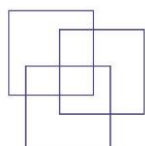


## **Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries**



Tripartite Action to Protect the Rights of Migrant Workers  
within and from the Greater Mekong Subregion  
(GMS TRIANGLE project)

**Regional Office for Asia and the Pacific**





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## Foreword

More than three million migrant workers from Cambodia, the Lao People's Democratic Republic and Myanmar are working in Thailand. The bilateral MOUs signed between the governments of Thailand and neighbouring countries over a decade ago remain the principal agreements aimed at jointly managing labour migration. The overarching objective of all these agreements, and the desired outcome for all parties, is the regularization of labour migration that leads to decent work opportunities for women and men migrants. A review of the effectiveness of the MOUs in managing flows in these corridors is timely given the considerable changes witnessed in recent years, in terms of trends, the social, economic and political environment, and resulting policy priorities within each country context. Such an assessment can contribute to strengthened policy, procedures and bilateral cooperation on migration management.

From its very inception the ILO resolved to protect "the interests of workers employed in countries other than their own" (ILO Constitution, 1919, Preamble, recital 2), and has pioneered the development of specific international standards for the governance of labour migration and protection of migrant workers. The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), accompanying the Convention on Migration for Employment Convention (Revised), 1949 (No. 97), includes a Model Agreement on Temporary and Permanent Migration for Employment, in the Annex.

This analysis and the recommendations put forward stem from the extensive experience of ILO technical cooperation on labour migration, in response to specific requests to provide support to review the MOU. It builds on a 2008 ILO publication on *Inter-state cooperation on labour migration: Lessons learned from MOUs between Thailand and neighbouring countries*. The analysis of bilateral agreements is also underway elsewhere in the Asia-Pacific region and around the world as part of a World Bank and ILO study, as co-chairs of the working group on low-skilled labour migration under the Global Knowledge Partnership on Migration and Development (KNOMAD).

The review draws on the knowledge and insights gained from several years of implementing the ILO TRIANGLE projects,<sup>1</sup> which have been providing technical cooperation in these countries and throughout South-East Asia since 2010. Specific consultations on the MOU have taken place in countries of origin and in Thailand. Together with the International Organization for Migration (IOM), separate consultations and interviews have been arranged in Thailand, with the Government, with employers, and with trade unions and civil society organizations. A number of ILO staff and consultants provided inputs to this review, including Nilim Baruah, Ben Harkins, Manuel Imson, Heike Lautenschlager, Hnin Hnin Nwe, Anna Olsen, Jacqueline Pollock, Rim Khleang, Kuanruthai Siripatthankosol, Sally Barber, Max Tunon and Kolakot Venevankham.

The ILO encourages the governments and social partners to consider this analysis and recommendations in strengthening the existing policies and practices to make the MOUs more effective in managing labour migration between Thailand and neighbouring countries, and for consideration in the drafting of new MOUs between Thailand and other countries in the region, including a proposed MOU with Viet Nam. This can serve to ensure safe and orderly migration that results in decent work for migrants, and can better contribute to the growth and development of Cambodia, the Lao People's Democratic Republic, Myanmar and Thailand.

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<sup>1</sup> Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project) is supported by the Australian Department for Foreign Affairs and Trade (2010-2015). Tripartite Action to Protect and Promote the Rights of Migrants in the ASEAN Region (ASEAN TRIANGLE project) is supported by Canada's Department for Foreign Affairs and Trade (2012-2016). The GMS TRIANGLE operates in six countries and focuses on national level activities, while the ASEAN TRIANGLE project promotes bilateral and regional tools and cooperation, to reduce the exploitation of migrant workers in the region.

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## Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
ASEAN TRIANGLE	Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DOE	Department of Employment (Thailand)
EPS	Employment Permit System
GMG	Global Migration Group
GMS TRIANGLE	Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion
ID	Identity Document
ILO	International Labour Organization
IOM	International Organization for Migration
KNOMAD	Global Knowledge Partnership on Migration and Development
MOEAF	Myanmar Overseas Employment Agencies Federation
MOFA	Ministry of Foreign Affairs (the Lao People's Democratic Republic)
MOFAIC	Ministry of Foreign Affairs and International Cooperation (Cambodia)
MOH	Ministry of Health (the Lao People's Democratic Republic)
MOL	Ministry of Labour (Thailand)
MOLES	Ministry of Labour, Employment and Social Security (Myanmar)
MOLSW	Ministry of Labour and Social Welfare (the Lao People's Democratic Republic)



MOLVT	Ministry of Labour and Vocational Training (Cambodia)
MOPS	Ministry of Public Security (the Lao People's Democratic Republic)
MOU	Memorandum of Understanding
NCPO	National Council for Peace and Order (Thailand)
NGO	Non-governmental organization
NPA	National Plan of Action
NV	Nationality Verification
OAM model	Opportunity, Attitude and Motivation
OSSC	One Stop Service Centre
PDOLSW	Provincial Department of Labour and Social Welfare (the Lao People's Democratic Republic)
PEO	Provincial Employment Office (Thailand)
PLFTU	Provincial Lao Federation of Trade Unions
PLYU	Provincial Lao Youth Union
SEZ	Special Economic Zone
TDRI	Thai Development Research Institute
TIP report	The US Department of State Trafficking in Persons report
UN	United Nations
WCF	Workers Compensation Fund

## Definitions

The following definitions apply for the purpose of this assessment:

### Employment

“The employed population is made up of persons above a specified age who furnish the supply of labour for the production of goods and services. When measured for a short reference period (of one week or one day), it refers to all persons who worked for pay, profit or family gain during that period.” (ILO Resolution concerning the statistics of the economically active population, employment, unemployment and underemployment, 1982).

### Irregular migration

“Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration.” (IOM, Glossary on Migration, 2011).

### Labour broker

“Although there is no official definition of the term ‘labour broker’ within any instrument of the ILO or the United Nations General Assembly, the term is used in this report to refer to any natural or legal person not licensed by the State to provide one or more of the previously mentioned labour market services. This includes both individual brokers and social networks that provide services with or without remuneration” (Harkins et al., 2013).

### Migrant recruitment

“The engagement of a person in one territory on behalf of an employer in another territory or the giving of an undertaking to a person in one territory to provide him [or her] with employment in another territory, together with the making of any arrangements in connection with the operations mentioned above, including the seeking for and selection of emigrants and the preparation for departure of the emigrants.” (Migration for Employment Convention (Revised), 1949 (No. 97)).

### Migrant worker

“A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

### MOU migrant

A migrant worker who has migrated to Thailand legally under the conditions laid out in the Memoranda of Understanding between Thailand and neighbouring states, namely Cambodia, the Lao People’s Democratic Republic and Myanmar.

## **Nationality Verification (NV)**

One of the necessary steps required for irregular migrants from neighbouring country to obtain regular status. Following registration, only irregular migrants that can provide identifying documentation issued by the government of their country of origin can complete the regularization process and obtain a visa and work permit. This process has typically been completed by representatives of the countries of origin coming to Thailand to issue the passports or certificates of identity.

## **Private employment agency**

“Any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- (a) Services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships [that] may arise therefrom;
- (b) Services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to...as a ‘user enterprise’), which assigns their tasks and supervises the execution of these tasks;
- (c) Other services relating to job seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.” (Private Employment Agencies Convention, 1997 (No. 181)).

## **Recruitment complaint mechanism**

“...machinery and procedures, involving as appropriate the most representative employers’ and workers’ organizations, for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.” (Private Employment Agencies Convention, 1997 (No. 181)).

## **Regularization**

“Any process by which the authority in a State allows non-nationals in an irregular or undocumented situation to stay lawfully in the country.” (IOM, Glossary on Migration, 2011).

## **Regular migration**

“Migration that occurs through recognized, authorized channels.” (IOM, Glossary on Migration, 2011).

# 1. Introduction

## 1.1 Background and justification

This paper is framed within the premise that labour migration governance systems should be aimed at promoting policy coherence, matching supply and demand, protecting workers' rights, strengthening institutional mechanisms and encouraging social dialogue. The setting up of effective and accessible systems under MOUs for migrants to migrate and work legally and with full protection of relevant laws, and for employers to employ migrants within legal systems, is one of the tools to achieve these aims.

In 2002 and 2003, the Royal Thai Government signed memoranda of understanding (MOUs) on employment cooperation with the Governments of Cambodia, the Lao People's Democratic Republic and Myanmar, which provided a framework for regular labour migration to Thailand from neighbouring countries. The MOUs set out in broad terms cooperation under the following objectives: employment, repatriation, protection of workers' rights and prevention and action against illegal border crossing, trafficking and illegal employment.

Migration through the channels established under the MOUs took several years to commence, but since 2008-09 there has been a gradual increase in the number of 'MOU migrant workers' entering Thailand – but this group of MOU workers still represent only a small proportion of the total number of migrant workers in Thailand. Restrictions placed by certain countries of origin on the type of work that migrants can do abroad means that regular migration is far less common for fishers and domestic workers, and more common in manufacturing and construction. In agriculture, seasonal workers are far less likely than year-round workers to have regular status.

Article 3 of the MOUs with Cambodia and Myanmar state that “the authorised 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 MOU, into the scope of this MOU”. This has paved the way for the regularization of irregular migrants in Thailand and the issuing of temporary identification or travel documents to them from the countries of origin (nationality verification or NV).

Over 1 million migrants have migrated through MOU procedures and/or completed nationality verification, with an additional 1.6 million migrants having registered at the One Stop Service Centres (OSSCs) established in Thailand in June 2014. Despite these multiple efforts to provide options for regular migration (under MOU arrangements) and regularization (through OSSCs and NV), there remain a considerable number of workers with irregular status, who may have entered Thailand without documents and did not register, or who failed to complete the regularization process. Regular migrants may have become irregular after changing jobs, not renewing their work permits, or after completing the four-year period allowed under the MOU.

Beyond the procedures for enabling regular migration, there are concerns about the extent to which the other aims of the MOUs are being effectively met. There are numerous reports highlighting the abuses suffered by migrant workers in recruitment and employment (Harkins et al., 2013; Human Rights Watch, 2010). For example, recruitment fees can be excessive compared to the wages migrants receive, resulting in situations akin to debt bondage. Some migrants experience substitution of contracts on arrival, finding themselves working in a different sector, occupation or workplace to that agreed upon. Migrants' labour rights are often violated, including pay abuses, the withholding of identity documents and non-contribution to social security coverage, including the Workmen's Compensation Fund.

In 2014, the United States Government's annual Trafficking in Persons Report downgraded Thailand to the lowest ranking (Tier 3), and Cambodia, the Lao People's Democratic Republic and Myanmar were placed on the Tier 2 Watchlist. For each country, the report highlighted the specific vulnerability of migrant workers to trafficking, and the limitations around securing prosecutions for labour trafficking – with corruption being a major contributing factor. In the Cambodia chapter, there was a specific recommendation for the MOUs on the deployment of migrant workers to include strong protection provisions to decrease workers' vulnerability to trafficking.

Moreover, the MOU articles on repatriation have not been implemented transparently or effectively, and as such the potential impact of migration on development in countries of origin has been limited and has contributed to irregular migration. A proposed repatriation or savings fund has never been operational. Policies related to deportation appear to be ad hoc and are applied flexibly in different provinces. Until the One Stop Service Centres were established in June 2014, migrants who had completed their four-year maximum work period had no instructions on how to remain in the country legally, and many overstayed or registered under a different name in order to maintain legal status.

## **1.2 Objectives and scope**

The objective of this review is to assess the MOUs signed between Thailand and Cambodia, the Lao People's Democratic Republic and Myanmar; and to put forward policy and operational recommendations for more effective MOUs that reflect and complement the changes in the landscape, and will lead to more safe and orderly migration that results in decent work. This assessment together with the recommendations will consider the MOUs' scope and objectives, the extent to which they meet the needs of workers and employers, and the implementation and review mechanisms.

The review offers a concise analysis that draws from and refers to in-depth reports and analysis by the ILO and others that look at laws, policies and issues in the four countries in relation to emigration and immigration, recruitment, the regularization process, labour rights, complaints mechanisms, social protection, repatriation, data collection, and other related issues.

The effective implementation of the MOUs are affected by a number of policies and practices that fall outside the content of the MOUs themselves, but will also be considered as they cannot be separated from the intentions and implications of labour migration procedures under the MOUs. It is also important to note that all four countries are engaging in negotiations with other countries regarding the sending or receiving of workers, and this review can also provide useful guidance and considerations in the drafting of new agreements.

It should further be noted that the policy framework and procedures are changing frequently, and that this assessment takes into account information available up until December 2014.

## **1.3. The purpose of MOUs and bilateral agreements**

Increased attention has been given to international cooperation as critical to managing labour migration and promoting the rights of migrant workers. The UN General Assembly's 2013 High Level Dialogue on International Migration and Development predicted that, "[m]anaging the future demand and supply of migrant labour at the bilateral, regional and global level will represent a significant policy challenge in the decades to come" (UN, 2013). An adequate regulatory framework and comprehensive labour migration policies based on international standards and on-the-ground realities are crucial to ensuring safe and orderly migration, the protection of migrant workers' rights, and maximizing the potential impact of migration on development.

At present, inter-state cooperation pertaining to labour migration is generally formed under bilateral agreements or MOUs between sending and receiving countries. Well-designed agreements can ensure that migration takes place in accordance with agreed principles and procedures. They can cover the whole migration process from recruitment, entry, to return. For countries of origin bilateral agreements and MOUs ensure that nationals obtain employment and are adequately protected in the country of destination. For countries of destination, bilateral agreements and MOUs can help meet labour market needs and shortages.

Bilateral agreements are formal and legally binding, whereas MOUs are informal mechanisms in the form of executive agreements between ministries of two or more countries. Both bilateral agreements and MOUs are capable of regulating the recruitment and placement of migrant workers between countries, although MOUs as executive agreements rather than international treaties have little primacy over national laws. Because of their binding nature, negotiating bilateral agreements is often time-consuming. In South-East Asia, MOUs are more common than bilateral agreements.

### 1.4 International standards and comparative experience

In 2014, the ILO and the World Bank commissioned an assessment of MOUs and bilateral agreements, as part of their cooperation under the Global Knowledge Partnership on Migration and Development (KNOMAD). A total of 65 agreements from within the Asia-Pacific region and the Arab States were analysed, nearly 70 per cent of which were signed during 2007-14. The assessment benchmarked the agreements against 18 good practices, for example:

**Table 1: Good practice elements found in MOUs in the Asia-Pacific and Arab States regions**

Criteria	% of total agreements/MOUs addressing criteria (n=65)
Exchange of relevant information between the country of origin and destination on labour migration	89
Provisions relating to employment contracts and applicable labour laws	75
Implementation, monitoring and evaluation procedures	92
Defining clear responsibilities between parties	72
Mechanisms for complaints and dispute resolution procedures	57
Provision for free transfer of savings and remittances	38

Source: ILO research on bilateral agreements and MOUs

In conducting additional analysis on such agreements on international cooperation, Wickramasekara (2014) also identified a number of recent positive developments on MOUs:

- Agreements that are specific to domestic workers (Saudi Arabia, Jordan, Malaysia), recognizing the vulnerabilities of work in the sector, and particularly for women migrant workers.
- Standard or model employment contracts have been developed, for example, for domestic workers in Saudi Arabia and Sri Lanka.
- New migration laws and policies have been enacted that include articles on the role of bilateral agreements (Bangladesh, Cambodia, Nepal).
- Revival of government-to-government agreements and public employment services (Republic of Korea, New Zealand, Bangladesh and Malaysia) that have led to dramatic reductions in migration costs. In the case of the Republic of Korea Employment Permit System (EPS), the government-to-government agreements are accompanied by regular dialogue and investment into support services by the Republic of Korea.
- Agreements between countries of origin to cooperate on the protection and promotion of the rights of migrant workers, for example between Indonesia and the Philippines.

**Box 1**  
**Content of a model agreement**

The Model Agreement on Temporary and Permanent Migration for Employment, annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) provides a list of 29 articles that should be considered in formulating agreements on labour migration:

- Exchange of information
- Action against misleading propaganda
- Administrative formalities
- Validity of documents
- Conditions and criteria of migration
- Organization of recruitment, introduction and placing
- Selection testing
- Information and assistance of migrants
- Education and vocational training
- Exchange of trainees
- Conditions of transport
- Travel and maintenance expenses
- Transfer of funds
- Adaptation and naturalization
- Supervision of living and working conditions
- Settlement of disputes
- Equality of treatment
- Access to trades and occupations and the right to acquire property
- Supply of food
- Housing conditions
- Social security
- Contracts of employment
- Change of employment
- Employment stability
- Provisions concerning compulsory return
- Return journey
- Double taxation
- Methods of cooperation
- Final provisions

## **2. Overview of the MOU mechanism**

### **2.1 Historical development**

Thailand emerged from a net-sending to a net-receiving country for labour migrants during the 1990s, as rapid growth led to an increase in the demand for low-skilled workers from neighbouring countries. Labour shortages began to appear in jobs and sectors that had become undesirable to many Thai workers. A series of cabinet resolutions were issued to allow for the temporary stay and employment of migrants. These registration policies provided short-term amnesty for violation of Thailand's immigration laws. Targeted at irregular migrant workers already employed in Thailand, they stopped

short of granting full legal status or labour protections to migrant workers, in essence allowing employers to request a temporary reprieve from deportation.

Although the registration efforts had initially been perceived as temporary policy measures to respond to short-term labour market needs (Chantavanich et al., 2007), the limitations of this approach eventually became clear as it was recognized that the shortage of workers was not going to subside in the near-term. Short of a dramatic restructuring of several key sectors of the Thai economy that had become dependent on low-wage labour, migrant workers were necessary for maintaining competitiveness with other export-oriented economies. The need for more proactive policies was highlighted by the major fluctuations in the numbers of migrants registering and re-registering, and by unsuccessful attempts by authorities to manage workers through increased border control and deportation efforts.

Based upon a regional consultation held in 1999, The Bangkok Declaration on Irregular Migration was adopted, gaining the support of 19 countries in Asia and the Pacific. The Declaration highlighted the importance of cooperative management of labour migration between countries of origin and destination, and set the ground for the signing of three bilateral MOUs between Thailand and Cambodia, the Lao People's Democratic Republic, and Myanmar in 2002 and 2003 (Vasuprasat, 2008).

In 2004, Thailand embarked on a comprehensive amnesty for migrants already in the country to register free of charge for a temporary ID card. Approximately 1.2 million migrants registered at that time, the majority of whom were from Myanmar. There have been several registration windows since, notably in 2009 and 2011. In 2008, Thailand amended the Alien Employment Act, which provides the main legal framework for the employment of foreigners in Thailand, and provides a policy framework for aspects of both MOU and NV procedures.

Practical implementation of the MOUs was substantially delayed due to cooperation challenges between sending and receiving country governments, and limited capacity of the relevant agencies to manage the processes outlined in the MOUs. Establishing the practical procedures for recruitment and placement of migrant workers with employers to operationalize the MOUs required bilateral meetings between the relevant labour ministries that proceeded at a halting pace. As a result, the deployment of migrant workers did not begin in Cambodia and the Lao People's Democratic Republic until 2006 – over two years after the MOUs were signed – and were deferred in Myanmar until 2009.

## **2.2 Utilization of the MOU agreements**

Although the availability and reliability of official data on migrants receiving permission to work under the MOU process has varied during their implementation, there is general agreement that the MOUs have been underutilized. Employer demand for workers under the agreements continues to far outstrip the number of workers who migrate under the established processes. Although it is yet to be investigated how these employers managed to fill their reported labour shortages, there is good reason to believe that they may have turned to irregular migrants (Vasuprasat, 2008), who may or may not have since been regularized. Thus, the limited effectiveness of the implementation of the MOUs continues to have a direct impact on continuing irregular migration to Thailand.

As of June 2014, approximately 250,000 migrants had completed the MOU process and obtained employment in Thailand (Table 2). In comparison, nearly 1.6 million irregular migrants (including dependents) registered with the Thai authorities in a four-month window in 2014. While the MOU and NV processes have provided a means for regularizing migration to Thailand, the regular registration opportunities available to irregular workers and their employers have contributed to the limited effectiveness of the MOUs.



**Table 2: Migrant workers with work permits under the MOU agreements as of November 2014**

Country of origin	Number of MOU migrants
Cambodia	90 757
Lao PDR	21 289
Myanmar	141 963
<b>Total</b>	<b>254 009</b>

Source: Office of Foreign Workers Administration, Ministry of Labour, Thailand

### 2.3 Policy and legislative developments since the adoption of the MOUs

Since the MOU agreements were signed, there have been considerable developments in relation to the governance of labour migration in each of the four countries, as well as dramatic social, economic and political developments. Bilateral meetings to implement the MOU have also resulted in a number of changes in the procedures designed to make them more applicable to the current context, but these have been reactive and ad hoc, not fully considered nor disseminated – which has led to challenges in implementation. Some of the key recent developments in each country are as follows:

#### Thailand

Despite becoming increasingly reliant on migrant workers in certain low-skilled and labour intensive sectors, and despite expectations that this trend is expected to continue given the now shrinking working age population and rising education levels, Thailand is yet to formulate a coherent long-term policy on labour migration, including a vision on the utility of labour migration to Thailand's economic and social outlook. The policy should balance the interests of different Government departments, employers, workers – and be informed by and feed into regional mechanisms.

The protection of migrant workers and efforts to combat trafficking had received more attention from the Thai authorities. This was largely due to pressure from the international community, through the US Trafficking in Persons (TIP) report and increased attention of retailers and buyers of Thai exports in the US, Europe and Australia. A number of initiatives to strengthen protection of migrants were initiated, including on the revision of ministerial regulations in the domestic work and fishing sectors, in strengthening labour inspection, on the registration of migrant fishers, and on improved collaboration between the authorities and NGOs, among others.

After the military government came to power in May 2014, migration management and the protection of migrants and anti-trafficking has become even more of a priority. In June 2014, statements and actions by the government triggered an unprecedented exodus of over 200,000 Cambodian workers. The impact on industry and agriculture was immediately felt, and has resulted in wider acknowledgement on the need for migrant workers in the Thai economy. In the same month, Thailand was downgraded to Tier 3 in the US TIP report. The National Council for Peace and Order (NCPO) established a new Committee and Sub-Committee on Solving Problems of Migrant Workers.<sup>2</sup> The NCPO opened One Stop Service Centers throughout the country to register irregular migrants. From 26 June to 29 November more than 1.6 million irregular migrants were registered. Efforts have also been made to standardize and reduce the costs involved in regular migration, such as work permits and extensions. Linked to this has been the acknowledgement of corruption as disrupting effective migration management (see section 3.4 for further detail).

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<sup>2</sup> This committee replaced the National Committee on Illegal Workers Administration (NCIWA) or *KorBorRor*. There are a number of other sub-committees working on issues affecting migrant workers, and this situation remains fluid.

## Cambodia

Labour migration has become a key livelihood strategy for many of the 250,000–300,000 young Cambodian women and men that enter the labour market each year. The legislative developments in Cambodia have been some of the most far-reaching changes within the region. In 2010, a Labour Migration Policy and Action Plan was adopted to guide the overseas employment programme, and has since been updated for 2015-18. In 2011, a new Sub-decree 190 on Sending Khmer Abroad through Private Recruitment Agencies was passed that became the pre-eminent law governing labour migration. In 2013, eight *prakas* (ministerial orders) were passed that gave further implementing details to the Sub-decree. The *prakas* regulate the operation of recruitment agencies; establish a complaints mechanism for migrant workers, and guidelines on inspection as well as awards and penalties; and set standards for pre-departure training, contracts and onsite services. While *prakas* instruments do not carry the full force of a law, they are practical implementation tools binding the actions of Ministry of Labour and Vocational Training (MOLVT) officials and governing licensing systems for recruitment agencies.

Following the exodus of over 200,000 Cambodians from Thailand in June 2014, the Government has paid additional attention to the obstacles to regular migration, including reducing the costs and burdens of obtaining a passport, and opening one-stop centres in Cambodia. However, these were not effective, as at the same time a registration window was open in Thailand, which saw nearly 700,000 Cambodian migrant workers and their dependents come forward – a far greater number than was previously expected.

Another key development in the past decade has been the diversification of destinations for Cambodian migrant workers. While Thailand is still by far the principal country of destination, Cambodian workers are now going through legal channels to the Republic of Korea, Malaysia (until a temporary ban on domestic workers was put in place in 2011), and in smaller numbers to Japan and Singapore. MOUs have also been signed with Qatar and Kuwait.

## The Lao People's Democratic Republic

With investment in the Lao People's Democratic Republic growing, and many factories and enterprises facing labour shortages, the Government's policy is to promote domestic employment opportunities rather than migration abroad. Because of the shortages, the Lao People's Democratic Republic has also become a country of destination, with migrant workers from neighbouring countries filling jobs across the skills spectrum. However, the Government recognizes the migrants' intentions and motivations – primarily the wage differential – and encourages legal and safe options for those who have decided to migrate.

The Government's policies on labour migration are centred on the national Labour Law (Amended), (2014). Supporting this legislation are a number of regulations including the MOLSW Decision No. 43 on the Establishment and Governance for the Employment Services Enterprises (2010), which serves to regulate the recruitment of Lao workers and the registration of recruitment agencies; Prime Ministerial Decree No. 68 (2002) on the Sending of Lao Workers to Work Abroad, which stipulates the rights and obligations of Lao migrant workers and endorses Thailand as an approved destination; and Implementing Guideline No. 2417 (2002), which serves as part of the regulatory framework around Decree No. 68 (MOLSW, 2013). The new Labour Law incorporates elements of labour migration management without the same specific focus as the supporting regulations. It is therefore envisaged that updates to the specific regulations on labour migration will be needed to enable practical implementation of the goals of the new law.

## Myanmar

Since 2011, there have been significant changes to the political landscape, as well as the economy and society. There is recognition that the Overseas Employment Law (1999) needs to be updated to reflect the current situation; however, there are a number of priorities in relation to revision of the labour laws. Although at the time of writing it had not been formally adopted, the Ministry of Labour, Employment and Social Security (MOLES) has a draft five-year National Plan of Action (NPA) for the Management of International Labour Migration, 2013-17, covering governance of labour migration, protection and empowerment of migrant workers, labour migration and development, and data collection and management. The draft NPA clearly acknowledges the importance of remittances to the development of the country, and aims to address a number of gaps in rights protection.

Myanmar now recognizes migrants who leave the country through irregular channels and has sought to find ways to verify their nationality and provide them with documents. Prior to 2014, Myanmar workers who had completed the NV process were issued with temporary passports. However, it has since become the policy of the Myanmar Government to gradually replace temporary passports with regular ones. Myanmar has worked together with the Thai authorities to set up centres in Thailand to register workers already in the country and without documents, and to provide a system for migrants to transfer their temporary passports into ordinary passports. Migrant workers are required to produce the same documents as any Myanmar national to apply for an ordinary passport, including a national ID card and household registration. Not all migrants are able to access these documents. For some migrants who have been outside of the country for decades, they have lost contact with families who may have the documents. Some families from ethnic areas may have never had the documents. But for the vast majority, it involves a trip home to obtain the documents, which is costly in terms of travel, time and wages lost.

There are 202 overseas employment agencies registered with the Government to send workers to countries including Malaysia, Singapore, the Republic of Korea, and Qatar. Of these, around 70 employment agencies are focused on the deployment of workers to Thailand. The Ministry is working with these agencies to encourage not only compliance with the law but also higher ethical standards and greater responsibility on the part of the agencies.

A labour attaché has been appointed at the Embassy in Bangkok and coordinates with migrant support groups to provide assistance to Myanmar nationals in Thailand. However, the size of the migrant population and the extent of challenges requires a much larger, better funded team to be able to respond quickly and effectively.

## 3. Analysis of the content and effectiveness of the MOUs

### 3.1 Content of the MOUs




















The MOUs were developed largely due to prodding by the National Security Council of Thailand (Hall, 2011), demonstrating the security-driven approach to labour migration that continues to prevail. In practice, this means that there is a heavy focus on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers, with less focus on meeting labour market needs and the protection of migrants, including social protection and rights at work. The recruitment and placement process itself is not well-defined within the text of the MOUs, nor the labour and social protection afforded to migrants.































Four similar objectives are described in each of the MOUs, as well as a rough framework of articles for how they will be achieved:

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;
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; and
4. Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

Beyond these initial objectives, the remainder of the agreements provide relatively similar terms for managing the deployment, employment, and return of workers from all three sending countries. It should be noted that Table 3 lists the original content of the MOUs, and that some of the content may have been altered following bilateral meetings; however, this information is not publicly available.







**Table 3. Content of MOUs between Thailand and countries of origin**

MOU provisions	Cambodia	Lao PDR	Myanmar
Entry into force	May 2003	Oct. 2002	June 2003
<b>Administration and procedures</b>			
Meetings between senior officials at least once per year			
Procedures established to integrate irregular migrants prior to the agreement entering into force		-	
Recruitment and placement of migrants requires the permission of authorities from both countries			
Receiving country authority informs counterpart of the number of workers needed, duration of employment, qualifications required, working conditions, and wages offered for employer job openings			
Sending country authority responds to requests for workers by sending a list of applicants, including name, hometown, education, experience, and personal reference			-
Coordination between authorities to arrange visa, work permit, health insurance/insurance, contribution to the deportation/savings fund, taxes, and employment contract (Myanmar)			
Shared database of workers employed under the MOU to record the certified date of their return home (kept for four years after return)			

MOU provisions	Cambodia	Lao PDR	Myanmar
<b>Return and deportation</b>			
Duration of employment is for an initial two year period that can be renewed up to a limit of four years			
A three year interval is required before re-applying for employment after the completion of a contract <sup>3</sup>			
Worker contribution of 15 per cent of monthly salary to the deportation/savings fund established by receiving country authority			
Refund from the deportation/savings fund, with interest, will be made within seven days (Myanmar)/45 days (Cambodia and Lao PDR) of termination or completion of employment contract			
Right to refund from the deportation/savings fund is revoked for workers not returning to their country of origin after completion of their employment contracts			
Receiving country authority may draw upon the deportation/savings fund (to cover bank fees and deportation of workers in Cambodia and Myanmar, and to cover the deportation of workers in Lao PDR) <sup>4</sup>			
Workers are allowed to temporarily return to their country of origin during employment without losing their work permits			
<b>Protection</b>			
Receiving country authority will ensure that workers are provided with protection in accordance with national laws			
Workers will receive the same wages and benefits as nationals based on the principles of non-discrimination and equality (regardless of gender, ethnicity [Lao]/race [Cambodia and Myanmar], or religion)			
Disputes between workers and employers relating to employment shall be settled by authorities in the receiving country based upon national laws and regulations			

<sup>3</sup> This provision has since been altered through bilateral meetings. See details in section 3.9.

<sup>4</sup> It is worth noting that there is a continuing lack of clarity around Savings/Deportation funds. See details in section 3.9

MOU provisions	Cambodia	Lao PDR	Myanmar
<b>Measures against illegal employment</b>			
Both countries will take measures to prevent and suppress illegal border crossings and employment (Cambodia, Lao PDR and Myanmar), and trafficking (Cambodia and Myanmar only)			
Both countries will share information regarding human trafficking, undocumented entry, unlawful employment, unlawful labour practices (Cambodia and Lao PDR), and smuggling of illegal workers (Myanmar)			

### 3.2 MOU procedures

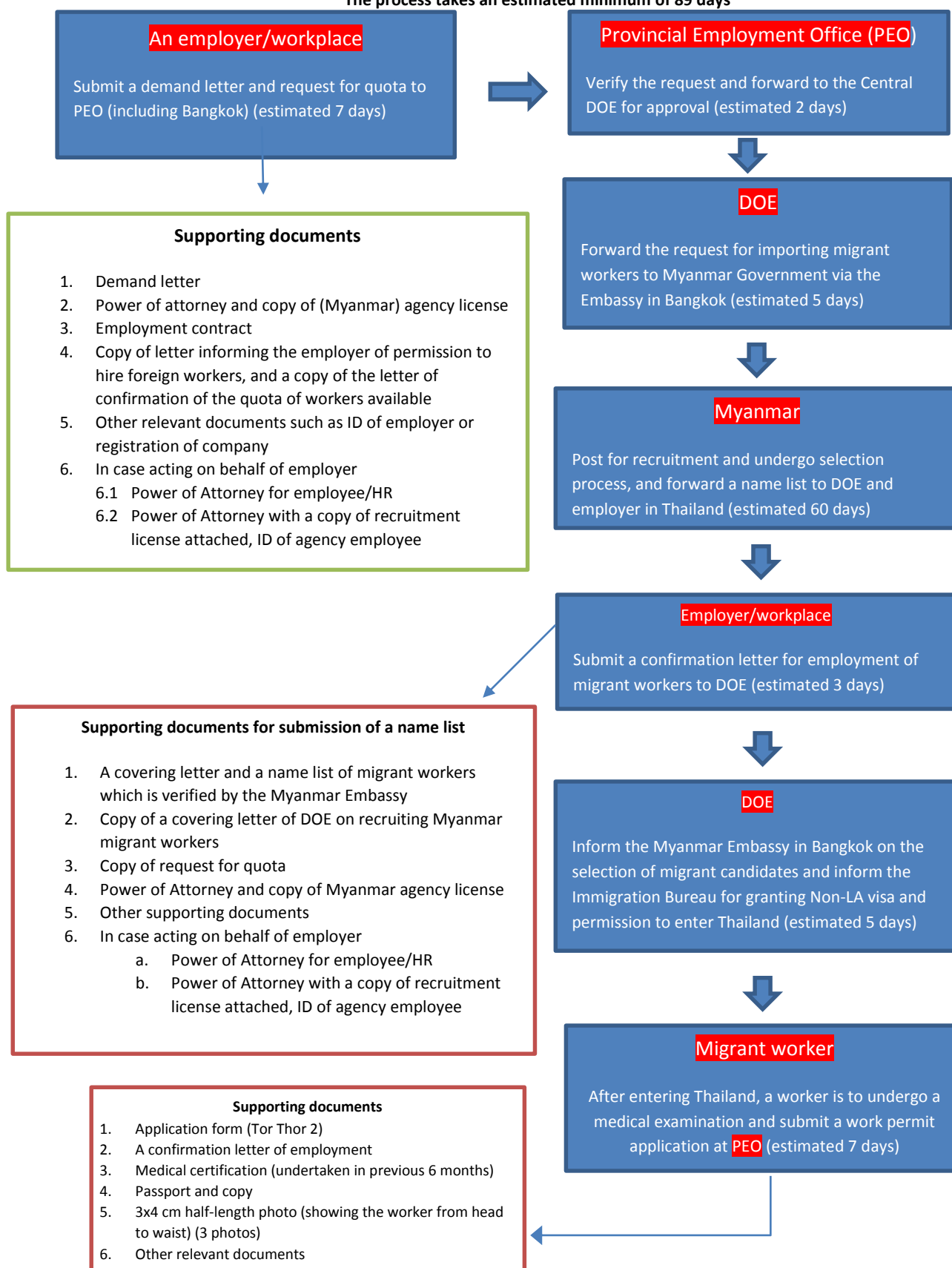
The formal procedure for recruitment and placement as established between the responsible authorities follows the same general model for the three countries of origin deploying workers to Thailand.

The MOUs imply an active role for government authorities in facilitating legal migration, but recruitment agencies have been able to step in and fill this role instead. This effectively means that, while recruitment agencies are the main actors facilitating recruitment, an extra layer of government approval is required at all formal stages of deployment, adding to the number of variables involved and time required for MOU migration. Hugué (2014) identifies 25 formal and informal steps to deploying a Myanmar worker through MOU procedures as they currently stand, including that recruitment agencies have to send multiple notifications at different stages to the Thai Department of Labour and Department of Employment. There is also a great deal of duplication on each side of the border. For example, migrant workers in Myanmar may undergo three medical checks (two in Myanmar and one in Thailand); the costs of which are usually borne by the workers themselves. By comparison, the NV process involves 13 steps (IOM, 2014b).

In Myanmar, the procedure for deploying a worker takes an estimated minimum of 89 days from the point at which an employer identifies a vacancy to the arrival of a worker at the worksite, according to a Thai Department of Employment flowchart (re-created in English as Figure 1). In Cambodia and the Lao People's Democratic Republic, the steps identified (in Annexes 1 and 2) suggest that the process would take a minimum of 62 and 55 working days, respectively. In deploying a worker from any of the three MOU sending countries, the steps require complicated submissions and approvals processes involving workers, employers, recruitment agencies on both sides of the border, provincial and central level labour ministries in both origin countries and Thailand, ministries of foreign affairs, and various other ministries and departments. In the Lao People's Democratic Republic, the deployment process involves approvals processes from the village level upwards, throughout which costs and processing times are not always standardized. Further, the approvals process for all three countries of origin is quite passive, with the vast number of steps involved taking place in inter- and intra-governmental spheres, meaning that, from the perspective of both the worker and employer, the lengthy approvals processes are opaque and difficult to understand, increasing their reliance on recruiters and brokers as intermediaries.

**Figure 1. MOU recruitment and placement process for workers from Myanmar as of 3 July 2014**

The process takes an estimated minimum of 89 days



Source: Department of Employment, Thailand, as of 3 July 2014.



Processes for workers migrating from Cambodia and the Lao People's Democratic Republic are available in detail in Annex 1 and Annex 2.

The steps outlined in Figure 1 are as largely as described by the MOUs, however because the MOU procedures are described as a government-to-government process, the advent of recruitment agencies and brokers as key focal points between employers, governments and workers, as well as the administrative requirements to complete each step (for example, obtaining documents under the laws of the country of origin and completing medical checks in multiple jurisdictions) mean that there are several additional stages to regular migration. The stages at which duplication or delays may be experienced can vary across each step. The lengthy and complicated process provides a disincentive to migrate regularly. In the absence of clear and transparent procedures for regular migration, workers turn to brokers, word-of-mouth, and other informal channels.

### **3.3 The decision-making process: regular migration vs. irregular migration**

As shown in the diagram above, the required procedures involved for recruitment and placement under the MOU agreements are extensive. What has emerged during policy implementation by labour authorities is a process that has frequently been described as complex, prolonged, and expensive (Vasuprasat, 2008; Sciortino et al., 2009; Hall, 2011; Harkins et al., 2013). Moreover, many migrants do not see any advantage in terms of decent working conditions in having legal status.

An ILO study found that 68 per cent of migrant workers in Thailand perceived migration with regular status as offering greater protection (ILO, 2010). However, interviews carried out with Cambodian migrants in Rayong, Thailand found that those who had experienced a variety of legal statuses as migrant workers were sceptical of the benefits of the MOU (cited in Harkins et al., 2013). Those with irregular status were able to save more money as irregular migration is comparatively cheaper, faster and easier. Payroll deductions for social security, housing and recruitment expenses can result in a state of pecuniary captivity, and some organizations suggest that as legal migration puts the migrant in increased contact with officials, the avenues for bribery and intimidation are actually increased. Workers under the MOU are often bound to their employer for an initial two-year period without the freedom to change jobs on their own will if they want to retain their regular status. Furthermore, some Cambodian migrant workers recruited through the MOU process are afraid that the homes or land that they have used as collateral will be repossessed by their recruitment companies if they leave before their employment contract is completed (Harkins et al., 2013).

In addition, certain employers may not be convinced that the MOU process provides any additional benefits to them. In the past, unscrupulous employers have been able to pick and choose workers, dismiss those who did not work as they wished and find new workers with ease. Once committed to the MOU process, they are committed to the set of workers chosen for them and further, the workers coming through MOU process have greater expectations and may be more likely to express their dissatisfaction.

In promoting regular migration, it would be worthwhile to consider these disincentives in relation to the irregular channels available. Behavioural change is hinged on the opportunities, attitudes and motivations (the OAM model) of the major stakeholders (Marshall, 2011). This means that strategies to encourage regular migration and regularization campaigns in Thailand need to address all three of these aspects. Beneficiary tracing data collected by GMS TRIANGLE shows that understanding the risks of irregular migration is not enough. For example, service providers counselling potential migrants on safe and legal migration in Battambang, Kampong Cham and Prey Veng provinces in Cambodia, indicated that a third of the migrants counselled who later chose to migrate did so irregularly, despite greater awareness.



Legal avenues must be more accessible to potential migrant workers with respect to cost and time taken for processing. Regular migration must also offer better protection from the risks of migration to create a more attractive prospect of legal migration, including guaranteeing basic workers' rights in destination countries. In designing a new system for labour migration governance, the experiences of workers should be reflected at the heart of the administrative practices to ensure compliance.

**Box 2**  
**Border and seasonal migration**

One of the principal challenges in managing labour migration is ensuring that regular movement in border areas, and for short-term or seasonal work, is also governed by rules and regulations that protect the rights of workers. In addition to the investment required for migration under the MOU channels, those in border provinces do not have the same access to recruitment agencies and official documentation required for regular migration. Rather than travel to the capital to process passports and obtain pre-departure training, migrants from border provinces are more likely to migrate irregularly.

As such, some provincial governments in Thailand have had to be pragmatic and develop their own measures around the registration of migrant workers, issuing documentation that allows them to stay within the province, but also placing restrictions on mobility – at least partially in response to complaints from employers in border areas that migrants workers frequently move to find better jobs in the interior. More recently, discussions have been taking place on province-to-province agreements in border areas – which are seemingly being negotiated within the realm of the interior ministries, rather than labour ministries – in the case of Cambodia, by the Ministry of Interior under the scope of the National Committee on the Suppression of Trafficking.

In July 2014, the NCPO Cabinet revived plans for Special Economic Zones (SEZs) border areas, including in Sadao, Songkhla province; Mae Sot, Tak province; Aranyaprathet in Sa Kaeo province; and Khlong Yai in Trat and Mukdahan province. New legislation has also been proposed to regulate which documents can be used by seasonal labour migrants, where and for how long the workers could work, and in what occupations (Charoensuthipan, 2014).

There remains limited analysis of how such measures comply with existing law and policy, nor how they affect the plans for more regular migration under the MOUs.

### **3.4 Registration and regularization**

A key complication in the effective implementation of the MOU agreements has been widespread recognition among both migrants and employers that they can expect regular amnesties to register irregular migrants. After over 20 years of such redemptive policies, the incentives to forego the costly, slow, and complex MOU process are strong. As a result of these and other practical concerns, such as a reluctance to engage with legal processes and government authorities, and the lack of any guarantee of decent work, many migrant workers believe that the MOU process offers insufficient benefits in comparison to irregular migration.

**Table 4. Number of migrant workers who have completed NV and MOU processes, as of November 2013**

Nationality Verification	Men	Women	Total
Myanmar	427 830	301 440	729 270
Lao PDR	21 070	15 317	36 387
Cambodia	57 623	37 348	94 971
<b>Total</b>	<b>506 523</b>	<b>354 105</b>	<b>860 628</b>

MOU	Men	Women	Total
Myanmar	39 349	17 346	56 695
Lao PDR	9 977	7 911	17 888
Cambodia	50 735	33 638	84 373
<b>Total</b>	<b>109 061</b>	<b>58 895</b>	<b>158 956</b>

Source: Department of Employment, Ministry of Labour, Thailand<sup>5</sup>

The process of registration and regularization, however, is also complex. Because of this, irregular migrant workers and their employers have often turned to brokers who operate in an uncertain regulatory environment, often with no or limited oversight. In registration windows prior to the 2014 amnesty, there were reports of workers paying from 8,000 to 12,000 Thai baht (THB) for regularization via brokers, who allegedly used their relationships with the authorities to complete the process. NGOs have reported incidents where migrants have paid for registration and regularization, only to find out that the brokers or their employers have cheated them. Others have started the process but missed deadlines or run out of money paying for all the ongoing costs of remaining legal.

During the last round of nationality verification in mid-2012, a survey by the Migrant Working Group (an NGO coalition) found that, among respondents who had entered the NV process, 25 per cent had completed the procedure; 11 per cent had applications still in process; 19 per cent had submitted and been rejected, and 45 per cent had experienced problems, for example, been required to resubmit their applications. Among those who did not apply for NV, 43 per cent said they had not registered to obtain the correct documentation (Tor Ror 39/1); 18 per cent said their employer was not able to pay the fee; and 15 per cent said their employer did not want them to undertake the process. Five per cent said they did not understand the process and 2 per cent said the timeline for applying did not fit with their working schedule (Migrant Working Group, 2012).

With the additional requirement of nationality verification, involving the countries of origin, the regularization process has presented new administrative challenges. Following a registration window, a date for completing the NV process is set, but it has proven logistically impossible to process all the migrants in the time given. The country of origin is required to come to Thailand to issue certificates of identity or passports to these workers. According to the Cambodian Government, in the six weeks following the closing of the registration window on 31 October 2014, about 7,250 passports have been issued to Cambodian workers so far, with the intention to issue over 670,000 more before the 31 March 2015 deadline (Barron, 2014).

### 3.5 Assessing labour market needs

Given that Thailand has an unemployment rate of only 1 per cent, and has absorbed over 3 million migrant workers into its labour force, the evidence of a substantial shortage are solid (Ducanes, 2013). Demographic considerations also point toward the likelihood of increasing shortages over the coming decades, and by 2020, the country's working-age population is expected to be reduced by 150,000 workers each year. Rising education levels result in fewer people interested in low-skilled and labour

<sup>5</sup> Source data available at the DOE website: <http://wp.doe.go.th/wp/index.php/2013-07-25-03-45-44/2013-07-25-03-50-28/2013-07-25-03-51-48> [accessed 16 Dec. 2014].

intensive work. Pending a major restructuring of its economy, an even more pronounced labour shortage could be looming – possibly contributing to even stronger dependence on foreign workers in some sectors (Ducanes, 2013).

Sector specific shortages have emerged as well. The National Fisheries Association of Thailand estimates that the sector requires an additional 50,000 workers, in an industry that is already dominated by migrant workers. According to the Thai Development Research Institute (TDRI), the construction sector employs about 2.2 million workers (300,000 are registered migrant workers), but could accommodate up to 2.9 million due to the boom in the property sector and public infrastructure projects. There are an estimated 700,000 domestic workers in Thailand, and HomeNet (a prominent NGO working with domestic workers) suggests that well over 50 per cent of these positions are filled by migrant workers. The need for domestic workers will likely further increase as the population ages and more women join the workforce.

Thailand has yet to take a methodical approach to measuring the apparent labour shortages in certain sectors and provinces, or to set admissions quotas based upon these labour market needs. As some Thai recruitment agencies have noted, the quotas established under the policy are generally not a limitation because they cannot find enough workers willing to go through the process anyway (Harkins et al., 2013). However, recruitment agencies in sending countries find it difficult to provide workers with the right skills due to inadequate accessibility to the job opportunities available.

### 3.6 Recruitment costs

In the relevant international standard, ILO Convention on Private Employment Agencies, 1997 (No. 181), the costs of recruitment should be borne by the employer, not the worker. However, this principle is not widely applied in Asia, where governments have instead opted to set limits on recruitment fees that agencies can charge.

In Cambodia, the Lao People's Democratic Republic and Myanmar, the costs of regular migration are usually a severe burden on the migrants, but calculating the actual costs of recruitment is exceedingly difficult. There are multiple cost components, a large variation in many worker-paid costs (as they are not all standardized or adequately regulated), and workers may be unaware or have forgotten the actual costs. Migrants may still be paying off recruitment costs through deductions or through loan repayments – which are not always transparent. It should be noted that Thailand's Labour Protection Act states that wage deductions are unlawful, except for taxes and social security contributions.

For Cambodian workers, where private recruitment agencies are the primary agents facilitating the process at origin, migrating for work under the MOU requires approximately a three-month time period; a total expense of between US\$560-620, which is typically borne by the migrant workers through a combination of upfront payments and payroll deductions; and the services of a Thai private employment agency to complete the bureaucratic hurdles on the receiving end (Harkins et al., 2013). Earning the minimum wage (THB300 a day), it would take about 60-70 days to earn this amount. It should be noted that migrants, regardless of their legal status, do not always receive the minimum wage (see section 3.8 on rights protection). In addition, employers can use the debt as a reason or excuse to confiscate the migrants' documents for fear they will leave before paying off their debts. All these scenarios leave the migrants more vulnerable to abuse without the freedom to leave their work. In comparison, Cambodian migrants could migrate to border areas for as little as US\$3 and be at work within the day, or move further into Thailand for a maximum of US\$200 (Vutha et al., 2011).

In Myanmar, a recent study of migrants that had gone through the MOU process found that they often received services from unregulated agents or brokers to assist them, requiring from 14 to 50 days to complete the procedures, and with average expenses paid for the entire process between US\$650-

1,100. Costs and fees are incurred on both sides of the border, and are paid by the worker through initial payments and deductions from salary (Hall, 2012). The Myanmar Overseas Employment Agency Federation provides a lower estimate of the costs, as broken down in Table 5.

**Table 5. Recruitment cost structures for Myanmar as of 2014**

<b>Cost in country of origin per worker</b>	<b>Myanmar Kyat (MMK)</b>
Passport + transport + food + copy	34 000 (US\$34)
Outside medical check up	15 000 (US\$15)
Labour Card	1 000
Contract + copy + visiting card + T-shirt	9 500
EMS cost to Naypyitaw + staff cost + embassy cost	5 000
Demand MOEAF recommendation	1 000
Accommodation cost in Yangon during interview	3 000
Transportation from Yangon to Myawaddy	10 000
3-days' costs in Myawaddy	10 000
Smart card, photo, copy	3 500
Transport and border crossing	2 000
Advertisement and recruiting fee	50 000
General costs at check point	6 000
<b>Total</b>	<b>150 000 (US\$150)</b>

During 2012–15: the Revenue Department, Ministry of Home Affairs, takes MMK10,000 per person.

<b>THB 10,000 advance from employer per migrant (then deducted from migrants' wages over next 10 months)</b>	<b>Thai Baht</b>
2-year visa	1 100
Medical check + transportation to workplace + food	1 300
Work permit	3 800
Health insurance	1 300
Thai DOE and Immigration fees on the Thai side	600
Service fees on the Thai side	1 900
<b>Total</b>	<b>THB10 000 (US\$313)</b>

Source: Reported by the Myanmar Overseas Employment Agency Federation (MOEAF) to ILO staff

In the Lao People's Democratic Republic, the Ministry of Labour and Social Welfare cites THB15,000–21,000 (US\$470–650) as the cost of recruitment. Anecdotal evidence given to ILO staff by a recruitment agency operating in the Lao People's Democratic Republic suggested that his recruitment agency charged THB19,500 (US\$605), which would take most workers six months to pay back. The Prime Minister's Decree No. 68/PMO (2002) stipulates that the agencies have to advance the cost of recruitment to Lao workers. Agencies can only charge 15 per cent of the migrants' monthly base wage over the period of their employment abroad, to cover all the expenses associated with the recruitment process. If workers earn the minimum wage of THB300 (US\$9) and work 26 days a month over a two-year period, the recruitment agency could collect THB28,080 (US\$878). Thai employers would normally advance 50 per cent of the cost to the agencies in the Lao People's Democratic Republic as initial expenses, and another 50 per cent after the workers have arrived at the workplace in Thailand. This amount would later be recouped by employers in Thailand through deductions from the salaries of the migrant workers.

**Table 6. Recruitment cost structures for the Lao People's Democratic Republic as of 2013**

Document	Timeline	Cost
Application form to obtain passport to be signed at the village level by district and provincial police	6 days	100,000 Lao Kip (LAK)
Obtaining of criminal records certificate	3 days	LAK20,000-40,000 (varies in different locations)
Health check-up	2 days	LAK20,000-65,000 (varies in different locations)
Issuing of passport	10 days	LAK30
	7 days	LAK30 + LAK50,000 service fee
	3 days	LAK30 + LAK100,000 service fee
	1 day	LAK150,000
Extension of passport	3 days	US\$10
	1 day	US\$10 + LAK50,000
Approval of name list at provincial Department of Labour and Social Welfare	3 - 5 days plus 2-3 hours pre-departure training	LAK10,000
Department of Skills Development and Employment (DSDE) issues permission for sending labourers and issues work permit	3-5 days	LAK100,000 for work permit (there is no cost for certifying the name list at the DSDE)
Department of Recruitment, Thai Ministry of Labour certifies the name list	5-8 days	No cost
Apply for Visa L-A at the Thai Consular based in Lao PDR	1 day	THB2,000
<b>Total</b>	<b>55 working days</b>	<b>370,000-645,000 Kip (US\$45 – US\$80)</b>

Source: Ministry of Labour and Social Welfare, cited in the *Operations manual on the protection and the management of migrant workers for three ministries of Lao PDR*, 2013.

### 3.7 Regulating the recruitment industry

The MOUs describe government-to-government recruitment: the “receiving country authority informs counterpart of the number of workers needed, duration of employment, qualifications required, working conditions, and wages offered for employer job openings.” The “sending country authority responds to requests for workers by sending a list of applicants, including name, hometown, education, experience, and personal reference.” In practice, the process is usually facilitated on both sides by private employment agencies and sub-agents. An industry of licensed and unlicensed recruitment actors has emerged in the past decade, with varying degrees of regulation.

The size of the recruitment industry in each of the sending countries is different in terms of size, maturity and the level of state involvement. As of January 2015, in the Lao People's Democratic Republic there are 13 registered agencies sending workers abroad; in Myanmar, 67 agencies send specifically to Thailand; while in Cambodia there are 44 registered recruitment agencies, who send workers to Thailand. In Thailand, 207 Thai recruitment agencies recruitment for domestic labour. Thai-based agencies in particular do not just to serve the Thai 'market', but also a number of other destination countries – although Thailand is by far the principal destination country for all three neighbouring countries. In addition, there is a network of sub-agents that serve the recruitment agencies, as well as brokers that facilitate irregular migration and placement in Thailand.

In Cambodia, the Lao People's Democratic Republic and Myanmar, there are gaps in the regulation of recruitment practices, the administration of sending workers abroad and the provision of support services. Although recruitment agencies are licensed, there is limited evidence of inspection or assessment prior to licensing, effective application and enforcement of recruitment standards through monitoring and inspection, a complaints mechanism, and sanctioning of agencies. This is particularly evident at provincial and local levels, where it is often difficult to distinguish between brokers that are sub-contracted by a licensed recruitment agency and those that are operating illegally; and in both cases they work with little regulation. Without access to reliable information, migrants make uninformed decisions or are susceptible to being deceived about the reality of working abroad.

### **Box 3**

#### **Case study from Myanmar: A recruitment agency's perspective**

Agencies bring workers to border crossings (Myawaddy or Kawthoung), where the workers have to sign employment contracts with their employers. When the workers take up employment in Thailand, in some cases they are not happy with their working conditions. Some of these workers return to Myanmar and ask for a refund from recruitment agencies. There is often insufficient evidence to make successful claims against the recruitment agencies, especially where there are no receipts, or signed contracts or agreements between the workers and the recruitment agencies.

"The Government is issuing licenses too easily and the Government should monitor whether the agencies have the capacity to send workers and take responsibility if there is problem. The penalties ordered by the Government against unethical recruitment agencies are very weak; even when an agency is blacklisted, they can apply for a license with another name.

Another problem is that the employers from Thailand depend on illegal brokers to recruit workers. The brokers are not from legal agencies and there is no association, therefore it is difficult to coordinate with this broker to improve the process for sending workers and to take responsibility for protecting the rights of migrant workers."

Source: Reported to ILO by a Myanmar recruitment agency

On the Thai side of the border, there is a growing industry of 'labour consulting companies' that facilitate the recruitment and placement of migrant workers under the MOU process. These private employment agencies and subcontracting agencies are operating in a 'grey market' as the services they provide currently fall outside the scope of the provisions in the relevant labour legislation. Some of these agencies have established themselves as the *de jure* employer for foreign workers under the

MOUs, subcontracting out their labour to other firms, and muddying responsibility for the legality of employment practices and working conditions (Harkins et al., 2013). Sometimes they bring in large numbers of workers from abroad even before having found suitable employers.

There is lingering legal ambiguity about these agencies' operations, and whether they bear statutory responsibilities and liabilities as employers under labour laws – including the Alien Working Act, the Labour Protection Act, the Social Security Act, and the Workmen's Compensation Act – has yet to be determined. In particular, migrants' wages and benefits are now often provided directly by the subcontracting agencies rather than by the firm where they are working; this may lead to wages with a large number of deductions – some of which may not be entirely transparent or understandable. In addition, subcontracted workers often find difficulty in claiming benefits for work-related accidents. Because the worker is registered under the name of the sub-contracting agency, and the accident itself occurs in the workplace of their direct employer, confusion around legal responsibility is introduced, leading to significant delays in compensating the worker.

In 2013, a legal opinion was offered by the Thai Council of State stating that the act of recruitment defined under the Recruitment and Job-Seekers Protection Act is not limited only to Thai job-seekers. Furthermore, the Council took the position that the provisions within Chapter II of the law, which stipulate the requirements for licensing, operation, and reporting of domestic employment agencies, are enforceable for agencies recruiting migrant workers for employment in Thailand. (Harkins, 2014a). Further review of the relevant legislation is needed in order to clarify the roles allotted to private employment agencies under the MOUs, as well as the regulatory mechanisms that will be used to ensure that adequate labour protection is maintained for migrant workers.

### **3.8 Protection of the rights of migrant workers in Thailand**

The MOUs call for the protection of migrant workers in accordance with national laws. Thailand's Labour Protection Act B.E.2541 (1998) applies to all, regardless of nationality or legal status.<sup>6</sup> But while migrant workers are provided equal protection under the law, their status as migrants and the nature of their work means that they are at risk of labour rights violations. International organizations, NGOs and the media have highlighted the various rights abuses that migrant workers are subjected to in their home countries and once in Thailand.<sup>7</sup> Although there are indications that migrant workers are less vulnerable to certain types of abuse and extortion if employed via the MOU process, qualitative and quantitative research studies have questioned the assumption that the artifice of increased protection for migrants provided under the agreement has conclusively translated into decent work while employed in Thailand (Harkins et al., 2013; MAP Foundation, 2012).

In practice, migrant workers often earn less than the minimum wage (IOM, 2013), and are subjected to illegal wage deductions, excessive working hours, and poor living and working conditions. The high levels of debt often involved, frequent confiscation of identification documents (Sciortino, 2009), and requirement that workers stay tied to a specific employer leave migrant workers at risk regardless of their legal status. Moreover, Sections 88 and 101 of the Labour Relations Act (1975) issue restrictions on non-Thais establishing trade unions and serving as union leaders. Although they can legally join Thai unions, migrants frequently work in jobs that are not traditionally unionized and in workplaces

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<sup>6</sup> The Labour Protection Act excludes some sectors in which migrant workers are prevalent. These are agriculture, sea fisheries work and domestic work, for which protections are prescribed in Ministerial Regulations under the Labour Protection Act.

<sup>7</sup> The rights abuses suffered by migrant workers have been articulated by the ILO Committee of Experts, in observations on the application of the Forced Labour Convention; by the UN Special Rapporteurs – on trafficking and on the rights of migrant workers; and in the US State Department's annual Trafficking in Persons Report, as well as reports by the UN Thematic Working Group on Migration, ILO, IOM, Human Rights Watch and others.

where there are no unions. Migrant organizing and collective bargaining power for increased rights is therefore very limited.

While the number of migrant workers with social security coverage is increasing (451,537 as of October 2014 according to the Social Security Office (SSO) of Thailand), the majority are still without sufficient access. All migrant workers with regular status are in theory eligible for many of the same benefits as Thai nationals – although some sectoral exclusions apply, for example, in domestic work, agriculture and fishing (Harkins, 2014b). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made several observations related to the treatment of migrant workers in Thailand, including on the Forced Labour Convention, 1930 (No. 29) and the Equality of Treatment (Accident Compensation) Convention, 1925, (No. 19). The CEACR requested that the Royal Thai Government “take positive and urgent measures to review the policy and legal framework concerning social security coverage and protection of migrant workers in case of occupational accidents and to instruct the SSO to lift restrictive conditions and facilitate access of migrant workers to the WCF [Workers Compensation Fund] irrespective of their nationality” (ILO, 2011).

A significant remaining gap is the policy and implementation of complaint mechanisms, which currently leaves migrant workers without adequate means to seek redress for rights violations during recruitment and employment. Unclear institutional mandates, lack of standard operating procedures, inadequate awareness-raising activities, and ineffective interpretation services all present considerable barriers. Mechanisms do not exist for resolving cross-border labour-related disputes, such as contract substitution, and as such it is near impossible to seek redress for abuses carried out on the other side of the border (Harkins, 2014a).

One of the reasons why regular migrant workers are reluctant to submit a complaint to the authorities is for fear of retaliation from their employer or losing their work permit. The MOU does not include provisions for workers to change employers, but it was agreed in the bilateral meetings to abide by the conditions laid out in a Cabinet Resolution dated 19 January 2010. This stated that migrants can request to change their employer only in “the most necessary situations, including the employer’s death, an employer’s activities cease, an employer breaches the rights of workers or commits a violent act, or the employer does not act in accordance with the labour protection laws”. Migrants can change employers only within the same industrial sector and the employer must sign the transfer form allowing migrants to go to another employer. In addition, the procedure of changing employers must be completed within 15 days (although migrants are required to leave the country within seven days of becoming unemployed) which is impractical for migrant workers.

Moreover, the labour inspectorate has been ineffective in identifying and responding to the specific vulnerabilities faced by migrant workers. This is due to the lack of specialized labour inspectors (officers are required to perform multiple roles), limited powers to enforce the law, the absence of data in planning labour inspections, non-use of translators in inspections and inadequate cooperation with other government departments. In addition, many migrants are employed in forms of work that are difficult to inspect, including domestic work, in fishing or agriculture, or in the informal economy.

In recent years, the Government of Myanmar has placed two labour attachés in Thailand to respond to issues associated with labour migration. The typical duties of labour attachés include dealing with complaints, compensation claims, and cases of abuse, exploitation and trafficking. Attachés can also vet potential employers and assist with just and orderly repatriation. The Government of Cambodia has not yet placed a labour attaché in Thailand despite the large numbers of Cambodian workers.



### 3.9 Repatriation

The focus of the MOUs is largely on recruitment and employment procedures, but effective migration management also requires that repatriation is considered. The implementation of repatriation-related policies has been reactive and proven extremely challenging.

One of the very evident problems in the MOUs is the article stating that a three-year interval is required before re-applying for employment after the completion of a contract (maximum duration of four years). This affects a significant number of migrants that have completed the four-year period. In 2013, NGOs began to raise concerns about the large number of regular migrants that were becoming irregular as a result of this article (Table 7). Employers have also called for an increase in the period of employment beyond four years given their investment in training. Eventually, this issue was raised in bilateral meetings, and on 25 March 2014, the Thai Government issued a Cabinet Resolution granting 180 days of amnesty to workers who underwent the NV process and completed the four-year employment period. In July 2014, the NCPO set up One Stop Service Centres in every province across Thailand. The centres allowed for the registration of migrants who had completed the four-year employment period allowable under the MOUs, together with migrants who had not previously registered.

**Table 7. Completing the four-year term of employment**

Year	Estimated number of Myanmar migrant workers that have completed or will complete four years	
	MOU	NV
2014	551	263 926
2015	4 658	301 743
2016	21 848	613 672
2017	44 556	450 938

Source: Department of Employment, Ministry of Labour, Thailand

A second article in the MOU related to repatriation that proved difficult to implement was the establishment of a savings fund. The MOU established a savings fund that was intended to incentivize return to the country of origin upon completion of the employment contract. There were never clear procedures about how these funds were to be accessed by migrants or used by the authorities. The legal framework for the fund was established under the latest amendment of the Alien Employment Act in 2008. On 29 November 2013, the Ministry of Labour issued a ministerial regulation (under the Alien Employment Act) stating that the fund will become effective as of 1 March 2014. However, at a meeting on 29 July 2014, it was decided by the NCPO to draft a ministerial regulation to repeal the current policy on collections for the savings fund.

Similarly (although not as part of the MOUs), the Thai Government has indicated that migrant workers' contributions to pensions and unemployment insurance can be refunded in a lump-sum at the end of their contract – as they are not entitled to these benefits in practice – there are no clear guidelines on how this transfer occurs. There are currently over 450,000 workers registered with the social security fund, who contribute 5 per cent of their salary to the fund.

The difficulty faced by migrant workers in maintaining links with family members in communities of origin is also linked to the need for effective repatriation at the end of the period of employment. For regular migrants, visiting their home while employed in Thailand involves complicated visa application processes. Regular migrants also face high transportation costs and are at risk of extortion while traveling outside of the province in which they work.

Moreover, missing from the MOUs but of vital interest to countries of origin, are return and reintegration strategies that can help to translate the full potential of migration into development outcomes. At the Lao People's Democratic Republic-Thailand 6th Technical Officials Meeting on the

MOU in 2010, an agreement was reached on the issuance of Certificates of Employment for Laotian migrant workers who have completed their employment contracts, which will then help the migrants in applying for jobs commensurate with their experience and skills in the future.

**Box 4**  
**Arrest and deportation**

The Government of Thailand does make regular arrests of irregular migrants and deports them to the border. Cambodian Immigration reported 102,202 deportees at the Poipet checkpoint (the most significant site for deported workers) in 2012, while at Wang Tao in the Lao People's Democratic Republic (the most significant site for Laotian deportees) 26,267 deportees were reported from October 2011 to September 2012 (UNIAP, 2013a; UNIAP, 2013b). However, deportations are carried out in an *ad hoc* manner from province to province. While migrants are subject to deportation, there is little evidence of employers being punished for hiring irregular migrants.

The rights of migrants with regards to deportation are enshrined in various international standards, including the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) which protects the right of workers to unpaid wages and other entitlements. More particularly, Article 22 of the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (1990) protects migrant workers and their families from mass expulsion, providing a right to an individualized, fair and transparent process where deportation is being considered.

In practice, migrant workers with irregular status and their employers are in many cases able to pay the local authorities to protect them from arrest. Unregistered migrant workers could be asked to pay bribes ranging from THB200 to 8,000 or more to the police in exchange for their freedom, either when stopped by the police or when in police custody (Robertson, 2010). The UN Special Rapporteur on the Human Rights of Migrants expressed particular concern about the pattern of arbitrary arrest, violence and exploitation of migrants. This was exacerbated by the Prime Minister's Order of 2 June 2010, which established a special centre to suppress, arrest and prosecute alien workers who are working underground, and an increasing number of cases of systematic abuse of official powers had been reported, which the Special Rapporteur identified as "including the 'sale' of irregular migrants to various brokers who then transfer the migrants back to their worksites for fees or who 'resell' or traffic the individuals to various employers in the fishing and domestic industries".

## **4. Bilateral cooperation and administration of the MOUs**

### **4.1 Administration**

Government delegations from Thailand and neighbouring countries organize regular bilateral meetings to discuss implementation of the MOU and to make adjustments to the process. The governments take turns in hosting the discussions. In the case of Myanmar-Thailand, a meeting is held every three months, and for the Lao People's Democratic Republic-Thailand, the senior officials meet on an annual basis, with ministerial meetings every two years. The labour ministries lead the delegations, with participants from the ministries of foreign affairs and home affairs, the police, the Attorney General's office and provincial governments.

The outcomes of the meetings are not always shared publicly nor clearly conveyed to the officers responsible for implementing the changes, nor the workers and employers that have to navigate the decisions and processes that emerge from the meeting. Sometimes the information is conveyed in the media, but low-skilled potential migrants face language barriers and literacy challenges. Migrants are therefore extremely reliant on recruitment agents or brokers to get information on the new conditions, procedures or costs that emerge from the MOU discussions. Employers have also noted that they would benefit from information on which recruitment agencies are top performers, and which have been suspended or had their licenses revoked.

**Box 5**  
**Dissemination of MOU procedures**

“The procedure for working legally in Thailand is always changing and we do not know what [the changes are]. Everybody here knows how we can go to Thailand by passing the border, therefore people do not spend their time collecting this information and they migrate [through] illegal channels and work illegally in Thailand.”

- Comments on MOU procedures by a migrant worker at a workshop in Dawei, Myanmar (September 2014)

## **4.2 Policy incoherence on deployment into certain sectors**

Despite the regular meetings between the two countries, and that Article 4 of the MOU states that “employment procedures must be in accordance with the laws of each party”, there are some critical policy inconsistencies between countries of origin and Thailand that have yet to be addressed. This is evident especially in areas of work in which migrants are particularly vulnerable: domestic work and fishing.

Confusion remains around how domestic workers from the Lao People’s Democratic Republic and Myanmar can migrate to Thailand legally under the MOU process. The Decree governing labour migration from the Lao People’s Democratic Republic indicates that professions that do not broadly develop skills and/or technical knowledge, are contrary to tradition, culture and law or are dangerous to the health and safety of workers are banned.<sup>8</sup> Discussions with Government officials in the Lao People’s Democratic Republic indicate that domestic work is generally viewed as contrary to the Decree, however the Government and other stakeholders also acknowledge that workers do migrate from the Lao People’s Democratic Republic under the MOU to undertake domestic work. There is also conflicting opinion as to if a position in low-skilled construction or agriculture would be contrary to the Lao Decree.

In terms of fishing, the Cambodian Prime Minister has stated that licensed recruitment agencies were not permitted to recruit for jobs in the Thai fishing industry, acknowledging the dangers inherent in this occupation. While his statement has not been reflected in any official policy or law, the directive appears to have been largely adhered to by the Cambodian recruitment industry. Despite this, 29 per cent of the male potential migrant workers who responded to an ILO study indicated their intention to work in the fishing sector (ILO, 2011).

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<sup>8</sup> Article 38 of the Labour Law (Amended) (2014)

**Table 8. Workers in vulnerable sectors, by type of work, nationality and gender, as of December 2009**

Type of work	Nationality									Total
	Cambodia			Lao PDR			Myanmar			
	Male	Female	Total	Male	Female	Total	Male	Female	Total	
Fishing	13 208	1 761	14 969	1 153	647	1 800	34 496	5 313	39 809	56 578
Seafood processing	3 044	2 976	6 020	629	551	1 180	60 477	69 296	129 773	136 973
Agriculture	15 141	8 944	24 085	11 355	6 680	18 035	110 441	69 142	179 583	221 703
Household	1 422	5 156	6 578	3 227	18 040	21 267	16 977	84 968	101 945	129 790
Total	32 815	18 837	51 652	16 364	25 918	42 282	222 391	228 719	451 110	545 044

Source: Office of Foreign Workers Administration, Department of Employment, Ministry of Labour, *Statistics on Foreigners Obtaining Work Permits during 2009*, cited in *Thailand Migration Report 2011*.

Migration into low-skilled positions continues, and many irregular migrant workers in domestic work and fishing have registered and obtained nationality verification with the authorization of the governments of Cambodia and the Lao People's Democratic Republic. The lack of legal migration options can further marginalise these workers and place them in an even more vulnerable position.

### 4.3 Sharing data and labour market information

The MOUs include data collection as an area for cooperation. The governments maintain data on the migration flows and registration, which, in the case of Thailand, is publicly available on the website of the Ministry of Labour. The data are quite basic, and do not allow for much analysis beyond examining the trend of regular migration flows.

Because of the often fluid legal status of migrant workers and the regular registration windows, it has proved extremely difficult to keep track of the actual numbers that have maintained legal status and those that have knowingly or unknowingly become irregular. Furthermore, no methodologies exist for estimating irregular migration flows – although Cambodia and the Lao People's Democratic Republic have conducted some exercises at provincial level to estimate migration flows. Another major gap has been around the return of migrant workers. Even when migrants use regular channels, recruitment agencies do not always provide the governments with information on if and when the migrants have returned – although this was made a requirement of Cambodian recruitment agencies in 2011.<sup>9</sup>

There is a dearth of information on key aspects of the implementation of MOUs, including the duration of the recruitment process, recruitment costs, working conditions (wages, working hours, social security enrolments, workplace injuries, etc.). Such data can be used to formulate policies that incentivize regular and streamlined migration channels, and identify areas that require additional attention, as has been apparent in the case of the Republic of Korea's Employment Permit System – which the governments of Cambodia, Myanmar and Thailand are engaged in.

Moreover, the way in which data is shared is essential to effective migration management. For example, the database of migrants with work permits and their employers is held by the Department of Employment, and could be used by the Social Security Office to ensure that these employers enrol their workers in the scheme. The Ministry of Interior could also collect and share more detailed information on the registration of migrants and deportations.

<sup>9</sup> Article 26 of the Sub-decree on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (No. 190) (2011)

**Box 6**  
**An ASEAN labour migration statistics database**

Improved data collection and sharing is essential to shaping evidence-based policies and inter-state cooperation. The importance of data collection and knowledge sharing has been affirmed by the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007); the 6th ASEAN Forum on Migrant Labour (AFML) (2013); the 19th International Conference of Labour Statisticians (ILO, 2013); and in the Report of the ILO Director-General, Fair migration: Setting an ILO agenda (ILO, 2014).

In order to manage and understand international labour migration trends more coherently, the ILO has launched an International Labour Migration Statistics (ILMS) database to collect relevant, comparable and accessible data, providing a research tool for policy-makers to monitor labour migration trends and assess comparative evidence on inflows and outflows of migrants in the ASEAN region. The first phase of the ILMS was released in 2014 and includes data on the following 16 categories:

**International migrant stock**

- Resident population by sex and by labour force participation (total and youth total) (total and migrant)
- Resident population by sex and by level of qualification (total and migrants)
- Migrants by country of origin
- Employed migrants by country of origin
- Employed persons by industry (total and migrants)
- Employed persons by occupation (total and migrants)
- Employed persons by sex and by status in employment (total and migrants)
- Average monthly wages by sex (total and migrants)

**International migrant flow**

- Inflows of migrants by sex and by country of origin
- Inflows of migrants by sex and by level of qualification
- Inflows of employed migrants by industry
- Inflows of employed migrants by occupation

**Emigration**

- Nationals abroad by sex and by country of residence
- Outflow of nationals by sex and by country of destination
- Outflow of employed nationals by sex and by country of destination
- Outflow of employed nationals by industry

The database can be accessed at: - [www.ilo.org/ilostat](http://www.ilo.org/ilostat)

## Recommendations

These recommendations stem from the assessment of the MOUs and consultations with the tripartite constituents, civil society organizations and recruitment agencies in Thailand, Myanmar, Cambodia and the Lao People's Democratic Republic. They are targeted at the governments of the four countries, but should be carried out in consultation with representative workers' and employers' organizations.

Not all of the recommendations pertain directly to the MOU, but rather relate more broadly to effective migration management. Good governance of labour migration should include the following basic principles: consistency with international standards and good practices, policy coherence, gender sensitivity, transparency and flexibility, social dialogue, and formulating policies based on evidence or data. The ILO Multilateral Framework on Labour Migration provides a valuable source of guidance in establishing and evaluating migration policies.

Given the widespread acknowledgement that the MOUs are outdated and have had limited success in reaching their objectives, an overarching recommendation is to draft a new set of agreements. The MOU should move from a reflexive model that relies on crisis response towards a framework for regular migration that is coherent and comprehensive, while still adaptable to context through regular and structured reviews.

### Recommendations on admission

Relative to irregular migration, the process of migrating through the MOU channels is currently time-consuming, costly and complex, with a lack of clear information available about regular migration. These factors mean irregular migration, or falling into irregular status while already in Thailand, continues to be appealing for many current and potential migrant workers, perhaps in spite of the risks. To address this, the following recommendations are proposed:

#### Extending the reach of the MOU channels

1. The Thai Government should commission regular labour market assessments, in consultation with social partners, to inform quotas and the compilation of occupation shortage lists. The assessment can examine specific skills levels required in occupations/sectors, and also the needs within different provinces. The assessment should address both the current needs and projected needs, taking into account the changing demographic and employment trends among the Thai workforce. This information can be shared with governments and recruitment agencies in countries of origin, to allow for a more effective matching of supply and demand.
2. Legal avenues must be more accessible to potential migrant workers with respect to cost and time taken for processing. The procedures for migrating through legal channels should be reviewed and streamlined by the governments of Thailand and neighbouring countries, in consultation with social partners, identifying which documents and what steps are duplicative or unnecessary. For example, health authorities in Thailand can verify hospitals and clinics in Myanmar, which would reduce the need to conduct repeated health checks in both countries. Similarly, in origin countries, approvals processes for documentation required to exit the country as a migrant worker could be simplified. For example, in the Lao People's Democratic Republic, the requirement that passport applications be signed by both district and provincial level police, before the application is passed on to the Ministry of Foreign Affairs for passport issuance, means that passport processing times range up to 16 working days. Regular migration must also offer better protection from the risks of migration to create a more attractive prospect of legal migration. In promoting regular migration and regularization, approaches to influence behavioural change must be considered, for example influencing the opportunities, attitudes and motivations of the major stakeholders.

3. Bilateral discussions need to take place to address the policy incoherence between countries, for example the restrictions on the deployment of domestic workers (the Lao People's Democratic Republic and Myanmar) and fishers (Cambodia). There should be some assessment of whether the restrictions are working, and what benchmarks are required to remove the restrictions. Moreover, the concerned governments can consider how the MOUs can provide sector-specific legal migration options and protections, including standard contracts; pre-departure/on arrival orientation; duration of visa/work permit; etc. For example, the revision of the MOU between Indonesia and Malaysia in 2011 included additional protections for domestic workers, including the right to be paid into a bank account, the right to a day off and the right to hold on to identity documents.
4. The MOUs must also cover seasonal migration, with specific and simplified procedures for seasonal agricultural workers/workers on the border. This should include the period of time that seasonal workers can stay in Thailand, and specific reference to their protection measures, including accident insurance compensation. Seasonal or border migration may be managed differently within different provinces, but should follow an overall policy framework established at the national level that provides fundamental rights.

## Recruitment

5. The governments of the four countries should commit to moving towards the elimination of recruitment fees paid by workers, and instead recruitment agencies should charge employers for the service – in line with ILO Convention No. 181.
6. Recruitment fees and the catalogue of migration costs (including passport charges, health checks, criminal record checks, etc.) should be standardized. Fees and costs should not be charged without issuing receipts. With standardized recruitment and hiring processes, the processing time and cost can be better defined.
7. As part of the regular data collection to assess the MOUs, research should be carried out in all countries to monitor recruitment fees.
8. The Thai Government should clarify the policy towards wage deductions to recover recruitment costs. At present the Labour Protection Act states that deductions cannot be made, except for taxes and social security contributions.
9. The regulation of recruitment agencies and subcontracting agencies (that also have a recruitment function) needs to be specifically and clearly defined in an amendment to the Recruitment and Job Seekers Protection Act, or a new Ministerial Regulation or Order. This must include criteria for licensing, including an appropriate guarantee deposit; caps on recruitment fees; responsibilities of the agencies in the protection of workers, including in responding to complaints and ensuring social security coverage; penalties for violations; etc.
10. If sub-contracting agencies are entitled to recruit and employ migrant workers, the Thai Government should ensure that subcontracting agencies bear statutory responsibilities/liabilities as employers under the relevant labour laws – including the Alien Working Act, the Labour Protection Act, the Social Security Act, and the Workmen's Compensation Act.
11. Employers and workers should have more information about which recruitment agencies (in origin countries and in Thailand) are top performers / blacklisted.
12. Clarity is required on the mandate of Thailand's Department of Employment in receiving and responding to complaints related to recruitment under the MOU.
13. The MOUs should also provide alternatives to private recruitment agencies to encourage competition, including direct recruitment by accredited employers, and government-to-government arrangements. Some sources have reported that the government-to-government process for deploying Bangladeshi workers in Malaysian plantations sector has drastically reduced the costs involved from US\$4,500 to US\$400.



14. There should be greater cooperation in preparing workers with the skills required in destination countries. Training institutions in countries of origin could provide skills training for workers imported through the MOU process, based on the needs of employers.
15. Employers should receive all the information about the workers such as the profile, health records, language and skills set, and other characteristics – as with the Republic of Korea’s EPS roster.

## Recommendations on protection

Reducing irregular migration and protecting the rights of migrant workers should be seen as complementary objectives rather than as mutually exclusive. Under current conditions, migrant workers do not always see the advantage of protections that come with legal status. In many cases there is little evidence that economic returns and social protection benefits actually make it back to the workers themselves.

16. It is essential to widely disseminate the Thai Government’s commitment to provide **equal treatment with regard to labour protection**, including under the Labour Protection Act B.E.2541 (1998), regardless of nationality and legal status, including fundamental labour rights for irregular migrants. Sections 88 and 101 of the Labour Relations Act should be amended to remove restrictions on non-Thais establishing trade unions and serving as union leaders. **Freedom of association** and the right to collective bargaining are among the ILO fundamental rights at work.
17. The Thai Government must increase **flexibility for migrants to change employers** in a manner in which employers do not lose out on the advances and costs incurred in the recruitment process. The criteria and procedures for changing employers must be more clearly stipulated and communicated to government officials, employers and workers. The period of time in which a worker can seek alternative work must be increased in order for changing employers to be a viable option. Thailand, Cambodia and Myanmar send migrant workers to the Republic of Korea, where migrants have a period of three months (increased from one month) to find a new employer – although in the Republic of Korea, the conditions under which workers can change employers is in national legislation, not the MOU.
18. While these recommendations speak specifically to arrangements in or around the MOUs, the goal of incentivizing regular migration would also benefit from ensuring that **workers in all sectors are protected under labour laws** more broadly – for example, the Thai Government should legislate to ensure that all workers must be paid the minimum wage, including those in domestic work, fishing or agriculture.
19. Migrant workers must be able to sign a **written contract and fill official forms in a language they understand**, with assurance of an accurate translation. Steps should be taken to ensure workers are given the right to review and refuse employment contracts before committing to migration and/or employment. Standard contracts, agreed by both governments, could be adopted to reflect the full suite of rights and protections for particularly vulnerable sectors of work.
20. Procedures must be established to **address and penalize the widespread practice of contract substitution**. In situations where contract substitution has occurred, workers should have options in terms of returning home with all costs refunded, accepting the new terms and conditions of work, negotiating for improved conditions or finding alternative employment in Thailand. When contract substitution occurs, this should be recorded and tracked by both governments, with a view to sanctioning offenders on both sides of the border.
21. The governments of countries of origin must **strengthen the role of labour attachés and consular officials** in protecting migrant workers, including by outlining key functions and means for cooperation between labour attachés and consular officials, and the Thai authorities and social partners. Because of the demands placed on the labour attachés, the



procedures for engaging them must be clearly stipulated. Labour attachés and consular officials should regularly meet for dialogue with the concerned ministries of Thailand to learn about new policies and procedures, share emerging trends, and strengthen cooperation.

22. The governments of the four countries should provide **support services** and cooperate with NGOs and trade unions to establish channels through which to disseminate information on policies and procedures, and to facilitate migrants' access to services, including complaints mechanisms. These support services can also include measures to introduce/expand programmes to support integration, develop language and other skills, and build support networks for migrants.
23. **Complaint mechanisms** should be strengthened and made more accessible to migrant workers at all phases of the migration cycle. Efforts should be taken to disseminate information on the complaint mechanism to migrant workers and their families through pre-departure training programmes, information campaigns, and through migrant worker resource centres and diplomatic missions, among others. Avenues for seeking remedies if rights are violated should be clearly articulated in the MOUs, with procedures established for returned migrants to file complaints and seek redress against employers, brokers and agents in Thailand. Lessons can be drawn from the experience of drafting and implementing MOUs on trafficking.
24. Requirements for employers to **register migrant workers in the Social Security Fund** should be enforced by making it a necessary step in obtaining a work permit, and by synchronizing the databases of the Department of Employment and the Social Security Office. The total contribution made by migrants to the Fund should be monitored, as should the extent to which migrants avail of these services. This information is crucial in informing debates about the contribution of migrants to the Thai economy and society. The governments should also initiate moves toward exploring and adopting systems to facilitate the portability of social security.
25. Governments must **clarify migrants' rights to social protection**, including:
  - a. The processes for accessing lump-sum reimbursement for contributions to pensions and unemployment insurance (protections that de facto migrants cannot access), and monitor migrants' contributions to these funds;
  - b. The health and education rights for migrants' family members; and
  - c. The procedures for medical check-ups, and assurances that medical checks provide linkages and access to treatment and care.
26. Studies should also be commissioned to **assess the contribution of migrant workers** to the economy of Thailand, and the impact they have on society, including examining health costs versus the social security and health insurance contributions. This information should be used to influence the development of policies, and inform public debate.

## Recommendations on repatriation and reintegration

MOU procedures contain a heavy focus on the recruitment process. Repatriation and reintegration is a key part of migration management, and yet the policies in this area are unclear and not jointly developed to mutually benefit the countries involved.

27. The Governments must revise the clause in the MOU that requires **migrants that have worked in Thailand for four years** to remain in Myanmar for three years before being able to migrate to Thailand again. This amendment has already been agreed to by all sides, but not formalized in the MOU with any clear procedures. In cases where migrant workers have secured job offers, provisions should be made for the extension of regular status.
28. The **Repatriation/Savings Fund** designed to incentivize migrants to return on time at the end of their contracts needs to be formally removed from the MOU.

29. The governments of countries of origin must develop **economic and social reintegration policies and programmes**. These should already be introduced to migrant workers as part of their pre-departure training, and by labour attachés and consular officials in the country of destination. Programmes could include increasing livelihood options through employment services, counselling on investment of savings, business start-up training, etc. **Networks of returned migrants** should be established that can facilitate the reintegration process and also provide information to potential migrants. To assist in migrants' re-entry to the labour market in countries of origin, employers in Thailand can also deliver training and provide certificates of the skills attained.
30. Requirements and procedures for migrants returning home during their period of work in Thailand should be eased, including circulation-friendly visa policies, to **allow for ties to be maintained with families and communities of origin**. Returning migrants should have cheaper transportation options and greater protection, to ensure their physical safety and to guard against extortion.
31. Migrants who have been found to have breached immigration rules should be either offered official pathways to correct the breach, or should be **deported in a safe and humane manner**, avoiding detention wherever possible, and their **right to due wages** and benefits should be recognized and enforced. The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) also states that employers of irregular migrants and brokers facilitating irregular migration should be penalized – not just the workers themselves.

### Recommendations on administration of the MOU

The effective implementation of the MOU requires greater involvement of different government departments and social partners; increased sharing of information to key stakeholders at all levels, including guidance on the outcomes of the MOU bilateral meetings; and a monitoring framework.

32. The delegations that attend the regular bilateral meetings that administer the MOUs should reflect the composition of the committees managing labour migration in each country, including representatives from all key government departments, including labour, immigration, health, social welfare. It is essential that the needs and concerns of workers and employers are reflected, including by guaranteeing **social dialogue and consultation with workers' and employers' organizations** and NGOs both prior and subsequent to the bilateral meetings.
33. The **outcomes of bilateral meetings on the MOUs and on migration management more broadly should be shared systematically** with key partners, in a clear and timely manner. Guidance on the impact of the decisions taken must be communicated with government officers at all levels, with a clear articulation of their roles and responsibilities. Employers can be reached through employers' organizations, industry associations and chambers of commerce. There are networks of NGOs in Thailand and countries of origin that the governments can use to **disseminate information** to migrant workers. The governments should also continue to use the media and public information campaigns.
34. **Information on policy and procedural changes** made within each country needs to be effectively communicated between the governments. This includes communicating the legislative and administrative provisions relating to recruitment, emigration and immigration, employment, rights and protections of migrants and their families. It is also important to take action to act quickly to correct misleading information or unsubstantiated rumours that are circulating among migrant communities.
35. **Data on migrant workers** should be strengthened through greater inter-agency collaboration at the national level, and harmonized among the four countries. This includes the regular exchange of labour market information; administrative records on regular migration through the MOU and the registration/nationality verification processes, as well as data on

deportations and irregular migration; and analysis of trends and patterns. Processes for correcting discrepancies in data should be established. Procedures should be in place to ensure that data collected and shared feeds in to a system of dialogue and review around policies, procedures and the MOUs themselves. The categories of data collected could be made more specific so as to allow further analysis – e.g. migration of women and men into different sectors; migration from and to different provinces.

36. **Procedures and criteria for monitoring and evaluating** the effective implementation of the MOU should be established. Criteria could include the number of migrants that use MOU channels by gender and sector; the cost or period of time it takes to deploy a worker under the MOU channel; the number of workers that return at the end of their contracts; etc. The monitoring should take place on a regular basis, involving an extended group of officials and social partners from both countries.

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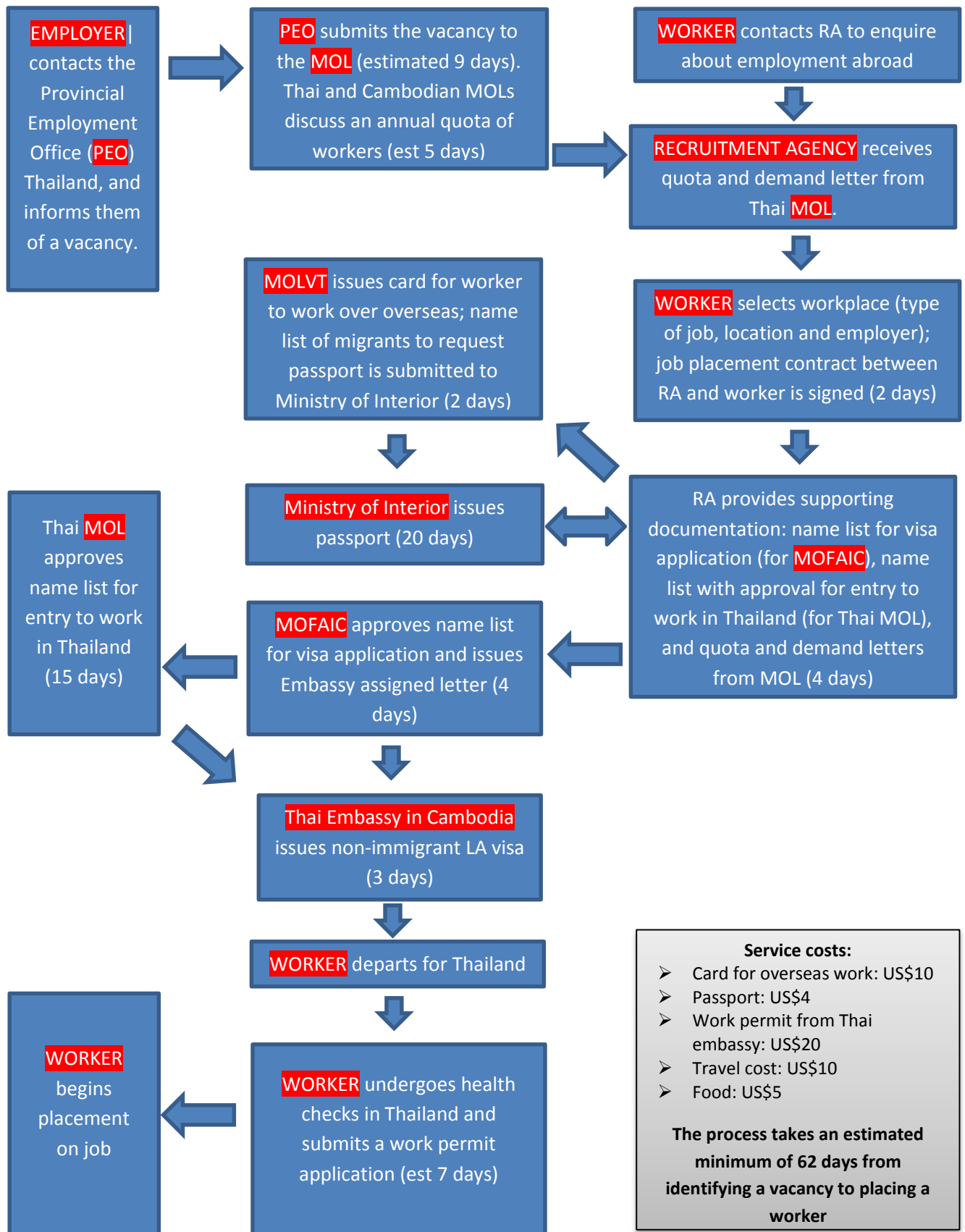
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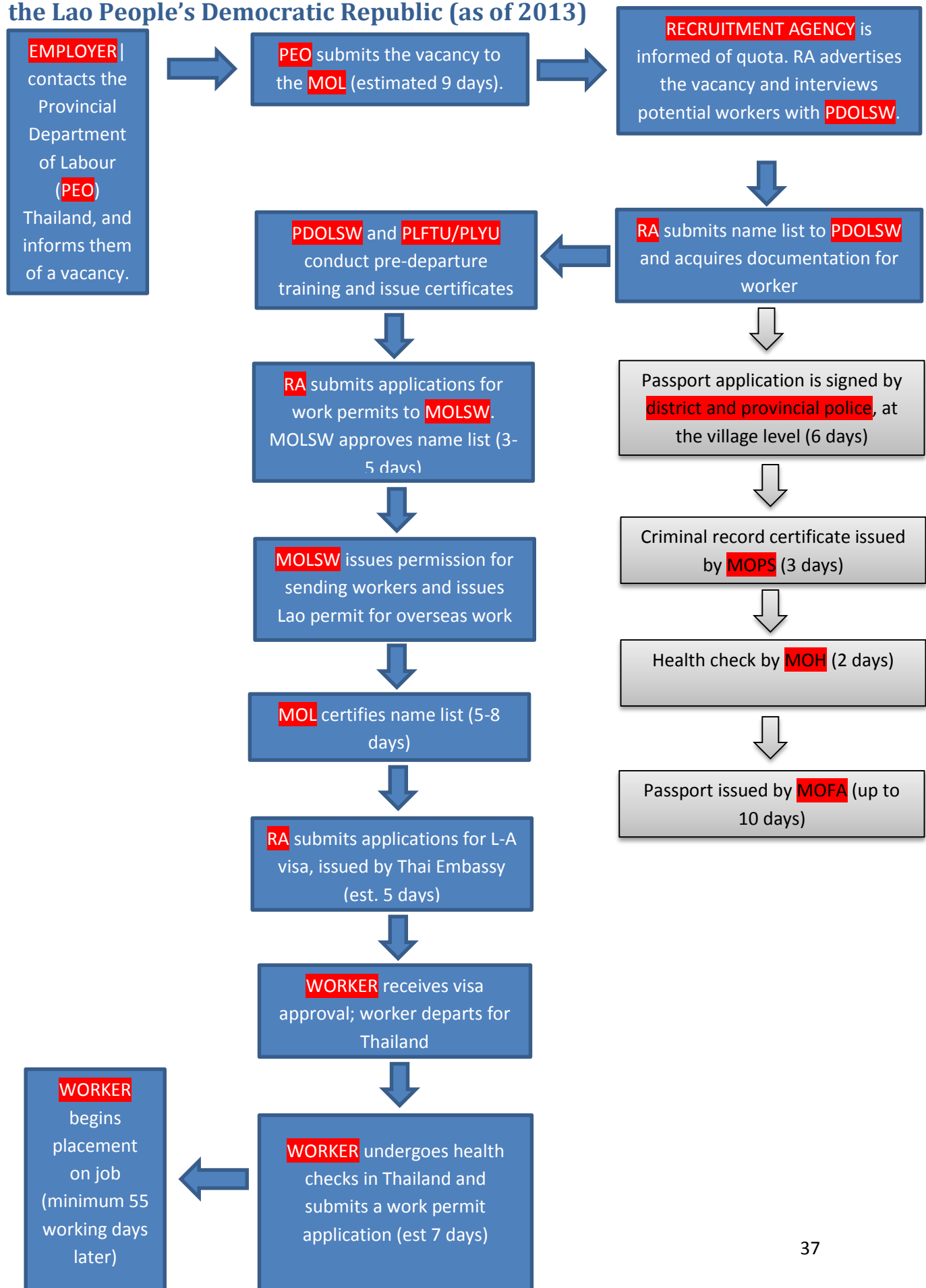
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## Annex 1: MOU recruitment and placement process for workers from Cambodia (as of 2014)



## Annex 2: MOU recruitment and placement process for workers from the Lao People's Democratic Republic (as of 2013)







## **Review on the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries**

Bilateral MOUs were signed between Thailand, and the Governments of Cambodia, the Lao People's Democratic Republic and Myanmar, more than a decade ago. These MOUs remain the principal agreements aimed at jointly managing labour migration between Thailand and neighbouring countries. Given considerable changes to the socio-economic and political context in the Greater Mekong Subregion, the ILO has conducted a review of the effectiveness of these MOUs in managing the flow of migrant workers in these corridors. This review also offers practical recommendations for the strengthening of key aspects of labour migration governance under the MOUs and in national legislation and policy in relation to promoting policy coherence, advancing sound labour market governance, protecting workers' rights, strengthening institutional mechanisms, and encouraging social dialogue. The review and the recommendations draw on international standards and comparative experience, as well as consultations in Thailand and countries of origin with governments, employers, workers' organizations, civil society and recruitment agencies.

The **Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Sub-region** (GMS TRIANGLE project) aims to strengthen the formulation and implementation of recruitment and labour protection policies and practices in the Greater Mekong Subregion, to ensure safer migration resulting in decent work. The project is operational in six countries: Cambodia, the Lao People's Democratic Republic, Malaysia, Myanmar, Thailand and Viet Nam. In each country, tripartite constituents (government, workers' and employers' organizations) are engaged in each of the GMS TRIANGLE project objectives – strengthening policy and legislation, building capacity of stakeholders and providing services to migrant workers. These goals are interdependent, with policy advocacy and capacity building activities driven by the voices, needs and experiences of workers, employers and service providers.

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