The duration of the employment contract shall not exceed two years.

Upon the termination of the employment contract, both parties can negotiate the renewal of the contract or making a new contract.

The renewed of new employment contract shall be re-stamped with a visa of the Ministry of Social Affairs, Labour and Veterans Affairs.

Article 12- The providing party is a labour scout who recruits workers in pursues of the number and skills and stated in the employment contract.

The employment contract which is signed by workers and receiving party shall be approved by the authorized labour inspector.

Article 13- Upon making employment contract each worker shall provide:

- The curriculum vitae with photograph (4x6).....2 sheets
- The justice clearance.....2 copies
- The health certificate issued by the department of occupational and health.....2 copies
- The copy of certificate or other qualification, if any.....2 copies
- The copy of workers' passports.....2 copies
- The job application card.....1 copies

Article 14- Before leaving for abroad, the providing party and receiving party are responsible for preparing and conducting training course on working system, life style, custom, tradition and common laws of the receiving country.

Article 15- The salary of each worker shall be imposed a tax in accordance with the existing law of the Kingdom of Cambodia.

Article 16- The receiving party shall be responsible for all expensed of the officials of the providing party accompanying workers to the receiving country and monitoring the work place and the lodgings of workers as stated in the employment contract.

The providing party shall send its officials to pursue the implementation o f the employment contract when it is deemed necessary.

Article 17- If labour dispute happens; the receiving party will negotiate and settle it immediately with the workers based on the employment contract. In the event that it cannot be settled,

urgent information shall be provided to the Royal Embassy or diplomatic mission of the Kingdom of Cambodia to the receiving country to participate in the dispute resolution.

Article 18- The receiving party shall notify the sending party within 45 days before the real date of the repatriation of the workers.

The receiving and the providing parties shall jointly agree with each other on the date and the agenda of the repatriation of the workers.

Article 19- In the event that the worker is missing during the implementation of the employment contract, the receiving party shall urgently inform the Royal Embassy or diplomatic mission of the Kingdom of Cambodia to the receiving country and the Ministry of Social Affairs, Labour and Veterans Affairs of the Kingdom of Cambodia.

Article 20- Any person who sends Khmer workers to abroad in violating of the provision of this Sub-Degree shall be punished by any penalty in accordance with the existing law.

Article 21- The provisions which are contrary to this Sub-Degree shall be null and void.

Article 22- The Co-Minister in charge of the Cabinet of Ministers, the Co-Minister of Interior, the Minister of Foreign Affairs and International Cooperation, the Minister of Economy and Finance, the Secretary of State for Social Affairs. Labour and Veterans Affairs shall carry out this Sub-Degree from the date of the signatures.

Phnom Penh, July 20, 1995

First Prime Minister

Second Prime Minister

Sealed and Signed

Norodom Ranarith

Hun Sen

cc:

- The Cabinet of the King
- The Secretariat General of the National Assembly
- The Cabinet of the First Prime Minister
- The Cabinet of the Second Prime Minister
- As Article 22 “for implementation”
- File, Chronicle

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNEMENT OF THE KINGDOM OF THAILAND
AND
THE GOVERNMENT OF THE KINGDOM OF CAMBODIA
ON
COOPERATION IN THE EMPLOYMENT OF WORKERS**

The Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand, hereinafter referred to as “the Parties”

RECOGNIZING the principles enshrined in “The Bangkok Declaration on Irregular Migration of 1999”;

BEING CONCERNED about the negative social and economic impacts caused by illegal employment;

DESIROUS of enhancing mutually beneficial cooperation between the two countries;

HAVE AGREED AS FOLLOWS:

OBJECTIVE AND SCOPE

ARTICLE 1

The Parties shall apply all necessary measures to ensure the following:

1. Proper procedures for employment of workers;
2. Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses;
3. Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
4. Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

This memorandum of understanding is not applicable to other exiting processes of employment that are already in compliance with the laws of the Parties.

AUTHORISED AGENCIES

ARTICLE II

For the purpose of this Memorandum of Understanding, the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation of the Kingdom of Cambodia and the Ministry of Labour of the Kingdom of Thailand shall be the authorized agencies for the government of the Kingdom of Cambodia and for the Government of the Kingdom of Thailand respectively.

ARTICLE III

The Parties, represented by the authorized agencies, shall hold regular consultations, at senior official and/or ministerial levels, at least once a year on an alternate basis, on matters related to the implementation of this Memorandum of Understanding.

The authorized agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.

AUTHORITY AND PROCEDURE

ARTICLE IV

The Parties shall take all necessary measures to ensure proper procedures for employment of workers.

Employment of workers requires prior permission of the authorized agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries.

The authorized agencies may revoke or nullify their own permission at any time in accordance with the relevant laws and regulations.

The revocation or nullification shall not affect any deed already completed prior to the revocation or nullification.

ARTICLE V

The authorized agencies may through a job offer inform their counterparts of job opportunities, number, period, qualifications required, conditions of employment, and remuneration offered by employers.

ARTICLE VI

The authorized agencies shall provide their counterparts with lists of selected applicants for the jobs with information on their ages, permanent addresses, reference persons, education, experiences and other information deemed necessary for consideration by prospective employers.

ARTICLE VII

The authorized agencies shall coordinate with the immigration and other authorities concerned to ensure that applicants, who have been selected by employers and duly permitted in accordance with Article IV, have fulfilled, inter alia, the following requirements:

1. Visas or other forms of entry permission;
2. Work permits;
3. Health insurances or health services;
4. Contribution into saving fund as may be required by the authorized agencies of the respective Parties;
5. Taxes or others as required by the Parties;
6. Employment contracts of employers and workers.

Contract of terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorized agencies.

ARTICLE VIII

The authorized agencies shall be responsible for the administration of the list of workers permitted to work under this Memorandum of Understanding. They shall keep, for the purpose of reference and review, the lists of workers who report themselves or have their document certified to the effect that they have returned to their permanent address after the end of the employment terms and conditions, for at four years from the date of report or certification.

RETURN AND REPATRIATION

ARTICLE IX

Unless stated otherwise, the terms and conditions of employment of workers shall not exceed two years. If necessary, it may be extended for another term of two years. In any case, the terms and conditions of employment shall not exceed four years. Afterwards, it shall be deemed the termination of employment.

A three-year break is required for a worker who has already completed the terms and conditions of employment to re-apply for employment.

ARTICLE X

The Parties shall extend their fullest cooperation to ensure the return of bona fide workers, who have completed their employment terms and conditions, to their permanent addresses.

ARTICLE XI

The authorized agencies of the employing country shall set up and administer a saving fund. Workers are required to make monthly contribution to the fund in the amount equivalent to 15 percent of their monthly salary.

ARTICLE XII

Workers who have completed their terms and condition of employment and returned to their permanent addresses shall be entitled to full refund of their accumulated contribution to the saving fund and the interest by submitting the application to the authorized agencies three months prior to their scheduled date of departure after completion of employment. The disbursement shall be made to workers within 45 days after the completion of employment.

In the case of workers whose to their permanent prior to completion of employment and have to return to their permanent addresses, the refund of their accumulated contribution and the interest shall also be made within 45 days after termination of employment.

ARTICLE XIII

Temporary return to country of origin by workers whose terms and conditions of employment are still valid and in compliance with the authorized agencies' regulations shall not cause termination of the employment permission as stated in Article IV.

ARTICLE XIV

Procedures and documents required in the application for refund as stated in Article XII shall be set forth by the authorized agencies.

ARTICLE XV

The right to refund of their contribution to the saving Fund is revoked for workers who do not return their permanent addresses upon the completion of their employment terms and conditions.

ARTICLE XVI

The authorized agencies of the employing country may draw from the savings fund to cover the administrative expenses incurred by the bank and the deportation of workers to their country of origin.

PROTECTION

ARTICLE XVII

The Parties in the employing country shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country.

ARTICLE XVIII

Workers of both Parties are entitled to wage and other Benefits due for local workers based on the principle of non-discrimination and equality of sex, race and religion.

ARTICLE XIX

Any dispute between workers and employers relating to employment shall be settled by the authorized agencies according to the laws and regulations in the employing country.

MEASURES AGAINST ILLEGAL EMPLOYMENT

ARTICLE XX

The Parties shall take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, trafficking of illegal workers and illegal employment of workers.

ARTICLE XXI

The Parties shall exchange information on matters relating to human trafficking, illegal immigration, trafficking of illegal workers and illegal employment.

AMENDMENTS

ARTICLE XXII

Any amendment to this Memorandum of Understanding may be made as agreed upon by the Parties through diplomatic channels.

SETTLEMENT OF DISPUTES

ARTICLE XXIII

Any difference or dispute arising out of this Memorandum of Understanding shall be settled amicably through consultation between the Parties.

ENFORCEMENT AND TERMINATION

ARTICLE XXIV

This Memorandum of Understanding shall enter into force after the date of signature and may be terminated by either Party in written notice. Termination shall take effect 90 (ninety) days following the date of notification. In case of termination of this Memorandum of Understanding by either Party, for the benefit of the workers, the Parties shall hold consultation on how to deal with employment contracts that are valid.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Government, have signed this Memorandum of Understanding.

DONE at Ubon Ratchatani on the Thirty First Day in the Month of May of Two Thousand and Three of the Christian Era in English language, in two original copies all of which are equally authentic.

For the Royal Government of
the Kingdom of Cambodia

For the Royal Government of
the Kingdom of Thailand

ITH SAMHENG

Minister of Social Affairs,
Labour, Vocational Training
and Youth Rehabilitation

SUWAT LIPTAPANLOP

Minister of Labour

Review of labour migration management, policies and legal framework in Cambodia

The review of labour migration management, policies and legal framework in Cambodia is an attempt to understand the underlying factors inhibited the promotion of orderly labour migration flow from Cambodia to Thailand. The study points to the weaknesses in the institution entrusted to manage labour migration, the legal framework governed the migration process, the labour migration policy, and the bilateral cooperation between the labour sending and the receiving countries. These are the main factors contributing to the growing irregular cross-border labour migration. The long porous border and the cultural affinity between people of the two neighboring countries make it even difficult for the States to have absolute control over the movement of national persons. The study offers solutions for better management of labour migration. These are the formulation of clear migration policy and legal framework, streamlining the migration administration, creation of specialized organization, reduction cost of migration, raising awareness on legal channel for migration, improvement in inter-ministerial coordination, and negotiation with labour receiving country to establish standard employment contract and to protect the rights of migrant workers.

ILO/Japan Project on Managing Cross-border Movement
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ILO Regional Office for Asia and the Pacific

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