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The Right to Health

RIGHT TO HEALTH FOR LOW-SKILLED LABOUR MIGRANTS IN ASEAN COUNTRIES

United Nations Development Programme Bangkok Regional Hub

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This report summarizes the context for labour migration governance and health rights for low-skilled migrant workers, as at March 2014. While every effort has been made to ensure accuracy at the time of writing, readers should note that the laws and policies in the region are complex and constantly changing.

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List of acronyms

ACMW	ASEAN Committee on Migrant Workers
AIDS	Acquired immunodeficiency syndrome
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
BNP2TKI	National Board for the Placement and Protection of Indonesian Overseas Workers
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESC	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CSO	Civil society organization
DOLE	Department of Labor and Employment (Philippines)
FDW	Foreign domestic worker
GDP	Gross domestic product
HIV	Human immunodeficiency virus
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ILO	International Labour Organization
IOM	International Organization for Migration
JUNIMA	Joint UN Initiative on Migration, Health and HIV in Asia
LICADHO	Cambodian League for the Promotion and Defence of Human Rights
MoLISA	Ministry of Labour, Invalids, and Social Affairs (Viet Nam)
MoLVT	Ministry of Labour and Vocational Training (Cambodia)
MoM	Ministry of Manpower and Transmigration (Indonesia)
MoU	Memorandum of understanding
NGO	Non-governmental organization
OFW	Overseas Filipino worker
OHCHR	Office of the High Commissioner for Human Rights
OWWA	Overseas Workers Welfare Administration
PLoS	Public Library of Science
POEA	Philippines Overseas Employment Administration
SKHPPA	Hospitalisation and Surgical Scheme for Foreign Workers (Malaysia)
SPIKPA	Health Insurance Protection Scheme for Foreign Workers (Malaysia)
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGASS	United Nations General Assembly Special Session
VAMAS	Vietnamese Association of Manpower
WHA	World Health Assembly
WHO	World Health Organization

Executive summary

This report provides a comprehensive situational overview of low-skilled labour migration and labour migration governance within South-East Asia, alongside a review of the legal, social, and cultural factors affecting the right to health for migrant workers in the region. An overview of the international standards for the right to health, including their specific application to migrant workers, is included as context for this situational overview.

At a global level, the catalyst for this report is the adoption of the World Health Assembly (WHA) *Resolution on the Health of Migrants* in 2008. Among other things, this resolution calls for the promotion of migrant-sensitive health policies;¹ the establishment of health information systems containing disaggregated data to support analysis of migrant health needs;² and the documentation and sharing of information and best practices for meeting the health needs of migrants in countries of origin, return, transit, or destination.³

While ratification of international standards on migrant workers' rights, and particularly the right to health, differ across the region, the unanimous adoption of the WHA resolution by all 10 members of the Association of Southeast Asian Nations (ASEAN) — Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam — provides a significant regional mandate for action to address the health-related vulnerabilities of migrants, including migrant workers.

At the regional level, specific impetus for the preparation of this report also comes from the second *Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region*, held in Bangkok in November 2011. This meeting was co-convened by the UNDP Bangkok Regional Hub and the ASEAN Secretariat, with technical support from members of the Joint United Nations Initiative on Migration, Health and HIV in Asia (JUNIMA).

During meeting proceedings, government and civil society representatives from each of the ASEAN Member States discussed priorities for action in addressing the health vulnerabilities of migrant workers throughout the whole migration cycle. In particular, participants at this meeting

1 World Health Assembly, *Resolution on Health of Migrants*, article 1.

2 *Ibid.*, article 3.

3 *Ibid.*, article 5.

called for the development of a comprehensive situational overview of migrant workers' health access and related challenges in the region, both to inform policy and to support future advocacy efforts.

The specific aim of this report is to fill this identified gap in the literature. All content provided throughout the report is based on desk review; discussions during multi-stakeholder dialogues; and correspondence with government, civil society, and fellow agencies within the UN family. Draft versions of the report have been reviewed by each of these stakeholders at various stages throughout the writing process. Funding for the report has been jointly provided by the Governance and HIV, Health, and Development Practice Teams within the UNDP Bangkok Regional Hub.

The materials covered in this report are arranged as follows:

Section I reviews the definitions of the right to health, most comprehensively outlined in article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and supplemented by later comments from the ICESCR Committee. This section also introduces the health-related components of international standards specific to migrants' rights, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICMW), *Migration for Employment* (No. 97), *Migrant Workers (Supplementary Provisions) Convention* (No. 143), and *Domestic Workers Convention* (No. 189).

In brief, the 'right to health' is understood as an inclusive right that encompasses a range of complementary rights, such as the right to access food and nutrition, housing, safe and potable water, adequate sanitation, safe and healthful working conditions, and health-related education and information.⁴ For any individual, the right to health means having the freedom to control one's health and body, and the entitlement to a system of health protection that provides equality of opportunity for all.⁵ In practice, this right may be best understood as "a claim to a set of social arrangements—norms, institutions, laws, an enabling environment—that can best secure the highest attainable standard of health."⁶

Following this theoretical introduction, Section I sets the context for the remainder of the report by reviewing current research and understandings of the health vulnerabilities facing migrant workers throughout the migration cycle. Throughout each of the four key stages of migration—pre-departure, transit, settlement in host country, and return—migrant workers can face health-related barriers on a regular basis that go beyond their lack of recognition under the host country's labour laws. These include stigma and discrimination, social exclusion, precarious employment status, exploitative working conditions, and increased occupational health and safety hazards.

4 Committee on Economic Social and Cultural Rights (CESC), 2000, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights", General Comment no. 14, article 11.

5 Ibid., article 8.

6 World Health Organization (WHO), 2005, *25 Questions and Answers on Health and Human Rights*.

Section I concludes by outlining the framework for the ASEAN-specific remainder of the report. In 2010, subsequent to the adoption of the WHA *Resolution on the Health of Migrants*, a follow-up *Global Consultation on Migrant Health* was organized by the World Health Organization and the International Organization for Migration. This consultation produced an *Operational Framework for Migrant Health*, which included four main pillars, or priority areas, to assist in the realization of the WHA resolution. These are: (i) establishment of policy and legal frameworks; (ii) monitoring of migrant health; (iii) partnerships, networks, and multi-country frameworks; and (iv) creation of migrant-sensitive health systems.

Sections II and III of this report provide an up-to-date, region-specific situational overview of labour migration flows and volumes, socio-economic context for migration, and labour migration governance. Section II provides a regional snapshot, while Section III provides country-specific profiles for each of ASEAN's 10 Member States.

In brief, more than 14 million cross-border migrant workers originate from within South-East Asia. While more than 6 million of these workers will remain in the region, the remainder will cross into other regions such as the Arab States and Europe. These workers will move between source and host countries through formal government processes or travel in clandestine ways without proper documentation. Notably, an increasing number of these workers are women, and travelling alone. They may be motivated by opportunities for increased income, vertical job mobility, and skills improvement. They may also be driven to leave their home country by a combination of poverty, critical unemployment levels, or political or environmental upheaval.

Despite the variety of reasons for migrating to work, commonalities exist. The majority of these workers will find themselves in low-skilled, labour intensive sectors in the host countries. Each of these sectors, such as construction, domestic work, agriculture, and seafood processing, presents its own specific set of health hazards, in addition to the broad set of health vulnerabilities that all low-skilled migrant workers face, as introduced in Section I.

This report's regional and country-specific reviews of the broad set of challenges hindering migrant workers' access to health systems and support are structured around the four pillars of the *Operational Framework for Migrant Health*, and findings are summarized in Table 3. Regional recommendations for action under these four pillars are also provided at the close of Section II. Further, country-specific recommendations are included at the end of each country profile in Section III.

Introduction

The economic contribution of low-skilled migrant workers within the South-East Asian region is without question. Source countries reap significant benefit from migrant remittances and greater employment opportunities in the face of high unemployment levels at home. In turn, host countries have access to new sources of labour in the face of demographic and socio-economic changes that might otherwise be detrimental to key export industries.

At the same time, it is widely agreed that the rights of migrant workers will diminish once they cross international borders.⁷ As in other regions across the globe, South-East Asia's migrant workers can face stigma and discrimination, social exclusion, lack of recognition under labour laws, precarious employment status, and exploitative working conditions on a regular basis.

The content of this report focuses on a particular set of rights for migrant workers, namely those that are encompassed under the 'right to health'. This report comes at a time when global health approaches, as their cornerstone, promote access to equitable, culturally sensitive services systems, supported by education and health promotion. It also comes at a time when migrant well-being is increasingly at the fore of international discussions on migration and development.

Broadly speaking, the right to health encompasses the freedom to control one's health and body and the entitlement to a system of health protection that provides equality of opportunity for all.⁸ In practice, we might best understand this right as "a claim to a set of social arrangements — norms, institutions, laws, an enabling environment — that can best secure the highest attainable standard of health."⁹

While ratification of international standards on migrant workers' rights and the right to health differ across the region, the recent *World Health Organization (WHO) Resolution on Migrant Health* was adopted by all 10 ASEAN Member States — Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam — at the 61st World Health Assembly in 2008. This resolution recognizes the increased health risks facing migrants, and calls for the promotion of migrant-sensitive health policies and bilateral and multilateral cooperation on migrants' health among countries involved in the migratory process.

Although examples of supportive policies and practices for the protection of migrant health do exist in the region, the ASEAN Member States' unanimous endorsement of this WHO resolution

⁷ International Commission of Jurists, 2011, *Migration and International Human Rights Law: Practitioners' Guide*, no. 6.

⁸ CESCR, General Comment no. 14, article 8.

⁹ WHO, *25 Questions and Answers*.

provides a significant mandate for regional and national action to further reduce migrant health vulnerabilities throughout the migration cycle.

At the regional level, specific impetus for the preparation of this report also comes from the second *Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region*, held in Bangkok in November 2011. This meeting was co-convened by the UNDP Bangkok Regional Hub and the ASEAN Secretariat, with technical support from members of the Joint UN Initiative on Migration, Health and HIV in Asia (JUNIMA).

During meeting proceedings, government and civil society representatives from each of the 10 ASEAN Member States discussed priorities for action in addressing migrant workers' health vulnerabilities throughout the whole migration cycle. In particular, participants at this meeting called for the development of a comprehensive situational overview of migrant workers health access and related challenges in the region, both to inform policy and to support future advocacy efforts.

However, what is missing is a comprehensive situational overview of the status quo within the region — of labour migration governance and its implications for health access policies for migrant workers; of existing data sources and collection processes on migrant workers' health access; and of existing research and practices hindering or supporting the realization of migrant workers' right to health in the region.

The specific aim of this report is to fill this identified gap in the literature. It provides a broad-based, consolidated, regional knowledge resource as a supplement to the aforementioned mandate for action on migrant health, with a particular focus on low-skilled migrant workers. Its production is based on commentary from government, civil society, and within the United Nations family, which suggests that there is a strong need for a comprehensive situational overview of migrant workers' health access in the region, including existing legal, social, and cultural barriers.

All content provided throughout the report is based on desk review; discussions during multi-stakeholder dialogues; and correspondence with governments, civil society organizations, and agencies within the UN family. Draft versions of the report have been reviewed by each of these stakeholders at various stages throughout the writing process. Funding for the report has been jointly provided by the Democratic Governance and HIV, Health, and Development Practice Teams within the UNDP Bangkok Regional Hub.

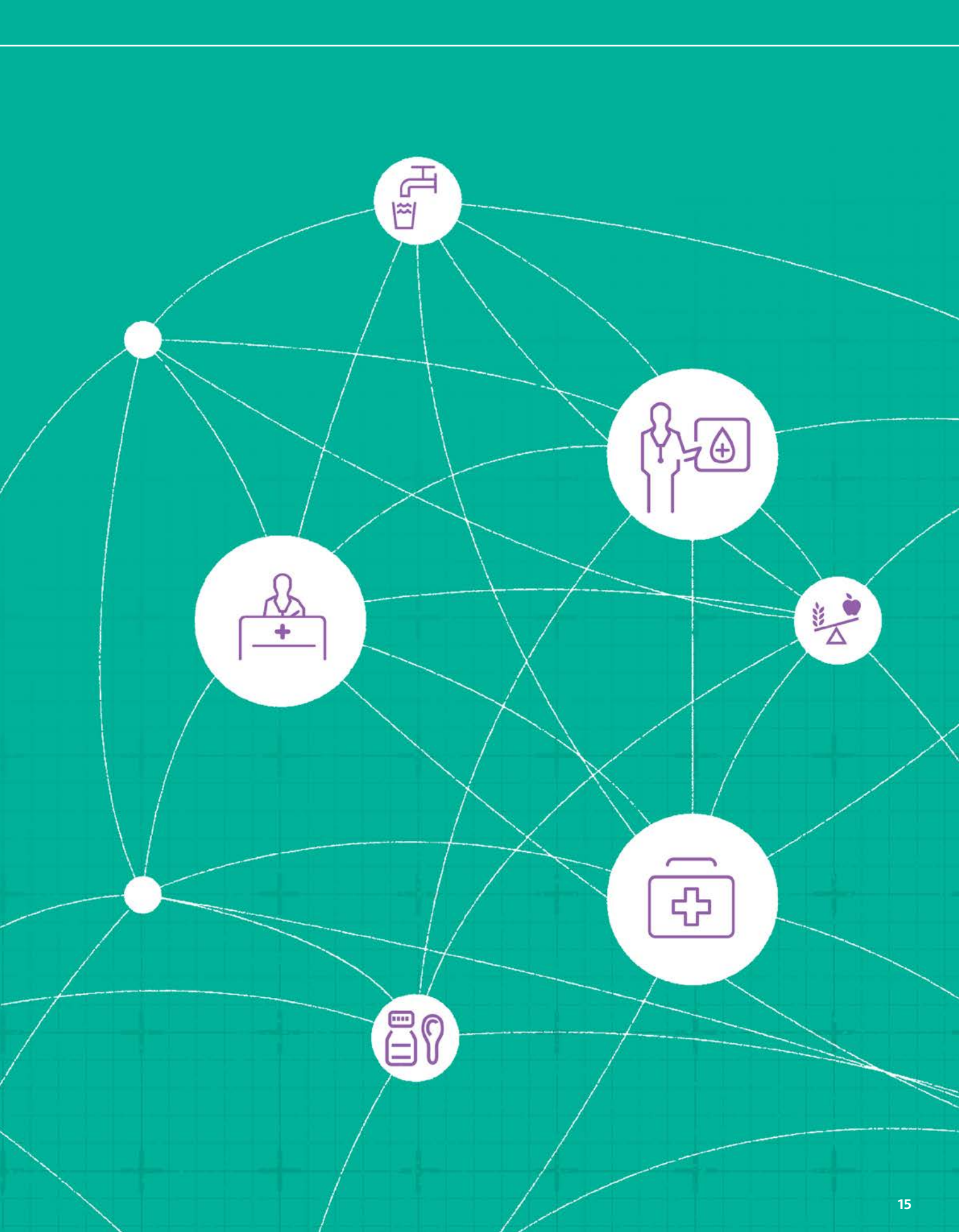
The three separate sections of this report provide:

- an overview of international standards for the right to health, including their specific application to migrant workers;
- a regional situational overview of low-skilled labour migration; of labour migration governance; and of legal, social, and cultural barriers to health access for low-skilled migrant workers; and
- separate country profiles of the above for each of the 10 ASEAN Member States.

Section I

Migrant workers and the right to health





What is the 'right to health'?

The World Health Organization (WHO) defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease.”¹⁰ It is influenced by a broad range of factors, including income and social status, social support networks, education and literacy, employment/working conditions, social environments, physical environments, personal health practices and coping skills, healthy child development, biology, gender, and culture.¹¹

A definition of the ‘right to health’ encompasses a similarly broad range of factors. It is not simply the right to be healthy or the right to health care. It includes complementary rights, such as the right to access food and nutrition, housing, safe and potable water, adequate sanitation, safe and healthful working conditions, and health-related education and information.¹²

The norms, or standards, for the right to health are specifically outlined in article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). This article prescribes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” It includes specific provisions for child and maternal health; environmental and industrial hygiene; medical access and attention for all; and prevention, treatment, and control of diseases.¹³

¹⁰ Preamble to the Constitution of the WHO as adopted by the International Health Conference, New York, 19–22 June, 1946; signed on 22 July 1946 by the representatives of 61 states (Official Records of the World Health Organization, no. 2, p. 100).

¹¹ Hamilton, N., 2010, “Migration Health: Emerging Perspectives”, *Health Policy Research Bulletin*, vol. 17, pp. 3–7, at www.healthcanada.gc.ca/hpr-bulletin.

¹² CESCR, General Comment no. 14, article 11.

¹³ *International Covenant on Economic, Social and Cultural Rights* (ICESCR), article 12.

Since the ICESCR entered into force in 1976, the right to health has been further expanded on by the ICESCR Committee.¹⁴ According to Comment 14 from the Committee, the right to health for individuals means the freedom to control one's health and body and the entitlement to a system of health protection that provides equality of opportunity for all.¹⁵

For State Parties to the ICESCR, there is an obligation to respect, protect, and fulfil the right to health. In practice, this requires the creation and promotion of health and support systems based on four key principles:

- Availability of functioning public health and health-care facilities, goods, and services, including safe and potable drinking water, adequate sanitation, hospitals and clinics, and trained medical and professional personnel receiving domestically competitive salaries.
- Accessibility of health facilities, goods, and services, defined by the principle of non-discrimination, particularly with regard to the vulnerable or marginalized. This includes physical accessibility, economic accessibility (affordability), and information accessibility.¹⁶
- Acceptability of health facilities, goods, and services, which must be respectful of medical ethics and culturally appropriate.
- Quality of health facilities, goods, and services, which must be scientifically and medically appropriate and of good quality, including skilled medical personnel, scientifically approved and unexpired drugs, safe and potable water, and adequate sanitation.¹⁷

Beyond the ICESCR, aspects of the right to health are also covered in a range of other key human rights instruments. Some of these protections are covered in Table 1. A detailed summary of specific conventions and the rights they cover is also found in the Annex of this report.

¹⁴ The Committee on Economic, Social and Cultural Rights (CESC) is the body of 18 independent experts that monitors implementation of the *International Covenant on Economic, Social and Cultural Rights* by its States parties.

¹⁵ CESC, General Comment no. 14, article 8.

¹⁶ *Ibid.*, article 4.

¹⁷ *Ibid.*, article 12.



Table 1

RIGHT TO HEALTH IN INTERNATIONAL CONVENTIONS

Convention	Relevant articles and comments	Right to health protections
<i>International Covenant on Economic Social and Cultural Rights (ICESCR)</i>	ICESCR Article 7	The right to safe and healthy working conditions.
	ICESCR Article 9	The right to social security, including social insurance.
	ICESCR Article 12	The right to the enjoyment of the highest attainable standard of physical and mental health.
	CESCR General Comment 14	Expands on right to the highest attainable standard of physical and mental health.
<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>	CEDAW Article 11 (1) f	The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction, on a basis of gender equality.
	CEDAW Article 12 and CEDAW Article 14 (2) b	The right to access health-care facilities, including information, counselling, and services in family planning, on a basis of gender equality.
	CEDAW General Comment 24	Expands on women's right to access health care, including reproductive health.
<i>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</i>	Article 5 (e) iv	The right of everyone to public health, medical care, social security, and social services, without distinction as to race, colour, or national or ethnic origin.
<i>Convention on the Rights of the Child (CRC)</i>	Article 24	The right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

The right to health for migrant workers

The general standards for right to health are more specifically applied to migrant workers in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICMW). This convention recognizes migrant workers as a group vulnerable to rights' violations and sets out a framework for "equitable and humane conditions of international migration".¹⁸ It recognizes the importance of providing migrant workers with access to social security, emergency medical care,¹⁹ and health and social services,²⁰ and stipulates that migrant workers should have access to the same treatment as nationals of the state of employment in respect to working conditions.²¹

Alongside the ICMW, the International Labour Organization's *Migration for Employment* (No. 97), *Migrant Workers (Supplementary Provisions) Convention* (No. 143), and *Domestic Workers Convention* (No. 189) also stipulate certain health protections specifically for migrant workers. These include standards with regard to medical examinations; care and hygiene before the migration journey, during the journey, and on arrival;²² equality of opportunity with regard to social security;²³ weekly rest periods; and protection from abuse.

¹⁸ *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families*, p. 9.

¹⁹ *Ibid.*, article 28.

²⁰ *Ibid.*, articles 43 and 45.

²¹ *Ibid.*, article 25. This article has important implications for advocacy on recognition of predominantly female foreign domestic workers, who are not recognized under employment law in any of the host countries among ASEAN Member States.

²² International Commission of Jurists, *Migration and International Human Rights Law*, p. 211.

²³ ILO Convention No. 143, article 10.

In line with these international standards, current global health approaches also endorse the public health benefits of a functioning health system accessible to all, without discrimination.²⁴ These approaches emphasize the need to address disparities in health status in order to improve overall public health. For migrant workers this means that their health status is no longer framed as a threat to human security or a source of disease, as it may have been in the past. Instead, exclusion and discrimination is replaced with a push for equitable, culturally sensitive service systems, supported by education and health promotion.

In reality, however, despite the ICESCR's comprehensive standards for right to health, and their specific application to migrant workers in the conventions and approaches described above, migrant workers can face a broad range of potentially serious health challenges throughout the migration cycle. A growing body of research addresses some of these connections between health and migration²⁵ and the range of health vulnerabilities of each stage of the migration continuum.²⁶

World Health Assembly Resolution on the Health of Migrants

The WHO *Resolution on the Health of Migrants* was adopted by all WHO Member States, including all 10 ASEAN Member States, at the 61st World Health Assembly in 2008. This resolution recognizes that health outcomes can be influenced by the multiple dimensions of migration, that some groups of migrants experience increased health risks, and that there is a need for additional data on migrants' health and their access to health care.

It calls on Member States to promote migrant-sensitive health policies;²⁷ to establish health information systems in order to assess and analyse trends in migrants' health, disaggregating health information by relevant categories;²⁸ to gather, document, and share information and best practices for meeting migrants' health needs in countries of origin, return, transit, or destination;²⁹ to raise the cultural and gender sensitivity of health service providers and professionals regarding migrants' health issues;³⁰ to promote bilateral and multilateral cooperation on migrants' health among countries involved in the whole migratory process.³¹

24 Fitchett, J., 2010, "The right to health in practice", *International Journal of Clinical Practice*, vol. 65(3), pp. 245–248.

25 Gushulak, B., and MacPherson, D., 2011, "Health Aspects of the Pre-Departure Phase of Migration", *Public Library of Science Medicine*, vol. 8(5).

26 Benach, J., Muntaner, C., Delclos, C., Menéndez, M., and Ronquillo, C., 2011, "Migration and 20 Low-Skilled Workers in Destination Countries", *Public Library of Science Medicine*, vol. 8(6).

27 WHA, *Resolution on Migrant Health*, article 1.

28 *Ibid.*, article 3.

29 *Ibid.*, article 5.

30 *Ibid.*, article 7.

31 *Ibid.*, article 8.



Table 2

MIGRANT-SPECIFIC RIGHT TO HEALTH IN INTERNATIONAL CONVENTIONS

Convention	Relevant articles and comments	Right to health protections
<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)</i>	Article 28	The right to receive emergency medical care.
	Article 43 (1) e	The right to access social and health services, provided that the requirements for participation in the respective schemes are met.
	Article 45 (c)	The right for families of migrant workers to access social and health services, provided that requirements for participation in the respective schemes are met.
<i>Migration for Employment Convention (ILO No. 97)</i>	Article 5 (b)	Member Parties to ensure that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey, and on arrival in the destination country.
<i>Migrant Workers (Supplementary Provisions) Convention (ILO No. 143)</i>	Article 9	Member Parties to ensure equal treatment for migrant workers with regard to social security.
<i>Domestic Workers Convention (ILO No. 189)</i>	Article 13	Member Parties to ensure the right to a safe and healthy working environment for domestic workers.
<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>	CEDAW General Comment 26	Expands on the rights of women migrant workers, including recommendations relating to safe migration and access to health services, including reproductive health care.

Operational Framework for Migrant Health

In 2010, a follow-up Global Consultation on Migrant Health organized by WHO and the International Organization for Migration produced an *Operational Framework for Migrant Health*. In essence, this framework establishes four priority pillars to help WHO Member States to operationalize the goals of the *Resolution on the Health of Migrants*.

The four pillars focus on: (i) the establishment of policy and legal frameworks; (ii) monitoring of migrant health; (iii) partnerships, networks, and multi-country frameworks; and (iv) creation of migrant-sensitive health systems. Key priorities for action were established under each of these pillars, as summarized in Table 3.³²

³² WHO, 2010, *Health of Migrants the way forward*; report of a global consultation, Madrid, Spain, 3–5 March, 2010.



Table 3

PRIORITIES FOR ACTION UNDER THE WHO/IOM OPERATIONAL FRAMEWORK FOR MIGRANT HEALTH

Monitoring migrants' health, priorities

Ensure the standardization and comparability of data on migrant health

Increase the better understanding of trends and outcomes through the appropriate disaggregation and analysis of migrant health information in ways that account for the diversity of migrant populations

Improve the monitoring of migrants' health-seeking behaviours, access to and utilization of health services, and increase the collection of data related to health status and outcomes for migrants

Identify and map: 1) good practices in monitoring migrant health; 2) policy models that facilitate equitable access to health for migrants; and 3) migrant-inclusive health systems models and practices

Develop useful data that can be linked to decision-making and monitoring of the impact of policies and programmes.

Policies and legal frameworks affecting migrant health, priorities

Adopt and implement relevant international standards on the protection of migrants and the right to health in national law and practice

Develop and implement national health policies that incorporate a public health approach to the health of migrants and promote equal access to health services for migrants, regardless of their status

Monitor the implementation of relevant national policies, regulations and legislation responding to the health of migrants

Promote coherence among policies of different sectors that may affect migrants' ability to access health services

Extend social protection in health and improve social security for all migrants

Migrant-sensitive health systems, priorities

Ensure that health services are delivered to migrants in a culturally and linguistically appropriate way, and enforce laws and regulations that prohibit discrimination

Adopt measures to improve the ability of health systems to deliver migrant-inclusive services and programmes in a comprehensive, coordinated and financially sustainable way

Enhance the continuity and quality of care received by migrants in all settings, including that received from NGO health services and alternative providers

Develop the capacity of the health and relevant non-health workforce to understand and address the health and social issues associate with migration

Partnerships, networks and multi-country frameworks, priorities

Establish and support ongoing migration health dialogues and cooperation across sectors and among key cities, regions and countries of origin, transit and destination

Address migrant health matters in global and regional consultative migration, economic and development processes (e.g., Global Forum and Development, Global Migration Group, RCPs, United Nations High-Level Dialogue on International Migration and Development)

Harness the capacity of existing networks to promote the migrant health agenda

Protecting migrant workers' right to health in the ASEAN region

Within the ASEAN region, the Philippines and Indonesia are the only states to have ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. Although Cambodia signed the convention in 2004, it has yet to ratify it.³³ While ratification of this and international standards on migrant workers' rights and right to health differ across the region, the unanimous adoption of the *WHA Resolution on the Health of Migrants* provides a significant regional mandate for action to address the health-related vulnerabilities of migrants, including migrant workers.

³³ United Nations, *Treaty Collection*, at <https://treaties.un.org>.

As the evidence base on migrant health vulnerabilities continues to grow, a number of other regional processes within ASEAN are also beginning to call for stronger responses on these issues. The *ASEAN Socio-Cultural Community Blueprint 2009–2015* includes priorities such as promotion of decent work,³⁴ access to health care, and promotion of healthy lifestyles for migrant workers. The *Dhaka Declaration 2011*, signed by four ASEAN Member States, recommends “the implementation of migrant-inclusive health policies to ensure equitable access to health care and services as well as occupational safety and health for migrant workers.”³⁵

The *ASEAN Declaration on the Protection and Promotion of Migrant Workers Rights* was adopted by all ASEAN Member States in 2007. Although legally non-binding, it contains obligations for both sending and receiving states to enhance protections of human rights and the welfare and dignity of migrant workers. In addition, the *ASEAN Declaration of Commitment: Getting to Zero New Infections, Zero Discrimination, Zero AIDS-Related Deaths*, which was adopted by all 10 ASEAN Member States in 2011, commits to addressing access barriers to HIV treatment for migrant and mobile populations.³⁶

At a global level, the *UN General Assembly's Political Declaration on HIV/AIDS 2011*, endorsed by all ASEAN Member States, includes a specific commitment to “address, according to national legislation, the vulnerabilities to HIV experience by migrant and mobile populations and support their access to HIV prevention, treatment, care and support.” Similarly, the *International Labour Organization (ILO) Recommendation 200: Recommendation Concerning HIV and AIDS and the World of Work* endorses the prohibition of mandatory testing, screening, or disclosure at any stage of migration, as well as the prohibition of discrimination in, or exclusion from, migration on the basis of real or perceived HIV status.³⁷

³⁴ ASEAN Socio-Cultural Community Blueprint, Section A(3), Human Development.

³⁵ Dhakar Declaration, 2011, was a statement of recommendations from the *Colombo Process* — a regional consultative process on overseas employment and contractual labour for countries of origin in Asia. ASEAN Member States involved are Indonesia, Philippines, Thailand, and Viet Nam.

³⁶ Article 18(b)ii.

³⁷ ILO, 2010, “Recommendation Concerning HIV and AIDS and the World of Work”, article 3, (c), at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142613.pdf.



Table 4

RATIFICATION OF INTERNATIONAL TREATIES PROTECTING RIGHT TO HEALTH WITHIN ASEAN

Country	<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i>	<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>	<i>International Covenant on Civil and Political Rights (ICCPR)</i>	<i>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</i>	<i>Convention on the Rights of the Child (CRC)</i>
Brunei Darussalam	✗	✓	✗	✗	✓
Cambodia	✓	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓	✓
Lao PDR	✓	✓	✓	✓	✓
Malaysia	✗	✓	✗	✗	✓
Myanmar	✗	✓	✗	✗	✓
Philippines	✓	✓	✓	✓	✓
Singapore	✗	✓	✗	✗	✓
Thailand	✓	✓	✓	✓	✓
Viet Nam	✓	✓	✓	✓	✓



Table 5

RATIFICATION OF INTERNATIONAL TREATIES PROTECTING MIGRANT WORKERS' RIGHTS WITHIN ASEAN

Country	<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)</i>	<i>Migration for Employment Convention (ILO No. 97)</i>	<i>Migrant Workers (Supplementary Provisions) Convention (ILO No. 143)</i>	<i>Domestic Workers Convention (ILO No. 189)</i>
Brunei Darussalam	✗	✗	✗	✗
Cambodia	✗	✗	✗	✗
Indonesia	✓	✗	✗	✗
Lao PDR	✗	✗	✗	✗
Malaysia	✗	✗	✗	✗
Myanmar	✗	✗	✗	✗
Philippines	✓	✓	✓	✓
Singapore	✗	✗	✗	✗
Thailand	✗	✗	✗	✗
Viet Nam	✗	✗	✗	✗

Health vulnerabilities through the migration cycle

While biology and genetics will clearly play a determining role in a person's health, migrant workers also face particular kinds of stigma and discrimination that can lead to detrimental health outcomes. Throughout the migration cycle, migrant workers may experience increased vulnerability to interpersonal and occupational hazards, social exclusion, inadequately targeted health programmes, and restricted access to health services.³⁸

Recent research also documents fear of reprisals among migrant workers for demanding better working conditions, migrant workers concealing their need for medical care from employers, lack of knowledge regarding their rights as workers, and difficulty accessing care and compensation when injured.³⁹ The practice and dangers of self-medication by migrant workers, in some cases using inappropriate medication, are also being investigated.⁴⁰

On a positive note, there is now a strong evidence base to support more inclusive health and labour policies and practices to address these vulnerabilities. The importance of universal access

³⁸ WHO, *Health and Human Rights*, p. 11.

³⁹ Benach, Muntaner et al., 2010, "Migration and Low Skilled Workers in Destination Countries", in *Public Library of Science (PLoS) Medicine*, vol. 8(6).

⁴⁰ Naing, T., Geater, A., and Punggrassami, P., 2012, "Migrant workers' occupation and health care-seeking preferences for TB-suspicious symptoms and other health problems: A survey among immigrant workers in Songkhla province, southern Thailand", *BioMed Central International Health and Human Rights*, vol. 12(22).

and culturally competent health care services is recognized,⁴¹ as is the link between health access and legal status as an impediment to accessing health services.⁴²

The cost of financing health care for migrants in host countries is also under examination,⁴³ as are the economic arguments for providing access to health services to safeguard a healthier workforce,⁴⁴ and the efficacy and feasibility of providing social protection to migrant workers.⁴⁵ More recently, the general health situation of migrants with precarious status⁴⁶ and the need for health care and support for irregular migrant workers⁴⁷ are also being investigated.

The following is a broad summary of some of the factors determining migrant health in each of four key migration stages: pre-departure, transit, settlement, and return. A number of key overarching issues related to the increased health vulnerabilities of migrant workers are also mentioned throughout, including feminization of the workforce, politicization of migration and securitization of borders, privatization of the recruitment process, HIV-related travel restrictions, and stigma and discrimination.

Pre-departure phase

Migrants' pre-migratory health status is a determinant of health throughout the migration cycle. A broad range of factors will influence pre-migratory health status, including socio-economic status, biology, genetics, behaviour, and environment.⁴⁸ Migrants' level of health education and awareness will exert a strong influence over health outcomes throughout the migration cycle. While pre-departure training for migrant workers is legislated in some source countries, it is not always the case that health is well-covered. From the perspective of the migrant, much of this information is also delivered in the days immediately prior to departure, leading to it being lost amidst other departure information. In many cases, the delivery of pre-departure training is the responsibility of private recruitment agencies, while governments lack the human resource capacity to monitor delivery and its quality.

Increased privatization of the recruitment process and the shift in governance of workers from departments and ministries of immigration or labour to for-profit recruitment agencies can also increase the health vulnerability of workers. Pre-migratory access to medical treatment, medical testing, and the provision of safe working conditions and sanitary housing is now the responsibility of private recruitment agencies in many countries. Research suggests that there is

41 Zimmerman, C., Kiss, L., and Hossain, M., 2011, "Migration and Health: A Framework for 21st Century Policy Making", *Public Library of Science (PLoS) Medicine*, vol. 8(5).

42 World Health Assembly (WHA), 2008, *Health of Migrants*, report by the Secretariat, article 6.

43 International Organization for Migration (IOM)/WHO, 2009, *Financing Healthcare for Migrants: A case study from Thailand*.

44 Burns, 2010, in IOM, *Thailand Migration Report 2011*, p. 24.

45 Mahidol Migration Centre, 2011, *Migrant Workers Rights to Social Protection in ASEAN: Case studies of Indonesia, Singapore, Philippines, and Thailand*; International Labour Organization (ILO), 2008, *Social Health Protection: An ILO strategy towards universal access to health care*.

46 Brabant, Z., 2012, "Health situation of migrants with precarious status: review of the literature and implications for the Canadian context", *Journal of Social Work in Public Health*, vol. 27(4), p. 336.

47 European Agency for Fundamental Rights, 2011, *Migrants in an Irregular Situation: Access to health care in 10 European Member States*.

48 Gushulak, B. D. and MacPherson, D. W., 2011, "Health Aspects of the Pre-Departure Phase of Migration", *Public Library of Science (PLoS) Medicine*, vol. 8(5).

little punitive punishment for recruitment agencies, with some engaging in unethical practices that may contribute to irregular migration, causing hardship to migrant workers.⁴⁹

Increased regulation of the migration process is having a questionable effect on the health of migrants throughout the migration cycle. Although the region is seeing an increase in bilateral cooperation on the recruitment and deployment of migrant workers, policy reviews suggest that increased regulation of the recruitment process does not necessarily lead to increased protections for migrant workers. In some cases, increasingly complex, bureaucratic, and expensive recruitment processes are leading migrants to travel undocumented. Increasing numbers of undocumented workers will receive little to no pre-departure health preparation and have little to no access to health services throughout the migration cycle.

Transit phase

Migrants' mode of travel can exert an influence over health outcomes. Clandestine travel methods can pose particular health challenges. In particular, travel methods of some undocumented workers can render them more vulnerable to abuse during attempts to cross borders.

Gender also plays a strong role in this phase. As increasing numbers of women and girls are migrating alone, research suggests that some female migrants are "forced to engage in transactional and unprotected sex with unscrupulous acts, including corrupt border officials, to facilitate border crossings"⁵⁰

Settlement phase in host country

Precarious employment status can create psychological distress and have direct negative health outcomes. It can also leave migrant workers afraid to report abuse or unacceptable working conditions.⁵¹ Precarious employment is shaped by the relationship between employment status, form of employment, and dimensions of labour market insecurity, as well as social context and social location. As a result of this status, migrant workers can suffer from excessive working hours, insufficient rest, and very low wages, which have a flow-on effect on their well-being.⁵² In certain cases, for example in domestic work, the nature of the work and the asymmetrical power relationship between employer and worker can make it very difficult for the worker to report the abuse and seek help if needed.⁵³

49 ILO, 2004, *Resolution on a fair deal for migrant workers in the global economy*.

50 IOM, 2012, *Issue in Brief*, p. 3; Information Note: Protect the human rights of all migrants (Office of the High Commissioner for Human Rights discussion note 27072010).

51 Brabant, Z., 2012, "Health situation of migrants with precarious status: Review of the literature and implications for the Canadian context", *Journal of Social Work in Public Health*, vol. 27(4).

52 Tomei and Belsler, 2011, "New ILO standards on decent work for domestic workers: A summary of issues and discussions", *International Labour Review*, vol. 150 (3–4).

53 "Human Rights and Female Migrant Labour in Asia", in *Gender, Emotions and Labour Markets: Asian and Western Perspectives*, p. 57.

A lack of recognition under national labour laws means that temporary unskilled workers have limited access to protections in host countries compared to national workers. This weak legal position translates directly into vulnerabilities in other areas of life, including health care and access to services.⁵⁴ Lack of legal recognition can also lead indirectly to exclusion from health care, as employers may use a range of exploitative methods for controlling workers, including holding passports or identity cards or not hiring workers who refuse to give up passports.⁵⁵ A lack of formal identification and papers makes access to health care particularly difficult. Research in other regions, particularly among undocumented workers, also discusses the implications of a potentially widespread practice of migrants using the identification or health care cards of others to access services, which can cause issues in terms of non-matching health profiles and treatment histories.

Social exclusion and work-related social problems can have serious detrimental effects on migrant workers. Issues range from lack of linguistic and cultural affinity with host country surroundings to specific job-related issues of confinement and isolation. For example, the physical confinement of domestic workers to one workplace prevents physical access to community contacts and health care providers. Similar isolation exists for example for predominantly male seafarers, who are often away at sea for long periods of time, with little or no contact with health care providers.

Lax occupational health and safety standards, particularly in those sectors such as construction, plantation, and domestic work in which low-skilled migrant workers are concentrated, can have serious influence on health. Lack of safety training or linguistic barriers that minimize the effectiveness of training when it does exist can exacerbate potential dangers; and research suggests that there are significant rates of injury and work-related deaths among migrant workers.⁵⁶

Regarding migrants' approach to use of health services, research shows that those arriving from fee-for-service environments may be unaware or unfamiliar with the provision of nationally insured services, even where they do exist.⁵⁷ Fear of potential consequences of accessing health services can also affect those travelling from well-policed environments. Recent research on health access for irregular migrant workers in the European Union found five main barriers to receiving and providing care: (i) costs of care and complex reimbursement procedures; (ii) unawareness of entitlements by health providers and beneficiaries; (iii) fear of detection due to information passed on to the police; (iv) discretionary power of public and health care authorities; and (v) quality and continuity of care. Some of these obstacles often also concern emergency health care.⁵⁸

Cultural competency of health care providers and the ability to deal with diversity are recognized as integral components of effective health care in host countries.⁵⁹ Caregivers require greater awareness of pre-departure factors for migrant populations in order to accommodate specific

54 Brabant, Z., op. cit.

55 Human Rights Watch, 2010, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East*.

56 Ibid.

57 Gushulak and MacPherson, op. cit.

58 European Agency for Fundamental Rights, op. cit.

59 Gushulak and MacPherson, op. cit.

migrant needs and to reduce barriers related to different cultural norms.⁶⁰ There is a growing evidence base to support culturally sensitive, non-discriminatory care that places a high value on the ways in which communication between health care providers and clients could and should be improved.⁶¹

Poor policy coordination and contradictory policy goals, such as increasing foreign labour requirements while maintaining restrictive rights for migrants, can pose indirect health challenges by increasing the number of undocumented or irregular workers migrating to meet labour demands in host countries.⁶² Commentators have recommended that health access and care need to be removed from politics⁶³ or issues of legal migration.

Return and re-integration phase

Accumulation of health factors throughout the migration cycle can lead to detrimental health outcomes following return to the home country. Migrants who have experienced precarious employment, suffered poor work and living conditions, or experienced social isolation and difficulties in accessing health services may have been exposed to other risk factors that promote poor health. Those who, for example, have been deported due to HIV status or other illness may need health care that does not exist in their home countries or which they cannot afford.⁶⁴

Method of return is also a factor. If migrants are deported or forcibly returned, they may not receive adequate health assistance during detention or referral to health services prior to and post-return. In all host countries in the ASEAN region, documented migrant workers must undergo mandatory medical screening following arrival. Deportation can occur for a number of reasons, including pregnancy, HIV/AIDS, tuberculosis, and hepatitis status. In many cases, migrant workers are not informed of the results of mandatory medical testing or the specific reason for deportation, nor are they offered counseling or access to health services.⁶⁵

⁶⁰ Ibid.

⁶¹ IOM, 2010, *Migration Health: Report of Activities 2010*, p. 8ff.

⁶² Zimmerman et al., 2011, *Migration and Health: A framework for 21st century policy-making*.

⁶³ Summerskill, W. and Horton, R., 2011, "Health in South-East Asia", *The Lancet*, vol. 373(9763), pp. 355–356.

⁶⁴ Davies, A. A., Borland, R. M., Blake, C., and West, H. E., 2011, "The Dynamics of Health and Return Migration", *Public Library of Science (PLoS) Medicine*, vol. 8(6).

⁶⁵ Joint United Nations Initiative on Migration, Health and HIV in Asia (JUNIMA), 2014 (forthcoming), "Assessment of Mandatory Screening Practices in Cambodia, Indonesia and the Philippines and the Impact on Migrant Workers".



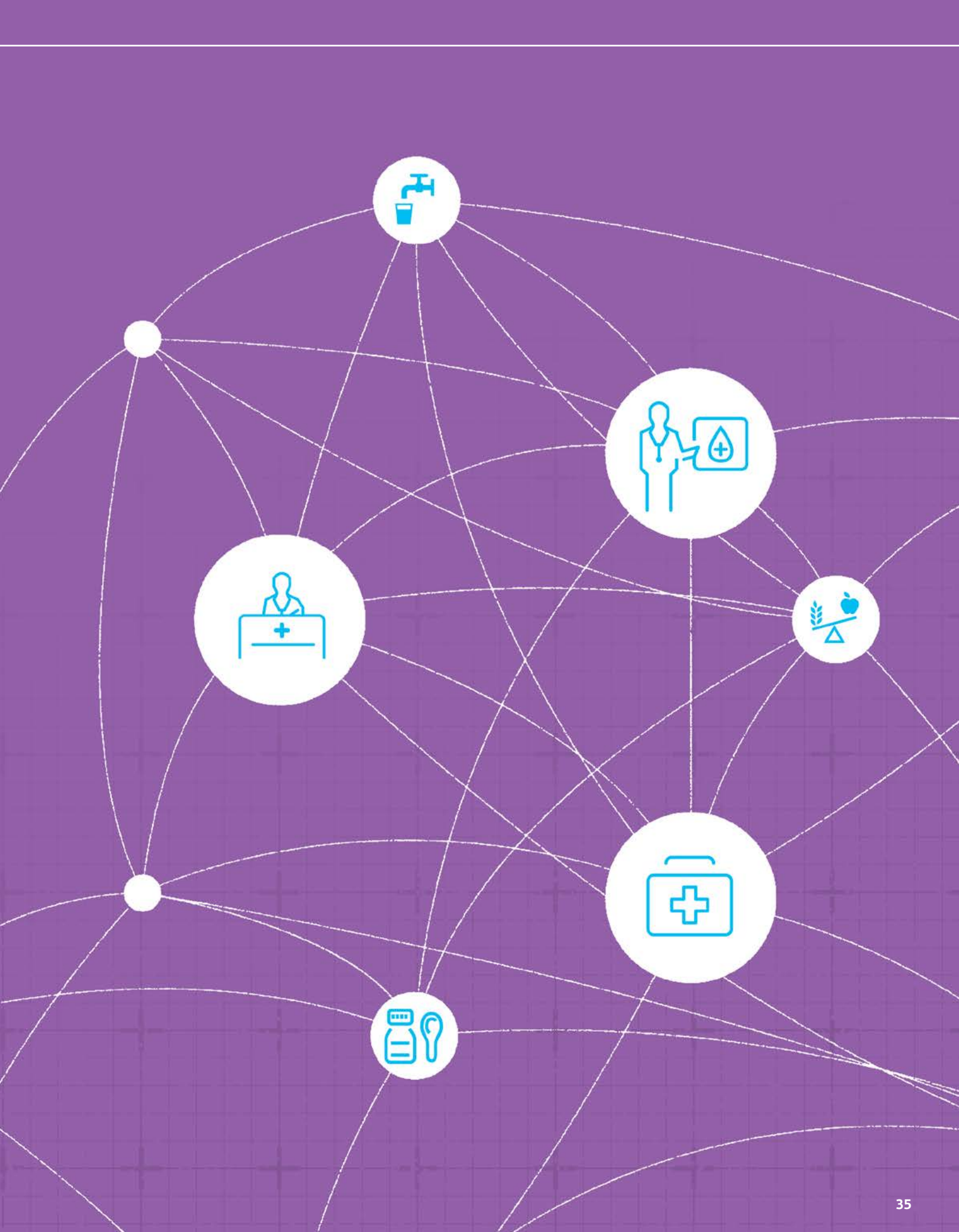
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Section II

Regional overview





Low-skilled labour migration in the South-East Asian region

Labour migration patterns

More than 14 million cross-border migrant workers originate from within South-East Asia. More than 6 million of these workers move to work in other countries within the region, while the remaining move to other regions, such as Europe and the Arab States. Primary source countries within the South-East Asian region are Cambodia, Lao PDR, Indonesia, Myanmar, Philippines, and Viet Nam. Primary host countries are Malaysia, Thailand, Singapore, and Brunei Darussalam — hosting 90 percent of the region’s migrant workers, alongside workers from South Asian countries, particularly Bangladesh and Nepal.

Low-skilled migrant workers travelling within, to, and from the South-East Asian region may move between source and host countries through formal government processes or travel in clandestine ways without proper documentation. Undocumented or irregular migrant workers — that is, those migrants who enter a country without proper documentation or who remain in a country following expiration of legal documentation — are present in all 10 ASEAN Member States, though to varying degrees.

The distinction between documented and undocumented or irregular workers is by no means clear, with many workers shifting fluidly between the two statuses. For example, a migrant worker may enter a country with proper documentation but become irregular as a result of changes in employment, visa or permit overstay, employer negligence, or the inability to navigate and/or afford legal registration procedures. The high volume of undocumented or irregular labour migration that occurs alongside migration through formal government processes in this region makes accurate estimates difficult to ascertain.

The two principal migration corridors within South-East Asia are the Mekong subregional corridor and the archipelagic ASEAN corridor.⁶⁶ In the first corridor, Thailand is the main destination country for migrant workers from neighbouring countries within the Greater Mekong Subregion, namely Myanmar, Cambodia, and Lao PDR. Low-skilled migrant workers from Viet Nam are also found in Thailand,⁶⁷ Cambodia, and Lao PDR. In the second corridor, Malaysia, Singapore, and Brunei Darussalam are the major destination countries. These three countries host significant numbers of migrant workers from Indonesia, as well as increasing numbers from Cambodia, Myanmar, and Viet Nam.

Migrant workers from South Asia also flow into South-East Asian host countries, particularly Malaysia and Singapore. Singapore, for example, is one of the top five destination countries for migrant workers from Bangladesh.⁶⁸ Malaysia has also been the top destination for documented Nepalese migrant workers for a number of years, hosting 38 percent of total documented deployments of Nepalese migrant workers in 2009.⁶⁹

Increasing numbers are also moving into the Arab States (mainly Saudi Arabia, United Arab Emirates, and Bahrain) and East Asia (mainly Taiwan, Republic of Korea [henceforth South Korea], Hong Kong Special Administrative Region, and Japan). For example, the number one destination region for documented Filipino female domestic workers is the Middle East, particularly Saudi Arabia.⁷⁰ Cambodia and Myanmar are also deploying an increasing number of female domestic workers to the Arab States, driven in particular by an Indonesian Government moratorium on supplying its female domestic workers to this region. For Viet Nam, the East Asian region is a primary destination, with the top three host countries for Vietnamese domestic workers being Taiwan, South Korea, and Japan.

66 Kaur, A., 2010, Labour Migration in Southeast Asia: Migration policies, labour exploitation, and regulation, *Journal of the Asia Pacific Economy*, vol. 15(1), pp. 6–19.

67 Although these workers are not formally recognized under Thai legislation.

68 Asia-Pacific RCM Thematic Working Group on International Migration including Human Trafficking, 2012, *Situation Report on International Migration in South and South-West Asia*, p. 34.

69 Ibid., p. 82, based on statistics provided by Nepal's Department of Foreign Employment.

70 Philippines Overseas Employment Administration, 2010, *Overseas Employment Statistics: 2010*, at http://www.poea.gov.ph/stats/2010_Stats.pdf.

Estimates of labour migration

Within the region, the Philippines and Indonesia are sources of the greatest number of migrant workers. Filipino migrant workers are currently deployed at an annual rate of approximately 1.5 million;⁷¹ and of the total 8.5 million Filipinos currently abroad, more than 50 percent are either documented temporary migrant workers or undocumented migrant workers. In the case of Indonesia, official estimates place approximately 6 million migrant workers abroad, including 4.2 million documented workers and 2 million undocumented workers.⁷²

By comparison, at the lower end of the scale, current estimates of Vietnamese migrant workers abroad, both documented and undocumented, are approximately a half-million, with an annual deployment target of 90,000 documented workers as of 2012.⁷³ Estimates from other countries are difficult to verify, given the high numbers of irregular migration that occurs. For example, both Cambodia and Lao PDR are very new to the formalized processes of labour migration, with more than 90 percent of Laotian workers travelling via irregular means.

Among host countries, Malaysia and Thailand are host to the greatest volumes of workers. In 2011, Malaysia was host to approximately 2.3 million migrant workers, including just over 1 million documented and 1.3 million undocumented workers,⁷⁴ while in the same year Thailand was host to approximately 1.5 million documented or semi-documented workers and between 1.5 million to two to four-times this number of undocumented workers.⁷⁵ In terms of workforce percentages, migrant workers constitute a significant proportion of the workforce in the region's two other host countries, Brunei Darussalam and Singapore. In Brunei Darussalam, the predominantly low- and semi-skilled temporary migrant workforce constitutes approximately 25 percent of the total workforce. In Singapore, this figure is approximately 30 percent.

With regard to gender ratios, recent estimates point to a feminization of labour migration in the region, particular among primary source countries. For example, in Indonesia the ratio of female to male workers in 2011 was 64 percent to 36 percent. In the Philippines, government statistics also suggest that more than 60 percent of deployments over the past 10 years have been female.⁷⁶

71 Philippines Department of Labour and Employment, 2011, *The Philippine Labor and Employment Plan, 2011–2016*, p. 12.

72 IOM, 2010, *Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, p. 15.

73 Vietnamese Ministry of Labour, Invalids, and Social Affairs (MoLISA), 2012, "Over 25,000 Vietnamese workers working abroad", 16 May 2012, at <http://english.molisa.gov.vn/news/viewdetail/tabid/339/newsid/54806/seo/Over-25-000-Vietnamese-workers-working-abroad/language/en-US/Default.aspx>.

74 Malaysian Ministry of Home Affairs, 2011.

75 IOM, 2011, *Thailand Migration Report 2011*.

76 Department of Labour and Employment, 2011, *The Philippine Labor and Employment Plan, 2011–2016*, p. 12.

Socio-economic context of labour migration

Major socio-economic factors that drive the flows of low-skilled migrant workers within, from, and to the ASEAN region include differing population demographics, economic disparity, periods of political instability, and environmental upheaval. While high unemployment, relatively low earning capacity, and poverty is a factor for those leaving source countries, rapid socio-economic development and the increasing participation of women in the workforce in host countries drive the continued demand for workers in host countries.

In addition to these key factors, long, porous borders between neighbouring countries and trans-border linguistic and cultural affinities also strengthen migratory links between certain source and host countries. In many of these cases—for example, between Myanmar and Thailand and between Indonesia and Malaysia—‘pioneer’ workers from source countries with a long history of out-migration have established strong cross-border linkages that act to encourage the aspirations of those in later generations.

In the case of source countries within the region, the oversupply of labour as a result of either lack of economic growth or failure of job growth to match economic growth can be critical. For example, in Lao PDR, where 55 percent of the population is under 20, there are critical unemployment levels in the 15–24-year-old age range.⁷⁷ In the Philippines, where job growth has been unable to keep up with population growth in recent years, those in this age group face unemployment rates more than twice the national average.⁷⁸

In source countries experiencing high unemployment, aspiring and current migrant workers cite poverty, opportunity for increased income, vertical job mobility, and skills improvement as the drivers for seeking work across borders. In terms of development policy, Cambodia, Lao PDR, and Viet Nam officially endorse labour migration as a poverty alleviation and development strategy.

In terms of economic incentive for migration, migrant remittances currently constitute a significant percentage of gross domestic product (GDP) for source countries within the region. During the financial crisis at the close of the last decade, the East and South-East Asian regions were the only two regions globally not to see a dip in inward remittance flows.⁷⁹ In 2010 the Philippines, Vietnam, and Indonesia were in the top 20 remittance recipients worldwide by dollar value (numbers 4, 16, and 17, respectively). The Philippines Department of Labor and Employment has noted that remittances from migrant workers have “kept the Philippine economy afloat in times of economic crisis”.⁸⁰

In the case of host countries in the region, rapid economic growth and socio-economic development have created significant labour shortages. In many cases, the industries within which migrant workers are concentrated are key export industries, most often in low-skilled,

⁷⁷ Lao PDR Ministry of Planning and Investment/UNDP, 2009, *Employment and Livelihoods: The 4th National Human Development Report*.

⁷⁸ Philippines Overseas Employment Administration, *Overseas Employment Statistics: 2010*, op. cit.

⁷⁹ World Bank, 2011, *Migration and Remittances Factbook 2011*, 2nd edition.

⁸⁰ Department of Labor and Employment, *Philippine Labor and Employment Plan 2011–2016*, p. 13.

labour-intensive jobs. In Brunei Darussalam, more than 80 percent of employees in mining and related industries and 75 percent of employees in the agricultural, forestry, and fishery sectors are temporary migrant workers.⁸¹ In Thailand, demand for migrant workers is greatest in fishing, seafood processing, agriculture, construction, and domestic employment industries,⁸² while in Malaysia and Singapore the demand is greatest in construction, manufacturing, maritime, and service industries.⁸³

In the Malaysian electronics industry, which contributes 60 percent of total manufactured exports and accounts for 8 percent of the GDP, a number of employers claim that their business activities would come to a standstill if they were not allowed to use migrant labour, primarily because the jobs in those fields are perceived as hazardous and 'dirty' to the average Malaysian.⁸⁴ The migrant workforce in electronics companies currently varies between 20 and 60 percent.⁸⁵ In Thailand, Myanmar migrant workers in key export industries, such as fishing and seafood processing, contribute an estimated \$11 billion, or 6.2 percent of the GDP, to the Thai economy.⁸⁶ These workers work predominantly in jobs for which Thai employers are unable to recruit national staff.

A more recent socio-economic factor influencing low-skilled migration flows in the region is the increase in women in the skilled workforce in host countries, such as Malaysia and Singapore. This has contributed in particular to a dramatic increase in demand for low-skilled female migrant workers in the domestic service industry. In Singapore, for example, where specific government policies are directed at increasing employment for middle-class women, domestic workers now constitute approximately 40 percent of the documented foreign workforce,⁸⁷ with an estimated one fifth of all households employing at least one live-in domestic worker.⁸⁸

The increased demand in the domestic service industry has resulted in an increase in female migrant workers migrating alone,⁸⁹ with women currently constituting an overall majority of migrants leaving sending countries within the region.⁹⁰ For example, in Indonesia women constitute 64 percent of the overseas labour workforce, while in the Philippines women constitute 53 percent,⁹¹ having accounted for more than 60 percent of total deployments over the past 10 years.⁹²

81 Department of Economic Planning and Development, Government of Brunei, 2010, *Brunei Final MDG Second Report*, p. 9.

82 IOM, 2011, *Thailand Migration Report 2011*.

83 Ministry of Manpower, Government of Singapore, 2011, Statistics: Foreign Workforce Numbers, retrieved 1 March 2012 at <http://www.mom.gov.sg/statistics-publications/others/statistics/Pages/ForeignWorkforceNumbers.aspx>.

84 Lee, 2010, "Labor Shortage Issues Forum", on *Penang Institute* website at <http://penanginstitute.org/v3/resources/articles/event/169-labour-shortage-issues-forum>.

85 Borman, S., Krishnan, P., and Neuner, M., 2010, *Migrant Workers in the Malaysian Electronics Industry: Case Studies on Jabil Circuit and Flextronics*.

86 Ditton, M. and Lehane, L., 2009, Towards realizing health-related Millennium Development Goals for Migrants from Burma in Thailand, *Journal of Empirical Research on Human Research Ethics*, vol. 4(3), pp. 37–48.

87 Ministry of Manpower, Singapore, op. cit.

88 UN Women, 2011, *Made to Work*, retrieved 1 February 2012 at unwomen-nc.org.sg/uploads/Day%20Off%202011%20June%202012.pdf.

89 Teng, Y. M., 2011, Singapore's demographic trends, *Global-is-Asian*, April June 2011, p. 11.

90 This compares with the international distribution, wherein women constitute approximately 48.4 percent of international migrants.

91 Ibid.

92 *Philippine Labour and Employment Plan, 2011–2016*, p. 12.

Labour migration governance

In recent decades there has been an increase in legislation and policy, which aims to (i) institute 'legalization' processes for irregular migrant workers already present in host countries; and (ii) establish legal migration processes for new migrant workers departing source countries. There has also been an increase in bilateral memoranda of understanding (MoU), which aim to better regulate the flow of migrant workers.

Despite these new developments, legislation and policies rarely include specific language on the protection and/or promotion of workers' rights, instead aiming primarily to streamline migration for employment purposes. In certain exceptions to this trend, legislation in regional source countries with a longer history of government-managed labour migration, including the Philippines and Indonesia, does provide explicit reference to the protection of migrant workers' rights. In many cases, however, these protections have proven difficult to enforce beyond national borders.

In host countries in the ASEAN region, labour migration policies have shifted from periods of amnesty to periods of strict controls on work permits and 'unauthorized' migration.⁹³ As a consequence, migrant workers are alternately framed by policy makers as threats to national security or integral to the operation of key industries. In Malaysia, for example, undocumented workers have previously been 'silently welcomed', while more recently, following economic crisis, strict measures to control unauthorized migration and strict work permit controls have been emphasized.⁹⁴ In Thailand, low-skilled labour migration has been regulated according to three guiding principles of national security, protecting working opportunities for Thai persons, and support the growth and development of Thailand⁹⁵ — with different principles emphasized according to the political climate of the time.

Generally speaking, academic, social, and political commentary on the implementation of labour migration legislation and policy across the region suggests that it can be limited and lacking in clarity. In many cases the operations of institutions responsible for managing labour migration are hindered by a lack of clear distribution of responsibilities and clear coordination of limited financial and human resources.⁹⁶

This lack of clarity on roles of multiple government and private stakeholders involved in labour migration processes hinders efforts to protect migrant workers throughout the migration cycle. In the case of Indonesia, for example, the management of the migration process for overseas foreign workers has been described as a complex, multi-stakeholder process complicated by a lack of

⁹³ Kaur, *op. cit.*

⁹⁴ Kanapathy, V., *Controlling Irregular Migration: The Malaysian Experience*.

⁹⁵ *Alien Employment Act 2008*, section 7.

⁹⁶ Orbeta, Jr., A. and Abrigo, M., 2011, "Managing International Labour Migration: The Philippine Experience", *Philippines Institute for Development Studies*, Discussion Paper Series No. 2011-33.

clarity in key legislation and the existence of conflicting government directives.⁹⁷ As a result, the establishment of effective mechanisms for the protection of Indonesian migrant workers has been hindered by problems of coordination, confusion, and conflicts of interest and authority among various stakeholders involved.

With regard to the very limited, and in many cases complete absence of, protections for undocumented workers, some commentators have suggested that the increased focus on legalization processes for migrant workers has resulted in even less protections for undocumented and semi-documented workers. For example, the Thai Government's policy of regularization and the Malaysian Government's amnesty were both aimed at ensuring proper documentation for workers, which in theory would lead to better protections, although in reality the cost of the legalization process (which is often relatively expensive) creates a greater financial burden on migrant workers. Migrant workers and advocacy groups note that the relative expensive cost of the legalization processes is not matched with a commensurate increase in earnings.⁹⁸

The legislated exclusion of low-skilled migrant workers in certain sectors from national labour laws is also a particular problem hindering protection of migrant workers in host countries of the South-East Asian region. For example, in the case of Malaysia, the *Employment Act*, which regulates migrant workers conditions, excludes domestic workers, named as "domestic servants." In Brunei and Singapore, migrant domestic workers also face similar exclusions from employment law. In Brunei, a supplementary order *Employment (Domestic Workers) Regulations 2009* governs which sections of the general *Employment Order 2009* will apply to migrant domestic workers. In the case of Singapore, while employment of foreign migrant workers is generally governed under the *Employment Act 1961* and the *Employment of Foreign Manpower Act (Chapter 91A)*, only a range of provisions under the latter apply to migrant domestic workers.

In many cases, in lieu of recognition under national labour laws, host countries utilize MoU agreements with major source countries as a means to manage and protect migrant workers. In Malaysia, MoU negotiations with source countries deal primarily with domestic workers excluded from national employment legislation. As such, they become the sole official source of protection for such workers. In recent times, MoU negotiations between Malaysia and source countries, such as Indonesia and Cambodia, have faced considerable hurdles, with protracted negotiations lasting a number of years.

In certain cases, sole reliance on such mechanisms, operating independently to national legislation, has also had a series of negative implications for migrant workers. For example, in the absence of a comprehensive migration policy, Malaysia's reliance on separate agreements with different host countries has created a hierarchy in terms of rights and benefits available to workers from different countries. While registered migrant domestic workers from Indonesia and Cambodia will often work for monthly wages of 400 to 600 ringgit (\$133 to \$200), Filipino domestic workers in

97 Raharto, A., 2011, "Labour Migration and the State: Indonesian institutions and practices", presentation delivered 14 July 2011 at UNESCO Workshop, Migrant Workers in Asia: Policies and Practices in Social Sciences; and Tirtosudarmo, R., 2011, "Migrant Workers as a Constitutional Challenge for Indonesia", paper delivered 14 July 2011 at UNESCO Workshop.

98 Discussions during the launch of Mekong Migration Network & Asian Migrant Centre, 2012, "From Our Eyes: Mekong Migrant Reflections", 2000-2012.

Malaysia earn the highest salaries, at \$400 a month, because of requirements imposed by the Philippines government in bilateral negotiations.⁹⁹

In host countries such as Thailand, MoU supplement rather than substitute for national legislation. For example, Thailand signed a MoU on labour migration management with Lao PDR in 2002, and Myanmar and Cambodia in 2003. These MoU supplement national legislation by outlining the specific steps to be taken by host and source countries in facilitating entry, stay, and work permits for migrant workers. Two of their primary goals are to regularize those undocumented or semi-documented workers already in the country, and to create structures to ensure all new workers entering the country are documented. However the 'protective' factors of such MoU are indirect, in the sense that legalization facilitates access to a range of legislated rights, such as minimum wage and access to health care, and not an explicit focus of these agreements.

The vulnerability of low-skilled migrant workers in this region also continues to be exacerbated by the increasing privatization of the recruitment process, coupled with the lack of government resources to monitor the practices of recruitment agencies and a lack of enforcement practices when recruitment agencies exploit migrant workers. Commentators in Malaysia, for example, have suggested that "the evolution of the recruitment process in recent times has seen that recruitment agencies and labour hire companies now dominate the recruitment process, while the Department of Immigration role has been reduced to granting visas."¹⁰⁰ A number of migration practitioners and migrant advocacy groups recommend that recruitment practices need to be improved in order to reduce irregular migration flows and address widespread abuses, such as excessive fees and costs, misrepresentation, and contract substitution.¹⁰¹

99 "RI-Malaysia MoU fails to provide needed safeguards for migrant workers", *Jakarta Post*, 1 June 2011, at <http://www.thejakartapost.com/news/2011/06/01/ri-malaysia-mou-fails-provide-needed-safeguards-migrant-workers.html>.

100 Kaur, op. cit., p. 13.

101 ILO/AP-Magnet, 2011, Discussion paper based on an online discussion on "Improving and Regulating Recruitment Practices in Asia and the Pacific", at http://apmagnet.ilo.org/resources/resource-content/discussion-paper-ap-magnet-1/at_download/file1.

Migrant workers' health in the South-East Asian region

Monitoring migrants' health

Regional discussions involving representatives from ASEAN ministries of health, labour, and foreign affairs and migrant advocacy groups have identified a range of key challenges in the area of monitoring migrants' health. These include: (i) lack of funding and capacity for data collection; (ii) lack of standardization due to differences in national health systems; (iii) lack of coordination on data consolidation among the various stakeholders who collect data; and (iv) lack of good practice examples for data collection and disaggregation.¹⁰²

While anecdotal evidence and fragmentary data clearly demonstrate that the living conditions and general work environment for many migrant workers is poor, the evidence base to inform decision-making and consequently track progress at the regional and national level is limited. An additional concern expressed by certain stakeholders is that data collection processes that do exist are focused on profiling and exclusion, for example, on medical testing for HIV and

¹⁰² UNDP/ASEAN Secretariat, 2011, *Report of Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region*, at <http://www.junima.org>, pp. 37ff.

subsequent deportation of workers, rather than for the purposes of creating evidence-based policy and improved services. It is clear that issues of stigma, discrimination, and the negative use of data is a continuing challenge in the effective monitoring of migrant workers' health.

In certain host countries in the region, for example Brunei Darussalam, there is almost no data on migrant workers' health needs and health-seeking behaviour as migrants are not separated from the general workforce in government health strategy, and disaggregated data on migrant workers is not kept. In other countries, for example Thailand, the fragmentary nature of available information is a consequence of lack of data consolidation. In the case of Thailand, there are at least nine databases¹⁰³ holding information on migrant workers, administered by three separate ministries.¹⁰⁴ Data is kept in various formats, making it difficult to compile the data when needed. In terms of data analysis, while a broad range of raw data is available at the local level, data analysis is hindered by the lack of a standardized set of indicators at the national level.¹⁰⁵

In host countries where the demand for migrant workers is high, governments may fear an unknown burden of debt for providing health care and may thus seek to control workers' access to health services or social security initiatives. In these cases, the absence, or lack of consolidation, of reliable data on migrant workers' health vulnerabilities and health-seeking behaviour hinders the development of effective cost-benefit analyses to address host countries' concerns regarding the costs of equal access.

In source countries with significant numbers of undocumented migrant workers, for example Lao PDR and Cambodia, large numbers of departing workers will have little to no contact with health professionals prior to departure, having received very little preparatory information about health and safety in the host country.¹⁰⁶ Given this lack of interaction with health systems and services, there is limited opportunity for the collection of any data on migrant workers' health.

Although private recruitment agencies as well as both international and local non-governmental organizations may interact with migrant workers pre-departure and post-return, there are very few existing mechanisms for sharing or collating this data. In countries across the region, private recruitment agencies are increasingly taking on the sole responsibility for carrying out health assessments in accordance with the needs of receiving countries. However, these agencies are not subject to any mechanism for collating or sharing such data.

Data collation and sharing issues are not only a result of the privatization of recruitment processes. Limited multisectoral involvement in monitoring systems within and between government agencies is also an issue. For example, in the case of Lao PDR it is known that embassies and consulates work to connect migrants to social support services, but there is no mechanism for the

103 These are: (1) household registration (TR 38/1), (2) work permit, (3) medical examination, (4) compulsory migrant health insurance, (5) voluntary migrant health insurance, (6) infectious diseases surveillance (506 Report), (7) HIV/AIDS sentinel serosurveillance (506/1 Report), (8) prevention of mother-to-child of HIV database, and (9) migrant health care service utilization and cost.

104 These are: (1) Ministry of Immigration for household registration (TR 38/1), (2) Ministry of Labour for work permit, and (3) Ministry of Public Health for the seven health databases.

105 Jitthai, N. et al., 2010, *Migration and HIV/AIDS in Thailand*, IOM, p. 21.

106 Lee, C., 2007, "Exploitative Labour Brokerage Practices in Cambodia: The Role and Practices of Private Recruitment Agencies" (unpublished paper), cited in Cambodian Development Research Institute, 2011, "Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach", Working Paper Series No. 58.

collation of data on such practices. There is also limited communication among all stakeholders involved throughout the migration cycle, including the Ministry of Labour, embassies abroad, civil societies, and unions.¹⁰⁷

In certain countries in the region multi-stakeholder agreements on data collection and consolidation do exist. In Malaysia, for example, agreements exist among the ministries of Home Affairs, Human Resources, and Health to consolidate data,¹⁰⁸ much of which may be generated following the planned implementation of a biometric surveillance system that includes migrant workers.

On a positive note, countries with a long-established history of labour migration have taken steps towards improving the monitoring of migrant health. For example, the Indonesian Ministry of Health maintains a web-based data collection system, the Indonesian Health Information System, which includes migrant workers. At this stage, however, data is disaggregated only by employment sector, with no differentiation between workers in Indonesia and overseas foreign workers. The progressive establishment of a computerized database system for Indonesian migrant workers, known as SISCOKLTN, and the issuance of identity cards some way to address the need for a centralized national database on migrant workers, which may in turn assist in their monitoring and health protection.

Policies and legal frameworks affecting migrant health

On general standards regarding the right to health, three of the major host countries within the region — Brunei, Malaysia, and Singapore — as well as Myanmar have not ratified the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, or the *International Convention on the Elimination of All Forms of Racial Discrimination*. However, all 10 ASEAN Member States are party to the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*.

On migrant-specific standards that include the right to health, only the Philippines and Indonesia have ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. While Cambodia signed the convention in 2004, it has yet to ratify it.¹⁰⁹ The Philippines was the first within the ASEAN region to ratify the ICMW, in 1995, resulting in key changes to its *Migrant Workers and Overseas Filipinos Act 1995*, as amended most recently by the *Republic Act (RA) No. 10022*. Indonesia ratified this early in 2012, and related amendments to its *Indonesian Republic Act No. 39 year 2004 regarding Placement and Protection for Indonesian Overseas Workers* are currently under discussion in Parliament.¹¹⁰

¹⁰⁷ Ibid.

¹⁰⁸ *Report of Multi-Stakeholder Dialogue*, op. cit.

¹⁰⁹ United Nations, Treaty Collection, at www.treaties.un.org.

¹¹⁰ These are further discussed in the Philippines and Indonesia country profiles of this report.

Since the establishment of the Special Rapporteur on Migrant Workers' Rights, country visits within ASEAN have been made to Indonesia (2006) and the Philippines (2002). While the focus of the visit to Indonesia was to examine and hear testimonies on the rights of female domestic workers, the focus of the visit to the Philippines was more general, although a key outcome was concern regarding the vulnerability of female workers and the increasing involvement of private recruitment agencies in brokering labour migration.¹¹¹

The Philippines is also the only country to have ratified the *Migration for Employment Convention (C97)*, the *Migrant Workers (Supplementary Provisions) Convention (C143)*, and the *Domestic Workers Convention (C189)*. In the case of the *Convention Concerning Domestic Workers (C189)*, while the Philippines chaired the *Domestic Workers Convention* negotiating process and Indonesia expressed strong support, both Singapore and Malaysia abstained from voting on its adoption in 2011. The latter countries stated that the concerns of domestic workers could be addressed within the framework of existing national laws and policies.¹¹²

Varying levels of ratification of international standards for promotion and protection of migrant workers' rights, particularly among host countries within the region, mean that legislated protections for workers vary significantly across the region. There is no agreed joint regional policy approach towards the management and treatment of migrant workers, and in the majority of cases it remains unclear how the competing demands of host and sending countries, and the sometimes competing aims of economic development and migrants' rights protections, might be reconciled.

Although the *ASEAN Declaration on the Protection and Promotion of Migrant Workers' Rights* represents formal regional agreement to address cases of abuse and violence towards the region's workers¹¹³ and protect and promote workers' fundamental human rights, welfare, and human dignity, this declaration is not legally binding. Calls to implement the declaration at the regional and national level have also been hindered for a number of reasons. First, in order for the declaration to be implemented, an instrument for its implementation must be drafted and endorsed. As of mid-2013 a draft instrument on the implementation of the ASEAN Declaration on migrant workers had not been shared, and it remains unclear what range of migrants' rights it will cover.

Regional discussions on policy and legal frameworks have identified a gulf between the international law that comes into existence following convention ratification, and the national laws and policies that might subsequently be implemented under guidance of these conventions. Key challenges relate to: (i) who would be monitoring the implementation of international law within ASEAN; and (ii) which sector or focal point might take charge of implementation within the

111 For full reports, see <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/154/42/PDF/G0215442.pdf?OpenElement>.

112 Hangzo, P. and Cook, A., "The Domestic Workers Convention 2011: Implications for migrant domestic workers in Southeast Asia", *Insight: A Publication of the Centre for Non-Traditional Security Studies*, April 2012.

113 Bacalla, T., 2012, "ASEAN urged to set up mechanism for migrant rights", *Vera Files*, 10 September 2012, at <http://verafiles.org/asean-urged-to-set-up-mechanism-for-migrant-rights/>.

national environment. In those cases where legislated equal access existed, migrant workers were often unaware that such access applied to them.¹¹⁴

In addition, in all sending countries within the region, private recruitment agencies and employees are legally liable to some extent to ensure that the migrant workers they recruit are able to access health protections, such as health insurance and medical care. Under host country regulations, the onus to ensure such access in many cases is on private employers. In reality, the increasing number of non-government, private players involved in the migration industry means that monitoring and enforcement becomes an incredibly resource-heavy task, which government migration management bodies are unable to effectively support.

In terms of nationally legislated health-related protections currently applicable during the pre-departure stage, labour export law in all six source countries includes reference to pre-departure training, although only the Philippines, Indonesia, and Cambodia have issued policy directives regarding the inclusion of health components during training sessions. Commentary suggests, however, that these components are often only very brief and training in general is delivered close to departure time, when migrants have many other concerns in mind and are unable to absorb such a great deal of information. In reality, many migrant workers will embark on the migration cycle with low levels of health awareness, coupled with low levels of awareness of their rights in terms of health access that may be available to them in the host country, often resulting in also low levels of health-seeking behaviour.

The broader efficacy of such pre-departure training is also undermined in certain situations given that a significant majority of workers migrating are undocumented. In Cambodia, for example, the introduction of *Prakas 108 on Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad* was intended to ensure that pre-departure training would be delivered on “working environments..., labor law, human rights and other customary laws of the country for which they will work.” However, given the fact that up to 95 percent of cross-border migration is now irregular,¹¹⁵ a majority of departing migrants will have no access to such training, nor will they have access to any of the protections included in such training once in the host countries.

Once in host countries, South-East Asia’s migrant workers continue to face a range of legislative barriers hindering access to health, exacerbated again by lack of awareness on the part of workers, government officials and health service providers of what limited rights do exist. In the workplace, the variety of jobs in which low-skilled migrant workers are concentrated come with their own particular vulnerabilities in terms of health outcomes.

For example, construction workers face a range of occupational health and safety hazards, including working with hazardous tools and materials with no training, working in confined spaces, and lack of language abilities to read safety signs or communicate with managers. Predominantly female domestic workers also face situations of abuse, bonded labour, and lack of

¹¹⁴ Report of Multi-Stakeholder Dialogue, op. cit., pp. 32ff.

¹¹⁵ Cambodian Development Research Institute, 2011, “Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach”, Working Paper Series No. 58, p. 9; Djamin, R., 2011, “Migrant Workers and the State: A Regional Agenda”, presentation delivered at UNESCO Conference on Migrant Workers in Asia: Policies and Practices in Social Science, 14 July 2011.

access to rest, leading to a variety of adverse health outcomes. Yet lack of employment security can leave migrant workers with little or no ability to seek redress for rights violations with regard to their own health outcomes.

With specific regard to HIV/AIDS, a continuing area of concern in the ASEAN region is the existence of HIV-related travel restrictions on entry, stay, and residence in three of the four host countries within the region: Brunei, Malaysia, and Singapore. Although migration is not a risk factor for HIV, the conditions encountered during the migration cycle have been found to increase migrant vulnerability to HIV; and migrant workers are currently included as vulnerable populations under HIV/AIDS country strategies in each of the countries within the ASEAN region. For example, data from a recent Integrated Bio Behavioural Surveillance (IBBS) study in the six provinces with the highest HIV prevalence rates in Thailand has shown higher HIV-prevalence rates among migrant workers than the national population, with 2.5 percent for workers from Cambodia and 1.16 percent for those from Myanmar.

Migrant-sensitive health systems

The achievement of a migrant-sensitive health system—that is, a system that incorporates the needs of migrants into health financing, policy, planning, implementation, and evaluation and that understands the varied needs of migrants throughout the migration cycle¹¹⁶—is a particularly challenging goal. Throughout the ASEAN region, even in cases where migrant workers have managed to access health systems and services, issues related to cultural and linguistic accessibility have created a particular set of challenges. These include: (i) success of services being measured only on delivery rather than on how information is received; (ii) financial cost of providing targeted health care to migrant workers; (iii) lack of coordination between government and civil society; and (iv) lack of staff capacity in dealing with migrant-specific issues. It should be noted that the final example refers not only to lack of capacity of health workers but also of the non-health workforces, for example, embassy and consulate staff dealing with migrant workers.

While some host countries have piloted such initiatives as the provision of volunteer migrant health workers who are able to act as interpreters (Thailand) and establishing hotlines staffed by experienced migrant workers (Singapore), these initiatives are not widespread, and often are only pilot projects or are carried out ad hoc in the region. They are also significantly hindered by the lack of data on the health-care seeking habits and patterns of migrant workers, which are needed to provide an evidence base to support the continuation or extension of such programmes.

For example, although research on workplace management for linguistically diverse migrant workers in Brunei suggests that lack of language skills plays a key role in the inability to access services,¹¹⁷ translators or interpreters are not provided in health care facilities, primarily as a result

¹¹⁶ Marin, M., "Migrant-Sensitive Health Services", presentation delivered at ASEAN Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region, November 2011.

¹¹⁷ Santoso, D., 2009, "The construction site as a multicultural workplace: A perspective of minority workers in Brunei", *Construction Management and Economics*, vol. 27, p. 532.

of the lack of data to advocate for their necessity.¹¹⁸ Where interpreters are required in the provision of health promotion and care, it is necessary to rely on members of the existing workforce.¹¹⁹ In the case of Thailand, while migrant worker volunteers from Cambodia and Myanmar may be engaged in provincial areas, these programmes are hindered by government restrictions on the type of work migrants are able to carry out, which prevents the formal hiring of qualified Cambodian or Burmese migrants to work to provide ongoing translation services.¹²⁰

One important health access initiative introduced during the pre-departure stage, aimed at enhancing systems sensitive to the health of migrant workers, is the legislated access to portable health insurance. For example, under a Philippines Government initiative, migrant workers are provided with life and personal accident insurance and monetary benefits for work-related injuries, illness, or disability during employment abroad.

In 2011 the Indonesian Ministry of Labour also passed a decree on insurance for migrant workers, although this insurance mechanism can only be used for opportunistic infections; and at this stage, initial reports also suggest that the process of accessing insurance can be quite complicated, and possession of a policy does not guarantee the rights of labour migrants to claim insurance in host countries, with a number of reported difficulties in lodging claims.¹²¹

One area where the Philippines' work on the creation of migrant-sensitive systems for its workers has been used as a good practice for other sending countries relates to its work on repatriation and reintegration of overseas Filipino workers (OFWs) deported from host countries after having been found to be HIV-positive. As discussed in Section II of this report and in relevant country profiles, Brunei, Singapore, and Malaysia place restrictions on travel, entry, and stay of people living with HIV, as do countries in the Arab States, which are host to increasing numbers of low- and semi-skilled OFWs.

The Philippines has now established legislation and policies that aim to protect its migrant workers in this regard, including the *Republic Act 8504: Philippine AIDS Prevention and Control Act, Department Order 01-04 s. 2006 (Guidelines on the Referral System of Repatriated OFWs Diagnosed with HIV Abroad)* and *Memorandum circular on implementation of RA10022 with respect to referral/decking system being implemented by OFW clinics*. A national strategic plan and programmes also exist to address migrant workers' access to HIV services, although discussions suggest that there are a number of challenges in implementation, including: (i) gaps in relationships between the Department of Labour and embassies in countries receiving Filipino workers; and (ii) where issues related to undocumented workers are handled by the Department of Foreign Affairs and those related to documented workers are handled by Department of Labor, there is no mechanism for referral.

118 *Report of Multi-Stakeholder Dialogue*, op. cit.

119 *Ibid.*

120 National Human Rights Commission of Thailand, 2008, *Good Practices to Protect and Promote Migrant Workers' Rights in Thailand: Lessons-learned from NHRCT and its counterparts through people's capacity building and networking for enhancing human rights mechanisms*, p. 8.

121 IOM, 2011, *Labour Migration from Indonesia*, discussions at ASEAN Multi-stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region, November 2011.

Partnerships, networks, and multi-country frameworks

A number of multi-country and regional initiatives exist that include a focus on migrant health, including: the Colombo Process,¹²² which at its most recent regional meeting in 2011 addressed migrant health under the broader thematic focus of 'migration with dignity'; the Joint United Nations Initiative on Migration, Health and HIV in Asia (JUNIMA);¹²³ the CARAM Asia regional civil society organization (CSO) network; the ASEAN Committee on Migrant Workers; the *Memorandum of Understanding to Reduce HIV Vulnerability Related to Population Movement in the Greater Mekong Subregion*; as well as a range of other less formalized partnerships between particular source and host countries.

Regional multi-stakeholder discussions on this topic suggest that key challenges with regard to the effective functioning of partnerships, networks, and multi-country frameworks relate to: (i) the lack of inclusion of the voices of migrant workers in such networks and partnerships; (ii) the lack of financial and human resources and (iii) the lack of implementation and follow-up on multisectoral discussions, agreements, and recommendations.¹²⁴ More generally speaking, commentary from source countries also notes a need to advocate for the shared responsibility of host country governments in the health and welfare of migrant workers, within the framework of right to health and universal access to health care for all.

122 The Colombo Process is a "Regional Consultative Process on the management of overseas employment and contractual labour for countries of origins in Asia." For further information, see www.colomboprocess.org.

123 For further information, see www.junima.org.

124 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 32ff.



RECOMMENDATIONS

The following recommendations are shaped primarily by the research presented in this situational overview, and derived jointly from the following sources: (i) the global priorities identified in the WHA *Resolution on the Health of Migrants* and formalized in WHO/IOM's *Operational Framework for Migrant Health*; and (ii) multisectoral discussions during the regional *Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region*, convened in Bangkok in 2011¹²⁵ as part of the regional follow-up on the global *Operational Framework for Migrant Health*.¹²⁶

Pillar 1: Monitoring migrants' health

- 1 Improve multi-stakeholder collaboration among health, labour, immigration and security sectors, consulates, unions, civil society organizations, employers, and recruitment agencies
- 2 Develop and agree on standard migrant health indicators (access, quality, and cost).
- 3 Expand national monitoring beyond disease outcomes by also focusing on health behaviour, utilization of services, barriers to access of services, and access to safe and sanitary living and working conditions throughout the migration process.
- 4 Ensure the confidentiality, privacy, and safeguarding against harmful use of data of migrant workers.

Pillar 2: Policies and legal frameworks affecting migrant health

- 1 Adopt and implement relevant international standards on the protection of migrants and the right to health in national law and practice.
- 2 Integrate health into the draft ASEAN Instrument on the protection and promotion of the rights of migrant workers.
- 3 Identify and share legislative frameworks, mechanisms, and best practices on health access for migrants, including development of models and implementation guidance for policy makers.
- 4 Ensure that the development processes for MoU and bilateral and multilateral agreements are inclusive and participatory (including CSOs and the migrant community), and include reference to migrant welfare.

¹²⁵ For further information, see www.junima.org.

¹²⁶ For the original list of official priorities agreed upon as part of global *Operational Framework for Migrant Health*, see World Health Organization, 2010, *Health of Migrants – the way forward*; report of a global consultation, Madrid, Spain, 3–5 March, 2010.

- 5 Improve the monitoring processes and enforcement of legislated liability for migrant welfare for private recruitment agencies and employers.
- 6 Develop frameworks and indicators to monitor the success of policy implementation.
- 7 Develop health communication programmes and materials to increase awareness among migrant workers of their right to health access throughout the migration cycle.

Pillar 3: Migrant-sensitive health systems

- 1 Map and identify frameworks, best practices, and guidance for the delivery of culturally and linguistically appropriate health services to migrants.
- 2 Convene bilateral dialogues between relevant source and destination countries—including the participation of migrant workers themselves—to discuss, conceptualize, and implement public and community health systems that recognize the diverse cultural and linguistic needs of migrant workers.
- 3 Study the costs and benefits of providing migrant-sensitive health services, including the provision of such initiatives as multilingual service provision, employment of health assistants from migrant worker communities, and insurance schemes for migrant workers.
- 4 Mainstream the protection of migrant workers' health with national health strategies in order to ensure they are responsive to migrant workers' needs.
- 5 Work towards portability of health benefits across the region.
- 6 Increase awareness among foreign-service personnel, health workforce, migrants, and other stakeholders about social protection and health entitlements in countries of origin, transit, and destination.

Pillar 4: Partnerships, networks, and multi-country frameworks

- 1 Advocate for shared responsibility of host and destination country governments in the health and welfare of migrant workers, within the framework of right to health and universal access to health care for all.
- 2 Ensure that migrants' health is included in existing regional platforms (e.g., ASEAN summits).
- 3 Develop and strengthen intersectoral and intercountry health partnerships.
- 4 Establish, fund and support ongoing migration health dialogues and cooperation across sectors and among key cities, regions, and countries of origin, transit, and destination.

- 5 Involve migrant communities, civil society organizations, and unions as active partners, in particular for advocacy and service delivery.
- 6 Enhance intersectoral collaboration on migrants' health concerns with respect to ASEAN mechanisms, (such as ASEAN Intergovernmental Commission on Human Rights, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, and ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers) as part of the protection and the promotion of the rights of migrant workers.



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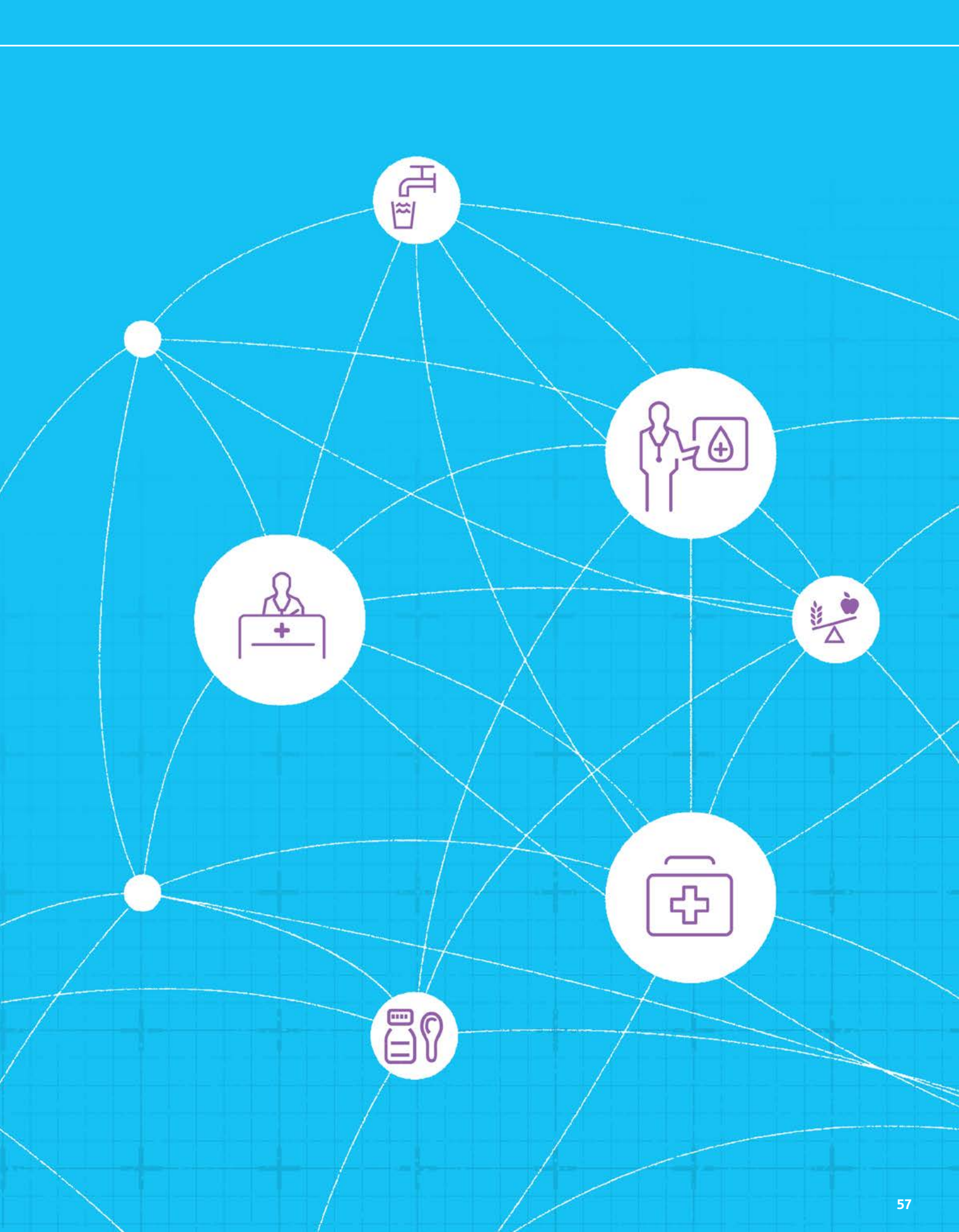
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Section III

Country profiles





Brunei Darussalam



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Approximately 25 percent of the Bruneian population of 400,000 are temporary residents, predominantly low and semi-skilled temporary migrant workers and their families.¹²⁷ Given that Brunei has no minimum wage legislation, migrant workers not only supply the demand for manpower in the host country but also benefit the industry economically as a result of low wages.¹²⁸

Brunei's private sector is dominated by industry, such as construction, production of oil and natural gas, manufacturing, and processing — all of which rely heavily on migrant workers. In the construction industry, more than 85 percent of employees are temporary residents, predominantly temporary migrant workers. Similarly, more than 80 percent of employees in mining and related industries and 75 percent of employees in the agricultural, forestry, and fishery sector are temporary migrant workers.¹²⁹

¹²⁷ *Brunei Final MDG Second Report*, op. cit.

¹²⁸ Santoso, op. cit., pp. 529-527.

¹²⁹ *Ibid*, p. 9.

The demand for migrant workers in Brunei continues to grow, with reports in early 2012 suggesting that Brunei was facing a shortage of approximately 40,000 workers in various sectors, including construction, mining, and services.¹³⁰

In-migration overview

There are approximately 100,000 documented migrant workers in Brunei,¹³¹ primarily found in what the nation's employment legislation terms 'industrial undertakings'—including mining and related industries, construction, and transport.¹³² As in other countries, estimates of the number of undocumented workers are difficult to confirm. However, it has been suggested that Brunei currently hosts an estimated 25,000 undocumented domestic workers and 10,000 undocumented garment workers. Many of these workers entered the country on social visit passes or tourist visas, then failed to leave and took up work without the relevant permit.¹³³

ASEAN Member States—Malaysia, Philippines, Thailand, and Indonesia—constitute four of the top five source countries for migrant workers in Brunei.¹³⁴ The Indonesian Embassy in Brunei estimates that there are more than 49,000 Indonesian migrant workers in the country in 2011, most working in the informal sector, and it expected to send another 8,300 documented workers in 2012.¹³⁵ Most recent estimates from the Philippines suggest an annual deployment of approximately 7,900 documented workers to Brunei,¹³⁶ and an increasing number of low-skilled workers are also coming from South Asia.



LABOUR MIGRATION GOVERNANCE

The entry, stay, and departure of all migrant workers in Brunei are governed by the *Immigration Act 2006*. Employment of migrant workers, with the exception of 'domestic servants',¹³⁷ is formally governed by the *Employment Order 2009*.¹³⁸ The additional *Employment (Domestic Workers)*

130 "30 RI Migrant Worker Firms form new body", *The Jakarta Post*, 26 April 2011, at <http://www.thejakartapost.com/news/2011/04/26/30-ri-migrant-worker-placement-firms-form-new-body.html>.

131 United States Department of State, 2012, *2012 Trafficking in Persons Report Brunei*.

132 *Employment Order 2009*; for full text see http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2009/EN/s037.pdf.

133 *Trafficking in Persons Report Brunei*, op. cit.

134 World Bank, 2011, *Migration and Remittances Fact Book 2011*, 2nd edition.

135 "30 RI Migrant Worker Firms form new body", op. cit.

136 Philippines Overseas Employment Administration, *Overseas Employment Statistics: 2010*, op. cit.

137 "Domestic servant" means any house, stable, or garden servant or car driver habitually employed in, or in connection with, the domestic services of any public or private dwelling-house, eating house, club, or institution.

138 For full text, see http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2009/EN/s037.pdf.

Regulations 2009 stipulates which provisions of the *Employment Order* apply to domestic workers. Although Brunei does not tend to utilize bilateral MoU with source countries as a means to manage labour migration, recent news reports suggest that Indonesia has instigated discussions with Brunei regarding the establishment of MoU on the placement and protection of its migrant workers in the country.¹³⁹

Brunei has not ratified the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* or the ILO's *Migration for Employment Convention (No. 97)*, *Migrant Workers (Supplementary Provisions) Convention (No. 143)*, or the 2011 *Domestic Workers Convention (No. 189)*. In late 2011 it was reported that Brunei was in the process of amending the *Employment Order 2009* to be in line with certain ILO standards on labour migration; however, it is unclear what form these amendments will take and when they might be enforced.¹⁴⁰

As is the case across the region, private recruitment agencies play a strong role in the placement and potential protection of migrant workers in Brunei. Lack of resources to monitor these agencies has allowed migrant workers travelling to Brunei to be exploited and/or abused throughout the migration cycle. Despite efforts in early 2012 to tighten the licensing requirements for private recruitment agencies, migrant workers reportedly continue to be subject to such rights abuses as debt bondage, non-payment of wages, passport confiscation, abusive employers, and confinement to the home.¹⁴¹

Generally speaking, while legislation governing labour migration does not focus on the protection of migrant workers' rights, the government has recently implemented certain policy measures aimed at protecting migrant workers, including arrival briefings, inspections of workplace facilities, and a telephone hotline for worker complaints.¹⁴²

Immigration Act 2006

Regulation 15 of this act sets out the rules regarding entrance of non-citizens for work or employment. All those who intend to work in Brunei, with the exception of Malaysian and Singaporean citizens, must be in possession of a valid Employment Pass, which specifies an individual's employer and is valid for a maximum period of five years. Workers are restricted to the original employer through whom the labour pass was obtained. Immigration law allows for prison sentences and caning for workers who overstay passes, for undocumented immigrants seeking work, and for workers employed by companies other than their initial sponsor.¹⁴³

Further regulations under this act deem it an offence to employ any person who has entered Brunei without a proper labour permit, has had this permit cancelled, or has re-entered following

¹³⁹ NZ Week, Indonesia working on MoU on migrant workers with 6 countries, 1 February 2013, at <http://www.nzweek.com/world/indonesia-working-on-mou-on-migrant-workers-with-6-countries-46903/>.

¹⁴⁰ *Report of Multi-Stakeholder Dialogue*, op. cit., p. 47.

¹⁴¹ Quratal-Ain Bandial, "Brunei on Tier 2 of human trafficking list", *The Brunei Times*, 22 June 2012, at <http://www.bt.com.bn/news-national/2012/06/22/brunei-tier-2-human-trafficking-list>.

¹⁴² US Department of State, 2010, *Country Reports on Human Rights Practices: Brunei*, p. 15.

¹⁴³ *Ibid.*

previous removal. Employers may also be held liable for any costs incurred by the government with regard to maintenance, repatriation, or removal of those whose permits are cancelled or who contravene the regulations of the act.¹⁴⁴

Research suggests that, in practice, many undocumented workers will enter the country on short-term social visits or visit passes, then overstay the granted period for these passes and take on work. There are also reports of domestic and construction workers paying fictitious employers in order to obtain labour passes before working freelance.¹⁴⁵ In some cases, migrant workers have been held responsible for their own illegal status, although this has occurred as a result of a former employers' negligence rather than through fault of their own.¹⁴⁶

Employment Order 2009

This legislation provides migrant workers,¹⁴⁷ with the exception of domestic workers and seamen, with many of the same legal protections as Brunei citizens employed in the private sector under standard contracts of service. Legislated protections include minimum standards for contracts of service, including a maximum salary period of one month.¹⁴⁸ The *Employment Order* also prohibits withholding of salaries by private recruitment agencies, and those who fail to comply with these regulations can be fined up to \$3,000 and jailed for one year. All contracts of services must be in writing, be signed by both parties, and include measures to be taken to provide for the welfare of the employee, including accommodation and medical treatment, as well as stipulations regarding termination processes. They should also be read over and understood by the employee before signing.¹⁴⁹

As is the case across the region, legislation posits power to manage the recruitment process with private recruitment agencies. The *Employment Order 2009* stipulates that all contractors and subcontractors hiring immigrant employees must be registered with the Commissioner of the Ministry of Labour,¹⁵⁰ and both employer and immigrant worker are deemed guilty of an offence in the case that the employer is unlicensed and/or the worker is not properly documented. Each are held liable to a fine of \$10,000 and imprisonment for between six months to three years.¹⁵¹

In practice, it is unclear how well these protections are implemented or enforced, and research shows evidence that many protections detailed above are not actually accessible. For example, despite the requirement for contracts to be in writing and read over and understood by employees, a number of migrant workers without the requisite literacy or language skills continue to have

¹⁴⁴ *Employment Order 2009*, Regulation 21.

¹⁴⁵ US Department of State, 2010, *Country Reports on Human Rights Practices: Brunei*.

¹⁴⁶ *Ibid.*

¹⁴⁷ Termed "immigrant employees" under legislation, and defined as "any employee who is normally resident outside Brunei Darussalam who has come to Brunei Darussalam for the purpose of performing work in Brunei Darussalam."

¹⁴⁸ *Employment Order 2009*, Part IV, article 39.

¹⁴⁹ Too, Debbie, "Employment agencies strive to protect employers, workers", *The Brunei Times*, 21 November 2011, at <http://www.bt.com.bn/business-besides-oil/2011/11/21/employment-agency-strives-protect-employers-workers>.

¹⁵⁰ *Employment Order 2009*, Part IV, article 54.

¹⁵¹ *Ibid.*, Regulation 118.

difficulty understanding contracts.¹⁵² Evidence also exists of wages being withheld and contract substitution practices forcing migrant workers to accept salaries and conditions less than were originally agreed upon.

The prohibition of salary withholding by private recruitment agencies also provides little protection for migrant workers who have signed contracts of service with recruitment agencies in source countries, which are not held to the same minimum standards as those legislated in Brunei.¹⁵³ Although it is unclear how many complaints have been filed against recruitment agencies, contractors, or subcontractors, or what the rate of success of such complaints has been, the Department of Labour reported in 2012 that it was making efforts to begin enforcing these legislated licensing requirements for all recruitment agencies.¹⁵⁴

Recent research also suggests that within construction worksites an absence of reliable or direct channels to convey complaints to management, whether due to language issues or to management not taking complaints seriously, can lead to a lack of protection of migrants' rights under legislation.¹⁵⁵

Employment (Domestic Workers) Regulations 2009

This additional set of regulations details which of the regulations contained in the *Employment Order 2009* cover domestic workers. Applicable protections include minimum standards for contracts of service and maximum salary periods, while clear exceptions include eligibility for a range of health benefits, including maternity leave.

In practice, while reports suggest that new employers of domestic workers are briefed on labour laws and regulations, and that, for example, domestic workers are required to be present during the signing of employment contracts so that labour officers can brief them on their rights and obligations,¹⁵⁶ domestic workers continue to face violations of the protections proscribed in national employment legislation. For example, recent news coverage of cases under trial this year in Brunei includes the case of an Indonesian domestic worker held under forced labour conditions.¹⁵⁷ Domestic workers from Indonesia have reportedly faced salary being withheld for between two and three months, while some families have been found to withhold wages to compensate for labour broker or recruitment fees that they are charged and as a tool with which to maintain the service of the workers.¹⁵⁸ Further documented rights violations include passport confiscation, confinement to the home, and contract switching.

¹⁵² Ibid.

¹⁵³ United States Department of State, 2012, *2012 Trafficking in Persons Report Brunei*.

¹⁵⁴ Bandial, Quratal-Ain, "Brunei on Tier 2 of human trafficking list", *The Brunei Times*, 22 June 2012, at <http://www.bt.com.bn/news-national/2012/06/22/brunei-tier-2-human-trafficking-list>.

¹⁵⁵ Santoso, op. cit.

¹⁵⁶ Bandial, Quratal-Ain, "Migrant Workers' Complaints Drop", *The Brunei Times*, 20 August 2011, at <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop>.

¹⁵⁷ Bandial, "Brunei on Tier 2 of human trafficking list", op. cit.

¹⁵⁸ CARAM Asia, 2011, *Reality Check: Rights and Legislation for Migrant Domestic Workers*.



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on right to health for all, Brunei is not a signatory to the *International Covenant on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for the protections of the right to health. It is also not a party to most core United Nations conventions that provide for the right of access to health care and medical treatment for all. While it has ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the right to access health-care services on a basis of gender equality (theoretically, including migrant workers beyond national citizens), it is yet to submit a report on this convention's implementation in national legislation.

Importantly, as a Member State of the World Health Organization, Brunei is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.¹⁵⁹ It is unclear, however, how this resolution has enhanced health care and access for migrant workers in Brunei since its endorsement in 2008.

Monitoring migrants' health

Migrant rights' groups, non-government organizations, and international organizations have advocated for the inclusion of migrant workers under Brunei's policy of universal health care. Generally speaking, inadequate relevant surveillance systems mean there is almost no data on migrant worker's health needs and health seeking behaviour.¹⁶⁰ Despite constituting more than 25 percent of the private sector workforce, migrant workers are not separated from the general workforce in government health strategy, and disaggregated data on migrant workers is not kept. Given this lack of data, an evidence base to advocate for migrant workers' inclusion in health financing is difficult to compile.

Policies and legal frameworks affecting migrant health

The provision of health care to citizens and permanent residents is a strong priority of the government of Brunei. Both these groups are eligible for government-funded access to health care, and total expenditure on health per capita is \$1,486 — considerably more than the regional average.¹⁶¹ However, temporary residents, including migrant workers, are not eligible for government-funded health care, and all health care provided must be privately-funded.

¹⁵⁹ WHA 61.17, *Resolution on Health of Migrants*.

¹⁶⁰ *Report of Multi-Stakeholder Dialogue*, op. cit., p. 52.

¹⁶¹ WHO, *Country Health Profile: Brunei Darussalam*, at <http://www.who.int/countries/brn/en/>.

Within national legislation, health care access and coverage for migrant workers is currently based on a system of employer liability. According to the *Employment Order 2009* employers are responsible for providing for “medical attention and treatment with medicines of good quality, first aid equipment”¹⁶² as well as provisions for paid leave during pregnancy and after childbirth (although domestic workers are not eligible for the latter). While employers are not mandated to provide medical insurance for foreign workers, the Labour Commissioner has publicly advised employers to take on medical insurance for employees, in order to reduce their costs in case of an accident and to prevent the burden of debt on the Ministry of Health.¹⁶³

In addition to covering medical attention and care, employers are also mandated to provide documented migrant workers with accommodations and sanitary arrangements that are sufficient and hygienic, as well as a sufficient supply of wholesome water.¹⁶⁴ Regarding health in the workplace specifically, the *Workplace Safety Health Order 2009* covers migrant workers alongside citizens in the private sector and stipulates minimum measures for protecting employees in the workplace. The order includes the regulations for incident reporting, first aid, risk management, workplace safety and health, registration of factories, construction, and abrasive blasting. According to this order, employers are responsible for taking measures necessary to ensure the workplace health and safety of employees, including the provision of necessary training and supervision.¹⁶⁵

While research on the extent of implementation and enforcement of health-related components of the above-mentioned legislation is limited, reports suggest that while the Department of Labour has generally enforced labour regulations effectively, enforcement in the unskilled labour sector has been lax, especially for migrant workers at construction sites. Although the law permits a worker to leave a hazardous job site without jeopardizing his employment, this does not generally occur.¹⁶⁶ More generally speaking, the fact that liability for payment and facilitation of health access lies with employers can render such protections far less accessible for low-skilled migrant workers who may fear termination of employment due to injury or need for health care.

An additional key concern is the effect of HIV-related restrictions. While persons living with HIV are not restricted from short-term stays in Brunei, and HIV is not specifically mentioned within the *Immigration Act*, the act does state that a person is a member of a “prohibited class” if found to be suffering from a “contagious or infectious disease which makes his presence in Brunei Darussalam dangerous to the community.”¹⁶⁷ For migrant workers, HIV tests are a requirement at the pre-departure stage (in order to be issued a temporary work permit) and within two weeks of arrival in Brunei, and then again every two years (in order to be issued work permit renewals). Testing is carried out by Ministry of Health clinical laboratories, and under the *Infectious Diseases Order 2003* it is compulsory for clinicians to report any positive cases to the Department of Health Services.

¹⁶² Ibid., Part VIII, article 83.

¹⁶³ Ibrahim, Diyana, “Panel to enforce Workplace Safety and Health Order”, *The Brunei Times*, 1 May 2012, at <http://www.bt.com.bn/news-national/2012/05/01/panel-enforce-workplace-safety-and-health-order>.

¹⁶⁴ *Country Health Profile: Brunei Darussalam*, Part VIII, article 80.

¹⁶⁵ De No, Goh, “Workplace Safety Order Will Save Lives”, *The Brunei Times*, 18 June 2012, at <http://www.bt.com.bn/business-national/2012/06/18/workplace-safety-order-will-save-lives>.

¹⁶⁶ US Department of State, 2010, *Country Reports on Human Rights Practices: Brunei*.

¹⁶⁷ *Immigration Act*, section 8 (2) c (ii).

In cases where migrant workers are found to be HIV-positive, they are advised of the cancellation of their work permit and the requirement to leave the country within one month. Feedback provided by Ministry of Health representatives note that for migrant workers, pre-test counselling is not always carried out, although post-test counselling is provided together with a letter of diagnosis if a test is positive, and the worker is advised to consult a doctor upon returning to his or her country of origin.¹⁶⁸ Migrant workers returning to their home countries under these circumstances are in a position of considerable vulnerability, given that many source countries are also not equipped with comprehensive HIV prevention, care, treatment, and support services, nor has Brunei developed partnerships with foreign embassies or host countries to notify or manage deportation of HIV-positive migrant workers.

Migrant-sensitive health systems

There are no existing national government or non-government networks focused on addressing migrant workers' health needs. Although research on workplace management for linguistically diverse migrant workers in Brunei suggests that lack of language skills plays a key role in the inability to access services,¹⁶⁹ translators or interpreters are not provided in health care facilities, although this may be more a result of the lack of data to advocate for their necessity.¹⁷⁰ Where interpreters are required in the provision of health promotion and care, it is necessary to rely on the existing workforce.¹⁷¹

Partnerships, networks, and multi-country frameworks

Brunei has no formal established bilateral agreements with source countries, and in the past the country has declared it has no intention to enter into formal bilateral or multilateral agreements on labour migration, despite a strong push from established source countries such as the Philippines.¹⁷² While recent reports from the Indonesian Minister for Manpower and Transmigration suggest that Indonesia has instigated talks with the Brunei Government on the possibility of a MoU concerning protection and welfare of its workers in Brunei,¹⁷³ it is unclear what stages such talks have reached.

168 *Report of Multi-Stakeholder Dialogue*, op. cit.; supplemented by feedback provided by Brunei Ministry of Health official on first draft of this report.

169 Santos, op. cit.

170 *Report of Multi-Stakeholder Dialogue*, op. cit.

171 Ibid.

172 OECD, 2004, *Migration for Employment: Bilateral Agreements at a Crossroads*, p. 192.

173 "Indonesia working on MoU on migrant workers with 6 countries", op. cit.



RECOMMENDATIONS

Monitoring migrants' health

- 7 Design and implement systems for the collection, analysis, and dissemination of disaggregated data on migrant workers, examining health care needs and health-seeking behaviour.
- 8 Carry out cost analysis for the inclusion of migrant workers alongside citizens and permanent residents in the provision of government-funded universal access to health care.

Policy and legal frameworks affecting migrant health

- 9 Ratify the *Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers* (No. 189).
- 10 Advocate for the removal of HIV-related travel restrictions on entry, stay, and residence for migrant workers and mainstream comprehensive HIV prevention, treatment, care, and support services for migrant workers in national HIV-control programmes.

Migrant sensitive health systems

- 11 Mainstream the protection of migrant workers' health with national health strategies in order to ensure they are responsive to migrant workers' needs.

Partnerships, networks, and multi-country frameworks

- 12 Develop and strengthen intersectoral and intercountry health partnerships, particularly regarding referral for migrant workers deported due to HIV-positive status.



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Cambodia



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Cambodia is one of the world's least-developed countries, with one third of the population living below the national poverty line. Where economic growth has occurred in the country, it has not been matched by employment growth,¹⁷⁴ leading to an impending influx of approximately 250,000 new entrants into the job market annually.¹⁷⁵ The government currently promotes overseas employment as a general poverty alleviation strategy,¹⁷⁶ and the country's *National Strategic Development Plan 2009–2013* prioritizes finding jobs for workers abroad in response to rising unemployment levels, particularly among those in the 15–24 year age range.¹⁷⁷

In terms of drivers for migration, the majority of Cambodians migrate due to increased income opportunities abroad.¹⁷⁸ In 2010 remittances from Cambodian migrants reached \$0.4 billion, constituting approximately 3 percent of GDP.¹⁷⁹ Research has found that up to 40 percent of Cambodian migrant workers in Thailand report remittances as the main income source for their family. Such remittances are spent on food, debt repayment, health care, agricultural inputs, and durable household assets.¹⁸⁰ In addition, the reported payment of large cash advances by

174 Ministry of Labour and Vocational Training/ILO, 2010, *Policy on Labour Migration for Cambodia*. For example, between 2005 and 2007 an average 10.5 percent growth in GDP was accompanied by only a 2.5 percent growth in employment.

175 Asia Foundation, 2011, *Cambodia's Labor Migration: Analysis of the legal framework*.

176 Human Rights Watch, 2011, *They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia*, p. 77.

177 Royal Government of Cambodia, 2010, *National Strategic Development Plan, Update, 2009–2013*, p. 158.

178 *They Deceived Us at Every Step*, op. cit.

179 Asian Trends Monitoring, 2012, "Low-income migration, when the marginalized move across borders", Bulletin 14, p. 6, at <http://www.asiantrendsmonitoring.com/2012/01/06/bulletin-14-low-income-migration-when-the-marginalised-move-across-borders/>.

180 "Irregular Migration from Cambodia", op. cit., p. 9.

recruitment agencies to impoverished families has offered additional incentive for migrants to seek employment abroad.¹⁸¹

Despite a government push for formalized migration policies and processes, it is important to note that officially managed labour migration is a relatively new phenomenon in Cambodia. Cross-border Cambodian migrants can be classified into two categories, namely, 'short-term, short range' workers engaging in daily cross-border work and 'long-term' workers engaging in migration to central, eastern, and southern provinces of Thailand or to Malaysia.¹⁸² Recent research suggests that up to 95 percent of all cross-border migration is irregular, citing the complexity, cost, and time-consuming nature of formal recruitment processes as the main reason behind such high levels of movement outside official processes.¹⁸³

Out-migration overview

Major destinations for cross-border migrant workers are Thailand, Malaysia, and South Korea.¹⁸⁴ Recent estimates by the Cambodian Ministry of Labour suggest that approximately 125,000 documented Cambodians are working abroad in these countries, plus Japan.¹⁸⁵ Current Thai Government estimates of the number of documented and undocumented Cambodian workers in that country range between 120,000 and 180,000.¹⁸⁶ Past estimates from Cambodian officials in Malaysia have suggested that approximately 40,000 Cambodians were working in Malaysia between 2008 and April 2011,¹⁸⁷ while more recent reports suggest that up to 50,000 female Cambodian domestic workers could be working in Malaysia today.¹⁸⁸

More accurate estimates of migrant worker numbers are difficult to ascertain, given the fact that most cross-border migration is irregular. A 2011 survey of 507 households in six high-migration villages in Cambodia—including returned and intending migrant workers, government officers, migration experts, and local community chiefs—found that irregular migration had been the most popular form among Cambodian workers seeking jobs overseas.¹⁸⁹ While legal recruitment is complex, slow, and costly (approximately \$700 to Thailand), informal recruitment requires only a few days, few or no documents, and a considerably lower cost (\$100–180).¹⁹⁰

181 Ibid.

182 IOM, 2011, *Thailand Migration Report*, p. 14.

183 "Irregular Migration from Cambodia", op. cit., p. 9; Djamin, R., 2011, "Migrant Workers and the State: A Regional Agenda", presentation delivered at UNESCO Conference on Migrant Workers in Asia: *Policies and Practices in Social Science*, 14 July 2011.

184 Asia Foundation, 2011, *Cambodia's Labor Migration: Analysis of the Legal Framework*, p. 4.

185 ASEAN-China Free Trade Area, 2012, "Cambodian legislators, officials talk to enhance migrant worker rights", 12 November 2012, at <http://www.asean-cn.org/Item/6491.aspx>.

186 IOM, 2011, *Thailand Migration Report*.

187 *They Deceived Us at Every Step*, op. cit.

188 Radio Free Asia, 2013, "Malaysian Couple Breaks Maid's Jaw", 5 June 2012, at <http://www.rfa.org/english/news/cambodia/jaw-06052012181109.html>.

189 Philippine Institute for Development Studies, 2011, "Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach", Discussion Paper Series No.2011 26.

190 Ibid.

Gender distribution amongst cross-border migrant workers is also difficult to ascertain given the dominance of irregular migration; however, it is estimated that more than half of all documented migrant workers from Cambodia are female.¹⁹¹ It is important to note that this overall distribution ratio differs significantly according to country of destination. Among registered workers heading to Thailand, approximately 63 percent are male and engaged in the agriculture and construction industries, while females are predominantly engaged in the agriculture and, to a lesser degree, household sectors.¹⁹² While Cambodian workers travelling to South Korea are generally male, working in manufacturing, construction, and agriculture, workers heading to Malaysia are predominantly female domestic workers.¹⁹³

Accurate data on the deployment of female domestic workers to Malaysia has been particularly difficult to gather in recent years, primarily due to the effects of government-issued moratoria on such deployments following high-profile cases of abuse in Malaysia. In 2008, following an Indonesian Government moratorium on the deployment of Indonesian household workers to Malaysia, recruitment agencies increasingly turned to Cambodia to obtain domestic workers. The Malaysian Embassy in Phnom Penh subsequently estimated that the number of visas issued to Cambodian domestic workers more than tripled between 2008 and early 2010, with Malaysia issuing approximately 24,700 work visas to new and extending domestic workers from Cambodia in 2010.¹⁹⁴ In 2011, however, the Cambodian Government issued a similar moratorium on the deployment of Cambodian workers to Malaysia following further reports of abuse, and in some cases, deaths of workers. While this moratorium has led to a decline in official deployments in recent years, it is suggested that this decline has been mirrored by an increase in irregular migration of female migrant workers.



LABOUR MIGRATION GOVERNANCE

Out-migration of Cambodian labour migrants and the related management of this process by private recruitment agencies is governed by *Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies* (revised August 2011). In December 2013 the government also launched eight new *prakas* (ministerial regulations) to support the implementation of *Sub-decree 190*. These cover the recruitment process and pre-departure orientation training, operating standards, on-site and repatriation services, inspection requirements for private recruitment agencies, and complaint receiving mechanisms for migrant workers.¹⁹⁵ In addition to this legislation, general approaches to labour migration governance are addressed in the Ministry of Labour and Vocational Training's *Policy on Labour Migration*

¹⁹¹ Reality Check: Rights and Legislation for Migrant Workers, op. cit., p. 7.

¹⁹² IOM, *Thailand Migration Report 2011*, p. 12.

¹⁹³ Asia Foundation, 2011, *Cambodia's Labor Migration: Analysis of the Legal Framework*, p. 8.

¹⁹⁴ Reality Check: Rights and Legislation for Migrant Workers, op. cit., p. 25.

¹⁹⁵ For an English translation of these eight *prakas*, including related annexes, see <http://apmagnet.ilo.org/resources/cambodian-prakas-ministerial-orders-2>.

for Cambodia, formulated in 2010 with technical assistance from the International Labour Organization.

Bilateral memoranda of understanding between Cambodia and key destination countries (notably Thailand and, more recently, Malaysia) also play a role in labour migration governance. In 2003, Cambodia signed a *Memorandum of Understanding on Cooperation in Employment of Workers* with Thailand. In early 2012, it was also reported that a draft MoU on the recruitment of Cambodian workers sent to Malaysia, including domestic workers, was under negotiation between the Cambodian and Malaysian ministries of labour. In the case of movement of workers to South Korea, this is essentially managed by the Manpower Training and Overseas Sending Board, and workers are registered via the Korean Employment Permit System. In 2012, it was also reported that the Cambodian Government had signed a preliminary manpower agreement with Qatar, with plans to send 3,000 unskilled migrant workers to the Arab emirate.¹⁹⁶

Cambodia is a signatory to the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families*. It has not ratified the two ILO conventions specifically related to labour migration: the *Migration for Employment Convention* (No. 97) or the *Migrant Workers (Supplementary Provisions) Convention* (No. 143). Nor has it ratified the 2011 *Domestic Workers Convention* (No. 189). Although the country is a signatory to the ICMW, it has been noted that its provisions may have limited application for the protection of Cambodian migrant workers given that none of the primary host countries for workers have signed or ratified the ICMW, and workers are subject to the laws of these countries throughout the majority of the migration cycle.¹⁹⁷

While the government's *National Strategic Development Plan, Update 2009–2013*, contains a commitment to improving working conditions overseas, particularly for female Cambodians,¹⁹⁸ general commentary on legislation and policy related to labour migration of Cambodian workers has labelled it as sporadic and limited, without comprehensive coverage.¹⁹⁹ Some of the key reasons cited for abuse of workers' rights during the migration process include lack of clarity on key stakeholder roles and responsibilities, lack of ability to monitor practices of recruitment agencies, and lack of serious punishment for corrupt recruitment agencies.

Policies on labour migration for Cambodia

The Cambodian Government's policy on labour migration, formulated in 2010 with the assistance of the International Labour Organization, identifies the three main policy challenges for migration as being: (i) improved governance; (ii) protection and empowerment of workers; and (iii) harnessing migration for development.²⁰⁰ It has been noted, however, that while this policy document may emphasize the need to protect migrant workers, protection is not a central theme in the regulatory

196 Royal Embassy of Cambodia UK, 2012, "Cambodia's Parliament Passes Deal to Send Laborers to Qatar", 26 August 2012, at <http://www.cambodianembassy.org.uk/e-news/index.php?lang=&menu=2&menucat0=0&k=1&year=2012&month=8&readmore=1&ck=6&page=0>.

197 Chan, S., 2009, "Review of labour migration management, policies and legal framework in Cambodia", ILO Asia-Pacific Working Paper Series, p. 11.

198 Royal Government of Cambodia, 2010, *National Strategic Development Plan, Update, 2009–2013*, p. 158.

199 "Irregular Migration from Cambodia", op. cit., p. 11.

200 Ministry of Labour and Vocational Training/ILO, 2010, *Policy on Labour Migration for Cambodia*.

provisions of the Cambodian Government.²⁰¹ It is also particularly important to note that this recently formulated labour policy contains few references to the management and protection of irregular migrants, who constitute the great majority of labour migrants from Cambodia.²⁰²

Certain specific recommendations for ensuring adequate protection for migrant workers, for example, the posting of labour attachés to Cambodian embassies abroad, were key recommendations in this 2010 policy document,²⁰³ but it is unclear the extent to which these initiatives have been implemented. To date, it has been reported that one embassy secretary in each of Malaysia, Thailand, and South Korea has been temporarily assigned to handle work related to Cambodian migrants.²⁰⁴

Further protective measures recommended in this policy document have also proven difficult to implement, including: (i) the provision of effective remedies to all migrant workers in cases of rights violations; (ii) the creation of effective channels through which migrant workers can lodge complaints against abusive practices and fraud; and (iii) the implementation of effective enforcement mechanisms and sanctions to deter unethical recruitment practices. The key reasons cited for these difficulties are the increased involvement of private recruitment agencies in labour migration processes, lack of clarity of stakeholder roles in legislation, and lack of capacity and resources for monitoring and legislation enforcement.²⁰⁵

Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies

This sub-decree essentially replaces the earlier *Sub-Decree 57 on Sending Khmer Migrants to Work Abroad*. While it names the Ministry of Labour and Vocational Training (MoLVT) as the key government agency responsible for sending Cambodian workers abroad, it also essentially turns over responsibility for all stages of the migration cycle—including recruitment, pre-departure training, employment/contracting, and travel—to private recruitment agencies. In terms of protections for workers, recruitment agencies are mandated to ensure proper “working conditions, health insurance, safety within working and accommodation areas,”²⁰⁶ as well as to make “arrangements to ensure that workers who are sent abroad will receive appropriate social security regime in accordance with the applicable laws and regulations of the receiving country.”

Despite the important progress envisioned and realized in the *Policy on Labour Migration for Cambodia*, both the content and formulation process for *Sub-decree 190* have been criticized by various commentators. Criticisms include: (i) the lack of inclusion of civil society or migrant worker advocacy groups in the drafting process,²⁰⁷ (ii) the fact that a number of articles have been

201 *They Deceived Us at Every Step*, op. cit.

202 “Irregular Migration from Cambodia”, op. cit., chapter 5.

203 Ministry of Labor and Vocational Training/ILO, 2010, *Policy on Labour Migration for Cambodia*, p. 4.

204 Cambodia, 2011, “Combined fourth and fifth periodic report of States Parties”, submitted to CEDAW Committee, 24 September 2011, at <http://daccess-ods.un.org/TMP/1266664.71362114.html>.

205 “Irregular Migration from Cambodia”, op. cit., p. 25.

206 *Sub-decree 190*, article 21.

207 *They Deceived Us at Every Step*, op. cit.

considered too vague to be effective; (iii) a lack of meaningful penalties for abusive recruitment agencies, which undermines the effect of the policy²⁰⁸; and (iv) a failure to address a number of the governance issues of its earlier incarnation, *Sub-Decree 57 on Sending Khmer Migrants to Work Abroad*.²⁰⁹

Certain research suggests that, in practice, recruitment agencies have been involved in the facilitation of fraudulent identities,²¹⁰ very high recruitment fees, and deceptive lending practices. In particular, research conducted by Human Rights Watch in 2011 on Cambodian domestic workers being deployed to Malaysia noted that the Cambodian Government had not taken concrete steps to properly investigate or punish those responsible for instances of abuse of legislated protections, including: credible reports of child recruitment and abuses in training centres, including the deaths of three women in training centres during the previous year.²¹¹ Nevertheless, in the first case of a successful prosecution, a Cambodian court in September 2011 convicted a manager of the VC Manpower Recruitment Agency and sentenced him to 13 months in prison for illegally detaining underage workers.

With the 2013 launch of eight *prakas* to supplement legislation on sending migrant workers abroad, the government was able to address a number of the criticisms and issues described above. For example, the *Prakas on Private Recruitment Agencies* details specific requirements, including security bonds and reporting requirements, for permission to operate for private recruitment agencies.²¹² The *Prakas on Inspection of Private Recruitment Agencies* also details inspection requirements for recruitment agency premises, including provisions for special inspections following MoLVT's receipt of complaints relating to labour disputes, working conditions, illness, work related accidents, or general misconduct.²¹³ The *Prakas on the Recruitment Process and Pre-departure Orientation and Training* contains step-by-step outlines of the duties and responsibilities of parties involved in the deployment of migrant workers departing Cambodia.

In addition, the *Prakas on the Promulgation of Minimum Standards of Job Placement Services Abroad Contracts* contains provisions aimed to address the previous absence of standards for working conditions, job status, and benefits for migrant workers, while the *Prakas on Complaint Receiving Mechanism for Migrant Workers* lays out the mode and means for formulating, submitting, receiving, and responding to complaints from migrant workers. This stronger set of standards establishes the systems and services to address some of the contract violations experienced by migrant workers, as identified in a CARAM Asia study in partnership with the national civil society organization Tenaganita. For example, violations experienced by migrant domestic workers, including changes in their working conditions (such as lower wages and debt bondage); irregular or no payment of wages; verbal, sexual, and physical abuse; and confiscation of personal documents.²¹⁴

208 Ibid.

209 Cambodian League for the Promotion and Defence of Human Rights (LICADHO) 2011, "Comments on the Sub-decree on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies."

210 Ibid., p. 11.

211 *They Deceived Us at Every Step*, op. cit.

212 articles 3, 4, 5.

213 article 3.

214 *Reality Check: Rights and Legislation for Migrant Workers*, op. cit.

Memorandum of Understanding between the Government of Thailand and the Government of Cambodia on Cooperation in the Employment of Workers

Cambodia signed this memorandum of understanding with Thailand in 2002 in an effort to regulate existing migration practices. In terms of content, it focuses primarily on regulation of migration practices rather than protection of migrant workers. Provisions in the MoU cover government-to-government recruitment of migrant workers for a specific period of employment in Thailand, providing incentives to motivate workers to return home after the completion of employment; labour protection and dispute settlement; and measures against illegal employment.²¹⁵ Workers recruited from Cambodia under this MoU are provided with visas for temporary stay plus work permits for a period of two years. These work permits are then renewable for another four years, after which it would be necessary to leave Thailand for a period of three years before re-registering.

Upon their introduction, MoU processes were intended to become the official method for recruiting new migrant workers from Cambodia to Thailand. However, at the end 2010 only approximately 50,000 workers had been recruited via the MoU processes, with workers continuing to engage in short-term, undocumented, cross-border work. Due to the continuing existence of a parallel system of registration for undocumented Cambodian workers already in Thailand, new workers were also less likely to engage in relatively costly and lengthy MoU recruitment processes.

For further information on labour migration governance for Cambodian migrant workers and the operation of both MoU and parallel registration processes in Thailand, please see the Thailand Country Profile of this report.

Bilateral memoranda of understanding between Cambodia and Malaysia

In October 2011, the Cambodian Prime Minister announced an indefinite ban on the sending of Cambodian domestic workers to Malaysia. This official ban came as a response to increasing reports of abuse, including a number of deaths, of Cambodian migrant workers in Malaysia. According to the details of the ban, those maids that were already contracted and in possession of travel documents were permitted to be deployed.²¹⁶ However, human rights groups and parliamentary opposition members in Cambodia nevertheless reported that some recruitment agencies were ignoring the ban and sending new workers.²¹⁷

In February 2012, the Cambodian Working Group for Domestic Workers, a coalition of civil society groups, submitted a formal Call to Action endorsed by 65 national and international civil society groups, calling upon the governments of Cambodia and Malaysia to “sign a bilateral agreement

²¹⁵ Chantanavich, S. and Jayagupta, R., 2010, “Immigration to Thailand: The Case of Migrant Workers from Myanmar, Laos and Cambodia”, in Segal, Elliot et al. (eds.), 2010, *Immigration Worldwide: Policies, Practices and Trends*, pp. 303–320.

²¹⁶ Open Development Cambodia, 2011, *Tags Archives: Domestic Workers*, at <http://www.opendevelopmentcambodia.net/tag/domestic-workers/page/2/>.

²¹⁷ *They Deceived Us at Every Step*, op. cit., p. 82; ABC Radio Australia, 2011, “Cambodian PM Bans domestic workers going to Malaysia”, 18 October 2011, at <http://www.radioaustralia.net.au/international/radio/onairhighlights/cambodia-bans-sending-maids-to-malaysia>; CNN, 2011, “Cambodia defies ban and sends maids to Malaysia, lawmaker says”, 6 November 2011, at <http://edition.cnn.com/2011/11/05/world/asia/cambodia-domestic-workers/index.html>.

that ensures the protection of rights enshrined in ILO C189.²¹⁸ While further discussions regarding a bilateral MoU on Cambodia manpower in Malaysia were held in August 2012,²¹⁹ as well as discussions in November 2012 regarding a draft bilateral *Memorandum of Understanding on Cooperation in Combating Trafficking in Persons*, no formal MoU agreements have yet been reached between the two countries.²²⁰



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on right to health for all, Cambodia is a State Party to the *International Covenant on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. While Cambodia submitted its first progress report to the ICESCR Committee in 2008, a joint coalition of Cambodian civil society groups has also submitted two 'parallel' reports to the ICESCR Committee, in 2002 and 2009, respectively.²²¹ Brief mention is made of migrants in these reports, although particular recommendations made in the 2009 parallel report under ICESCR article 9, relating to social security, recommend that the government should take special measures to extend social security protections to, and take special measures to protect, disadvantaged groups such as migrants.²²²

Cambodia is also a State Party to the *Convention on the Elimination of All Forms of Discrimination against Women*. In its most recent report to the CEDAW Committee, submitted in 2011, the government noted in reference to migrants only that one embassy secretary in each of Malaysia, Thailand, and South Korea had been temporarily assigned to handle work related to Cambodian migrants. However, the level of training and capacity of such embassy secretaries to deal with health and welfare issues facing migrant workers abroad, particularly vulnerable female domestic workers, is unclear. Importantly, as a WHO Member State, Cambodia is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.²²³

218 For full text of the Call to Action, see http://www.lscw.org/images/lscw/CWGDW_Call_to_Action_28_Feb_2012.pdf.

219 *Investment News in Cambodia*, 2012, "Cambodia and Malaysia discuss MoU on Use of Manpower", 4 October 2012, at <http://investmentnewsincambodia-mirror.blogspot.com/2012/10/cambodia-and-malaysia-discuss-mou-on.html>.

220 Coordinated Mekong Ministerial Initiative Against Trafficking, 2012, "MoU drafted between Cambodia and Malaysia to combat Trafficking in Persons", 25 November 2012, at <http://www.somaly.org/news/mou-drafted-between-cambodia-and-malaysia-combat-trafficking-persons>.

221 NGO Working Group, 2009, *Parallel Report on Cambodia 2009*, at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/NGO_WG_Cambodia_CESCR42.pdf.

222 *Ibid.*, p. 42.

223 WHA 61.17, *Resolution on Health of Migrants*.

Monitoring migrant workers' health

Research suggests that even documented migrant workers from Cambodia have little contact with health professionals prior to departure, receiving very little preparatory information about health and safety in the host country.²²⁴ Given this lack of interaction with health systems and services, there is limited opportunity for the collection of any data on migrant workers' health. While private recruitment agencies, as well as both international and local non-governmental organizations, may interact with migrant workers during pre-departure and post-return, there are also no existing mechanisms for sharing or collating this data.

Cambodian Government representatives in regional multi-stakeholder discussions have noted this lack of coordinated management of limited health screening data, citing a lack of funds to support the development of comprehensive data surveillance systems and the difficulty of collecting data from private recruitment agencies as key barriers in the development of better monitoring.²²⁵ For example, private recruitment agencies will carry out health assessments in accordance with needs of receiving countries, but they are not subject to any mechanism for collating or sharing such data within Cambodia. In the case of migrants returning to Cambodia as a result of health-related issues—for example, deportation due to HIV status—there are also no established referral or notification processes and no clear data on numbers of deportations that might help shape return and reintegration programmes and services.²²⁶

Policies and legal frameworks affecting migrant health

While Cambodia's national health budget has grown substantially in recent years, health spending remains low on a per capita basis, at approximately \$119.²²⁷ No nationwide social security programme exists to cover all workers, and approximately 60 percent of health expenditure is out-of-pocket. A *Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law* was passed by Parliament in 2002. Although a subsequent sub-decree in 2007 brought the Cambodian National Social Security Fund into force in 2008, it has focused primarily on work accidents and injury insurance for workers, and has served mainly the domestic textile industry.²²⁸ The fund is currently financed by employer contributions and only applies to those who are working in Cambodia. Portable insurance and social security protection are not available to migrant workers departing the country.

According to *Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies*, responsibility for arranging social security and access to health care for migrant workers while abroad sits entirely within the purview of the recruitment agencies. These agencies are also responsible for the pre-departure working and living conditions

²²⁴ Lee, C., 2007, "Exploitative Labour Brokerage Practices in Cambodia: The Role and Practices of Private Recruitment Agencies" (unpublished paper), cited in "Irregular Migration from Cambodia", op. cit.

²²⁵ *Report of Multi-Stakeholder Dialogue*, op. cit., p. 52.

²²⁶ Ibid.

²²⁷ WHO, 2009, Cambodia Statistics, at <http://www.who.int/countries/khm/en/>.

²²⁸ Samyodorai, S., 2009, "Social Security for Migrant Workers in ASEAN", at <http://arossasia.wordpress.com/2012/07/06/19-social-security-for-migrant-workers-in-asean-samyodorai/>.

of recruited workers.²²⁹ In reality, such arrangements for both pre-departure and the period of deployment are very difficult to enforce. As noted by CARAM Asia in a review of *Sub-decree 190*, given that the legislation provides no clear standards for administration of pre-departure centres, there are ongoing accusations of illegal detention, exploitation, and other forms of abuse against recruited workers.²³⁰

For workers experiencing such difficulties, there is often little access to redress. Research by Human Rights Watch in training centres in Cambodia for migrant workers being deployed to Malaysia found that labour agents restricted prospective workers' freedom of movement and limited their communication with relatives until they left for Malaysia. Despite legislation requiring certain standards, centres were found to be overcrowded, providing poor living conditions without access to adequate food, water, or medical care. Migrant workers noted that they experienced verbal, psychological, and sometimes physical abuse, while sick domestic workers were denied proper medical care or had medical expenses added to their existing recruitment debts.²³¹ Yet workers who had already committed large sums of money to recruitment agencies remained unwilling or unable to remove themselves from adverse conditions once in transit from home towns.

For many migrant workers, the ability to access limited health-related protections that may exist is hindered by a lack of awareness on the part of the worker of what their rights to health entail, both in the host and source country. In this regard, one important piece of legislation aiming to improve such awareness prior to moving abroad is *Prakas 108 on Education of HIV/AIDS, Safe Migration, and Labour Rights for Cambodian Workers Abroad*. Under this legislation, the Committee for the Control of HIV/AIDS under the Ministry of Labour and Vocational Training is mandated to provide training on methods of general welfare and HIV prevention, while the MoLVT also encourages relevant stakeholders to "conduct pre-, during, and post-departure training for Cambodian workers, and to reintegrate them into society following repatriation."²³²

However, although this *prakas* notes that inspections will be carried out by MoLVT officials to ensure that training is being delivered on "working environments..., labour law, human rights and other customary laws of the country for which they will work", as well as evaluations on working conditions and livelihood rights of workers,²³³ it remains unclear how often such inspections will be carried out and what the punishment might be for not adhering to these requirements. Given that the significant majority of workers departing Cambodia do so through irregular processes, it is also important to note that such workers do not receive any of the welfare-based preparations envisioned under this *prakas*.

Lack of health protections and cases of abuse may also continue during deployment, given the fact that responsibility for facilitating access to health care, and in many cases covering health care costs, for migrant workers once abroad shifts to local, private, employers under the relevant national

²²⁹ *Sub-decree 190*, article 21.

²³⁰ CARAM Cambodia, 2011, *Analysis of Sub-decree 190 on Management of the Sending of Cambodian workers to work abroad through private recruitment agencies*.

²³¹ *They Deceived us at Every Step*, op. cit., p. 11.

²³² *Prakas 108 on Education of HIV/AIDS, Safe Migration, and Labor Rights for Cambodian Workers Abroad*, article 1.

²³³ *Ibid.*, article 5.

legislation of the destination country. Given that 95 percent of workers migrate without proper documentation, this translates an inability to access even those limited health rights afforded to documented workers. For example, while the MoU between Cambodia and key destination country Thailand exists, it mainly focuses on legalizing irregular workers already working in Thailand and developing a formal system for the ongoing recruitment of documented workers. Although in theory such regularization indirectly leads to improved rights in terms of health access in Thailand, health is not specifically mentioned in the document. The complex, time consuming, and relatively expensive process of obtaining cards for health care access also hinders workers participation in such schemes, as is further discussed in the Thailand country profile of this report.

Migrant-sensitive health systems

Given the difficulties of achieving universal health care in a relatively resource-poor environment, contributions of non-governmental donors play a significant role in most aspects of health care in Cambodia. There are 20 multilateral and bilateral donors in country, and more than 100 health-related international and national non-governmental organizations.²³⁴ While there are relatively few donor-funded health programmes focused specifically on migrant workers, it is important to note that such individuals are included with local workers in many programmes, both prior to departure and on return.

Migrant workers from Cambodia travelling to Thailand may have access to non-government funded initiatives in which Cambodia migrant worker volunteers and migrant health assistants have been installed as volunteers in provincial hospitals in Thailand to bridge linguistic and cultural gaps. However, a number of these initiatives are in the pilot stage and are hindered by government restrictions on the type of work migrants are able to carry out, which prevents the formal hiring of qualified Cambodian migrants to work to provide ongoing translation services.²³⁵

Partnerships, networks, and multi-country frameworks

Participants in multi-stakeholder discussions on migrant workers' right to health in the ASEAN region have noted a clear lack of capacity of the Cambodian Embassy staff in receiving countries to support migrant workers who are experiencing difficulties in terms of health access, noting that while civil society organizations may be able to refer to legal support services in country, very little government assistance is available to migrant workers.²³⁶ While Cambodian authorities have set up an office of its Ministry of Labour in Bangkok to reach migrant workers, this office is primarily concerned with the implementation of regularization processes related to the MoU between these two countries.

For further information on health care access for Cambodian migrant workers deployed to ASEAN countries, namely Thailand and Malaysia, please see respective country profiles in this report.

²³⁴ WHO, 2011, *Cambodia: Country Cooperation Strategy at a glance*, at www.who.int/countryfocus/cooperation_strategy/ccsbrief_khm_en.pdf.

²³⁵ *Good Practices to Protect and Promote Migrant Workers' Rights in Thailand*, op. cit., p. 8.

²³⁶ *Report of Multi-Stakeholder Dialogue*, op. cit.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Design and implement systems for the collection, analysis, and dissemination of disaggregated data on migrant workers, examining health care needs and health-seeking behaviour throughout the migration cycle.
- 2 Advocate for the sharing of data on migrants' health and the establishment of effective referral systems for migrants traveling between Cambodia and Thailand.

Policy and legal frameworks affecting migrant health

- 3 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers* (No. 189).
- 4 Sign a bilateral agreement with destination country Malaysia that ensures the protection of rights enshrined in ILO Convention No. 189.²³⁷
- 5 Promote and effectively monitor *Prakas 108 on Pre-departure Education of HIV/AIDS, Safe Migration, and Labour Rights for Cambodian Workers Abroad*.

Migrant-sensitive health systems

- 6 Involve migrant communities, particularly peer-support networks involving pioneer migrants, in advocacy and service delivery.

Partnerships, networks, and multi-country frameworks

- 7 Strengthen multisectoral collaboration within Cambodia and clarify roles of key stakeholders in the management of migrant workers throughout the migration cycle.
- 8 Include civil society and migrant worker advocacy groups in government-led responses to the protection of migrant workers' rights, including right to health.
- 9 Strengthen intercountry partnerships with key host countries and implement existing recommendations, such as the posting of labour attachés to Cambodian embassies abroad, in order to improve the protection of Cambodian migrant workers' rights, including right to health in host countries.

²³⁷ This recommendation originally appeared in the Call to Action by the Working Group for Cambodia Domestic Workers.



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Indonesia



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Indonesia is one of South-East Asia's major sending countries of migrant workers. While cross-border migration, particularly into Malaysia, has a very long tradition, formal government-run migration programmes for migrant workers are relatively recent, having been first instituted in 1969.²³⁸ During the 1980s the Indonesian Government's Department of Manpower began to promote and regulate the export of migrant workers, in particular female domestic workers, and establish more formal ties with major migrant receiving states.²³⁹

Generally speaking, in both key ASEAN destination countries, Malaysia and Singapore, the increasing participation of middle-class women in the labour force coupled with overall low unemployment and labour shortages in low-wage sectors sustains the continuing demand for Indonesian workers—particularly female domestic workers.²⁴⁰ In the case of Malaysia, cultural, ethnic, and linguistic affinity combined with geographical proximity are key drivers of migration. While these factors facilitate easier communication between employers and workers in Malaysia, in other destination countries, such as Singapore, Indonesian workers are also preferred and thus more prominent, apparently due to both low cost and their “perceived docility” in comparison to Filipino domestic workers.²⁴¹

²³⁸ *Labour Migration from Indonesia*, op. cit., p. 15.

²³⁹ Silvey, R., 2007, “Unequal Borders: Indonesian Transnational Migrants at Immigration Control”, *Geopolitics*, vol. 12, pp. 265–279.

²⁴⁰ *Ibid.*

²⁴¹ Van Hear, N., Bakewell, O., and Long, K., 2012, “Drivers of Migration”, Migrating Out of Poverty Research Consortium, Working Paper 1, March 2012.

Other factors driving Indonesian migrants to take up low-skilled employment in the ASEAN region and such other destination countries as Saudi Arabia and Hong Kong include unemployment at home and wage differentials abroad. Labour surplus in Indonesia is an ongoing problem, with a current unemployment rate of approximately 7 percent, and a youth unemployment rate five-times the national average.²⁴² Recent research suggests that the majority of workers migrate with the intention of saving and remitting money to fund daily expenses, buy or build a house, educate children or relatives, and buy consumer goods. Many migrants are motivated to go abroad again once their saved money has run out.²⁴³

The latest available data show remittances from Indonesian workers amounted to approximately \$6.6 billion in 2009,²⁴⁴ which ranks labour migration as the third-largest contributor to Indonesian foreign exchange after energy (oil and gas) and tourism.²⁴⁵

Out-migration overview

Recent estimates from government sources suggest that approximately 6 million Indonesians are working abroad.²⁴⁶ While this estimate includes 4.2 million registered workers and approximately 2 million irregular workers in a variety of occupations, estimates from other sources suggest that there may be as many as 6 million Indonesian foreign domestic workers (FDWs) alone.²⁴⁷

In 2011, the total number of documented workers placed overseas was approximately 580,000, with the largest number of placements in Saudi Arabia (approximately 138,000) and Malaysia (134,000). Other top destinations within South-East Asia were Singapore (48,000) and Brunei (11,000), while Taiwan (51,000), United Arab Emirates (28,000), Kuwait (26,000), and Hong Kong (30,000)²⁴⁸ were the key destination countries in East Asia and the Arab States, after Saudi Arabia.

While it is worth noting that annual new placement numbers for documented workers have been declining in very recent times, down from approximately 645,000 in 2008, this decline can be at least partially attributed to the Indonesian Government-enforced moratoria on the supply of Indonesian FDWs to both Saudi Arabia and Malaysia,²⁴⁹ rather than a signifier of a general

242 Christie, S., 2012, "High Rate of Youth Unemployment Presents Big Challenge: World Bank", *Jakarta Globe*, 27 March 2011.

243 *Labour Migration from Indonesia*, op. cit., p. 22.

244 World Bank, 2011, *Migration and Remittances Factbook 2011*.

245 Prasetyohadi (Institute for Ecosoc Rights), 2011, "Significance of the Amendment of Law no. 39/2004 on Overseas Placement and Protection for Indonesian Migrant Workers", presentation delivered 14 July 2011 at UNESCO Workshop, Migrant Workers in Asia: Policies and Practices in Social Sciences.

246 Sunityo, E., 2012, "Policy and strategy of Indonesian Government in promoting migrant labor health", presentation delivered 9 March 2012 at ASEF Research Exchange Workshop on Social Determinants of Migrant Health across Asia & Europe.

247 Global Network and Labor Education and Research Network, 2010, "Baseline research on Domestic workers in Asia and the Middle East, Center for Migrant Advocacy, Second Draft", cited in *Domestic Workers Count: Global Data on an Often Invisible Sector*, 2011, Schwenken, H. and Heimeshoff, E. (eds.).

248 Sunityo, op. cit. All figures are approximate, rounded to the nearest 1,000.

249 These moratoria were decreed by the Indonesian president following publicity surrounding cases of abuse against Indonesian OFWs in Malaysia and the beheading of an OFW in Saudi Arabia, as will be discussed below. It is likely that some workers are still going to these countries, but through irregular channels.

declining trend in placement of Indonesian workers abroad. Commentary suggests that a decline in documented workers in such cases is also mirrored by an increase in undocumented workers.

Low-skilled or semi-skilled labourers constitute the majority of Indonesian migrant workers. For the three years from 2008 to 2010, an average of 74 percent of placements were in the informal sector, with 26 percent in the formal sector.²⁵⁰ Again, although the percentage of documented informal workers dropped to 54 percent in 2011, this was likely due to government intervention.

As is the case for other major labour-sending countries in the ASEAN region, the majority of the Indonesian migrant workforce is female, at 64 percent in 2011. While the majority of men work in agriculture, construction, or manufacturing, the majority of women are domestic workers or caregivers.²⁵¹ In the past, prior to the moratoria noted above, the ratio of female to male workers was considerably higher, at 84 percent in 2009 and 78 percent in 2010.²⁵²

Irregular Indonesian migrants—that is, those workers who leave Indonesia without following official procedures; who depart from Indonesia through official channels but allow their stay permits to lapse; and who work beyond their official documentation—can be found in all destination countries.²⁵³ While recent data or reliable estimates of numbers of irregular migrants is difficult to access, it has been suggested that they are most commonly found in Malaysia,²⁵⁴ where they constitute more than half the estimated 900,000 irregular migrants in that country.²⁵⁵

The Indonesian Institute for Ecosoc Rights cites five main factors influencing the irregular status of Indonesian migrant workers. While some migrants make a conscious choice to migrate through irregular channels, given the complexity or cost of taking the documented route, others will initially depart Indonesia as documented workers and subsequently terminate their employment with a particular employer as a result of abuse, withheld wages, or misrepresentation of working conditions, thus losing their legal status.²⁵⁶ Commentary from the International Organization for Migration suggests that irregular migration is likely to continue, given weak law enforcement and continued profitability for involved parties.²⁵⁷

²⁵⁰ The Indonesian Central Body of Statistics (BPS) bases its definition of “informal” and “formal” sectors on employment status. Seven categories of employment status are detailed, two of which are formal: (i) employer assisted by permanent/paid workers, and (ii) employee working permanently for institution, office, company, or individual; and five of which are informal: (i) casual agricultural employee, (ii) casual employee not in agriculture, (iii) unpaid worker, (iv) self-employed worker without paid employees, and (v) employer assisted by temporary or unpaid workers. For further information, see BPS–Statistics Indonesia, 2010, *The Informal Sector and Informal Employment in Indonesia*, pp. 63ff, at http://www2.adb.org/Statistics/reta_files/6430/2010/Indonesia-Country-Report-ISS09-Draft-21Sep10.pdf.

²⁵¹ *Labour Migration from Indonesia*, op. cit.

²⁵² Sunityo, op. cit.

²⁵³ IOM, 2010, *International Migration and Migrant Workers' Remittances in Indonesia*.

²⁵⁴ Ibid.

²⁵⁵ Kanapathy, V., 2008, “International Migration Statistics and Data Sources”, at <http://www.docstoc.com/docs/22427609/International-Migration-Statistics-and-Data-Sources-Malaysia>.

²⁵⁶ Cited in *International Migration and Migrant Workers' Remittances in Indonesia*.

²⁵⁷ *Labour Migration from Indonesia*, op. cit., p. 18.



LABOUR MIGRATION GOVERNANCE

Placement and protection of Indonesian migrant workers abroad is governed by the *Indonesian Republic Act No. 39/2004 regarding Placement and Protection for Indonesian Overseas Workers*. Generally speaking, management of Indonesian migration is a complex, multi-stakeholder process. The establishment of more effective mechanisms for the protection of workers has been hindered by problems in coordination, confusion, and conflicts of interest among the various stakeholders involved.²⁵⁸

To supplement the regulations of *Act 39/2004*, Indonesia has also signed a MoU with a number of recipient countries, including Jordan (2009), South Korea (2010), United Arab Emirates (2010), and Qatar (2011),²⁵⁹ although the major focus of these MoU has generally been on improving the migration processes rather than the protection of workers. Within South-East Asia, Indonesia has signed three MoU with Malaysia, seeking to regularize the recruitment of migrant workers.

The Indonesian Government continues to take important steps in advocating for the protection of workers' rights abroad, most recently with its ratification of the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* in 2012. In 2011, *Presidential Decree No. 15 on an Integrated Team for Protection of Indonesian Workers Overseas* established a team to: (i) review and evaluate policies, legal frameworks, and mechanisms relating to the placement and protection of emigrant workers; (ii) review memoranda of understanding that are in place with destination countries; and (iii) evaluate the handling of problems facing migrants overseas. Following the establishment of this team, and the government's ratification of the ICMW, amendments to *Act 39/2004* are currently under discussion in Parliament.

Act 39/2004

In line with this act, the placement of Indonesian overseas workers is managed by the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI), which was established in 2006. The board is a non-ministerial government authority, consisting of 13 members/departments, currently chaired by a representative from the NGO sector. Prior to the establishment of the BNP2TKI, migrant workers came under the control of the Ministry of Manpower and Transmigration (MoM).

Under *Act 39/2004* private recruitment agencies are essentially responsible for management of the entire migration process—from recruitment, document management, education and training, temporary accommodation, departure preparations, and departure to the destination country to repatriation back to Indonesia. Recruitment agencies are also now required to register all Indonesian workers arriving overseas at the embassy or consulate in the destination country.

²⁵⁸ Raharto, op. cit.; Tirtosudarmo, op. cit.; and *Labour Migration from Indonesia*, op. cit.

²⁵⁹ IOM, 2012, *Labour Migration from Colombo Process Countries: Good practices, challenges, and the way forward*, p. 37.

The Indonesian Embassy in the host country will then, in theory, hold a copy of the workers' contract and log the address of the employer. While this could be an important avenue towards improved protection for Indonesia overseas workers, reports suggest that many recruitment agencies are still failing to register migrant workers with the embassy or consulate upon arrival.²⁶⁰

Generally speaking, this act focuses more on administrative and practical aspects of the placement of Indonesian workers overseas, with only 8 out of 109 articles within 1 of 16 chapters of the act focusing directly on the issue of protection.²⁶¹ Further, specific protection issues include a certain level of ambiguity about what is meant by 'government' at certain points—that is, the MoM or BNP2TKI—and this ambiguity compromises the ability of either agency to act with full authority. This type of ambiguity is not limited to *Act 39/2004*, but also extends to other presidential regulations. For example, *Presidential Regulation 81/2006* decreed that all activities related to placement and protection of Indonesian migrant workers overseas should be handed over from the MoM to BNP2TKI. However, in contradiction to this decree, the subsequent *MoM Regulation 22/2008* decreed that BNP2TKI authority lies only with government-to-government recruitment and placement.²⁶²

Disjuncture in the management of migrant workers occurs not only as a result of ambiguity between BNP2TKI and MoM but also with regard to other stakeholders, such as private recruitment agencies, of which there are approximately 1,300 operating in Indonesia and receiving countries.²⁶³

More specific issues continue to hinder attempts at improving protection for Indonesian foreign workers, including insufficient punishments for recruitment agencies that violate *Act 39/2004*. For example, if any agency is reported for a violation to MoM, the agency can lose its license. However, there are no regulations preventing an agency from reapplying immediately.²⁶⁴ In addition, there are no clear processes for the monitoring and evaluation of recruitment agencies, and no clear procedures for reporting abuses.²⁶⁵

A number of organizations have documented the deceit and abuse of overseas domestic workers by private recruitment agencies.²⁶⁶ A key area of concern relates to the conditions in temporary lodgings provided for migrant workers by private recruitment agencies prior to deployment from Indonesia. Recent commentary suggests that although ministerial regulations on standard conditions for these lodgings have been issued, conditions often do not meet these minimum standards. In some cases, migrant workers are housed in overcrowded lodgings, are restricted from leaving their lodging centres, and are kept in these lodgings beyond the maximum periods of three months for workers being deployed to the Middle East and four months for those deployed to the Asia-Pacific region.²⁶⁷

²⁶⁰ Ibid., p. 111.

²⁶¹ Raharto, op. cit.

²⁶² Ibid.

²⁶³ Sunityo, op. cit.

²⁶⁴ Raharto, op. cit.

²⁶⁵ Ibid.

²⁶⁶ Human Rights Watch, 2011, "Protecting Indonesia's Vulnerable Migrant Domestic Workers", 31 October 2011, at <http://www.hrw.org/news/2011/10/31/protecting-indonesia-s-vulnerable-migrant-domestic-workers>.

²⁶⁷ Kuncoro, A., Damayanti, A., and Isfandiarni, I., 2013, "Indonesian Cross-Border Labour Migration: Structure, Institutions and Governance", *Working Papers in Economics and Business*, vol. 3 (6).

In most destination countries for Indonesians, workers are also generally not protected by labour laws and are thus particularly vulnerable to extreme exploitation as well as physical and psychological abuse, including violence, harassment, intimidation, and various forms of exploitation at every step of the migration process.²⁶⁸

Memoranda of understanding between Indonesia and Malaysia

Bilateral MoU between the Indonesian and Malaysia governments on labour migration include: on the recruitment of workers (2004); on the recruitment and placement of workers (2006); and on domestic workers (2011), which essentially replaces the 2006 MoU. The 2011 agreement grants Indonesian domestic helpers in Malaysia one day off per week (or extra pay if they work seven consecutive days) and the right to keep their passports. It also caps recruitment fees at \$1,500, allowing Malaysian employers the right to deduct up to \$600 from domestic helpers for recruitment fees, provided the helper receives at least half of her promised wages after any deductions.

Although these MoU exist, the relationship between Indonesia and Malaysia has encountered difficulties in recent times. Prior to the signing of the most recent MoU, in 2009 the Indonesian Government declared a moratorium on the placement of domestic workers in Malaysia, following publicity surrounding cases of abuse by Malaysian employers. Although the 2011 MoU essentially ended this moratorium, commentary from human rights groups has suggested that protections in the 2011 MoU require strengthening. In particular, Malaysia has not agreed to Indonesia's demand for a minimum monthly wage, while the provision enabling employers to pay a worker to forgo the day of rest could be easily abused, given the workers lack of bargaining power and fear of termination of employment.²⁶⁹



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on the right to health for all, Indonesia has ratified the *International Convention on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. Like all other ASEAN Member States, it has also ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens). It should be noted, however, that the protective provisions may have limited application for Indonesian migrant workers,

²⁶⁸ *Labour Migration from Indonesia*, op. cit., p. xi.

²⁶⁹ *Slow Reform*, op. cit., p. 14.

given that none of the primary host countries have signed or ratified the ICESCR, and workers are subject to the laws of these countries throughout the majority of the migration cycle.²⁷⁰

As a WHO Member State, Indonesia is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008. This resolution recognizes increased health risks for groups of migrants, and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.²⁷¹

Monitoring migrants' health

The Indonesian Ministry of Health maintains a web-based data collection system — the Indonesian Health Information System — that includes migrant workers, although data is disaggregated only by employment sector, with no differentiation between workers in Indonesia and overseas foreign workers. The progressive establishment of a computerized database system for Indonesian migrant workers and the issuance of identity cards goes in some way to address the need for a centralized national database on migrant workers, which may in turn assist in monitoring and health protection.

Indonesian participants in regional multi-stakeholder discussions on this topic have noted that continuing challenges related to the effective monitoring of migrants' health include issues of stigma discrimination and negative use of data; a lack of official data disaggregated by migrant worker status (rather than disaggregated only by employment sector); and a lack of commitment of stakeholders to maintain data collection, aggregation, and analysis.²⁷²

Policies and legal frameworks affecting migrant health

The estimated total expenditure on health per capita in Indonesia in 2009 was \$99.²⁷³ Insurance for Indonesian workers is currently limited to formal sector employees; and according to recent data, 64 percent of spending on health is private, the majority of which consists of out-of-pocket payments.²⁷⁴ Although the *National Social Security System Law* was passed in 2004 — essentially establishing four social security systems for private sector employers, civil servants, armed forces, and pensioners and veterans²⁷⁵ — membership is not compulsory for informal sector workers, nor workers in organizations of fewer than 10 people. In 2005 a non-contributory insurance scheme for poor households was also introduced,²⁷⁶ yet according to a recent case study prepared for Migrant Forum in Asia, only 17 percent of all workers in Indonesia (both formal and informal) are currently covered under social security and insurance schemes.

270 Chan, "Review of labour migration management", op. cit., p. 11.

271 WHA 61.17, *Resolution on Health of Migrants*.

272 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 53.

273 WHO Indonesia, *Statistics*, at www.who.int/countries/idn/en/. This compares to WHO's global average per capital expenditure on health of USD1027.

274 WHO Indonesia, 2008, *Country Cooperation Strategy: Indonesia*, at www.who.int/countryfocus/cooperation_strategy/ccs_idn_en.pdf.

275 *Law 4/2004*, article 5(3).

276 WHO Country Office for Indonesia, 2008, *Country Cooperation Strategy: Indonesia*.

In 2011 the Ministry of Labour passed a decree specific to insurance for migrant workers,²⁷⁷ but this insurance mechanism can only be used for opportunistic infections. Insurance will cover some illnesses, unpaid wage, and death of migrants. HIV-related health services cannot be claimed, but other sexual and reproductive health issues may potentially be covered. Workers are expected to pay a part of insurance premium before they depart and the remainder following their return to Indonesia. Insurance coverage includes (i) the pre-departure period between home village and recruitment agency boarding house for such things as sickness, injury, failure to go abroad, and death; (ii) while abroad for such things as sickness, injury, and death; and (iii) the return period from location abroad to home village.²⁷⁸

While the availability of such portable insurance coverage could signal improvements in health access for migrant workers, previous reviews of past implementation of insurance processes suggest that 70 percent of all claims were stalled in the claim lodgement system as of 2009. At the time, this situation led the Indonesian Migrant Workers' Union to protest, demanding that the MoM take action to address these stalled claims.²⁷⁹ Focus group discussions with migrant workers in 2011 also noted their difficulties with claiming on insurance, although insurance companies also noted in interviews that reasons for declining claims included lack of proper medical records and receipts.²⁸⁰

Aside from the establishment of such insurance measures, national legislation mandates a range of other measures to help promote and protect Indonesian migrant workers' right to health throughout the migration cycle. Prior to departure, workers receive two types of pre-departure orientations, each of which is required by legislation 39/2004 and includes a small health components. These are: (i) labour training and orientation, with focus on skill and competencies, approximately 20 hours in total and including two hours on health; and (ii) pre-flight orientation, eight hours in total, during which approximately 15 minutes is spent on HIV/AIDS.²⁸¹ While such initiatives are an important step, commentary notes that resources to monitor the effective delivery of such pre-departure training are limited, often with materials delivered at the last minute in the days prior to departure to too large an audience.²⁸²

Other health-related protections for migrant workers prior to departure include legislation developed by the Ministry of Manpower and Transmigration and the Ministry of Health prohibiting HIV status being used in recruitment processes. While such concerns are particularly important, they are nevertheless difficult to fully implement in practice, given that in many cases destination countries for Indonesian migrant workers require HIV testing as part of the recruitment process. Although Indonesia does not place any HIV-related travel restrictions on entry, stay, or residence, such restrictions exist in a number of key ASEAN destination countries for Indonesian workers, including Malaysia, Singapore, and Brunei. Destination countries in the Arab States also have

277 Decree of the Minister of Manpower and Transmigration on Insurance for Indonesian Workers.

278 Trimayuni, P., 2011, "Pre-departure Information Programmes for Indonesian Migrant Workers" (draft, 30/9/2011).

279 *Labour Migration from Indonesia*, p. 26.

280 Trimayuni, op. cit.

281 Sadik, H., 2010, National AIDS Commission Indonesia Presentation, delivered at 2010 JUNIMA Indonesia/Malaysia round table on Migrant Workers' Access to Health and HIV Services.

282 *Report of Multi-Stakeholder Dialogue*, op. cit.

legislation in place to enforce the deportation of non-citizens found to be HIV-positive. In the case of deployment to these countries, despite the existence of Indonesian legislation, migrant workers undergo mandatory medical tests, including an HIV test, prior to employment under the responsibility of private recruitment agencies. In instances where deportation from the host country occurs there are no established mechanisms for referral/access to services, and workers are often deported without access to counselling and support services.

Nevertheless, Indonesian Government agencies remain proactive in addressing many HIV-related vulnerabilities of migrant workers. In 2011 the National AIDS Commission developed a *National Action Plan for Migrant Workers, 2012–2015*, which focuses on prevention, treatment, care, support, and mitigation of the economic and social impact. Prevention initiatives include the improvement of HIV-related education within migrant workers' pre-departure and orientation programmes and the implementation of migrant-friendly HIV testing and counselling. In terms of care and support, the plan focuses on the development and implementation of proper referral systems for HIV-positive migrant workers and the establishment of proper monitoring processes to ensure the quality of migrant workers' medical agents. The strategy also focuses on the improvement of a database system and further research on migrant workers' biological and behaviour status.²⁸³ Recent research suggests, however, that this strategy is not yet operational.²⁸⁴

Migrant-sensitive health systems

Once migrant workers are deployed in country, their access to health systems and services is essentially in the hands of private recruitment agencies and employers in destination countries. Despite the existence of health insurance for Indonesian foreign workers, or memoranda of understanding detailing health-related provisions to be provided by employers in host countries, there remains an ineffective guarantee on the implementation of health services for Indonesian workers during placement periods. Not one of the top 10 destination countries for Indonesian migrant workers has ratified the ICMW, while the primary countries in which Indonesian domestic workers are placed do not recognize domestic work under their employment act. Thus, domestic workers are particularly vulnerable to extreme exploitation and abuse.²⁸⁵

Given that overseas deployment of Indonesian workers predominantly involves women who work in the informal sector, particularly domestic workers, this raises a range of specific health concerns. In order to address such negative outcomes in the migrant process for domestic workers, there are reports that the government is currently working on a new policy called the 'live-out' system for migrant domestic workers whereby they would be housed in dormitories instead of living with their employers.²⁸⁶ In addition, the Indonesian Government's *Domestic Worker Roadmap 2017* has

283 Silfanus, Dr. F, 2011, "Indonesia: National HIV/AIDS Action Plan for Migrant Workers, presentation delivered during the Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services in the ASEAN Region", Bangkok, 29–30 November 2011.

284 "Assessment of Mandatory Screening Practices in Cambodia, Indonesia and the Philippines and the Impact on Migrant Workers", op. cit.

285 *Labour Migration from Indonesia*, op. cit., p. xi.

286 Tan, Amanda, 2012, "Expect longer wait for Indonesian maids", *The Strait Times*, 1 March 2012, at http://www.menafn.com/menafn/qn_news_story.aspx?storyid={6b8e9186-28fb-4a21-95c5-c19b329c3129}.

put forward a plan to stop sending domestic workers abroad after 2017 unless receiving countries recognize them as formal workers and grant them all the necessary rights, including health rights.²⁸⁷

Currently, in order to support the assessment of returning Indonesian migrant workers upon arrival home, the MoM and BNP2TKI co-manage a supplementary terminal at Soeharto International Airport. Returning migrants are questioned upon arrival; but despite the existence of this disembarkation centre, a number of issues remain, including insufficient staff and inadequate knowledge of both procedures and referral systems available for health issues.²⁸⁸ Recent data suggests that approximately 14 percent of workers returning in 2011 were reported as 'troubled'. While the number one source of 'trouble' was one-sided termination, several health-related issues were also reported, including sickness due to work, sexual abuse, work accident, and pregnancy.

Partnerships, networks, and multi-country frameworks

The Indonesian Government has been proactive in partnering with stakeholders in destination countries to establish initiatives that might better protect its workers against potential negative health outcomes in the migration cycle. Established initiatives include: (i) the placement of labour attachés in countries with a large number of Indonesians, with the ability to respond to migrant workers' challenges in access to health systems and services; (ii) the provision of shelters for workers experiencing abuse; (iii) the provision of orientation programmes for new migrants arriving in destination countries such as Malaysia;²⁸⁹ and (iv) a hotline service, with anecdotal reports suggesting that 30 percent of workers are making use of this service.²⁹⁰

Nevertheless, Indonesian participants in regional discussions on this issue have noted a distinct lack of clarity on the role of government, both central and local, in supporting access to health services for returned workers,²⁹¹ as well as a lack of involvement of civil society organizations and migrant workers themselves in existing networks. For example, during bilateral negotiations between Indonesia and Malaysia on the recruitment of domestic workers, no mechanism existed for the involvement of civil society. Similarly, it has also been noted that when high-level multi-stakeholder dialogues do take place, recommendations and other outputs are not shared with stakeholders at other levels – regional, provincial, or local.²⁹²

For further information on health access for Indonesian migrant workers deployed to ASEAN countries, particularly Malaysia, please see respective country profiles in this report.

287 Soeriaatmadja, Wahyudi, 2012, "Jakarta plans to stop sending maids by 2017", *The Straits Times*, 5 January 2012, at <http://www.asianewsnet.net/home/news.php?id=25885&sec=1>.

288 Sunityo, op. cit.

289 Hall, A., 2012, *Migrant Workers' Right to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand*, at http://oppenheimer.mcgill.ca/IMG/pdf/Myanmar_and_Migrant_Workers_-_Briefing_and_Recommendations.pdf.

290 *Report of Multi-Stakeholder Dialogue*, op. cit.

291 Ibid.

292 Ibid., p. 56.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Develop and agree on standard migrant health indicators (access, quality, cost).
- 2 Advocate for the improvement of existing web-based data collection systems, including the collection, analysis, and dissemination of data disaggregated by status as migrant worker.
- 3 Improve multi-stakeholder collaboration in data collection processes.
- 4 Ensure the confidentiality and safeguarding against harmful use of data.

Policies and legal frameworks affecting migrant health

- 5 Advocate for the inclusion of health in the draft of the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.
- 6 Mainstream health and welfare issues within the development and review of memoranda of understanding and bilateral and multilateral agreements on labour migration.
- 7 Ensure development processes for memoranda of understanding and bilateral and multilateral agreements are inclusive and participatory (including CSOs and the migrant community).
- 8 Monitor the adherence of private recruitment agencies to government standards regarding pre-departure lodgings for Indonesian migrant workers.

Migrant-sensitive health systems

- 9 Increase collaboration among countries of origin, transit, and destination, and involve migrants in the creation and promotion of migrant-sensitive health systems.

Partnerships, networks, and multi-country frameworks

- 10 Involve migrant communities, civil society organizations, and unions as active partners, in particular for advocacy and service delivery.



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Lao PDR



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

The factors influencing cross-border migration from Lao PDR are the country's limited employment and comparatively low wages. While Lao PDR has a rapidly growing young labour force, with 55 percent of the population under 20 years of age, there are critical unemployment levels in the 15 to 24-year-old range.²⁹³

In 2005 it was estimated that approximately 8.4 percent of the total workforce, equivalent to about 40 percent of the total workers outside family farms, were working in Thailand.²⁹⁴ In the specific case of movement into Thailand, a range of factors have played a strong role in encouraging migration, including: the ease with which people can cross the border; the social, cultural, and linguistic kinships²⁹⁵; and the networks formed by pioneering migrants who embody the potential for vertical job mobility and skill improvement.²⁹⁶

In terms of value of remittances to Lao PDR, estimates suggest that these amounted to more than 7 percent of GDP in 2009,²⁹⁷ although more exact calculations are complicated by the fact that a significant proportion of migrants are undocumented and that money also flows in informal ways.

293 Lao PDR Ministry of Planning and Investment/UNDP, 2009, *Employment and Livelihoods: The 4th National Human Development Report*.

294 Ibid., p.156

295 Molland, S., 2011, "Safe Migration, Dilettante brokers, and the Appropriation of Legality: Lao-Thai 'Trafficking in the Context of Regulating Labour Migration'", *Pacific Affairs*, vol. 85(1), pp. 17-136.

296 Phenthongsawat, C., 2011, "Labour Migration in Lao PDR", presentation delivered at ADBI-OECD Round table on Labour Migration in Asia: Recent Trends and Prospects in the Post-crisis context, 18-20 January 2011, at http://www.adbi.org/files/2011.01.20.cpp_sess5.4.phenthongsawat.labour.migration.lao.pdr.pdf.

297 Ibid., p.156.

Out-migration overview

Many low-skilled migrant workers departing from Lao PDR do so via undocumented means, primarily due both to the cost and time required to engage in formal documented migration processes.²⁹⁸ Further, as many workers move to Thailand for crop cutting, seasonal agricultural work, or construction activities for relatively short periods, formal channels are inconvenient. Nevertheless, it is important to note that while a very large proportion of migrant workers leave Lao PDR through undocumented channels, half of those that arrive in Thailand will complete some form of registration with Thai authorities.²⁹⁹

For documented workers, the majority of formal requests for Laotian workers come from Thailand (57 percent), followed by Malaysia (28.6 percent), with the remaining coming from other Asian countries.³⁰⁰ Thailand is the primary destination for undocumented workers as well, many of whom may enter legally with border passes by land or illegally by boat.³⁰¹ Exact numbers of undocumented workers in Thailand are difficult to ascertain, given the ease with which potential migrant workers may cross the border into Thailand and remain there. In 2009 the ILO and the Thailand Development Research Institute estimate there to be approximately 300,000 Lao workers in Thailand at any one time, including 110,000 documented workers.³⁰²

Migrant workers from Lao PDR in Thailand generally work initially in the Thai border provinces as labourers, agricultural workers, service workers, and sex workers.³⁰³ Generally speaking, the majority of female workers are in the household sector, while the majority of male workers are in the agriculture sector.³⁰⁴ According to government statistics, of the 110,000 documented workers in Thailand, just under 20 percent were engaged in the household sector, followed by 16 percent in agriculture, and approximately 12 percent in 'food sales' and construction alike. An estimated 5.3 percent are engaged in the entertainment industry, mainly as sex workers.³⁰⁵

298 Chantanavich, S., 2008, *The Mekong Challenge: An Honest Broker – Improving cross-border recruitment practices for the benefit of government, workers and employees*. For example, those using licensed channels to come to Thailand from Cambodia and Lao PDR can expect to pay 15,000–20,000 baht (\$500–700), whereas irregular migration pay only 3,000–5,000 baht (\$100–180).

299 *Employment and Livelihoods: The 4th National Human Development Report*, op. cit., p. 157.

300 ILO, 2008, "Labour Migration from Lao People's Democratic Republic: A Factsheet", at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/trainingonmigrant/2labour-migration-from-lao-pdr-fact-sheet.pdf>.

301 Ibid., p. 310.

302 Ibid., p. 156.

303 Chantanavich and Jayagupta, "Immigration to Thailand", op. cit., pp. 303–320, p. 310.

304 IOM, 2011, *Thailand Migration Report 2011*, p. 12.

305 *Employment and Livelihoods: The 4th National Human Development Report*, op. cit., p. 161.



LABOUR MIGRATION GOVERNANCE

Out-migration overview

The key piece of legislation governing the movement of workers from Lao PDR is the *Prime Minister Decree 68/2002 on Export of Lao Workers Abroad*, supported by *Guidelines 2417/MOLSW on Implementation of the Decree on Export of Lao Workers Abroad*. Additional relevant guidelines include *Ministerial Decree No. 3824/LSW*, which prohibits Lao migrants from working in unskilled professions, such as cleaners, domestic workers, and porters, as well as vocations that are inappropriate and incompatible with Lao tradition, culture, and law, such as work in the sex sector.³⁰⁶

In 2013 the ministries of Labour and Social Welfare, Foreign Affairs, and Public Security jointly designed and published an *Operations Manual on the Protection and Management of Migrant Workers*. This manual outlines the procedures and stakeholder roles and responsibilities in sending Laotian workers abroad and receiving foreign workers in Lao PDR.³⁰⁷

General legislation and procedures described above are also supported by a 2003 *Memorandum of Understanding on Employment Cooperation with the Thai Government*, which provides a regulatory framework for the migration of low-skilled labour migrants to Thailand. Its primary aims are to regularize those workers already in Thailand and establish a regulated process for recruitment of all new workers from Lao PDR.

Lao PDR has not ratified either the *International Convention on the Protection of Rights of All Migrant Workers* or the ILO's *Migration for Employment Convention (No. 97)* or *Migrant Workers (Supplementary Provisions) Convention (No. 143)*. Nor has it ratified the recent *Domestic Workers Convention (No. 189)*. Generally speaking, protections for Laotian migrant workers before and during movement abroad are limited by two main factors: (i) the number of workers who migrate without proper documentation, leading to almost no access to limited rights protections that may exist for documented workers under legislation in host countries; and (ii) the strong involvement of recruitment agencies throughout the migration cycle coupled with the lack of government resources for monitoring their practices.

³⁰⁶ Chantanavich, *The Mekong Challenge*, op. cit. It should be noted that despite this decree a considerable number of migrant workers from Lao PDR are nevertheless engaged in these positions in host countries.

³⁰⁷ For an English translation of the text, see <http://apmagnet.ilo.org/resources/lao-pdr-operations-manual-on-the-protection-and-management-of-migrant-workers>.

Prime Minister Decree 68/2002 on Export of Lao Workers Abroad and Guidelines 2417/ MOLSW on Implementation of the Decree on Export of Lao Workers Abroad

This decree lays out the duties and responsibilities of both recruitment agencies and the Ministry of Labour and Social Welfare in managing the migration of Laotian workers abroad. According to the decree, the government aims to utilize migration of workers abroad to upgrade the skills, knowledge, and expertise of Laotian nationals. Potential workers must have completed primary school education and be in good health.³⁰⁸ Those planning to work abroad are also required to register with one of the nine state-recognized agencies, seven of which are private recruitment agencies.³⁰⁹

Recruitment agencies are responsible for administration of three separate contracts of services for migrant workers, including: (i) a contract between the prospective workers and the recruitment agency; (ii) a contract between the recruitment agency and the employer in the destination country; and (iii) a contract between the prospective worker and the prospective employer. Protective guidelines included in the implementing decree for this legislation include capping of recruitment fees at 15 percent of a worker's monthly wages. Despite this cap, however, no guidelines are given as to how many months these deductions may continue to occur.³¹⁰

Despite the existence of this range of contracts, research among Laotian migrant workers suggests conditions contained in contracts are rarely adhered to. For example, despite regulations on working hours in Thailand, approximately 40 percent of migrants from Lao PDR work more than 10 hours a day, for 6–7 days per week, amounting to 60–70 hours/week.³¹¹

Memorandum of Understanding between the Government of Lao People's Democratic Republic and the Government of the Kingdom of Thailand on Employment Cooperation, 2003

This MoU focuses on government-to-government recruitment of migrant workers for a specific period of employment in Thailand. Workers recruited from outside Thailand are provided with visas for temporary stay, plus work permits for a period of two years. These work permits are then renewable for another four years, after which workers are required to leave Thailand for a period of three years before re-registering. While the MoU itself focuses more on streamlining labour migration management rather than increasing protection of migrant workers per se, those workers who enter Thailand through this process and complete the requisite registration are eligible to gain access to social security provisions similar to those for Thai nationals.

The original aim of the Thai Government in instituting this MoU with Lao PDR (and also with Myanmar and Cambodia) was to funnel all new workers into these formal MoU recruitment processes, while at the same time carrying out separate regularization processes for those

308 Ibid.

309 *Employment and Livelihoods: The 4th National Human Development Report*, op. cit., p. 160.

310 Discussion paper based on an online discussion on "Improving and Regulating Recruitment Practices in Asia and the Pacific", op. cit.

311 *Employment and Livelihoods: The 4th National Human Development Report*, op. cit., p. 161.

undocumented or semi-documented workers already in Thailand. To date, however, relatively few workers from Lao PDR have entered the MoU recruitment process, with only 25,000 Laotians coming to Thailand through these means as of December 2010.³¹² It has been noted that key reasons for the relatively small numbers entering Thailand in this way is a result of high fees and the number of steps and amount of time required.³¹³

As is the case in other sending countries within the ASEAN region and beyond, commentators have suggested that efforts need to be made by the Lao PDR Government to reduce the cost and complexity of the recruitment process, if migrant workers are to be more likely to use documented processes and thus have increased access to legislated protection of their rights throughout the migration cycle. Research has also suggested that the government must do more to monitor and regulate the privatized recruitment process. The 2009 Lao PDR *Human Development Report* also summarizes the practices of illegal recruitment agencies as follows: 'Recruitment agents' on the Lao side contact those who wish to migrate to work, after which workers are smuggled to Thailand and handed over to Thai counterparts, who in turn deliver them to their employers. The employers then pay a fee to the agents for the service, which will be deducted from workers' salaries, in addition to the cost for transportation.³¹⁴

A point to note is that past research among both documented and undocumented migrant workers and NGOs working with migrant workers has suggested that migrant workers from Lao PDR believe they can protect themselves more effectively when undocumented. For example, while formal migrants can incur a large debt to enter the recruitment process, they are also contractually bound to employers who may force them to endure harsh working conditions. Undocumented migrants, on the other hand, may believe they have some level of autonomy and flexibility in this regard, with the ability to quit and shift employers if conditions are particularly harsh.³¹⁵



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on right to health for all, Lao PDR is not a signatory to the *International Covenant on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health; and it is not a party to most of the core United Nations conventions that provide for the right of access to health care and medical treatment for all. Along with all other countries in the South-East Asian region, it has ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the

³¹² IOM, 2011, *Thailand Migration Report 2011*.

³¹³ Ibid. For further, more detailed information on these processes from the Thailand perspective, see the Thailand country profile in this report.

³¹⁴ *Employment and Livelihoods: The 4th National Human Development Report*, op. cit.

³¹⁵ *The Mekong Challenge*, op. cit.

right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens).

Importantly, as a WHO Member State, Lao PDR is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.³¹⁶ In this regard, the Lao PDR Ministry of Health supports a pooling of resources and improved bilateral and multilateral cooperation among Thailand, Lao PDR, Cambodia, and Myanmar to improve health access for migrant workers in this subregion.³¹⁷

Monitoring migrants' health

Although a national health information system was first established in 1983, data is scattered, with very little information collected.³¹⁸ Discussions with government representatives suggest that lack of funding, capacity, and human resources for managing data collection and monitoring systems hinders the development of effective surveillance. With specific regard to migrant workers, there are already difficulties ascertaining the numbers of workers, let alone data on health or health-seeking behaviour.³¹⁹

Limited multisectoral involvement in monitoring systems—for example, with the Ministry of Labour, embassies abroad, civil societies, and unions—means that opportunities to collate existing data on migrants are also limited.³²⁰ For example, it is known that embassies and consulates work to connect migrants to social support services, but there is no mechanism for the collation of data on such practices.

Policies and legal frameworks affecting migrant health

The Ministry of Health is the primary provider of health services in Lao PDR, with a heavy reliance on the support of international non-governmental organizations.³²¹ Generally speaking, health service provision is strained by a lack of qualified, adequately distributed staff, adequate infrastructure, and affordable drug supply and for the general population. The supply of health services is unable to meet the health care demand, leading to insufficient outreach, monitoring, and supervision.³²² Social security systems for both public and private sector employees exist in Lao PDR, currently covering approximately 12.5 percent of the population. Although certain

³¹⁶ WHA 61.17, *Resolution on Health of Migrants*.

³¹⁷ *Report of Multi-Stakeholder Dialogue*, op. cit.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ WHO, 2012, "Lao PDR: Country Cooperation Strategy at a Glance."

³²² WHO, 2012, *Country Cooperation Strategy: Lao PDR*, p. 15.

vulnerable groups have access to exemptions from medical service fees, many households are not able to access basic health care services due to the cost.³²³

For Laotian workers moving abroad, legislation contains no specific provisions mandating recruitment agencies to ensure access to health and medical care, as is the case in legislation of certain other sending countries in the region. Under the government's decree on the export of Lao workers abroad, recruitment agencies are tasked with providing protection for workers in accordance with employment contracts, which may include provisions for employers to cover health access.

While recruitment agencies are also responsible for providing training for workers prior to departure from Lao PDR, there are no government regulations regarding the health content of such training, and it is unclear how many workers are being provided with necessary health education and information on their access rights prior to departure. In terms of return and reintegration, there are very few institutions for the reintegration of migrant workers upon return to Lao PDR, with those institutions that do exist focus primarily on trafficking victims.³²⁴

For those workers travelling to Thailand, those who have completed the documentation processes have access to health care either via the *Compulsory Migrant Health Insurance Scheme* or via the *Thai Social Security Scheme*, alongside Thai workers. The scheme under which a documented worker is eligible to access health care is dependent on the steps they have completed towards full registration in Thailand. Further information on these schemes can be found in the Thailand chapter of this report.

Migrant-sensitive health systems

Research on quality of life for Laotian migrant workers notes a number of health-related challenges amidst the difficulties workers face when abroad, notably: (i) risk of work-related illnesses, and improperly caring for themselves while working; (ii) dissatisfaction with insufficient financial resources; (iii) abuse by employers, conflict, and competition among workers working illegally in Thailand; (iv) living in crowded dwellings; (v) excessive consumption of alcohol and tobacco; (vi) poor access to official information about working and living in Thailand; and (vii) not being registered as nationals of either Thailand or Lao PDR.³²⁵

A specific, health-related study among 70 Laotian migrant workers living in Thailand also found that difficulties faced by workers when in Thailand derived from five key areas: (i) physical well-being; (ii) psychological well-being; (iii) social relationships; (iv) working and living environment; and (v) financial situation.³²⁶ A number of workers in this study expressed fear regarding health and safety in the workplace and acquisition of work-related illnesses, with workers noting that they

³²³ Ibid., p. 12.

³²⁴ Ibid.

³²⁵ Nilvarangkul, K., McCann, T. et al., 2011, "Enhancing a Health-Related Quality of Life Model for Laotian Migrant Workers in Thailand", *Qualitative Health Research*, vol. 21, pp. 312–323.

³²⁶ Ibid.

had no access to workplace health and safety information.³²⁷ Commentary from other sources also noted that for a number of those who experience poor working and other conditions, particularly undocumented workers, the risk of detention or deportation outweighs such matters.³²⁸

Despite this specific set of health vulnerabilities, there are limited examples of the establishment of health systems and services sensitive to the needs of Lao PDR's migrant workers, whether prior to departure, during deployment, or upon return. It is important to note, however, that due to the close cultural and linguistic links with Thailand, Laotian migrant workers are able to communicate easily with staff when they do access health care settings in Thailand.

Partnerships, networks, and multi-country frameworks

As noted earlier, the Lao PDR Ministry of Health supports a pooling of resources and improved bilateral and multilateral cooperation among Thailand, Lao PDR, Cambodia, and Myanmar to improve health access for migrant workers in this subregion.³²⁹ Within this group a number of consultations have already been held to look at cross-border partnerships, particularly with regard to improving access to antiretroviral treatment along the migration continuum for migrant workers living with HIV.³³⁰

For further information on health care access for Laotian migrant workers deployed to ASEAN countries, particularly Thailand and Malaysia, please see the respective country profiles in this report.

³²⁷ Ibid., p. 315.

³²⁸ *Employment and Livelihoods: The 4th National Human Development Report*, op. cit.

³²⁹ *Report of Multi-Stakeholder Dialogue*, op. cit.

³³⁰ For example: (i) *Consultation on Migrants' Access to Anti-Retroviral Treatment Along the Migration Continuum in Four Greater Mekong Subregion Countries*, see www.junima.org; and (ii) *Consultation on Memorandum of Understanding to Reduce HIV Vulnerability Associated with Population Movement*, see <http://regionalcentrebangkok.undp.or.th/practices/hiv/aids/GMSMOUConsultationJuly2012.html>.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Design and implement systems for the collection, analysis, and dissemination of disaggregated data on migrant workers, examining health care needs and health-seeking behaviour throughout the migration cycle.
- 2 Advocate for the sharing of data on migrants' health and the establishment of effective referral systems for migrants travelling between Lao PDR and Thailand.

Policies and legal frameworks affecting migrant health

- 3 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers*.
- 4 Advocate for mandatory inclusion of information on health and health access rights in pre-departure programmes delivered to Lao workers travelling abroad.
- 5 Simplify pre-departure registration systems and procedures in order to improve accessibility for prospective migrants.

Migrant-sensitive health systems

- 6 Involve migrant communities, particularly peer support networks involving pioneer migrants, in advocacy and service delivery.

Partnerships, networks, and multi-country frameworks.

- 7 Strengthen multisectoral collaboration within Lao PDR and clarify roles of key stakeholders in the management of migrant workers throughout the migration cycle.
- 8 Support ongoing migration health dialogues and cooperation among key cities, regions, and source and host countries.
- 9 Strengthen intercountry partnerships with key host countries in order to improve the protection of Laotian migrant workers' rights, including the right to health in host countries.



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Malaysia



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

The employment of low-skilled foreign workers as low-cost human capital from less developed countries in the Asian region has been a key component of economic growth in Malaysia, alongside Foreign Direct Investment from developed countries.³³¹ At the same time, Malaysian Government policy is to give priority to local citizens to enter the local labour market, and while export-oriented industries such as mining, plantation and electronics manufacturing have a history of reliance on low-skilled foreign labour,³³² this is a temporary measure to fill gaps which have not been filled by local workers.

In the plantation sector, where 75 percent of workers are low-skilled migrant workers,³³³ recent reports have suggested that employers will face increasing shortages, with locals unwilling to take up such work and foreign plantation workers from Indonesia potentially drawn home by booming palm oil sector there.³³⁴ In other industries, such as the electronics industry, which contributes 60 percent of total manufactured exports, accounting for 8 percent of the GDP, many employers claim that their business activities will come to a standstill if they are not allowed to use foreign labour because the jobs in those fields are perceived to be dirty, difficult and demeaning to the average Malaysian.³³⁵

331 War on Want, 2012, *Restricted Rights, 2012, Migrant women workers in Cambodia, Malaysia and Thailand*.

332 Ibid.

333 Adnan, H, "Labour shortage to get worse with Indonesian palm oil boom", in *The Star Online*, 29 May 2012, at <http://biz.thestar.com.my/news/story.asp?file=/2012/5/29/business/11372483&sec=business>.

334 Ibid.

335 Penang Institute, 2010, *Labour Shortages Issues Forum*, at <http://penanginstitute.org/v3/resources/articles/event/169-labour-shortage-issues-forum>.

While current policies allow employers from certain sectors to apply for foreign workers where locals cannot be engaged, the government is also implementing a range of strategies to encourage Malaysian nationals to fill workforce gaps. For example, (i) the automation of industry is intended to reduce demand for low-skilled labour and provide new opportunities for local employment; and (ii) the introduction in the plantation sector of incentives such as minimum wage, housing schemes, childcare and school centres is intended to encourage Malaysian nationals to enter this sector.

Broadly speaking, government policy towards migration of foreign low-skilled labour into Malaysia has shifted dramatically over time. While in the past undocumented workers were 'silently welcomed',³³⁶ a regulation phase involving legalizing and establishing official channels for foreign labour recruitment and signing bilateral agreements with governments of host countries, was followed by a focus on regularization and the prevention of illegal immigration and eventual freezing of foreign labour importation, prompted by public unease with increasing visibility of Indonesian workers.

In its most recent phase, following the recent global economic crisis, the government has shifted between strict measures to control unauthorized migration, strict work permit controls and amnesty programmes allowing undocumented migrants to leave the country.³³⁷ In late 2013 it was reported that amnesty programmes were coming to an end, and as of January 2014 undocumented foreign workers are now being deported in accordance with national laws and regulations.³³⁸ Malaysian officials also emphasize the government view that sending countries must be responsible for: (i) more tightly regulating their borders and prevent the departure of undocumented workers; and (ii) educating departing workers on the use of proper channels for labour migration to Malaysia.³³⁹

While Malaysian Government policy is to provide equal opportunity for documented migrant workers working alongside local workers, public perceptions of migrant workers are diverse. In a recent ILO survey on public attitudes to migrant workers, although more than 70 percent of Malaysian respondents believed that migrant workers were needed to fill labour shortages, more than 60 percent agreed at least to some extent that migrant workers were a drain on the national economy and that they could not expect the same pay for the same job.³⁴⁰

336 Kanapathy, *Controlling Irregular Migration: The Malaysian Experience*.

337 Kaur, op. cit., pp. 6-19.

338 Ng, J., 2014, "Malaysia gets tough on illegal immigrants as amnesty program expires", *The Wall Street Journal: South East Asia Realtime*, at <http://blogs.wsj.com/searealtime/2014/01/21/malaysia-gets-tough-on-illegal-immigrants-as-amnesty-program-expires/>.

339 Feedback provided during meeting between UNDP HIV, Health and Development team and Representatives from the Malaysian Ministry of Human Resources, Ministry of Health, Ministry of Home Affairs and Ministry of Foreign Affairs, 21 January 2014, Kuala Lumpur, Malaysia.

340 ILO, 2011, "Public attitudes on migrant workers: A four country study", *Prepared by the ILO Regional Office for Asia and the Pacific and the ILO Triangle Project*, at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_159851.pdf

In-migration overview

Malaysia, alongside Thailand, is host to the largest volume of migrant workers in the ASEAN Region. In 2011, the migration corridor between Malaysia and Indonesia was also reported as one of the largest in the world.³⁴¹ In the same year the government's '6P' amnesty programme³⁴² recorded a total of just over 2.3 million migrant workers in the country, including just over 1 million documented and 1.3 million undocumented workers.³⁴³ This included 1.04 million Indonesian workers, of whom 405,000 were documented and 640,000 were undocumented.

After Indonesia, the most common source countries for documented workers were Nepal (approximately 220,000 workers), Bangladesh (133,000), Myanmar (113,000), and India (55,000). Similarly, the most common source countries for undocumented workers, after Indonesia, were Bangladesh (approximately 268,000), Myanmar (144,000), India (52,000), and Nepal (33,000).

Documented and undocumented migrants work in similar sectors, including manufacturing, construction, oil palm and rubber plantations, domestic work, services, and agriculture. Approximately 54 percent of documented workers work in manufacturing, with a further 20 percent in agriculture, 14 percent in construction, and 12 percent in the service sector.³⁴⁴

While male workers work predominantly in construction and agriculture sectors, including palm oil and rubber plantations, female workers work predominantly in the electronics industry and as domestic workers. Some 70–80 percent of the approximately 300,000 workers in the electronic industry are women,³⁴⁵ while the vast majority of 350,000 migrant domestic workers are also women.³⁴⁶

In recent times a series of high-profile abuse cases involving domestic workers has created temporary shifts in traditional source countries, and an increased focus on those countries within both South and South-East Asian regions, with relatively new cross-border labour migration industries. While the Malaysian Government has charged and prosecuted several employers, certain sending countries have nevertheless responded to cases of abuse by enacting bans on the deployment of their workers to Malaysia.

For example, in June 2009 Indonesia placed a ban on new recruitment of Indonesian domestic workers for jobs in Malaysia until new protections were put in place, after which Malaysian recruitment agencies turned to Cambodia as a new source of domestic workers. When Cambodia

341 World Bank, 2011, *Migration and Remittance Factbook*, 2011.

342 "6P" is an abbreviated name for the Government of Malaysia's legalization and amnesty programme for migrant workers. The programme's title is composed of six Malay words, each starting with the letter P. These words stand for registration, legalisation, amnesty, supervision, enforcement, and deportation.

343 Malaysian Ministry of Home Affairs, 2011.

344 Malaysian Ministry of Home Affairs, 2011.

345 CARAM Asia, 2011, *Reality Check: Rights and Legislation for Migrant Domestic Workers*.

346 Hangzo and Cook, "The Domestic Workers Convention 2011", op. cit.

also instituted a temporary ban on the sending of domestic workers in October 2011,³⁴⁷ Malaysia began to receive more domestic workers from countries such as Vietnam and Lao PDR.³⁴⁸

Labour migration governance

Generally speaking, the entry, stay, and departure of foreign workers in Malaysia are governed by the *Immigration Act 1959/63* and its related regulations, as well as the *Passports Act 1966*. Employment conditions for those earning under 2000 ringgit (approximately \$600) per month and all workers engaged as manual labourers are covered under the *Employment Act 1955* (latest amendments effective April 2012). Those engaged as domestic servants face exclusions from a majority of rights protections afforded under this act, and any protections for such workers are essentially transferred to private recruitment agencies and individual employers, guided by the content of bilateral MoU between Malaysia and individual source countries. The government has several such MoU, with countries including Bangladesh, China, Indonesia, Pakistan, the Philippines, Thailand, and Viet Nam.

Enforcement of any protections detailed in MoUs and/or service contracts is overseen by the Department of Labour, in collaboration with other government agencies and foreign embassies. Generally speaking, the Department of Labour is also empowered to conduct statutory inspections at workplaces. In 2013 more than 21,000 inspections were conducted by labour officers and 1,669 compliance notices were issued to employers who had committed various offences under the *Employment Act*.³⁴⁹

The evolution of the recruitment and employment process for semi-skilled and unskilled workers in recent times has seen that recruitment agencies and labour hire companies now dominate the recruitment process, while the Department of Immigration role has been reduced in some ways to the granting of visas.³⁵⁰ The government has taken steps to bar from further recruitment those Malaysian agencies found to act in contravention of regulations and will continue such enforcement in order to eradicate illegal employment.

Nevertheless, academic commentary has described regulation and monitoring as inadequate in the absence of a proper mechanism by which such agencies can be held liable for migrants' basic welfare, or abuse and exploitation.³⁵¹ Despite a strict government policy to deport undocumented migrants, research by advocacy groups also suggests that many workers will enter into undocumented and illegal employment because it is cheaper for both employers and migrants.³⁵²

³⁴⁷ "RI-Malaysia MoU fails to provide needed safeguards for migrant workers", op. cit.

³⁴⁸ Nie, Y, 2011, "Malaysia, Singapore, struggle with maid bans", 23 December 2011, at <http://www.voanews.com/content/malaysia-singapore-struggle-with-maid-bans-132502753/168135.html>

³⁴⁹ Statistics provided during meeting between UNDP HIV, Health and Development team and Representatives from the Malaysian Ministry of Human Resources, Ministry of Health, Ministry of Home Affairs and Ministry of Foreign Affairs, 21 January 2014, Kuala Lumpur, Malaysia.

³⁵⁰ Kaur, op. cit., p. 13.

³⁵¹ Kaur, A., 2008, "International Migration and Governance in Malaysia: Policy and Performance".

³⁵² War on Want, 2012, *Restricted Rights, 2012, Migrant women workers in Cambodia, Malaysia and Thailand*.

Malaysia has not ratified either the *International Convention on the Protection of the Rights of All Migrant Workers* or the ILO's *Migration for Employment Convention (C97)* or *Migrant Workers (Supplementary Provisions) Convention (C143)*. Despite strong reliance on migrant workers in key industries, there is no multistakeholder migration management body nor one comprehensive policy on in-migration, and recent commentary describes the government's migration policy as providing short-term remedies, following a cycle of amnesty, freeze, and crackdown.³⁵³ Feedback from Malaysian officials reiterates the fact that the employment of migrant workers is a temporary measure to fill workforce gaps and that labour legislation alone is sufficient for the management of such migrant workers alongside the local workforce.³⁵⁴

Immigration Act 1959/63 and related regulations

The *Immigration Act* mandates that all non-citizen entrants must be in possession of valid entry permits or passes.³⁵⁵ Upon arrival, all foreign nationals seeking to work in Malaysia are issued with a Temporary Employment Visit Pass. In order to be certified as fit for employment and receive this pass, all migrant workers must have passed medical examinations prior to departure from their home country.³⁵⁶ In order to remain in Malaysia, workers must pass regulation medical tests again within one month of arrival in Malaysia, and annually for the first two years of employment.

It is important to note that all foreign workers entering Malaysia are broadly classified into two tiers: 1) higher skilled 'expatriate personnel' and foreign skilled professionals; and 2) semi-skilled and unskilled foreign 'workers'. Each tier is governed by a different set of regulations and those described below relate to the latter tier.

The Department of Immigration permits the employment of semi-skilled and unskilled foreign workers only in approved sectors. Current approved sectors are manufacturing, plantation, agriculture, construction, and services. Foreign workers engaged in the manufacturing, plantation, agriculture, and construction industries must be between 18 and 45 years of age, may not bring dependents, and may only work for a period of five years. They must also pass medical examinations prior to and following entry, as described above.

With specific regard to the service industry, the Ministry of Human Resources is the lead agency in determining source countries and terms and contracts for employment for foreign domestic workers (FDWs).³⁵⁷ Current approved source countries are Cambodia, India, Indonesia, Lao PDR, the Philippines, Sri Lanka, Thailand, and Viet Nam. FDWs between the ages of 21 and 45 must also

353 Regional Thematic Working Group on International Migration Including Human Trafficking, 2008, *Situation Report on International Migration in East and South-East Asia*.

354 Feedback provided during meeting between UNDP HIV, Health and Development team and Representatives from the Malaysian Ministry of Human Resources, Ministry of Health, Ministry of Home Affairs and Ministry of Foreign Affairs, 21 January 2014, Kuala Lumpur, Malaysia.

355 *Immigration Act*, article 6; Upon arrival in Malaysia, foreign nationals seeking to work in Malaysia will be issued with a Temporary Employment Visit Pass.

356 Current policy with regards to medical examination states that medical examinations in source countries must be conducted at approved clinics/hospitals, using the Malaysian Ministry of Health's medical examination format, which covers required types of examinations and tests. Those certified as fit for employment will then be issued with a "Visa with Referral" by the Malaysian Immigration Department prior to departure from the source country.

357 Ministry of Human Resources determination is subject to approval of Cabinet Committee of Foreign Workers.

pass medical examinations upon entry at an approved medical centre, as required for all foreign workers (detailed above). FDWs are not allowed to change employers without the permission of the Immigration Department of Malaysia Employer.

Given the number of unregistered migrants in the country, the government has conducted a number of amnesty exercises during the past decade—in 2002, 2004, 2005, and 2013—while also amending the *Immigration Act* in 2002 to incorporate stiffer penalties for both unregistered migrants and their employees.³⁵⁸ The harsh crackdown on irregular migrants following the 2004 amnesty had a serious effect on certain industries. At that time, in order to increase employment avenues, the Malaysian authorities extended recruitment to workers from Burma, India, Nepal, Pakistan, Sri Lanka, and Viet Nam, allowing them to enter the country on tourist visas to seek employment, provided local authorities had a record of their fingerprints.³⁵⁹

Relevant offences under the *Immigration Act* include: continued presence in the country after the expiration or cancellation of relevant pass or permit;³⁶⁰ harbouring any person having entered in contravention of the act;³⁶¹ and employing a foreign worker not in possession of a valid pass.³⁶² Powers to search and arrest without warrant anyone considered in contravention of the *Immigration Act* are given to senior immigration officers, senior police officers, or any other police or immigration officer under their direction.³⁶³ In practice, policing of undocumented migrants is carried out by the Immigration Department, Royal Malaysian Police, and a volunteer civil corps called the 'RELA'.³⁶⁴ Those workers whose passes are cancelled are prohibited from re-entering Malaysia.³⁶⁵

Research suggests that in certain cases where passports have been held by employers or outsourcing agents, documented workers have been left vulnerable to arrest.³⁶⁶ This is an area of concern for migrant workers despite the fact that policy implemented subsequent to the *Passport Act 1967* allows an employer to hold the passport of a migrant worker for safe-keeping, with written consent from the worker. It is possible that this vulnerability to arrest by enforcement officials due to lack of ID will be overcome by the introduction of a Foreign Worker Centralized Management System, which aims to provide biometric personal identification cards to all foreign workers.³⁶⁷

358 Presentation by Minister of Home Affairs Malaysia, International Symposium on International Migration and Development, 28–30 June 2006, http://www.un.org/esa/population/migration/turin/Turin_Statements/AHMAD.pdf.

359 Kanapathy, *Controlling Irregular Migration: The Malaysian Experience*, p. 3.

360 *Immigration Act*, article 15.

361 *Ibid*, article 56 (1) (d).

362 *Ibid*, article 55b (1).

363 *Ibid*, article 51 (1).

364 RELA is an abbreviation for Ikatan Relawan Rakyat Malaysia, translated into English as Volunteers of Malaysian People. Volunteer RELA personnel are not authorized to conduct operations alone against illegal migrants and may only operate in the presence of the Department of Immigration of Royal Malaysian Police.

365 *Immigration Act*, article 9 (4).

366 War on Want, 2012, *Restricted Rights, 2012, Migrant women workers in Cambodia, Malaysia and Thailand*.

367 This scheme is still under government consideration, as of January 2014.

Employment Act and related regulations

The *Employment Act* is the key labour law for most workers in Malaysia, both national and foreign, with the exclusion of 'domestic servants'³⁶⁸ and seafarers.³⁶⁹ Regulations of the act relating to contracts, wages, and standard working hours include: (i) contracts less favourable than the rights afforded by the law are considered void;³⁷⁰ (ii) contracts for all periods of work longer than 1 month should be in writing, and include conditions of termination;³⁷¹ (iii) employers have the right to terminate an employee without notice or suspend without pay "on the grounds of gross misconduct inconsistent with the fulfilment of the express or implied conditions of his employment";³⁷² (iv) wage periods should not exceed one month and payment should be made within seven days of the end of each wage period;³⁷³ and (v) deductions should not exceed 50 percent of wages per salary period and should not be paid for a welfare scheme or insurance benefits, payments to a third party, or for accommodations and food provided by the employer under the terms of the contract of service.³⁷⁴ An additional employment directive issued by the government in April 2009 also stated that employers could not deduct the foreign worker levy (mandated under the *Immigration Act*) from workers' salaries.

Due to the nature of work of FDWs, these workers are excluded from key protections under Malaysia's *Employment Act*. As a result, they cannot seek redress for violation of rights except to claim for unpaid wages under the *Employment Act*.³⁷⁵ Feedback from the government notes, however, that new regulations under the *Employment Act* pertaining to the employment of domestic workers are currently being drafted.³⁷⁶ In lieu of coverage under the *Employment Act*, domestic workers are instead covered through individual employment contracts signed between the domestic workers and the employer. Any breach of contract can be reported to the nearest Labour Office for appropriate action. Employers and domestic workers are also provided with handbooks which spell out duties and responsibilities of both parties as well as contract numbers of Labour Offices nationwide.

Reported human rights violations of foreign domestic workers in Malaysia have included non-payment of wages, wrongful deductions, withholding of passports, physical abuse, sexual harassment and rape, psychological abuse, threats, long working hours, no off day, confinement, work in two places, employment of children, lack of proper food, various health problems without treatment, not being allowed to conduct religious obligations, and denied access to family.³⁷⁷

368 Defined in the *Employment Act* as a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washer-woman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

369 Defined as "engaged in any capacity in any vessel registered in Malaysia".

370 *Employment Act*, Part 2, article 7.

371 *Ibid*, part 2, article 10.

372 *Ibid*, part 2, article 14.

373 *Ibid*, part 2, articles 18 & 19.

374 *Ibid*, Part 2, article 24

375 While the Minister has the powers to withdraw these exclusions and bring about equal treatment to domestic workers without making reforms to the *Employment Act*, it is worth noting at this point that Malaysia abstained from voting on the adoption of ILO's Convention No.189 on *Decent Work for Domestic Workers*.

376 Note provided following meeting between UNDP HIV, Health and Development team and Representatives from the Malaysian Ministry of Human Resources, Ministry of Health, Ministry of Home Affairs and Ministry of Foreign Affairs, 21 January 2014, Kuala Lumpur, Malaysia.

377 CARAM Asia, 2011, *Reality Check: Rights and Legislation for Migrant Domestic Workers*, p.26.

Memorandum of understanding between Malaysia and Indonesia on the recruitment and placement of Indonesian domestic workers

The recent signing of an MoU between Indonesia and Malaysia on the recruitment and placement of Indonesian domestic workers provides for improved protections for migrant domestic workers. The new agreement includes salary protections such as capping recruitment fees at 4,511 ringgit (\$1,500) as well as capping the amount employers can reclaim from domestic workers' salaries at 1,800 ringgit (\$600). It also stipulates that no more than 50 percent of the worker's salary can be deducted each month.

Domestic workers are also allowed to keep their passports instead of having to surrender them to their employers (although employers are entitled to hold them for "safe-keeping"), and guarantees them a weekly day off. However, the agreement does not set a minimum wage, allowing for the determination of wages according to market forces.

With regard to wages, Malaysia's preference for regulating conditions for FDWs through bilateral agreements means that, for example, registered migrant workers coming from particular countries receive different payments. Indonesian and Cambodian domestic workers often work for monthly wages of 400 to 600 ringgit (\$133 to \$200). Filipina domestic workers in Malaysia earn the highest salary, at \$400 a month, because of requirements imposed by the Philippines Government.³⁷⁸

Generally speaking, should a migrant worker seek legal redress against his or her former employer for violation of any of the variety of legislations discussed above, he or she must pay 100 ringgit for a Special Monthly Pass to remain in the country, during which time work is not permitted. Although in a small number of cases exemption from paying monthly pass fees is available for those who seek assistance from NGOs, lack of income to support cost of living and/or legal fees can create a barrier for those seeking legal redress. NGO experience suggests that due process in bringing such matters before court can take more than six months.³⁷⁹

In some cases, where migrant workers file cases against their current employer, an employer may cancel the employees work permit. This may leave workers vulnerable to arrest for immigration offences, with some cases of arrest occurring while migrant workers are attending legal proceedings against their employers.³⁸⁰ In terms of labour dispute cases involving foreign workers, including foreign domestic workers, the practice is to settle cases within one month. However, this timeline is subject to cooperation from parties such as the employer, FDW, and the relevant embassy, as well as logistical issues such as the availability of interpreters during official case proceedings.

Reports of a recent investigation in Malaysia by a Cambodian investigative committee of government officials, rights workers, and other agencies found that the process of finding legal aid for abuses is too costly and/or time consuming and migrants returned to Cambodia without

³⁷⁸ Ibid.

³⁷⁹ The Micah Mandate, 2012, "Press Statement: Clearing misconceptions: The truth about migrants in Malaysia", at <http://themicahmandate.org/2012/05/clearing-misconceptions-the-truth-about-migrants-in-malaysia/>.

³⁸⁰ Migration Working Group/Northern Network for Migrants and Refugees, 2009, "Joint Submission for the 4th session of the Universal Periodic Review, February 2009", at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/MWG_JUMP_MYS_UPR_S4_2009_MigrationWorkingGroup_theNorthernNetworkforMigrantsandRefugees_JOINT_upr.pdf.

seeking legal resolution.³⁸¹ The migrant rights organization Tenaganita also reported that in 2011 it recorded more than 1,500 cases involving undocumented workers and 500 cases on violation of immigration law by employers, noting that most undocumented workers were deported after serving jail sentences while most employers were cleared of charges.³⁸²

An important point to note relates to knowledge and perception of laws and regulations from an employer's point of view. Research carried out by CARAM Asia in 2010, involving interviews with approximately 280 randomly selected employers from Peninsular and East Malaysia, found that the vast majority of employers were not familiar with laws and regulations affecting migrant worker employment, particularly foreign domestic workers, although one in five believed workers were sufficiently protected under national laws.³⁸³ In order to address this lack of awareness of laws and regulations, the Department of Labour has introduced initiatives to promote awareness of laws and regulations protecting FDWs, including inspections, dialogues, and publications of guidelines stipulating roles and responsibilities of both employers and workers.

A joint submission by the Migration Working Group and the Northern Network for Migrants and Refugees to the Office of the UN High Commissioner for Human Rights' (OHCHR) Universal Periodic Review for Malaysia in 2009 also included allegations that the government had "interfered with the ability of civil society to criticize its migration policies", as exemplified by the arrest case of a prominent migrant rights activist.³⁸⁴



LABOUR MIGRATION GOVERNANCE

In terms of international standards on right to health for all, Malaysia is not a signatory to the *International Convention on Economic, Social and Cultural Rights* (ICESCR), which provides the most comprehensive provisions for protections of right to health. Further, it is also not a party to most core conventions of the UN that provide for the right of access to health care and medical treatment.

Nevertheless, Malaysia has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), which provides for the right to access health care services on a basis of equality of men and women (theoretically, including migrant workers). The country also upholds the right of all individuals to sexual and reproductive health in line with CEDAW and the

381 Voice of America, 2012, "Inquiry finds abuse of migrant workers in Malaysia", 9 January 2012, at <http://www.voacambodia.com/content/inquiry-finds-abuse-of-migrants-in-malaysia/1579269.html>.

382 "Malaysia not safe for Indonesian migrant workers", *The Jakarta Post*, 7 May 2012, at <http://www.thejakartapost.com/news/2012/05/07/malaysia-not-safe-indonesian-migrant-workers.html>.

383 CARAM, 2010, *Malaysia us Hong Kong: Employers perceptions and attitudes towards foreign domestic workers*.

384 Migration Working Group/Northern Network for Migrants and Refugees, 2009, "Joint Submission for the 4th session of the Universal Periodic Review, February 2009", at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/MWG_JUMP_MYS_UPR_S4_2009_MigrationWorkingGroup_theNorthernNetworkforMigrantsandRefugees_JOINT_upr.pdf.

Convention on the Rights of the Child (CRC), and such services are available to those who seek care, irrespective of citizenship.

As a Member State of the World Health Organization, the country is committed to the WHO *Resolution on Migrant Health*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care for migrants.³⁸⁵

Malaysia does not discriminate against any person who seeks general health care, in either public or private facilities. Migrant workers who choose to seek treatment at any Ministry of Health facility are subject to the Ministry's medical fee schedule.

Monitoring migrants' health

In terms of data collected by government departments on the health status and health-seeking behaviour of migrant workers in Malaysia, agreements exist between the Ministries of Home Affairs, Human Resources, and Health to consolidate data,³⁸⁶ much of which may be generated following the planned implementation of a biometric surveillance system, including migrant workers.

With specific regard to occupational safety and health, a passive surveillance system implemented and monitored by the Department of Occupational Safety and Health, under the Ministry of Human Resources, monitors reported cases of occupational diseases or poisoning, including among migrant workers. Data is analysed and used to improve workplace safety, health, and employee welfare. Data on cases of occupational injuries is also collected and maintained with a common data pool.

Under certain regulations stipulated under the *Occupational Safety and Health Act 1994* — including the *Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupation Disease) Regulations 2004* — employers are subjected to particular record-keeping and reporting requirements, including exposure monitoring, medical surveillance programmes, and worker training. However, it is unclear whether such data is aggregated according to migrant worker status.

Despite comprehensive legislation and policies designed to protect aspects of migrant workers health and bring to justice those employers acting unlawfully,³⁸⁷ it is important to note a range of results from recent research into the general state of health of certain migrant workers in Malaysia.

³⁸⁵ WHA 61.17, *Resolution on Health of Migrants*.

³⁸⁶ *Report of Multi-Stakeholder Dialogue*, op. cit.

³⁸⁷ Includes *Occupational Safety and Health Act 1994*; *Occupational Safety and Health (Use and Standards of Chemicals Hazardous to Health Regulations) 2000*; *Guidelines on Reproductive Health Policy and Programmes in the Workplace 2002*; *Health Insurance Protection Scheme for Foreign Workers*; *Workers' Minimum Standards of Housing and Amenities Act 1990*; all to be discussed in following section on policy and legal frameworks.

In terms of healthful living and working conditions for migrant workers from other ASEAN countries working in Malaysia, research conducted among migrant garment workers from Myanmar in 2011 found that a number of workers experienced conditions detrimental to health, and had not undergone any work-related safety training, nor education and training on health and reproductive rights.³⁸⁸

Research by Human Rights Watch among female domestic workers from Cambodia going to Malaysia also identified a range of health-related abuses, including excessively long hours of work with no rest days; non-payment of wages; poor living conditions, including food deprivation; psychological, physical, and sexual abuse; and restrictions on freedom of movement and communication.³⁸⁹

A joint submission by the Migration Working Group and the Northern Network for Migrants and Refugees to the OHCHR's Universal Periodic Review for Malaysia in 2009 also noted that some migrant workers in Malaysia were living in poor housing conditions provided by employers, were suffering from over-crowding, lacked space for food preparation and sleeping, and had insufficient hygiene facilities.³⁹⁰

Policy and legal frameworks affecting migrant health

Malaysia has an extensive and comprehensive primary health care system, and a health strategy that emphasizes health promotion and the provision of health care that is "equitable, affordable, effective, efficient".³⁹¹ The government-funded public primary health care delivery system is designed to provide universal access to primary health care services for the population.

According to the *Employment Act*, medical expenses for migrant workers must be covered by the employer, who must also allow paid sick leave when there is an injury arising from an accident at work. In addition, the Foreign Workers Compensation Scheme, introduced under the *Workmen's Compensation Act 1952*, covers accident and injury claims from foreign workers. Recent research suggests that in practice many workers have not been able to access legally mandated sick leave, and have been unlawfully fined or dismissed for taking leave. In other cases, workers are prevented from going to public hospitals as they are not in possession of their passports, which are required to access services, as they have been unlawfully held by recruitment agencies.³⁹²

Other laws contributing to the legislative and policy framework protecting migrant health include the *Occupational Safety and Health Act 1994* and the subsequent *Occupational Safety and Health (Use and Standards of Chemicals Hazardous to Health) Regulations 2000*. Under the aforementioned act all employers, including those of documented migrant workers, are required to provide:

388 War on Want, 2012, *Restricted Rights, 2012, Migrant women workers in Cambodia, Malaysia and Thailand*, p.24.

389 *They Deceived us at Every Step*, op. cit.

390 Migration Working Group/Northern Network for Migrants and Refugees, 2009, "Joint Submission for the 4th session of the Universal Periodic Review, February 2009", at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/MWG_JUMP_MYS_UPR_S4_2009_MigrationWorkingGroup_theNorthernNetworkforMigrantsandRefugees_JOINT_upr.pdf.

391 WHO Malaysia, 2010, *Country Cooperation Strategy: 2009–2013*.

392 War on Want, 2012, *Restricted Rights, 2012, Migrant women workers in Cambodia, Malaysia and Thailand*.

(i) necessary information, instruction, training, and supervision to ensure employee safety and health at work; and (ii) a working environment that is safe and without risk to health.

An enforcement, monitoring, surveillance, auditing, and compliance programme to ensure that such standards are in force has been implemented by the Department of Occupational Safety and Health, under the Ministry of Human Resources. In cases among migrant workers of occupational injury, disease, or poisoning in the workplace, these are acted upon following the same procedures as those among Malaysian nationals. Under the subsequent regulations regarding chemical use and standards, documented cases of significant chemical exposure are followed by annual health surveillance of all exposed employees.

With regard to safe and healthful housing standards for migrant workers, the Department of Labour regulates housing standards for migrant workers in estate and mining sectors according to the *Workers' Minimum Standards of Housing and Amenities Act 1990*. The government also encourages employers from other sectors to provide similar standards of housing and amenities to foreign workers as stated under this act.

In an important step for migrant workers, employers have recently been mandated to take out medical insurance for migrant employees. The Skim Perlindungan Insurans Kesihatan Pekerja Asing (SPIKPA), also known as the Health Insurance Protection Scheme for Foreign Workers, is a national insurance-based protection scheme under which sits the Hospitalisation and Surgical Scheme for Foreign Workers (SKHPPA).

The Malaysian Government began its progressive implementation of SPIKPA in January 2011,³⁹³ in order to cover the cost of medical treatment and hospitalization of foreign workers. As of November 2013, 1.7 million foreign workers had been covered under this scheme. Total coverage provided amounts to 10,000 ringgit a year, and the cost of the insurance premium is 120 ringgit per year for a foreign worker.

A total of 24 insurance companies have now agreed to join this scheme, and it is compulsory for most foreign workers in Malaysia, with the exception of FDWs in Peninsular Malaysia and Sabah and foreign workers working in estates.³⁹⁴ The purchase of the SKHPPA insurance policy is also now a prerequisite for issuance and renewal of permits of foreign workers by the Malaysian Immigration Department.

The scheme is implemented in a cashless form, and foreign workers who are protected under SPIKPA are neither required to pay a deposit nor submit a letter of guarantee from their insurance company/employer. The cost of treatment in the hospitals is covered by the insurance company, except in those cases where a foreign worker is seeking treatment for any disease not covered by the policy. In the event of any outstanding bills, the foreign worker's permit will not be renewed and the employer will be blacklisted by the Malaysian Immigration Department.

³⁹³ Progressive implementation began in Peninsular Malaysia on 1 January 2011, followed by Sabah on 1 July 2012 and Sarawak on 1 February 2013.

³⁹⁴ FDWs in Peninsular Malaysia and Sabah who are given the option of whether or not they wanted to be covered under this scheme, while FDWs in Sarawak are covered under the compulsory scheme at the request of the State Government. Foreign workers working in estates that are already covered under the *Minimum Standards of Housing and Amenities Act 1990*.

It is important to note that HIV testing is mandatory for incoming prospective migrant workers, as part of pre-departure medical examinations conducted in approved clinics or hospitals in source countries.³⁹⁵ Such testing is also a component of compulsory medical examinations to be carried out within one month of arrival and annually for the first two years of employment. Migrant workers in Malaysia who are found to be HIV-positive are considered not suitable or fit for employment and will not have their work permits renewed. Provisions for treatment, medical assistance, and post-test counselling have been developed in the case of deportation, but remain difficult to access. There is no referral system in place for migrant workers who are found to be HIV-positive in Malaysia and considered unfit for work, which hinders potential follow-up, care, and treatment in the migrant's country of origin.³⁹⁶

Migrant-sensitive health systems

Regional multi-stakeholder discussions on this issue have brought up a number of examples of initiatives to increase migrant sensitivity of health systems. These include: (i) training of longer-term migrant workers to provide outreach with workers from rural clinics; (ii) the provision of signage and information on workplace safety to workers in their native language in industries such as plantations with a large percentage of foreign workers; and (iii) the availability of one-stop crisis centres in hospitals for migrant workers who experience violence and sexual harassment.

With regard to in-language information, migrant workers are able to access information, health promotion, and disease prevention programmes in a range of languages at health facilities. Workers are advised to visit facilities with a companion who is able to communicate in Bahasa Malaysia and/or English. However, most health materials are also available in various languages at health facilities, such as Malay, English, Chinese, and Tamil.

The *Occupational Safety and Health Act 1994*, enforced by the Department of Occupational Safety and Health within the Ministry of Human Resources, requires employers to provide information, instruction, training, and supervision to ensure the safety and health of employees at work, including migrant workers. Among recommendations provided to improve the occupational safety and health standards in sectors largely employing documented migrant workers is the installation of signage and provision of information in workers' native languages.

For services responding to violence and sexual harassment, 130 one-stop crisis centres have been established in emergency departments of Ministry of Health hospitals, providing special services for the management of violence cases, including sexual harassment and counselling without discrimination in terms of migrant worker status. The Department of Occupational Safety and Health's *Guidance for the Prevention of Stress and Violence in the Workplace 2001* also includes guidance for addressing related workplace issues, including among migrant workers.

³⁹⁵ Such testing also includes screening for infectious disease, pregnancy and drug use, in accordance with Ministry of Health policy.

³⁹⁶ Malaysia Country Profile, on www.junima.org.

Despite these good practice examples of systems and services sensitive to migrant needs, challenges that continue to hinder the delivery of further such initiatives include: (i) lack of capacity of staff in dealing with migrant-specific issues; (ii) success of services being measured only on delivery rather than on how information is received; (iii) financial cost of providing targeted health care to migrant workers; (iii) lack of coordination between government and civil society; and (iv) particularly in the case of HIV-related treatment, stigma and discrimination and fear of breach of confidentiality.³⁹⁷

Despite the fact that all employers of foreign workers are requested to insure their foreign workers through the Foreign Workers Healthcare Insurance Protection Scheme, health systems and services can remain difficult for migrant workers to access. For example, case studies of migrant workers in the Malaysian electronics industry note that if a doctor certifies an employee medically unfit for employment at any time, this is grounds for immediate termination of employment.³⁹⁸ In cases such as these, lack of job security prevents workers from seeking medical care, regardless of the level of awareness, availability, and accessibility of such care. Research also suggests that migrant workers in Malaysia, in particular female domestic workers, can face a range of specific health-related violations, including abuse, sexual and mental violence, denial of rest time, and vulnerability to occupational health hazards, with little or no access to treatment and care.³⁹⁹

The Task Force on ASEAN Migrant Workers has also made a series of recommendations related to the health rights of migrant workers and the establishment of more migrant-sensitive health systems. Recommendations include: (i) the safeguarding of living and housing conditions by ensuring compliance with the *Housing and Amenities Act*; (ii) strict application and enforcement of the *Occupational Health and Safety Act*; and (iii) the provision of counselling for migrant workers who experience violence and sexual harassment.⁴⁰⁰

Partnerships, networks, and multi-country frameworks

Malaysian participants in regional discussions on access to health and HIV services for migrant workers have noted a lack of mechanisms to involve civil societies and migrant workers in new and existing networks, or to contribute to the development of bilateral agreements between Malaysia and source countries. For example, when the Malaysian Government negotiated with Indonesia on the establishment of a MoU on labour migration, there was no mechanism for the involvement of civil society.

While it is important to recognize that the development and implementation of policy sits under the purview of the Malaysian Government, observers have also noted that while Malaysia participates in global and regional dialogues on this issue, recommendations and results have not necessarily been translated at the country level. Even where they have reached the national level they may not filter down to the regional, provincial, and local level.⁴⁰¹

³⁹⁷ *Report of Multi-Stakeholder Dialogue*, op. cit., p. 57.

³⁹⁸ Bormann, Krishnan, and Neuner, op. cit.

³⁹⁹ CARAM, 2010, *Malaysia vs Hong Kong: Employers perceptions and attitudes towards foreign domestic workers*.

⁴⁰⁰ Task Force on ASEAN Migrant Workers, 2008, "National Statement, Malaysia National Consultation on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers", August 13–14, 2008.

⁴⁰¹ *Report of Multi-Stakeholder Dialogue*, op. cit., p. 57.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Develop and agree on standard migrant health indicators (access, quality, and cost).
- 2 Improve multi-stakeholder collaboration in data collection processes, involving health, labour, immigration, and security sectors as well as consulates, unions, civil society organizations, and employers.
- 3 Ensure confidentiality, privacy, and the safeguarding of personal health data.

Policy and legal frameworks effecting migrant health

- 4 Ratify the *Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers (C189)*.
- 5 Advocate for the removal of HIV-related travel restrictions on entry, stay, and residence for migrant workers, and mainstream comprehensive HIV-prevention, treatment, care, and support services for migrant workers in national HIV-control programmes.
- 6 Ensure that development processes for MoU and bilateral and multilateral agreements are inclusive and participatory (including CSO and migrant community) and include reference to migrant welfare.

Migrant-sensitive health systems

- 7 Mainstream the protection of migrant workers' health with national health strategies in order to ensure they are responsive to migrant workers' needs.

Partnerships, networks, and multi-country frameworks

- 8 Develop and strengthen intersectoral and intercountry health partnerships, particularly regarding referral for migrant workers deported due to HIV-positive status.
- 9 Involve migrant communities, civil society organizations, and unions as active partners—in particular for advocacy and service delivery.



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Myanmar



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Workers from Myanmar have migrated primarily due to economic hardship, political instability, and environmental upheaval.⁴⁰² Internal conflict, which has also limited development of economic opportunities in Myanmar as well as increased personal insecurity in border areas largely populated by ethnic minorities, has pushed workers across borders.⁴⁰³ During periods of massive inflation in the 1980s and 1990s, wages also failed to keep up with the inflation rate, and consequently many were forced to leave Myanmar in search of better-paid employment⁴⁰⁴ — with a reported average daily wage of 1,500 to 2,000 kyat (\$1.20–1.60) being insufficient for survival.⁴⁰⁵

Migration from Myanmar to Thailand's border areas began in greater numbers in the early 1990s. Marked disparity in the rate of economic growth between Myanmar and Thailand, the fact that Myanmar and Thailand share a border of approximately 2,500 kilometres accessible only by foot, and continuing labour demand from the Thai agricultural and fisheries industries have been key factors driving and facilitating this labour migration flow.

Although a significant percentage of those departing Myanmar and seeking work abroad do so via undocumented means, according to the objectives of national legislation on overseas employment, documented labour migration is supported as a means to enable the beneficial

402 Mon, M., 2010, "Burmese Labour Migration into Thailand: Governance of migration and labour rights", *Journal of the Asia Pacific Economy*, vol. 15(1), pp. 33–44.

403 UNFPA, 2011, *Socio-cultural Influences on the sexual and reproductive health of female migrant workers in four Mekong region countries: Cambodia, Lao PDR, Thailand, and Viet Nam*.

404 Ibid, p. 34.

405 Wine, A., 2008, "For Greener Pastures", *The Irrawaddy*, vol. 16(10), at http://www2.irrawaddy.org/print_article.php?art_id=14366.

and systematic utilization of the country's human resources for building a modern and developed state.⁴⁰⁶ Accordingly, registered workers are required to remit between 30 and 50 percent of wages received abroad to their families at home via the Myanmar Foreign Trade Bank.⁴⁰⁷

Out-migration overview

Estimates suggest that up to 10 percent of Myanmar's population of 48 million migrates internationally; however, accurate figures and information about these migration flows are difficult to obtain because migration is mainly irregular.⁴⁰⁸ In 2010 it was estimated that low-skilled or unskilled workers constituted more than 80 percent of Myanmar's outmigration flows.⁴⁰⁹

Low-skilled workers from Myanmar travel predominantly into neighbouring Thailand and to Malaysia. While the unauthorized migration of peoples from Myanmar to Thailand represents one of the three largest migration movements in Asia,⁴¹⁰ 2010 statistics from the Thailand Ministry of Labour estimate a total of approximately 1 million registered Myanmar migrant workers in Thailand. Some of those seeking work have entered Thailand legally with work permits and stayed beyond the registered period; others enter at legal border crossings on day passes and then do not return.⁴¹¹

In terms of total numbers, males make up a slight majority of registered migrant workers from Myanmar in Thailand, at 54 percent. While men generally work in construction, agriculture, fishery, and rubber plantations, women work predominantly as domestic workers and in garment and electronics factories.⁴¹² Of the approximately 1 million registered migrant workers in Thailand in 2010, roughly 17 percent were engaged in the agricultural sector, followed by 16 percent in construction, and 12 percent in seafood processing.

Estimates suggest that up to 500,000 unskilled migrant workers from Myanmar have worked illegally in Malaysia, while approximately 250,000 were officially registered as of March 2012.⁴¹³ In addition, an estimated 100,000 to 200,000 unregistered workers have worked in Singapore.⁴¹⁴

406 *Law Relating to Overseas Employment 1999*, article 3(a), English translation at http://blc-burma.org/html/myanmar%20law/lr_e_ml99_03.html.

407 "Burmese Labour Migration into Thailand", op. cit.

408 Regional Thematic Working Group on International Migration Including Human Trafficking, 2008, *Situation Report on International Migration in East and South-East Asia*, p. 60; Wine, op. cit.

409 NLM, 2011, Minister for Labour responds to questions of Dr. Myat Nyana Soe, at http://www.burmalibrary.org/docs12/PYIDH-NLM2011-03-migrant_workers-29.pdf.

410 Ditton and Lehane, "Towards Realizing the Health-related Millennium Development Goals", op. cit., pp. 37-48.

411 Mon, "Burmese Labour Migration into Thailand", op. cit.

412 Wine, "For Greener Pastures", op. cit.

413 Hall, *Myanmar and Migrant Workers*, op. cit.

414 Ibid.



LABOUR MIGRATION GOVERNANCE

Myanmar has not ratified either the *International Convention on the Protection of the Rights of All Migrant Workers* or the ILO's *Migration for Employment Convention* (No. 97) or *Migrant Workers (Supplementary Provisions) Convention* (No. 143). Although the *Law Relating to Overseas Employment 1999* theoretically governs the overseas employment of all workers, aside from seafarers and government assignments, in reality a significant percentage of movement across the border is undocumented, thus taking place outside the provisions of this legislation. In the specific case of movement from Myanmar to Thailand, labour migration processes are guided by a bilateral *Memorandum of Understanding on Employment Cooperation* between the two governments on the employment of low-skilled workers.

Research has suggested that for Myanmar workers travelling to Thailand, local police, border police, and the military are the most powerful actors in the region, with migrant workers having little access to actionable rights to protect themselves. Reports also document police extorting money from both workers and employers, and employers withholding identification documents until fees associated with recruitment are repaid, leaving those workers found by police without permits liable to paying further bribes.⁴¹⁵ Most recently, confusion surrounding expiration of deadlines for registration processes for Myanmar workers in Thailand has led to migrant workers being vulnerable to further exploitation, for example, in terms of kickbacks to government agents and mistreatment by private, unregulated brokers.⁴¹⁶

Law Relating to Overseas Employment 1999

This law establishes central committees to shape policy on overseas employment, including recruitment and training processes. The law bans workers from seeking work abroad in the domestic and entertainment sectors, and one of its four main aims is “to ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to”.⁴¹⁷ All workers seeking to travel abroad via official avenues must register as overseas employment seekers with relevant government departments.⁴¹⁸

According to this law, recruitment agencies must be licensed as service agents and are liable to one year imprisonment and a fine of 5,000 kyat (\$4) for violation of the license requirements.⁴¹⁹ More than 100 private recruitment agencies are registered in Myanmar under overseas employment

⁴¹⁵ Arnold, 2013, “Burmese social movements in exile: Labour, migration, and democracy”, in M. Ford (ed.), 2013, *Social Activism in South East Asia*, pp. 89–103.

⁴¹⁶ Wallace, B., 2013, “Burmese Migrant Workers on Edge in Thailand”, *The World*, 8 January 2013, at <http://www.theworld.org/2013/01/burma-migrants-thailand/>; “Nationality deadline opens door to corruption”, *Bangkok Post*, 11 December 2012, at <http://www.bangkokpost.com/news/local/325497/nationality-deadline-opens-door-to-corruption>.

⁴¹⁷ *Law Relating to Overseas Employment 1995*, article 3, (c).

⁴¹⁸ *Ibid.*, chapter 5, articles 9–12.

⁴¹⁹ *Law of Overseas Employment 1995*, chapter 6.

legislation,⁴²⁰ and reports suggest that these agencies must pay an initial fee of 5 million kyat (\$4,000) to the Labour Ministry, plus other fees amounting to approximately 20–25 million kyat (\$16,000–20,000) in office costs and bureaucratic expenses.⁴²¹ Licenses must be extended annually.

The law provides no guidance or capping of recruitment fees that licensed service agents may charge. Reports suggest that agencies charge applicants 1.2 million kyat (\$960) to arrange jobs and flights to Malaysia; 3.2 million kyat (\$2,560) to Singapore; 1.2 million kyat (\$960) to the United Arab Emirates; and as much as \$11,000 to Japan.⁴²²

Memorandum of Understanding between the Government of the Kingdom of Thailand the Government of the Union of Myanmar on Cooperation in the Employment of Workers

The governments of Thailand and Myanmar signed this MoU covering low-skilled labour migration in 2003. The focus is to provide a framework for government-to-government recruitment of migrant workers for a specific period of employment in Thailand, providing (i) incentives to motivate workers to return home after the completion of employment, (ii) labour protection and dispute settlement, and (iii) measures against illegal employment.⁴²³ Migrant workers under this MoU were eligible for visas for temporary stay in Thailand, plus work permits for a period of two years. These work permits were then renewable for another four years, after which it would be necessary to leave Thailand for a period of three years before re-registering.

Despite the fact that this agreement originated in 2003, preparations for implementation did not begin properly until 2008. As at end January 2010, only approximately 1,500 workers had been recruited directly from Myanmar via MoU processes. Owing to the lack of initial success of this MoU in filtering the continuing flow of undocumented workers from Myanmar into Thailand, the MoU processes were opened up to those semi-documented workers already living in Thailand.⁴²⁴ As part of this additional MoU registration process, migrant workers already in Thailand were required to go through an identification process known as ‘nationality verification’. This provided complications for a number of reasons, in particular: (i) a significant number of migrants had no official identification documents as the government did not recognize a number of ethnic minority groups as Burmese citizens; and (ii) unlike other neighbouring countries within the Greater Mekong Subregion, the Myanmar Government was originally unwilling to establish identification centres inside Thailand, instead requiring any migrant workers already in Thailand and seeking MoU registration to return home.

Once agreement was tentatively reached on establishing identification centres within Thailand, progress was further hindered by lack of agreement regarding the potential centre locations of

420 Myat, M. and Theingi, H., 2010, *The Potential Contribution of Return Migrants in Burma's Trade and Investment Liberalization Strategy*, at http://asaa.asn.au/ASAA2010/reviewed_papers/Theingi-Hla_and_Myat_Mon.pdf.

421 Wine, “For Greener Pastures”.

422 Ibid.

423 Chantanavich and Jayagupta, “Immigration to Thailand”, op. cit., pp. 303–320.

424 See also the Thailand Country Profile of this report for an additional explanation of this process.

identification. In 2006, the governments of Thailand and Myanmar agreed to establish a temporary processing centre for migrant worker registration in Mae Sot, Thailand, followed by additional centres in other border crossing points, with the aim of processing applications for approximately 10,000 migrant workers from Myanmar who had been offered jobs in Thailand.⁴²⁵ Subsequently, in 2008 three passport registration offices were planned in locations along the Thai–Myanmar border, which would allow migrants to apply for relevant identification documents and register for work permits. A Myanmar labour attaché is now also based in Bangkok to assist migrants to resolve disputes with employers and approve contracts.⁴²⁶

Estimates suggest that since the inception of MoU registration for workers already in Thailand, via nationality verification processes, approximately 350,000 workers from Myanmar had completed all required steps as at end January 2011.⁴²⁷ Following the expiration of a Thai Government deadline for all migrant workers to complete the required steps, all migrant workers in Thailand who have not met the deadline are theoretically classified as ‘illegal, pending deportation’. However, some confusion continues regarding implementation of the deportation processes, with Myanmar Government officials continuing to negotiate with Thai Government officials, and migrant rights’ groups calling for policy clarity in the absence of official statements from Thailand.⁴²⁸



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on the right to health for all, Myanmar is not a signatory to the *International Covenant on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. Further, it is also not a party state to most core United Nations conventions that provide for the right of access to health care and medical treatment. Nevertheless it has ratified CEDAW, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens); and as a WHO Member State the country is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.⁴²⁹

⁴²⁵ Mon, “Burmese Labour Migration into Thailand”, op. cit.

⁴²⁶ Joint United Nations Initiative on Migration, Health and HIV in Asia (JUNIMA), 2013, Policy Brief: HIV and Labour Migration in the GMS: Myanmar.

⁴²⁷ IOM, 2011, *Thailand Migration Report 2011*.

⁴²⁸ O’Toole, B., 2012, “Confusion stalls Thai policy for Myanmar migrant workers”, *The Myanmar Times*, 24 December 2012, at <http://www.mmmtimes.com/index.php/national-news/3648-confusion-stalls-thai-policy-for-myanmar-migrant-workers.html>.

⁴²⁹ WHA 61.17, *Resolution on Health of Migrants*.

Monitoring migrants' health

Research completed in 2010 on the health status of migrant workers in the Sangklabhuri district of Thailand, near the border with Myanmar, found that migrant health, once in the host country, was characterized by poverty and social exclusion.⁴³⁰ Additional barriers preventing migrants from seeking adequate care included language, transportation, costs, and lack of knowledge about important health issues.⁴³¹ Further research also notes that after arrival in Thailand many migrants see their health deteriorating due to heavy work, poor living conditions, and lack of access to care,⁴³² with many employees living in dormitories on the factory grounds, where conditions are often overcrowded and unsanitary.⁴³³

Comprehensive information regarding health service provision, access, and utilization for migrant workers from Myanmar is very difficult to obtain for a variety of reasons, including: (i) the number of parties — government, non-government, and private — involved in data collection; and (ii) the inaccessibility of some areas within the country; and (iii) the internal and cross-border movement of the population.⁴³⁴ As a significant majority of workers depart via undocumented means, there is no consolidated available data on migrant health status prior to departure. Although workers may interact with a variety of service providers during the migration cycle, including local and international non-government organizations, there are no mechanisms for joint collation of data.

Policies and legal frameworks affecting migrant health

The Myanmar Ministry of Health is responsible for the provision of all public health services in the country, which provides services at no charge. The public health system is highly under-resourced, however, with government expenditure on health accounting for approximately 20 percent of all spending, and the private sector constituting approximately 80 percent.⁴³⁵ Both non-government organizations and the United Nations play a significant role in contributing to health-related activities in Myanmar.

According to the *Law Relating to Overseas Employment*, workers leaving Myanmar must undergo a medical examination and obtain a health certificate prior to departure.⁴³⁶ The worker also has the right to claim compensation or damages for injuries sustained at a worksite.⁴³⁷ However, given that a significant number of migrant workers depart Myanmar clandestinely and via undocumented means, these provisions do not apply. Undocumented migrant workers also have no access to official health preparations in the form of pre-departure training and information sessions.

430 Ditton and Lehane, "Toward realizing the health-related millennium development goals for migrants from Burma in Thailand", op. cit.

431 Veerman, R. and Reid, T, 2010, "Barriers to Health Care for Burmese Migrants in Phang Nga Province, Thailand", *Journal of Immigrant Minority Health*, vol. 13(5).

432 Ibid.

433 Marian, P., 2012, "South-East Asia: Migrant Workers Face Factory Exploitation", *Just-Style*, 14 May 2012, at http://www.just-style.com/news/migrant-workers-face-factory-exploitation_id114356.aspx.

434 Ibid., p. 17.

435 WHO, 2008, *WHO Country Cooperation Strategy, 2008–2011: Myanmar*, at www.who.int/countryfocus/cooperation_strategy/ccs_mmr_en.pdf.

436 *Law Relating to Overseas Employment*, 1995, article 20.

437 Ibid., article 24.

For workers travelling to Thailand, those who have completed the documentation processes in Thailand have access to health care either via the *Compulsory Migrant Health Insurance Scheme* or via the Thai *Social Security Scheme*, alongside Thai workers. The scheme under which a documented worker is eligible to access health care is dependent on the steps they have completed towards full registration in Thailand. Further information on these schemes can be found in the Thailand chapter of this report. Most recently, in 2013 ministers from Thailand and Myanmar signed a memorandum of understanding for strengthening border health collaboration between the two countries.⁴³⁸

Migrant-sensitive health systems

Information provided by the non-government organization Médecins Sans Frontières notes that migrant workers in factories, on construction sites, and in agriculture report more health problems than those in other industries. This increased pressure on health as a result of conditions in the workplace results mainly from poorly maintained equipment and the lack of adequate safety measures. Health problems include injuries from accidents, exhaustion, sleep deprivation, and even cases of malnutrition.⁴³⁹

While national and international NGOs provide health programmes and services predominantly in border areas, undocumented workers have no access to government-supported health care, although they can pay for medical treatment at government or private hospitals, and under special conditions, decided by service providers, they can benefit from free treatment. A point of note here, as detailed in relatively recent research, is that the staff of Médecins Sans Frontières have reportedly witnessed the police setting up road blocks in front of the main hospital and arresting migrants on their way out after they had attended medical services.⁴⁴⁰

Migrant workers from Myanmar travelling to Thailand may have access to non-government-funded initiatives whereby migrant worker volunteers and migrant health assistants have been installed as in provincial hospitals in Thailand to bridge linguistic and cultural gaps. However, a number of these initiatives are still in the pilot stage and are hindered by government restrictions on the type of work migrants are able to carry out, which prevents the formal hiring of qualified Burmese migrants to provide ongoing translation services.⁴⁴¹

438 Policy Brief: HIV and Labour Migration in the GMS: Myanmar, op. cit.

439 Myat and Theingi, 2010, *The Potential Contribution of Return Migrants in Burma's Trade and Investment Liberalization Strategy*, at http://asaa.asn.au/ASAA2010/reviewed_papers/Theingi-Hla_and_Myat_Mon.pdf.

440 Ibid.

441 *Good Practices to Protect and Promote Migrant Workers' Rights in Thailand*, op. cit., p. 8.

Partnerships, networks, and multi-country frameworks

Participants in multi-stakeholder discussions on migrant workers' right to health in the ASEAN region have noted that the majority of health-related funding for migrant workers is earmarked for HIV. Although non-government organizations are heavily involved in the provision of health-related services to workers, particularly in border regions, discussion participants noted the need for such organizations to be more involved in migration and development partnerships.⁴⁴²

Within the subregional grouping of Myanmar, Cambodia, Lao PDR, and Thailand a number of consultations have already been held to look at cross-border partnerships, particularly with regard to improving access to antiretroviral treatment along the migration continuum for migrant workers living with HIV.⁴⁴³ Regional-level strategies involving Thailand are also in place, as in Mon State, including informal local networking systems to care for migrants.⁴⁴⁴

For further information on health care access for migrant workers from Myanmar working in Thailand, please see the Thailand country profile in this report.

⁴⁴² *Report of Multi-Stakeholder Dialogue*, op. cit., p. 57.

⁴⁴³ For example, (i) *Consultation on Migrants' Access to Anti-Retroviral Treatment Along the Migration Continuum in Four Greater Mekong Subregion Countries*, see www.junima.org; and (ii) *Consultation on Memorandum of Understanding to Reduce HIV Vulnerability Associated with Population Movement*, see <http://regionalcentrebangkok.undp.or.th/practices/hiv/avids/GMSMOUConsultationJuly2012.html>.

⁴⁴⁴ *Report of Multi-stakeholder Dialogue*, op. cit., p. 57.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Design and implement systems for the collection, analysis, and dissemination of disaggregated data on migrant workers, examining health care needs and health-seeking behaviour throughout the migration cycle.
- 2 Advocate for the sharing of data on migrants' health and the establishment of effective linkages and referral systems for migrants traveling between Myanmar and Thailand.

Policies and legal frameworks affecting migrant health

- 3 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers*.
- 4 Mainstream migrant health and welfare issues within the development and review of bilateral negotiations with host country Thailand.

Migrant-sensitive health systems

- 5 Involve migrant communities, particularly peer support networks involving pioneer migrants, in advocacy and service delivery.
- 6 Increase collaboration with host country Thailand in the provision of migrant-sensitive health services, including advocating for the continuation of migrant-sensitive services for workers from Myanmar working in Thailand.

Partnerships, networks, and multi-country frameworks

- 7 Include international non-government organizations, civil society, and migrant worker advocacy groups in government-led responses to the protection of migrant workers' rights, including the right to health.



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Philippines



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Government-managed out-migration from the Philippines began in the early 1970s as a temporary response to both increasing unemployment at home and a boom in contract employment in the Middle East.⁴⁴⁵ Four decades later the country now has one of the most well-established out-migration programmes in the ASEAN region, and is widely considered as providing a strong model for deployment of migrant workers abroad.⁴⁴⁶

Overseas Filipino Workers (OFWs) depart the Philippines for a variety of social and economic reasons, including high unemployment and as a result of strong family and personal networks abroad. In terms of economics, national employment growth has been unable to keep up with population growth, and consequently unemployment levels are increasing.⁴⁴⁷ In particular, those aged 15–24 years currently experience an unemployment rate more than twice the national average,⁴⁴⁸ leading many to seek opportunities abroad. In addition, a strong national history of living and working abroad makes this option particularly viable. At the end of 2010 nearly one tenth of the nation's population of nearly 100 million were either living or working abroad.⁴⁴⁹

The *Republic Act 10022* governing migration of Filipinos overseas explicitly states that the state “does not promote overseas employment as a means to sustain economic growth and achieve

⁴⁴⁵ Migration Policy Institute, 2004, “Labor Export as Government Policy: The case of the Philippines”, *Migration Information Source*, at <http://www.migrationinformation.org/Feature/display.cfm?ID=191>.

⁴⁴⁶ IOM, 2012, *Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward*; Orbeta and Abrigo, op. cit.

⁴⁴⁷ Department of Labor and Employment, 2011, *The Philippine Labor and Employment Plan, 2011–2016*.

⁴⁴⁸ *Ibid.*, p. 21.

⁴⁴⁹ World Bank, 2012, *The Effect of the Global Financial Crisis on Migration and Remittances*, at <http://www.iadb.org/intal/intalcdi/PE/2012/10238.pdf>.

national development”;⁴⁵⁰ and recent commentary from a variety of government authorities envisions a reduced dependence on overseas employment.⁴⁵¹ Nevertheless, past government rhetoric surrounding the nation’s OFWs has viewed them as the nation’s “new heroes”;⁴⁵² and the Department of Labor and Employment (DOLE) has noted that remittances from OFWs have essentially “kept the Philippine economy afloat in times of economic crisis.”⁴⁵³

Data from the World Bank supports this assertion, estimating that remittances from overseas foreign workers amounted to approximately \$21.3 billion in 2010,⁴⁵⁴ constituting 30 percent of the country’s export sector earnings and having a greater value than foreign direct investment.⁴⁵⁵ The Philippines currently ranks fourth in the world in terms of migrant worker remittances.⁴⁵⁶

Out-migration overview

Along with Indonesia, the Philippines is one of the two major migrant worker-sending countries within the ASEAN region. Of the more than 8 million Filipinos residing abroad in 2010, almost 47 percent were temporary migrants and approximately 7 percent were undocumented or irregular workers. Since 2006 the annual new deployment rate of documented OFWs has been greater than 1 million,⁴⁵⁷ and total overseas Filipino worker deployments of almost 1.69 million in 2011 represented the highest level to date.⁴⁵⁸ OFWs are officially deployed in 192 countries, with significant numbers of low-skilled or semi-skilled labour migrants, primarily in the household services sector, heading to the Middle East and East and South-East Asia.

Of the registered OFWs deployed in 2011, approximately 1.32 million were land-based and 370,000 sea-based (fisherman, seafarers, etc.). Of these total deployments, approximately 26 percent, or 437,000, were new hires for 2011. In addition to documented deployments, estimates from the Commission on Filipinos Overseas suggest there were more than 700,000 irregular Filipino migrants worldwide as of December 2010, up from approximately 650,000 as at the end of 2009.

The top destination region for low-skilled or semi-skilled OFWs is the Middle East, which has been the case for a number of years. In 2010 more than 60 percent of all documented deployments were to the Middle East. According to the latest statistics from the Philippines Overseas Employment

450 Philippines Overseas Employment Administration, “Omnibus Rules and Regulations”, op. cit.

451 Centre for Migrant Advocacy, 2011, “Submission to the UN Committee on Migrant Workers”, p. 5ff.

452 Rafael, V., 1997, “Your grief is our gossip: Overseas Filipinos and other spectral presences”, *Public Culture*, vol. 9, pp. 267–291.

453 *The Philippine Labor and Employment Plan*, op. cit., p. 13.

454 World Bank, 2011, *Migration and Remittances Factbook*, p. 205.

455 *Ibid.*, p. 13; the three countries with greater remittances than the Philippines were India, China, and Mexico.

456 Ordinario, C., 2012, “Philippines Economy can’t do without OFW remittances”, *Rappler*, at <http://www.rappler.com/business/12143-philippine-economy-can-t-do-without-ofw-remittances-neda>.

457 *The Philippine Labor and Employment Plan, 2011–2016*, op. cit., p. 12.

458 Philippines Overseas Employment Administration, 2011, *2007–2011 Overseas Employment Statistics*, at <http://www.poea.gov.ph/stats/2011Stats.pdf>; includes both land-based and sea-based, and both repeat and new hires.

Administration, the top two destination countries for migrant worker deployments in 2011 were Saudi Arabia and the United Arab Emirates, hosting approximately 24 percent (317,000) and 18 percent (236,000), respectively, of all land-based OFW deployments. Qatar, Kuwait, and Bahrain were also among the top 10 destination countries for land-based OFW deployments in 2011.⁴⁵⁹

The number two destination region for OFWs is Asia, hosting approximately 25 percent of documented deployments (280,000) in 2010. In 2011, Singapore and Hong Kong were the number three and four destination countries for land-based OFW deployments, hosting approximately 11 percent (147,000) and 10 percent (130,000), respectively. Taiwan and Malaysia were also among the top 10 destination countries for land-based OFW deployments in 2011.⁴⁶⁰

There is a clear pattern of feminization of Filipino migrant workers as well as a strong gender divide across the employment sectors in which OFWs are deployed. Gender composition of migrants first reached parity in 1992,⁴⁶¹ while DOLE statistics estimate that more than 60 percent of deployments over the past 10 years have been females.⁴⁶² Female workers currently constitute approximately 53 percent of new hires,⁴⁶³ although it is worth noting that the annual employment share for females has slipped in recent years. This slip has been attributed to a variety of reasons, including the Philippine Government's moratoria on the sending of female domestic workers to certain countries, as well as restrictions on the fielding of entertainers, predominantly female, in Asian destination countries.⁴⁶⁴

For low-skilled female OFWs by far the largest numbers of new hires in 2010 were categorized as household service workers,⁴⁶⁵ who travelled predominantly, in order of volume, to Hong Kong, Kuwait, United Arab Emirates, Saudi Arabia, Qatar, and Singapore.



LABOUR MIGRATION GOVERNANCE

The key piece of legislation guiding the deployment of Filipino OFWs is the *Migrant Workers and Overseas Filipinos Act 1995 (RA 8042)*, as amended most recently by the *Republic Act (RA) No. 10022*. The Philippines Overseas Employment Administration (POEA), under the DOLE, has released implementing rules and regulations for this act,⁴⁶⁶ and has established "Rules and Regulations

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Battistella, G. and Maruja, M. B., 2011, Protecting Filipino Transnational Domestic Workers: Government Regulations and their Outcomes, Philippine Institute for Development Studies: Discussion Paper Series No, 2011 12, p. 4.

⁴⁶² *The Philippine Labor and Employment Plan, 2011–2016*, op. cit.

⁴⁶³ Philippines Overseas Employment Administration, *Overseas Employment Statistics: 2010*, op. cit.

⁴⁶⁴ Orbeta and Abrigo, op. cit.

⁴⁶⁵ This category includes "domestic helpers and related household workers", "maids and related housekeeping service workers", and "caregivers and caretakers".

⁴⁶⁶ Philippines Overseas Employment Administration, 2010, "Omnibus Rules and Regulations Implementing the *Migrant Workers and Overseas Filipinos Act of 1995*, as amended by *Republic Act No. 10022*", at http://www.poea.gov.ph/rules/omnibus%20irr_ra10022.pdf.

Governing the Recruitment and Employment of Land-based Overseas Workers”.⁴⁶⁷ Migration of OFWs is also guided by bilateral agreements—in the form of non-legally binding MoU—with specific receiving countries, including the United Arab Emirates, Bahrain, and Taiwan.

Generally speaking, Philippine labour migration laws and policies have a strong focus on worker protection. The government is known for advocating for protections for its OFWs through high-level missions to address migrant welfare, the enforcing of model contracts for migrant protection, and the regulation of private recruitment agencies.⁴⁶⁸ To date, the Philippines has the most responsive formal record of all ASEAN countries with regards to migrant rights’ protection, having ratified both the *International Convention on the Protection of the Rights of All Migrant Workers* and the ILO’s *Migration for Employment Convention* (No. 97) and *Migrant Workers (Supplementary Provisions) Convention* (No.143). In 2012 it also became only the second country in the world to ratify the ILO’s *Convention Concerning Decent Work for Domestic Workers* (No. 189), which came into force mid-2013. Recent sector-specific national policies to increase protection of OFWs also includes *The Household Services Reform Package*, aiming to improve protections for service sector workers abroad.

[Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022](#)

This act lays out the varied responsibilities of the range of government agencies that are involved in managing various aspects of the migration process for OFWs, including: the Department of Foreign Affairs; the Department of Labor and Employment; and DOLE subsidiary bodies—the Philippines Overseas Employment Administration and Overseas Workers Welfare Administration. POEA, in particular, is mandated to take responsibility for the “regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers.” The Department of Foreign Affairs is responsible for negotiation of bilateral and multilateral agreements for the protection of migrant workers.

Republic Act 10022 reiterates the importance of government agencies, specifically POEA, in licensing and monitoring recruitment agencies. In the amended law, there is now more monitoring and regulation of the private sector that is involved in the migration process. The act notes that all recruitment agencies within the Philippines must be licensed by the government, while all foreign agencies wishing to hire OFWs must also be accredited by POEA, through the Philippines Overseas Labor Offices. In practice, the POEA maintains a classification and ranking system for all agencies as a means of publicizing those that are up to standards and those that are not.⁴⁶⁹

⁴⁶⁷ For the full list of rules and regulations, see <http://www.poea.gov.ph/rules/POEA%20Rules.pdf>.

⁴⁶⁸ Brooks, A., 2011, *Gender, Emotions and Labour Markets: Asian and Western Perspectives*.

⁴⁶⁹ Orbeta and Abrigo, op. cit., p. 9.

In its labour export legislation, the government formally prioritizes the “fundamental human rights and freedoms of Filipino citizens” ahead of other goals of “economic growth and national development.”⁴⁷⁰ This focus on protection is evidenced by a number of key amendments included in *RA 10022*, notably an enforced commitment by the government to continuously monitor international conventions and ratify those that guarantee protection of OFWs,⁴⁷¹ and an agreement that the state will only deploy Filipinos to countries where existing labour laws protect the rights of migrant workers. In this regard, the Department of Foreign Affairs is mandated to issue ‘certifications’ for destination countries to POEA, either facilitating continued labour export or imposing a ban on the deployment of migrant workers.⁴⁷² Criteria for such certifications include:

- having existing labour and social laws protecting the rights of migrants; or
- being a signatory to multilateral conventions, declarations, or resolutions relating to the protection of migrant workers; or
- have concluded a bilateral agreement with the Philippines on such matters; or,
- taking positive, concrete measures to protect the rights of migrant workers.⁴⁷³

In 2011, only 76 of the 192 countries to which Filipino OFWs are deployed had been certified.⁴⁷⁴

For OFWs themselves, legislated protections include pre-employment orientation seminars, pre-departure training, and mandatory contract templates. According to the implementing rules and regulations of RA10022, POEA will also provide free legal services to OFWs who are victims of illegal recruitment processes.⁴⁷⁵ A national reintegration centre for OFWs is also mandated to be established, to serve as a “mechanism for their reintegration into the Philippine society” and “tap their skills and potentials for national development.”⁴⁷⁶ In support of this latter goal, the reintegration of OFWs is also a policy principle of DOLE’s *Labor and Employment Strategy for 2011–2016*.⁴⁷⁷

The regulation of the costs incurred by OFWs moving abroad is also included in *RA10022*. Placement fees for most land-based workers are capped at one month’s salary, and fees cannot be claimed from domestic workers. The employer is liable for a range of charges, such as visa, airfare and administration, as well as compulsory welfare fund contributions. The collection of excessive fees (anything more than one month’s salary) can result in a six-month suspension for the first

⁴⁷⁰ *Migrant Workers and Overseas Filipinos Act of 1995*, at <http://www.poea.gov.ph/rules/ra8042.html>, section 2(b).

⁴⁷¹ *RA10022*, Declaration of policies, Section 1(a), at http://www.poea.gov.ph/rules/omnibus%20irr_ra10022.pdf.

⁴⁷² Part I. Deployment, section 5: Termination or Ban on Deployment.

⁴⁷³ Part I. Deployment, section 4: Deployment of Migrant Workers.

⁴⁷⁴ Orbeta and Abrigo, op cit.

⁴⁷⁵ Republic of the Philippines, 2010, “Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022”, http://www.poea.gov.ph/rules/omnibus%20irr_ra10022.pdf.

⁴⁷⁶ *RA10022*, section 17.

⁴⁷⁷ *The Philippine Labor and Employment Plan, 2011–2016*, op. cit.

offense, a six-to-twelve month suspension for a second offense, and cancellation of license for the third offense.⁴⁷⁸

Nevertheless, while a series of protections exist in national law and policy and non-legally binding bilateral MoU with destination countries, implementation and monitoring remain as areas of concern according to commentators.⁴⁷⁹ The reality also remains that workers crossing borders are unable to take protections with them, no matter how well meaning, and are subject instead to the laws and policies of the host country, or even excluded from recognition under these laws in the case of domestic household service workers in key host countries for OFWs.



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on the right to health for all, the Philippines is also a signatory to the *International Convention on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of the right to health; the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens); and most of the core United Nations conventions that provide for right of access to health care and medical treatment.

As a WHO Member State, the country is also committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.⁴⁸⁰ Its recent ratification of ILO's *Domestic Workers Convention* also demonstrates a commitment to reducing the specific health-related vulnerabilities of migrant domestic workers.

Monitoring migrants' health

The Philippines' participation in multi-stakeholder regional dialogues on this topic note a range of key barriers to the establishment of the successful monitoring of migrants' health, including: (i) lack of standard sets of indicators and data models; (ii) difficulties in monitoring workers while in host countries (for example, while testimonials of negative experiences exist, these are not supported by the collection of data that gives systematic proof to push policy responses); and (iii) lack of relationship between data and programming, that is, data is used for profiling and

478 Discussion paper based on an online discussion on "Improving and Regulating Recruitment Practices in Asia and the Pacific", op. cit.

479 Centre for Migrant Advocacy, 2011, "Submission to the UN Committee on Migrant Workers".

480 WHA 61.17, *Resolution on Health of Migrants*.

exclusion or to prove compliance to particular standards, rather than to inform programming. A key problem noted by the Philippines, in addition to other source countries, was that although the country may have established its own law against mandatory HIV testing, unfortunately the testing regulations of a number of the countries to which the Philippines sends significant numbers of workers must be complied with.⁴⁸¹

Policies and legal frameworks affecting migrant health

Protection of the right to health is a focus in both domestic policy and practice. Multi-sectoral cooperation within government and between government and civil society is also stronger in the Philippines than in other ASEAN Member States, and a number of practices related to improving health access for impending, currently deployed, and returned migrant workers have been cited as best practice examples in a range of forums. Particular initiatives of note, as will be discussed below, include: the extension of portable health insurance to migrant workers; the implementation of multisectoral training schemes to enhance the capacity of overseas labour officers dealing with migrant health issues; and the creation of procedural guides for overseas welfare officers in managing HIV-positive overseas foreign workers deported from those host countries with travel-related restrictions.

For the general population in the Philippines, universal health coverage and mandatory health insurance through the Philippine Health Insurance Corporation, or PhilHealth, was originally mandated by the *National Health Insurance Act of 1995*. However, commentary notes that the levels of protection afforded through PhilHealth have been limited by difficulties in accessing benefits, failure to understand and comply with administrative requirements, and the inability to afford necessary co-payments.⁴⁸² More recently, in December 2010 the government endorsed the *Aquino Health Agenda: Achieving Universal Health Care for All Filipinos*, with the goals of ensuring sustained health financing and equitable access to affordable health care.⁴⁸³ In terms of data and monitoring to inform health care services and financing, while a more extensive national health information system exists than in many other ASEAN Member States, the effectiveness of this system, for both national and impending or returned migrant workers, is fragmented by a decentralized health system, whereby responsibility for health services and budgets has shifted to local government authorities.⁴⁸⁴

For migrant workers in particular, *RA10022* prescribes a range of health-related protections, including the responsibility of recruitment and manning agencies to shoulder the insurance coverage of each migrant worker deployed,⁴⁸⁵ the establishment of a re-placement and monitoring

481 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 54.

482 WHO, 2011, *Country Strategy Philippines*, 2011-2016, at http://www.who.int/countryfocus/cooperation_strategy/ccs_phl_en.pdf, p. 23.

483 *Ibid.*, p. 24.

484 *Ibid.*

485 Orbeta and Abrigo, op. cit.

centre for returning Filipinos,⁴⁸⁶ and an Overseas Filipinos Resource Centre in countries where there are large concentrations of Filipino migrant workers.⁴⁸⁷

The key government agency responsible for implementation of a number of the above mentioned health-related protections for deployed migrant workers is the Overseas Workers Welfare Administration (OWWA). This agency provides workers with “social security, as well as judicial, social, and employment assistance”, while medical insurance is arranged through PhilHealth. The OWWA is currently established in 24 countries, three of which are in South-East Asia: Singapore, Brunei, and Malaysia. The administration provides access to life and personal accident insurance and monetary benefits for members who suffer work-related injuries, illness, or disability during employment abroad, although the amounts reportedly range from only 2,000 pesos (\$40) to 50,000 pesos (\$1,000), or up to 100,000 pesos (\$2,000) in the case of permanent disability.⁴⁸⁸ In a number of cases, the portability of benefits in practice has been a significant issue for migrant workers.⁴⁸⁹

A policy focus of the Philippine’s Department of Labor and Employment’s *Strategy 2011–2016* includes a commitment to expand social protection and review deployment of workers to countries that are high- and medium-risk and also deployment in high-risk occupations.⁴⁹⁰ Further, DOLE aims to work with the Department of Foreign Affairs to “transform Philippine embassies, consular offices and Philippines Overseas Labor Offices into centres of care and service for OFWs by assigning more foreign service officers to posts where there are many OFWs and train them in the needs of the communities they serve.”⁴⁹¹

DOLE’s strategy also specifically recommends a focus on expanding welfare and protection measures for OFWs, as well as a growing need for work-force-specific occupational safety and health programmes, which include OFWs’ vulnerability to mental health problems such as depression, psychosis, anxieties, and phobias, as well as addressing increased incidence of HIV/AIDS.⁴⁹² At the same time, recent commentary notes that sexual and reproductive health problems in particular, including HIV/AIDS and other sexually transmitted infections, continue to fall between the cracks of policy and legal frameworks affecting migrant health because of a policy focus on “work-related illnesses” and a lack of research illustrating the link between work conditions and sexual and reproductive health problems.⁴⁹³

Key gaps in health access for OFW’s while abroad continue to occur as a result of a lack of sensitivity of health and medical care providers abroad and policies in destination countries that prevent certain interventions by host countries. For example, research conducted on the

486 RA10022, Part I, sections 17–18.

487 Ibid., section 19.

488 ILO, 2010, “Report IV, Decent Work for Domestic Workers”, Fourth Item on the Agenda at the International Labour Conference, 99th Session, 2010, p. 61, at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf.

489 Government of Philippines, Overseas Workers Welfare Association, 2011, at <http://www.owwa.gov.ph/>.

490 Department of Labor and Employment, 2011, *The Philippine Labor and Employment Plan*, p. 45, at <http://www.dole.gov.ph/fndr/bong/files/PLEP-26%20April%20version.pdf>.

491 Ibid., p. 20.

492 Ibid.

493 Commentary provided by Philippines-based NGO Action for Health Initiatives (ACHIEVE). For further information, see www.achieve.org.ph.

sexual and reproductive health of women migrant domestic workers identified the deployment of Filipino doctors to Philippine embassies and consulates as a potentially effective response to issues of language and cultural barriers for OFWs attempting to access medical and health care abroad,⁴⁹⁴ but policies in destination countries do not allow Filipino doctors to practice abroad without national accreditation, making such a solution unfeasible.

Migrant-sensitive health systems

A particular area where the Philippines' work on health access for its OFWs has been used as a good practice for other sending countries relates to its work on repatriation and reintegration of OFWs deported from host countries after having been found to be HIV-positive. As discussed in other country profiles, three countries in the region — Brunei, Singapore, and Malaysia — maintain legislated restriction on travel, entry, and stay of people living with HIV, as do countries in the Arab States, which are host to increasing numbers of low-skilled and semi-skilled OFWs.

Relevant health-specific legislation and policies that aim to protect OFWs in this regard include the *Republic Act 8504: Philippine AIDS Prevention and Control Act, Department Order 01-04 s. 2006 (Guidelines on the Referral System of Repatriated OFWs Diagnosed with HIV Abroad)* and *Memorandum circular on implementation of RA10022 with respect to referral/decking system being implemented by OFW clinics*. A national strategic plan and programmes also exist to address migrant workers' access to HIV services, although discussions suggest that there are a number of challenges to implementation, including: (i) gaps in relationships between the Department of Labor and embassies in countries receiving Filipino workers; and (ii) where issues related to undocumented workers are handled by the Department of Foreign Affairs and those related to documented workers are handled by the Department of Labor, there is no mechanism for referral.

HIV-specific issues include: (i) the inability to influence receiving countries, and a need to better understand what the constraints are that prevent receiving countries from moving forward on this issue, e.g., financial limitations and myths regarding HIV; (ii) migrant workers' fear or negative perception of the embassies and consulates, leading to a lack of confidence regarding approaching these resources when in need.⁴⁹⁵ There are also no arrangements between authorities in destination countries and Philippine embassies, consulates, and labour offices abroad regarding the confidential referral of HIV-positive OFWs. As a result, HIV-positive OFWs are regularly deported without the awareness of Philippine posts abroad, in many cases preventing delivery of crucial referral services.

Although such key challenges continue to exist, examples of positive steps in the improvement of HIV-sensitive health services include: (i) the development of a guidebook on handling HIV cases among OFWs on-site;⁴⁹⁶ (ii) conduct of HIV-awareness seminars for department personnel of the Office of the Undersecretary for Migrant Workers' Affairs, Officer of Consumer Affairs, and

⁴⁹⁴ ACHIEVE, 2011, "Health of Our Heroes".

⁴⁹⁵ *Report of Multi-Stakeholder Dialogue*, op. cit.

⁴⁹⁶ This guidebook was developed by Action for Health Initiatives (ACHIEVE), with financial support from UNAIDS (first edition) and UNDP (second edition), for use by Philippine embassies and consulates.

Foreign Service Institute;⁴⁹⁷ (iii) integration of HIV modules through the Department of Labor and Employment into pre-employment and pre-departure orientation seminars for OFWs; and (iv) training of overseas labour offices to provide needed services on-site. CSOs have also conducted pre-departure seminars on HIV/AIDS for OFWs (among seafarers and domestic workers), as well as providing care and support (counselling and referral) for HIV-affected workers and community-based programmes for female spouses of seafarers.

In addition, its work specifically on domestic workers' health is of interest. In August 2012 the government announced that it was creating a programme to halt sending domestic workers to destination countries where abuse was rampant.⁴⁹⁸ In the same year the Labor Secretary was reported as stating that an 'exit strategy' for removal of domestic worker deployments to countries where abuse occurred would be completed by end 2012.⁴⁹⁹

Partnerships, networks, and multi-country frameworks

As demonstrated by a number of examples provided above, the creation of multi-stakeholder, cross-sectoral, and government-civil society partnerships for the improvement of migrant workers' access to health systems and services generally occurs to a greater degree in the Philippines than in many other ASEAN Member States. Philippine civil society representatives in regional multi-stakeholder dialogues on this issue have noted that the government recognizes the need to work with networks to provide required services.⁵⁰⁰



RECOMMENDATIONS

Monitoring migrants' health

- 1 Improve multi-stakeholder collaboration in data collection processes, involving the health, labour, immigration, and security sectors; consulates; unions; civil society organizations; and employers.
- 2 Advocate for sharing migration health data among sectors and countries for the purpose of enhancing migrants' health.

497 These seminars were conducted by Action for Health Initiatives, and integrated by the Foreign Service Institute into training programmes such as the Foreign Services Cadetship Program and Pre-departure orientation seminars of Foreign Service personnel.

498 Esplanada, J., "DOLE plans to end deployment of maids overseas in 5 years", *Global Nation Inquirer*, 25 August 2012, at <http://globalnation.inquirer.net/48074/dole-plans-to-end-deployment-of-maids-overseas-in-5-years>; Ruiz, R., 2012, Philippines aims to halt migration of domestic workers, *The National*, 27 August 2012, at <http://www.thenational.ae/news/uae-news/philippines-aims-to-halt-migration-of-domestic-workers>.

499 De Leon, J., 2012, "Abusive employers to be banned from getting Filipino maids", *Gulf News*, 27 August 2012, at <http://gulfnews.com/news/gulf/uae/general/abusive-employers-to-be-banned-from-getting-filipino-maids-1.1066716>.

500 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 57.

Policies and legal frameworks affecting migrant health

- 3 Advocate for the integration of health rights into the draft ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.
- 4 Improve monitoring processes and enforcement of legislated liability for migrant welfare for private recruitment agencies and employers.

Migrant-sensitive health systems

- 5 Increase collaboration among countries of origin, transit, and destination, and involve migrants in the creation and promotion culturally and linguistically sensitive health systems.
- 6 Increase awareness among foreign service personnel, health workforce, migrants, and other stakeholders about social protection and health entitlements in countries of origin, transit, and destination.

Partnerships, networks, and multi-country frameworks

- 7 Advocate for the shared responsibility of host and destination country governments in the health and welfare of migrant workers, within the framework of right to health and universal access to health care for all.
- 8 Advocate for the inclusion of migrants' health in existing regional platforms (e.g., ASEAN summits).
- 9 Enhance intersectoral collaboration on migrants' health concerns with respect to ASEAN mechanisms—such as ASEAN Intergovernmental Commission on Human Rights, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, and ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers—as part of the protection and the promotion of the rights of migrant workers.



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Singapore



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Singapore is a receiving country for foreign migrant workers coming from within the ASEAN region. As of December 2012, the foreign workforce was approximately 1.27 million,⁵⁰¹ while the total labour force in Singapore stood at approximately 3.36 million as of January 2013.⁵⁰² The country's total fertility rate (TFR) has been below replacement level since 1974, and for the past 10 years it has ranked among the countries with the lowest TFRs in the world.⁵⁰³ As such, Singapore will likely remain heavily dependent on foreign labour not just to sustain economic growth but also to combat ageing.

In the past the Singapore Government's approach to foreign labour has been mixed. Academic commentary identifies four policy stages in recent history: (i) a period of very strict controls on the admission of low-skilled labour migrants immediately following political independence, as a result of high domestic unemployment; (ii) the subsequent introduction in the 1980s of a 'no foreign labour' policy outside the sectors of construction, shipbuilding, and domestic services; (iii) a period of strong economic growth leading to an immediate increase in demand for foreign labour and a subsequent reduction in restrictions on import of foreign labour; and (iv) the reintroduction of stricter policies in response to the global financial crisis beginning in 2009.⁵⁰⁴

501 Ministry of Manpower, "Foreign Workforce Numbers", at <http://www.mom.gov.sg/statistics-publications/others/statistics/Pages/ForeignWorkforceNumbers.aspx>.

502 Ministry of Manpower, "Labour Force", at <http://www.mom.gov.sg/statistics-publications/national-labour-market-information/statistics/Pages/labourforce.aspx>.

503 Teng, Y. M., 2011, "Singapore's demographic trends", *Global-is-Asian*, April-June 2011, p. 11.

504 Yue, C. S., 2011, "Foreign Labor in Singapore: Trends, Policies, Impacts, and Challenges", Philippines Institute for Development Studies Discussion Paper Series, No. 2011-24.

Despite the more recent return to stricter controls following the global financial crisis, demand for foreign workers continues as a result of a high rate of employment and a limited pool of local labour. For example, it is estimated that one in five households in Singapore employ a live-in domestic worker, with demand increasing. Anecdotal reports in early 2012 also suggested that the current low and semi-skilled workforce would require tens of thousands more than its current total of 240,000 construction workers to execute planned public housing programmes alone.⁵⁰⁵

In-migration overview

The majority of migrant workers coming to Singapore from within the ASEAN region are semi-skilled or unskilled workers, employed in labour-intensive jobs such as construction, manufacturing, maritime, and service industries, which include domestic work, health care, retail, entertainment, and hospitality.⁵⁰⁶ Exact data on the number of foreign workers from particular source countries is not available in the public domain as it is considered by the government to be sensitive. However, in terms of sector-specific statistics, the total foreign workforce includes 206,000 female foreign domestic workers and 264,000 predominantly male construction workers,⁵⁰⁷ constituting roughly 6 and 8 percent of the total female and male resident workforce of Singapore, respectively.

The number of registered foreign domestic workers (FDW) in Singapore has risen from 140,000 in 2002 to 206,000 in 2012, the majority of whom come from Indonesia and the Philippines.⁵⁰⁸ However, according to Singapore Government regulations, FDWs may also come from Bangladesh, Hong Kong, India, Indonesia, Macau, Malaysia, Myanmar, the Philippines, South Korea, Sri Lanka, Taiwan, and Thailand. It has been reported that Singapore agents have recently been recruiting more workers from Myanmar in a bid to make up the shortfall caused by protracted fee negotiations with Indonesian domestic worker recruiters.⁵⁰⁹ While working in Singapore, a typical domestic worker works 84 hours per week and earns S\$300/month, the equivalent to approximately S\$1 (\$0.81) per hour.⁵¹⁰

Low-skilled migrant workers employed in the construction, marine, and service sectors are mainly from Malaysia, the People's Republic of China, Bangladesh, India, Thailand, and Myanmar.⁵¹¹ From within South-East Asia, foreign construction workers come from Malaysia, the Philippines,

505 Seneviratne, K., 2012, "Singapore's migrant workers struggle to secure better deal", *Asia Times*, 15 February 2012, at http://www.atimes.com/atimes/Southeast_Asia/NB15Ae04.html.

506 Humanitarian Organization for Migration Economics, 2011, *Shadow Report to the 49th session on CEDAW*, at http://www.home.org.sg/downloads/CEDAW_ShadowReport_Jul2011.pdf.

507 Ministry of Manpower, 2011, "Statistics: Foreign Workforce Numbers", at <http://www.mom.gov.sg/statistics-publications/others/statistics/Pages/ForeignWorkforceNumbers.aspx>.

508 Transient Workers Count Too, 2011, "Fact Sheet: Foreign Domestic Workers in Singapore (Basic Statistics)", at <http://twc2.org.sg/2011/11/16/fact-sheet-foreign-domestic-workers-in-singapore-basic-statistics>.

509 Ibid.

510 Lee Kuan Yew School of Public Policy, 2012, "Low-Income Migration: When the marginalised move across borders", *Asian Trends Monitoring Bulletin*, issue 14, p. 5.

511 Solidarity for Migration Workers, 2011, "A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review", May 2011, at http://home.org.sg/downloads/UPR_Report_011110.pdf.

Myanmar, and Thailand. A large number of construction workers also come from Bangladesh, India, Sri Lanka, Hong Kong, Macau, South Korea, and Taiwan. A typical construction worker works 50 hours per week and earns \$900/month, about S\$4.50 (\$3.65) per hour.⁵¹²



LABOUR MIGRATION GOVERNANCE

The *Employment Act 1961 (Cap 91)* provides for the basic terms and working conditions for all types of employees, including foreign workers, except managers and executives, seamen, domestic workers, and government employees. In its report to the Universal Periodic Review⁵¹³ in 2011, Singapore noted that the exclusion of domestic workers from protections under the *Employment Act* are necessary as certain aspects of their work make it impractical to regulate under this act.⁵¹⁴ As a result, FDWs are governed under the *Employment of Foreign Manpower Act (Chapter 91A)*. The *Employment Agencies Act 2011* also specifically governs the practices of recruitment agencies providing foreign workers in Singapore.

The Ministry of Manpower is responsible for the enforcement of each of three laws noted above, as well as their related regulations. In addition, the Ministerial Steering Committee on Foreign Workers Management was established in 2009 to coordinate government strategy on foreign migrant workers in Singapore. Unlike a number of other countries in the ASEAN region, Singapore does not generally supplement management of labour migration with bilateral agreements with source countries. To date, for example, the Philippines is the only country to have pushed for its own standard contract for its migrant workers in Singapore, although Indonesia may also follow Philippines in this regard.⁵¹⁵

Singapore has not ratified either the *International Convention on the Protection of the Rights of All Migrant Workers* or the *ILO's Migration for Employment Convention (No. 97) or Migrant Workers (Supplementary Provisions) Convention (No. 143)*. Singapore has also not ratified the *Convention Concerning Decent Work for Domestic Workers*, and was one of nine ILO Member States to abstain during voting for its adoption in 2011.⁵¹⁶ However, the government has implemented a range of legislative, administrative, and educational measures to protect the well-being of all foreign workers,⁵¹⁷ as will be discussed below.

⁵¹² Ibid.

⁵¹³ The Universal Periodic Review is a process that involves a review of the human rights records of all 192 UN Member States once every four years. It provides the opportunity for each State to declare what actions they have taken to improve human rights situations in their countries and to fulfill their human rights obligations; see <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

⁵¹⁴ Ministry of Foreign Affairs, 2011, *National Report for Singapore's Universal Periodic Review*, at http://home.org.sg/downloads/NationalReport_UniversalPeriodicReview2011.pdf.

⁵¹⁵ Gee, J., 2012, "Signing on the dotted line: Examining operational indicators of trafficking, Part 2: contract substitution", at <http://thetraffickingresearchproject.wordpress.com>.

⁵¹⁶ Human Rights Watch, 2012, *World Report 2012*, at <http://www.hrw.org/world-report-2012/world-report-2012-singapore>.

⁵¹⁷ *National Report for Singapore's Universal Periodic Review*, op. cit.

Employment Act 1961

This act provides for the basic terms and working conditions for all types of workers, with specific exceptions including seamen and domestic workers. It includes provisions for contracts of service; payments of salary, including fixed salary periods and authorized deductions; rest days, including the provision of one day of rest per week and maximum hours per working week; and holiday and sick leave entitlements, including entitlement to paid sick leave.

Employment of Foreign Manpower Act (Chapter 91A)

This act prescribes the responsibilities and obligations pertaining to the employment of foreign workers, focusing primarily on the provision of work permits and passes. The act states that all foreign employees working in Singapore must be in possession of a valid work pass, which is only valid under one employer⁵¹⁸ and may not be held by anyone other than the employee.⁵¹⁹ The act binds all employers to take responsibility for the well-being of their foreign workers, including purchasing and maintaining medical insurance and providing personal safety, proper accommodation, adequate food and rest, and prompt salary payment. Recent amendments to this legislation also include: (i) for domestic workers, the granting of one day off per week or compensation in lieu of, in effect for all work passes issued or renewed as of 1 January 2013; and (ii) increased penalties—including financial penalties and debarment from hiring foreign workers—to employers guilty of infringements against the act, in effect as of end 2012.

Under related regulations MoM also requires employers to pay a monthly levy for employees holding work permits, ranging from S\$50 to S\$470,⁵²⁰ plus a security bond of S\$5,000 for each migrant worker, including FDWs. The security bond is only repaid once the contract is completed and the worker is repatriated, at no cost to the worker. Conditions of the security bond include an employer's responsibility to: (i) ensure prompt payment of salary; (ii) cover costs of upkeep and maintenance, including medical treatment; (iii) provide acceptable accommodation; and (iv) cover the full cost of repatriation.⁵²¹

The government reports that it conducts interviews with randomly-selected first-time FDWs during their initial months of employment in order to help determine their adjustment to Singapore's work environment and to reiterate the importance of safe working conditions and their rights and responsibilities. In addition, first-time employers and employers who frequently change FDWs are required to attend a compulsory employer orientation programme covering good employment practices and obligations. Some are required to attend an interview with government officials before their application for a new FDW is approved.

⁵¹⁸ *Employment of Foreign Manpower Act*, article 12.

⁵¹⁹ *Ibid.*, article 13.

⁵²⁰ "Low-Income Migration: When the marginalised move across borders", *op. cit.*

⁵²¹ Ministry of Manpower, *Work Permit – before you apply*, at <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fw/before-you-apply/Pages/security-bond.aspx>.

Employment Agencies Act 2011

This act regulates the practices of employment agencies serving as intermediaries between employers and foreign workers. It limits the service fees that agencies can charge foreign workers, including FDWs, to no more than one month's salary per year of employment contract, subject to a maximum of two month's salary.⁵²² The government also requires a refund of at least 50 percent of the fees collected from workers who are prematurely terminated within the first six months of employment.

In April 2011 the government made changes to the Employment Agencies (EA) regulatory framework to raise the standard of recruitment practices in Singapore and deter malpractices associated with unlicensed agency activities. Changes include mandatory certification and/or registration for all EA personnel, enhancing the maximum penalty for operating an unlicensed EA, and penalizing employers who engage with unlicensed EAs. The Ministry of Manpower administers a demerit point system for employment agencies, and the accumulation of a certain number of points means the agency will be placed on a surveillance list and have their Work Permit Online and Employment Pass Online accounts suspended. Agents who commit further offences during the surveillance period may have their licences revoked or barred from licence renewal.⁵²³

The prosecution and conviction or de-licensing of employment agencies for offences under the *Employment Agencies Act*⁵²⁴ has been highlighted as a particular initiative aimed at increasing protections for foreign workers, including domestic workers. Through amendments to the *Employment of Foreign Manpower Act*, harsher penalties are now imposed for employers who are found to be in breach of work pass conditions such as syndicates that set up shell businesses and illegally import and supply foreign workers, and employers that illegally recover employment costs from foreign workers.⁵²⁵ Nevertheless, reports of rights abuses by employment agencies and employers as well as difficulties in seeking legal redress for such abuses continue, as will be discussed below.

Despite the range of legislative and administrative provisions detailed above, submissions by a range of NGO and human rights advocacy groups detail a number of rights abuses of migrant workers in Singapore. Submissions from NGO groups based in Singapore and research by Human Rights Watch suggest that employers have used the threat of contract cancellation to intimidate workers into accepting unlawful work conditions and to prevent them from filing complaints.⁵²⁶ In some cases, the fear of losing the \$5,000 security bond has led employers to restrict workers' movements and confiscate their passports,⁵²⁷ although the *Employment of Foreign Manpower Act* prohibits this. For example, the Humanitarian Organization for Migration Economics — an NGO that supports migrants' rights — has noted that nine out of ten domestic workers who seek their

522 Discussion paper based on an online discussion on "Improving and Regulating Recruitment Practices in Asia and the Pacific", op. cit.

523 "Myanmar agents send under-aged maids", op. cit.

524 Ibid. According to this report, in 2009 six employment agencies were prosecuted, convicted, and fined for offences under the act, while 11 agencies had their licenses revoked.

525 "Employment of Foreign Manpower Act Amended", *The Real Singapore*, 11 September 2012, at <http://therealsingapore.com/content/employment-foreign-manpower-act-amended>.

526 *World Report 2012*, op. cit.

527 "A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review", op. cit.

assistance are not in possession of identification documents as employers are holding them, in many cases under advice from employment agencies.⁵²⁸

In its submission to the Universal Period Review in 2011, Solidarity for Migrant Workers noted that a number of rights abuses of migrant workers also revolved around the complaints process for workers who have been abused by their employers. For example, some employers have been found to withhold records such as contracts, salary slips, and time cards, preventing workers from substantiating claims of employment-related abuse. Even where workers were successful in lodging claims, complaints can take a number of months to be resolved, during which time workers are unable to work. Given the employers ability to either immediately cancel work permits or even refuse to cancel work permits to prevent workers from seeking a new employer, migrant workers may take a significant risk in lodging complaints.⁵²⁹

Research has also found that migrant workers travelling to Singapore have experienced contract substitution, despite a government initiative to deliver approval letters to migrant workers prior to departure from home country to inform them of their salaries. Allegations of contract substitution refer to a process whereby workers are offered favourable terms early on during the recruitment process, only to be presented with new contracts with less favourable terms immediately prior to departing for the host country, leaving the worker with little choice but to sign.⁵³⁰

In response to this, countries such as the Philippines are pushing for their workers to sign standard contracts that stipulate minimum working conditions and salaries better than those provided by the host government's employment laws, although it is unclear how effective this initiative has been. Commentary suggests that such a push can potentially have the side-effect of creating precarious situations — politically for the governments involved, and economically for the sending country and workers who may be passed up by employers in favour of workers from a country that does not try to enforce such protections. From the perspective of the workers, concern for job security can prevent them from seeking to invoke legislated protections. For example, Filipina domestic workers are required to submit contracts and evidence of enforcement when renewing passports or contracts in Singapore, yet it is known that some will submit contracts that are not real in order to ensure continuation of employment, while in reality they have accepted contracts offering much lower pay.⁵³¹

With specific regard to the protection of domestic workers' rights in Singapore, the fact that migrant domestic workers are not covered under national employment legislation raises additional concerns. In its concluding comments about Singapore, the CEDAW Committee raised concerns regarding the rights of foreign domestic workers,⁵³² and in April 2010 the UN Special Rapporteur on Racism/Xenophobia raised concerns on his visit to Singapore about the living and working conditions of migrant workers, including domestic workers. While recent important progress in the protection of certain rights for domestic workers includes the creation of guidelines by the

528 Ibid.

529 Ibid., p. 2.

530 Gee, "Signing on the dotted line", op. cit., p.3.

531 Ibid.

532 "A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review", op. cit.

Dormitory Association of Singapore and the Migrant Workers' Centre, and while government agencies require employers to provide a certain amount of living space, adequate ventilation, and a convenient supply of potable water, it is unclear how these guidelines are implemented and enforced.⁵³³



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on right to health for all, Singapore is not a signatory to the *International Convention on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. It is also not a party state to most of core United Nations conventions that provide for right of access to health care and medical treatment. However, Singapore has ratified CEDAW, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens). As a WHO Member State, Singapore is also committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.⁵³⁴

Monitoring migrants' health

The World Health Organization ranks Singapore's health system the best in Asia and the sixth best in the world. The Singaporean Government also formally recognizes the importance of public health and sanitation, and adheres to the principal that good and affordable medical services should be available to all citizens.⁵³⁵ All working Singaporeans make compulsory salary contributions to medical insurance schemes, such as Medishield, while some citizens also take out private medical insurance policies.⁵³⁶

In terms of data collection specifically on health systems and service provision and utilization by migrant workers in Singapore, the majority of data that is collected is used for exclusionary purposes, for example HIV and pregnancy testing. Reporting of accidents and deaths of migrant workers is also kept confidential, and cannot be consolidated.⁵³⁷

533 Hartung, R., 2012, "Lure better workers here", *Singapore Today*, 9 January 2013, at <http://www.todayonline.com/CommentaryandAnalysis/Commentary/EDC130109-0000005/Lure-better-workers-here>

534 WHA 61.17, *Resolution on Health of Migrants*.

535 "A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review", op. cit.

536 *National Report for Singapore's Universal Periodic Review*, op. cit.

537 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 54.

The Singaporean non-government organization Transient Workers Count Too reported that in the first 10 months of 2010 it saw 685 injury cases for migrant workers,⁵³⁸ while the Humanitarian Organization for Migration Economics (HOME) reported that in 2009 it provided shelter housing for 1,388 migrant domestic workers. The most common violations experienced by these workers included inadequate food or accommodation (43 percent) and psychological abuse (30 percent).⁵³⁹

Policies and legal frameworks affecting migrant health

For all migrant workers, access to health services is dependent upon employers, who are legislated under the *Employment of Foreign Manpower Act* to take out compulsory medical insurance for foreign workers, including FDWs, to ensure basic coverage for medical expenses, including hospital bills and day surgery. For migrant workers, the government has also appointed NGOs such as HOME to provide such services as health promotion and awareness on its behalf.⁵⁴⁰

The *Employment of Foreign Manpower Act* stipulates health-related conditions to which employers of foreign workers, including FDWs, must adhere, including: (i) provision of adequate food as well as medical treatment; (ii) provision of safe working conditions; (iii) ensuring safety and health of the foreign employee at work; (iv) provision of medical insurance with coverage of at least S\$15,000 for a 12-month period of employment for inpatient care and day surgery; and (v) provision of a minimum of S\$40,000 in personal accident insurance. Some anecdotal evidence suggests that some employers who found out about illnesses would then terminate the employee.⁵⁴¹

While some migrant workers, excluding FDWs, are covered under the provisions of the *Employment Act*, it has been noted that both this act and the *Employment of Foreign Manpower Act* do not provide protections against denial of medical leave.⁵⁴² Provisions for medical insurance and care for domestic workers have also been criticized by some commentators as being too vague, in particular the absence of reference to working hours, access to public holidays, medical and annual leave, and definition of safe working conditions.⁵⁴³

In recent times, Singapore has taken a number of positive steps in the protection of migrant workers' right to health. A mandatory Settling-in-Programme for FDWs, with modules on stress management, safety awareness, and adapting to working in a foreign urban environment,⁵⁴⁴ was introduced in May 2012. As of 1 July 2008 the MoM has also increased the minimum coverage of personal accident insurance for FDWs from S\$10,000 to S\$40,000, as part of a broader review of work injury compensation, as well as to provide for situations of permanent disability.

538 "A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review", op. cit.

539 *National Report for Singapore's Universal Periodic Review*, op. cit.

540 *Report of Multi-Stakeholder Dialogue*, op. cit.

541 Ibid.

542 *World Report 2012*, op. cit.

543 Vogel, A. and Lim, S., 2011, "Survey of Foreign Domestic Worker Employment in Singapore", in Singapore National Committee for UNIFEM/ILO (eds.), *Made to Work 2011: Attitudes towards Granting Regular Days Off to Migrant Domestic Workers in Singapore*.

544 Hangzo and Cook, "The Domestic Workers Convention 2011", op. cit.

Singapore is one of three countries in the region with legislated HIV-related restrictions on entry, stay, and residence, and annual health monitoring of migrant workers is used for exclusionary purposes and deportation. According to work permit regulations, all migrant workers must undergo a biannual medical examination by a Singapore registered doctor. In accordance with the *Immigration Act*, detection of HIV is grounds for immediate deportation. Reports on HIV testing suggest that they often disregard established best practices of consent, confidentiality, counselling, and referral to treatment and support services.⁵⁴⁵

With specific regard to domestic workers, recent research by the CEDAW Committee notes that these workers do not have access to health education and screening programmes as a result of restrictive working conditions and lack of time off. Inconsistent enforcement of laws mandating employers to take out medical and hospital insurance has also lead to migrant women domestic workers going without medical treatment for long periods of time or being deported without access to medical treatment. At the same time, the psychosocial health of such workers is negatively affected due to such factors as work pressures, poor working conditions, abuse, and harassment. One psychiatrist at a state hospital reported seeing an average of five migrant women domestic workers per month suffering from mental disorders.

Migrant-sensitive health systems

Singapore's Health Promotion Board has worked with the Humanitarian Organization for Migration Economics in the delivery of health promotion seminars and outreach for migrant workers. Generally speaking, NGOs play a key role in the protection of migrant workers' right to access health care in Singapore. Attempts have been made to enhance the quality of care by setting up, for example, a 24-hour hotline for migrant workers, providing outreach materials in native languages, and engaging volunteer nurses from the Philippines in order to help with health outreach.⁵⁴⁶

Partnerships, networks, and multi-country frameworks

The government-run Health Promotion Board has partnered with HOME to carry out health and HIV-related seminars and outreach to migrant workers, including work with cross-border partners and a specific contract for outreach for sex workers, conducting surveys and research.⁵⁴⁷

⁵⁴⁵ Ibid.

⁵⁴⁶ *Report of Multi-Stakeholder Dialogue*, op. cit.

⁵⁴⁷ Ibid., p. 58.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Design and implement systems for the collection, analysis, and dissemination of disaggregated data on migrant workers, examining health care needs and health-seeking behaviour in order to inform health-related interventions and programming.

Policies and legal frameworks affecting migrant health

- 2 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and *ILO Convention Concerning Decent Work for Domestic Workers*.
- 3 Advocate for the removal of HIV-related travel restrictions on entry, stay, and residence for migrant workers, and mainstream comprehensive HIV prevention, treatment, care, and support services for migrant workers in national HIV-control programmes.

Migrant-sensitive health systems

- 4 Mainstream the protection of migrant workers' health within national health strategies in order to ensure they are responsive to migrant workers' needs.
- 5 Provide continued support to non-government organizations involved in health promotion and health-related service delivery for migrant workers.

Partnerships, networks, and multi-country frameworks

- 6 Include civil society and migrant worker advocacy groups in government-led responses to the protection of migrant workers' rights, including the right to health.
- 7 Develop and strengthen intersectoral and intercountry health partnerships, particularly regarding referral for migrant workers deported due to HIV-positive status.



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Thailand



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

Thailand is the primary host country for low-skilled migrant workers from three neighbouring countries within the ASEAN region: Myanmar, Cambodia, and Lao PDR. It is also a sending country for a relatively small numbers of low-skilled labour migrants to countries across Asia, the Middle East, and Africa.

Low-skilled labour migrants, predominantly from Myanmar, first began to work in Thailand's border areas in greater numbers in the early 1990s, initially employed in the fishing and agriculture industries.⁵⁴⁸ Since then, the demand for migrant workers has continued to grow, and low-skilled labour migrants are seen by some employers as providing relatively cheaper sources of labour across sectors increasingly avoided by Thai workers, with demand greatest in the fishing, seafood processing, agriculture, construction, and domestic employment industries.⁵⁴⁹ For example migrant workers account for 25 percent or more of the total number of employees in the fishing, fish-processing, and domestic service sectors.

Continuing demand for migrant workers is driven by multiple factors. The combination of demographic transition and the upgrading of the skills of the Thai workforce have left certain sectors facing a shortage of unskilled labour. Recent projections suggest that new Thai entrants to the labour market satisfied only 33 percent of the country's demand for unskilled workers at end 2012.⁵⁵⁰ On the other hand, positive growth rates in the 15–39-year age group in Myanmar,

⁵⁴⁸ "Immigration to Thailand", op. cit., p. 304.

⁵⁴⁹ IMO, 2011, *Thailand Migration Report 2011*.

⁵⁵⁰ Vasuprasat, P., 2010, *Agenda for Labour Migration Policy in Thailand: Towards long-term competitiveness*, (ILO).

Cambodia, and Lao PDR⁵⁵¹ help to ensure a steady flow of migrants willing to fill labour supply gaps in Thailand.⁵⁵²

Documented migrants from Myanmar contribute an estimated \$11 billion (6.2 percent of the gross domestic product) to the Thai economy and make up 5 percent of the workforce.⁵⁵³ Yet, despite the fact that they are an essential part of the Thai economy, these workers remain a marginalized group.⁵⁵⁴ Government policy is not always supportive of labour demand, and academic commentary suggests that many threats against the basic rights of migrants have stemmed from the state's view of them as security threats.⁵⁵⁵

Public perception of migrant workers in Thailand is also mixed. A recent survey on public attitudes towards migrant workers by the International Labour Organization found that although 40 percent of respondents in Thailand believed migrants contributed positively to the economy, more than 80 percent believed that government policies to admit migrants should be more restrictive. More than 80 percent of respondents also agreed at least to some extent that undocumented migrants could not expect to have any rights at work.⁵⁵⁶

A recent survey led by the Institute for Population and Social Research at Mahidol University found similar marked differences in Thai perception of registered versus irregular migrants. The survey found that the less favourable perception of irregular migrant workers was influenced by "fear of the unknown" and "fear of numbers." In addition, with specific regard to labour protections, half of the respondents in this survey believed that registered migrant workers should have the same labour protections as Thai workers, although at the same time a majority of respondents did not believe such workers should have access to the same minimum wages as Thais. Almost half of survey respondents also believed that registered workers competed with Thais for jobs.⁵⁵⁷

551 Asian Development Bank, 2009, "Migration in the Greater Mekong Subregion: A Background Paper for the 4th Greater Mekong Subregion Development Dialogue", Beijing, May 5, 2009".

552 World Bank, 2006, *Labor Migration in the Greater Mekong Sub-Region, Synthesis Report: Phase 1*.

553 Ditton and Lehane, "Towards realizing health-related millennium development goals for migrants from Burma in Thailand", op. cit.

554 Veerman and Reid, "Barriers to healthcare for Burmese migrants", op. cit., p. 1.

555 Ibid., p. 67.

556 ILO, 2011, *Public Attitudes to Migrant Workers: A Four Country Study*, at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_159851.pdf.

557 Institute for Population and Social Research Mahidol University, 2012, *The Survey of Thai Public Opinions on Myanmar refugees and displaced persons*, pp. iv-v.

In-migration overview

Although the majority of migrant workers in Thailand are low-skilled workers from neighbouring Cambodia, Lao PDR, and Myanmar, lesser numbers come from Bangladesh, China, and Viet Nam.⁵⁵⁸ While workers from the former group are difficult to enumerate given the number of undocumented workers, those from the latter group are difficult to identify and count given that the government does not officially recognize them.

Estimates from the Thai Ministry of Interior in 2010 suggested that there were approximately 2.46 million low-skilled migrant workers, both documented and undocumented, from Cambodia, Lao PDR, and Myanmar in Thailand. An exact breakdown of this figure into documented and undocumented is difficult to reach in the context of Thailand's complex, parallel registration systems, as will be discussed. However, it is estimated that this total figure includes approximately 1 million workers at various stages of registration with the Thai Ministry of Labour, and approximately 1.4 million who do not have any form of registration.⁵⁵⁹

In the past there have been questions surrounding the methods of enumeration for documented migrants, let alone undocumented migrants,⁵⁶⁰ which has led to doubt surrounding the final accuracy of government estimates. Non-government sources have estimated that the number of irregular migrants in Thailand could actually be two-to-four-times higher than the 1.4 million estimate,⁵⁶¹ given that many migrants have never completed any form of registration with Thai authorities.⁵⁶²

By far the greatest majority of migrant workers in Thailand come from Myanmar. Since 1996 the number of workers granted work permits from Myanmar has ranged between approximately 75 to 90 percent of all permits granted.⁵⁶³ Workers from Myanmar work primarily as daily labourers, factory workers, fishermen/seafood processors, farm workers, sex workers, and domestic workers. The second largest group of workers comes from Cambodia, working primarily as fishermen, mill workers, farm workers, construction workers, and a variety of low-wage labour. Third largest group comes from Lao PDR and are primarily employed as truck drivers, labourers, factory workers, construction workers, sex workers, and domestic workers.⁵⁶⁴

558 Institute for Population and Social Research Mahidol University, 2011, *A Situation Analysis on Health System Strengthening for Migrants in Thailand*, p. 5.

559 Ibid., p.3.

560 Archavanitkul, K., 2009, "A pilot study to improve data collection on migrants for the Thai 2010 census", cited in Baker, Holmyong, and Thianlai, 2010, *Research Gaps Concerning the Health of Migrants from Cambodia, Lao PDR and Myanmar in Thailand*, Institute of Population and Social Research, Mahidol University/WHO. Currently, the numbers of migrants are estimates heavily based on official statistics that are often poorly collected and that tend to exclude unregistered migrants. For example, Thailand's 2000 census enumerated just 70,173 people from Cambodia, Lao PDR, and Myanmar, equivalent to only 12 percent of the registered migrant workers at that time. With such a low enumeration, it is likely that those surveyed were not representative of migrants as a whole, making it impossible to draw conclusions.

561 Thailand Ministry of Labour, IOM Cambodia, 2011.

562 IOM, 2011, *Thailand Migration Report 2011*, p. 10. In 2009 it was estimated that the approximately 1 million documented workers in Thailand accounted for only 57 percent of the total number of migrant workers in the country.

563 Archavanitkul, K. et al., 2007, *Thai Government and HIV/AIDS and Reproductive Health Policy Change*, Institute of Population and Social Research, Mahidol University.

564 Jitthai, N. et al., 2010, *Migration and HIV/AIDS in Thailand*, IOM, p. 25.

Out-migration overview

Thailand currently deploys approximately 150,000 documented migrant workers per year. These workers are primarily male, with females accounting for only 16 percent.⁵⁶⁵ Predominant sectors for male employment are construction, manufacturing, and agriculture, while females tend to work in the domestic and entertainment sectors.

In 2010 almost two thirds of documented migrant workers from Thailand were deployed to Asian destinations. While destination countries included key ASEAN host countries of Brunei Darussalam, Malaysia, and Singapore, the largest proportion of workers (both male and female) were deployed to Taiwan. Secondary destinations for male migrant workers were the Middle East and Africa, which received almost one third of all male migrant workers. The main secondary destination for women was Hong Kong, at 13 percent.⁵⁶⁶



LABOUR MIGRATION GOVERNANCE

The *Alien Employment Act 2008* regulates the employment of all low-skilled labour migrants (as well as skilled and high-skilled) in Thailand according to the three guiding principles of national security, protecting work opportunities for Thai persons, and establishing a level of labour migration that would support the growth and development of Thailand.⁵⁶⁷ This act's primary focus is work permit regulations and the reservation of certain occupations for the Thai labour force. Migrant employment is also governed under the *Labour Protection Act 1998*, which focuses on working conditions and benefits and labour welfare. Aside from these acts and related policies, labour migration management is also further regulated by separate bilateral memoranda of understanding with Myanmar, Lao PDR, and Cambodia.

Thailand is not a party to either the *International Convention on the Protection of Rights of All Migrant Workers* or ILO's *Migration for Employment Convention* (No. 97) or *Migrant Workers (Supplementary Provisions) Convention* (No. 143), but Thai commentary suggests that the standards contained in these instruments generally overlap with the main rights conventions that already bind the country.⁵⁶⁸ At the same time, various external commentaries notes that while the policies and bodies to manage migrant workers are now well-established, complex procedural regulations, fear of misuse of personal data, and lack of information among employers and migrants about

⁵⁶⁵ *Thailand Migration Report 2011*, op. cit., p. 13. These figures include both new deployments and contract renewals.

⁵⁶⁶ *Ibid.*, p. 13.

⁵⁶⁷ *Alien Employment Act 2008*, section 7.

⁵⁶⁸ *Thailand Migration Report 2011*, op. cit., p. 67.

what the processes entail can often prevent migrants from engaging in regularization processes,⁵⁶⁹ through which rights protections may be formally accessed.

Alien Employment Act 2008

This act primarily governs the issuance and validity of work permits, establishing also a committee on alien work and a deportation fund for migrant workers. The act reserves certain occupations for the Thai labour force and is supplemented by regulations that list those occupations in which migrants are allowed to work.⁵⁷⁰ Broader management of labour in-migration processes in Thailand is coordinated at high levels and are relatively complex. Complexities for both migrants and employers derive not just from the existence of parallel and interlinked systems for registration but also from the numerous steps involved in each of the required processes leading to registration.

Over the past decade, recruitment of new workers from outside Thailand and registration and/or regularization of migrant workers already in Thailand have occurred in one of two ways: (i) via a temporary 'semi-regularization' process open to undocumented migrant workers already in Thailand; and (ii) via MoU processes open to new workers from outside Thailand as well as to semi-regularized workers already in Thailand who had taken the additional step of 'nationality verification'.⁵⁷¹ Currently, these processes are only open to low-skilled workers from Cambodia, Lao PDR, and Myanmar; low-skilled workers from China, Bangladesh, and Viet Nam are yet to be recognized by the regularization process.⁵⁷²

(i) Semi-regularization process

This process was introduced in 2004 and directed towards migrant workers already in Thailand but without proper documentation, allowing them to register as labourers or domestic workers.⁵⁷³ The registration process under this system initially involved three key steps: (i) the Ministry of Interior and its district and provincial offices register migrant workers and employers and provide ID cards; (ii) the Ministry of Public Health carries out compulsory medical examinations as part of the application process for work permits and provides medical certifications and health insurance cards; (iii) the Ministry of Labour provides work permits and identification cards.⁵⁷⁴

According to the initial intentions of this process, eligible undocumented workers already in Thailand who followed the three steps were eligible to receive a 13-digit ID number (Tor Ror 38/1) and were granted permission to stay in Thailand for one year. This was subsequently renewed

⁵⁶⁹ Ibid.

⁵⁷⁰ *Alien Employment Act 2008*, section 8.

⁵⁷¹ *A Situation Analysis on Health System Strengthening for Migrants in Thailand*, op. cit., p. 6.

⁵⁷² Office of the High Commissioner for Human Rights (OHCHR), 2011, *Thailand's low-skilled migration policy: Progress and Challenges*, at http://www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC_19092011.pdf.

⁵⁷³ Ibid, p. 2.

⁵⁷⁴ Jitthai, *Migration and HIV/AIDS in Thailand*, op. cit., pp. 16, 25.

for an additional year in 2005 and 2006. In 2006 a fourth step of 'nationality verification' by source governments (that is, Myanmar, Lao PDR, and Cambodia) was introduced into the semi-regularization process to filter semi-regularized workers into official MoU registration. According to this fourth step, semi-regularized workers, many of whom were without any formal identification, were required to provide identification data for verification by home country authorities. They were then able to receive a temporary passport or a certificate of identity, a visa to remain in Thailand for two years (extendable for two years, after which they would then have to return home for at least three years), and a change of work status to 'legal'.⁵⁷⁵

Laotian and Cambodian authorities commenced their nationality verification processes in 2006,⁵⁷⁶ and workers from both these countries were able to complete the registration process without leaving Thailand. The Myanmar registration process, however, only became operational in 2009,⁵⁷⁷ with difficulties arising due to the need, initially, for Myanmar workers to return home to carry out the nationality verification process.⁵⁷⁸

In 2007 the Thai Cabinet agreed to allow all semi-regularized workers who had completed steps (i) to (iii), as described above, permission to stay and work in Thailand until February 2010, by which time they should have undergone the nationality verification process detailed under step (iv). According to the Cabinet resolution, those who did not complete the nationality verification process within this time period would otherwise risk deportation. The February 2010 deadline was later extended until February 2012, provided workers had at least entered the nationality verification process (but not necessarily completed it) by February 2010.⁵⁷⁹ A subsequent extension was then provided until December 2012, followed by reports in 2013 that additional amnesty periods on any deportations were approved by the government.⁵⁸⁰

Estimates suggest that from this programme's inception until end January 2011 approximately 550,000 migrant workers from Myanmar, Lao PDR, and Cambodia had completed all four steps towards regularization and nationality verification,⁵⁸¹ including approximately 353,000 from Myanmar, 103,000 from Cambodia, and 93,000 from Lao PDR.⁵⁸² A further 400,000 are still eligible to complete the national verification process,⁵⁸³ having commenced it by completing steps (i) to (iii) and renewing their work permits. It is important to note, however, that despite the repeated extension of amnesty to enter and complete the nationality verification process, all workers with Tor Ror 38/1 ID numbers are "illegal, pending deportation" due to their initial illegal entry.⁵⁸⁴

575 Ibid., p. 19.

576 Mekong Migration Network, *Policy Overview: The Bilateral MoUs on Cooperation in the Employment of Workers*, at http://www.mekongmigration.org/?page_id=80

577 Ibid.

578 Although Myanmar officials now run a national verification centre in Ranong, Thailand, many Myanmar workers must still return to Myanmar if they wish to complete the nationality verification process. See *Thailand's low skilled migration policy*, op. cit.

579 *Order of the Prime Minister's Office No.125/2553 Re: Establishment of a Special Centre to Suppress, Arrest, and Prosecute Alien Workers Who are Working Underground*, at http://www.mapfoundationcm.org/pdf/eng/ORDER%20OF%20THAI%20PRIME%20MINISTER%20ND%20JUNE%2010%20_ENGLISH_.pdf?phpMyAdmin=8301f226d275ced436b6eaab3a961f9d.

580 *The Nation*, 2012, "Unverified Workers get three months", 27 December 2012, at <http://www.nationmultimedia.com/national/Unverified-migrant-workers-get-3-months-30196868.html>.

581 *Thailand Migration Report 2011*, op. cit., p. 11.

582 Ibid., p. 21.

583 Ibid., p. 11.

584 Ibid., p. 18.

The uncertainty of this system and the pending risk of deportation for a significant number of workers have generated a range of responses from advocacy and migrant worker groups. At the initial February 2010 deadline, approximately 1.4 million migrant workers were at risk of deportation. As the subsequent February 2012 deadline approached, a number of organizations expressed concern for the safety and security of migrant workers in Thailand as a result of the lack of information on government policy and the procedure for managing or deporting these workers.⁵⁸⁵ In particular, a group of 36 organizations led by the Human Rights Development Foundation in Thailand wrote an open letter to the then Prime Minister. This letter expressed concern that migrant workers whose status remained precarious as a result of the end of amnesty in 2010 had in the past been permitted to stay on in Thailand as they were “filling important gaps in the Thai Labour Force and strengthening the Thai economy.” The letter pointed to “limited public awareness raising both for employers and migrants of what nationality verification is about and what are its benefits, as well as the expense, dangers of misuse of personal information.”⁵⁸⁶

Similarly, as the most recent December 2012 deadline approached, media reports once again highlighted the expense and difficulty for migrant workers from all three neighbouring countries to negotiate the nationality verification process. Confusion regarding the status of deportation orders has also continued following the December 2012 deadline. The Cambodian Ambassador to Thailand, for example, was quoted in media reports stating that while ‘officially’ all undocumented Cambodian workers are subject to deportation, a deal had been struck with Thai authorities that would likely see many workers remain in Thailand.⁵⁸⁷ At the time of the deadline, a representative from the Thai Department of Employment noted that 150,000 Cambodians, 99,000 Laotian, and 60,000 Myanmar migrant workers would be facing deportation.

One additional point to note is that reports also suggest that a significant number of migrants entered the nationality verification process with false information in 2010, given the impending threats of deportation and lack of awareness of processes. Commentary has noted, however, that the lack of instances of migrants failing nationality verification subsequently raises doubts regarding the genuineness of this process.⁵⁸⁸

(ii) Memoranda of understanding processes

The second set of processes by which migrant workers are registered to work in Thailand are those outlined in bilateral, government-to-government MoU. Thailand signed separate *Memoranda of Understanding on Cooperation in the Employment of Workers* with Lao PDR in 2002, and Cambodia and Myanmar in 2003. These MoU focus on government-to-government recruitment of migrant workers for a specific period of employment in Thailand. Migrant workers recruited from outside Thailand under these MoU are provided with visas for temporary stay, plus work permits for a

585 Human Rights Development Foundation, Thailand, 2010, “Open Letter of Concern for the Safety and Security of Migrant Workers in Thailand”, at <http://www.hrw.org/news/2010/01/18/open-letter-concern-safety-and-security-migrant-workers-thailand>.

586 Ibid.

587 *Phnom Penh Post*, “Expulsion looming for migrant workers”, 10 December 2012, at <http://www.phnompenhpost.com/index.php/2012121060193/National-news/worker-expulsion-looming.html>.

588 *Thailand’s Low-Skilled Migration Policy*, op. cit.

period of two years. These work permits are then renewable for another four years, after which it would be necessary to leave Thailand for a period of three years before re-registering.

Upon their introduction, MoU processes were intended to become the official method for recruiting new migrant workers from neighbouring countries. However, at end 2010 only approximately 80,000 workers had been recruited via this process, including 50,000 from Cambodia, 25,000 from Lao PDR, and 1,500 from Myanmar.⁵⁸⁹

Based on commentary from government, civil society, and migrant worker groups, a number of challenges have been identified in both the semi-regularization and MoU registration systems, including: lack of awareness of both worker and employer regarding the protections registration offers and a perceived lack of benefit of entering into such processes;⁵⁹⁰ lack of explanation to migrants in their language, leaving them reliant on employers and potentially exploitative agents if they wanted to take part in the registration process; expense of registration;⁵⁹¹ processes seen as cumbersome, confusing, limited in time span;⁵⁹² and the risk to workers of becoming 'unregistered' if they do not follow correct, and complex, procedures when changing work or employers.⁵⁹³



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on right to health for all, Thailand has not ratified the *International Convention on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. It is also not a State Party to most United Nations core conventions that provide for the right of access to health care and medical treatment for all. Nevertheless, it has ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens).

As a WHO Member State, the country is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.⁵⁹⁴ Migrant and mobile populations in Thailand have also been identified under official health strategy as a vulnerable group in terms

⁵⁸⁹ This small figure from Myanmar reflects the fact that MoU, though signed in 2003, was only operationalized in 2010.

⁵⁹⁰ *Good Practices to Protect and Promote Migrant Workers' Rights in Thailand*, op. cit., p. 7.

⁵⁹¹ Nilvarangkul, K., McCann, T. et al., 2011, "Enhancing a Health-Related Quality of Life Model for Laotian Migrant Workers in Thailand", *Qualitative Health Research*, vol. 21, p. 312.

⁵⁹² *Thailand's Low-Skilled Migration Policy*, op. cit., p. 2.

⁵⁹³ *Ibid.*, p. 19.

⁵⁹⁴ WHA 61.17, *Resolution on Health of Migrants*.

of health care access and coverage, bearing a disproportionate share of the health burden in country.⁵⁹⁵

Monitoring migrants' health

Government and non-government groups in Thailand have generated a greater body of research on the health of migrant workers than in most other countries in the ASEAN region. Broadly speaking, this research supports anecdotal suggestions that the living conditions and general work environment for many migrants in Thailand are poor, with workers in factories, on construction sites, and in agriculture reporting health problems mainly as a result of poorly maintained equipment and the lack of adequate safety measures. Fishery workers are widely believed to be worse off than other workers. Commentary notes that these workers work in six-hour cycles over a 24-hour work day, with sickness, poor nutrition, abuse, and death at sea being common.⁵⁹⁶

Nevertheless, despite the relative volume of research, commentary suggests that what data exists is fragmented, due in part to the lack of separate monitoring and reporting systems for migrants and the resultant lack of disaggregated data, as well as to the elusive nature of the migration process in Thailand and the difficulties this creates in maintaining a comprehensive, consolidated evidence-based picture of migrant health, health service provision, and health-seeking behaviours.⁵⁹⁷ Despite strong progress in this area, key research gaps mean that there is still not enough data to create a comprehensive picture of who the migrants are. Although generalized evidence on what constitutes an effective health-care system for migrant workers does exist,⁵⁹⁸ interventions and programming to better address the health vulnerabilities of migrants are hindered by budget constraints and shifting politics.

What is particularly important to note in Thailand with regard to monitoring migrants' health is that issues related to the fragmentary nature of available information are not necessarily only a result of lack of data itself, as is the case in many other ASEAN countries. In terms of data management, there are at least nine databases⁵⁹⁹ containing information on migrant workers, administered by three different ministries.⁶⁰⁰ Also, data is kept in various formats, making it difficult to compile the data when needed. In terms of data analysis, while a broad range of raw data is available at the local level, data analysis is hindered by the lack of a standardized set of indicators at the national level.⁶⁰¹

595 WHO, 2011, *WHO Country Cooperation Strategy: Thailand, 2012–2016*.

596 Mekong Migration Network, 2011, *Legally Binding: A Summary of Laws in the Greater Mekong Subregion*, p. 40.

597 Baker et al., *Research Gaps Concerning the Health of Migrants*, op. cit., p. 7.

598 IOM/WHO, 2009, *Financing Health Care for Migrants: A case study from Thailand*.

599 These are: (1) household registration (TR 38/1), (2) work permit, (3) medical examination, (4) compulsory migrant health insurance, (5) voluntary migrant health insurance, (6) infectious diseases surveillance (506 Report), (7) HIV/AIDS sentinel serosurveillance (506/1 Report), (8) PMTCT database, and (9) migrant health care service utilization and cost.

600 These are: (1) MoI for household registration (TR 38/1), (2) MoL for work permit, and (3) MoPH for the seven health databases.

601 Jitthai, *Migration and HIV/AIDS in Thailand*, op. cit., p. 21.

Policies and legal frameworks affecting migrant health

A policy of universal health care was implemented in Thailand in 2002, which has resulted in almost 99 percent coverage for Thai nationals through a range of health protection schemes.⁶⁰² Health care protection for the general population is now provided via three means: (i) a Civil Servant Medical Benefit Scheme, covering 7 percent of the population; (ii) two schemes for private employees—the Worker Compensation Scheme and the Social Security Scheme—covering 15 percent; and (iii) a scheme for all other Thai people—the Universal Coverage Scheme—which covers 76 percent of the population.⁶⁰³ According to legislation, migrant workers who have completed all steps under the MoU processes, described earlier, are eligible for coverage under the Social Security Scheme.

The Ministry of Public Health launched the first *Border Health Development Master Plan 2007–2011* in 2007. A renewed plan for 2012–2016 was approved by the Cabinet and launched by the Minister of Public Health in August 2012. A *Strategic Plan on Migrant Health* for the same period is still in draft. Strategies included in these plans focus on the provision of quality services in relevant languages; increased participation of migrant communities; and improved training for relevant health personnel involved in the provision of health care to migrants in Thailand.⁶⁰⁴ International organizations and non-governmental organizations have also implemented programmes to provide additional health services in border areas.

In addition, *A National Master Plan for HIV/AIDS Prevention, Care, and Support for Migrants and Mobile Population (MMP), 2007–2011* was also developed and launched by the Department of Disease Control in 2007, aiming to reduce new HIV infections among MMP and increase quality of life of HIV-positive MMP. Nevertheless, progress in this area has been hindered by a lack of budget and implementation directives in the national master plan. While a second master plan is currently being drafted, progress remains unclear.

Generally speaking, registered migrant workers have access to two different types of health care, dependent on whether they are semi-regularized or fully documented. Recent policy developments are also aimed at increasing insurance coverage options for undocumented workers. The particulars of available insurance schemes are described below.

(i) Compulsory Migrant Health Insurance Scheme

This scheme is compulsory for semi-regularized workers with a Tor ID number. It is administered by the Ministry of Public Health, and migrants are required to pay 1,300 baht (\$42) per year, plus an additional 600 baht (\$19) for health examinations. This scheme is also open to dependents of semi-regularized workers, on a voluntary basis. Migrant workers under this scheme are eligible to receive the following general care (however, to access it they must return to the same hospital in

602 WHO Country Cooperation Strategy: Thailand, 2012–2016, op. cit.

603 Ibid., p. 22.

604 IOM, Migrant Information Note: Issue 10, April 2011.

which they received health screening): physical examination, diagnosis, treatment, child delivery, rehabilitation, dental care, board and meals in the common inpatient ward, medicine and medical products covered by the National Drug List, and medical referral.⁶⁰⁵ Migrant workers also receive access to accident and emergency treatment, but here again only within the province in which they are registered.⁶⁰⁶

A number of services are excluded from the compulsory migrant health insurance scheme. For example, workers do not have access to the social security scheme or work accident compensation. Under the medical referral component of this scheme migrant workers are eligible for referral to other hospitals, which may be in other provinces, for certain conditions for which adequate treatment is not available at the hospital where the migrant is registered for health insurance. However, referral and treatment for a number of conditions, including antiretroviral therapy for HIV/AIDS and kidney dialysis, is excluded. At the same time, it is important to note that while the compulsory migrant health insurance scheme is more limited in its range of treatment, a component of the funds generated by its implementation are dedicated to preventative health measures, for which there is no provision in the Social Security Scheme.

Until recently, documented workers have had no access to this health insurance, although they could pay for medical treatment at a government or private hospital; and on special conditions, decided by service providers, they could benefit from free treatment. However, in August 2013 eligibility for the compulsory migrant health insurance scheme was expanded to include undocumented migrants and their dependents. To enrol, undocumented workers are required to undergo an initial medical exam, pay an annual fee of 2,200 baht (\$67), and pay 600 baht (\$18) for each subsequent annual exam.⁶⁰⁷

A number of challenges have been identified within this system, including: (i) employers' practice of keeping employees' work permits and health cards as a means to deter them from running away or changing jobs, which in turn prevents them from getting medical care;⁶⁰⁸ (ii) reluctance of migrants to access health facilities due to a range of factors, including language barriers, perceived and real discrimination, and fear of harassment or arrest by authorities; (iii) an inability to pay the fees;⁶⁰⁹ and (iv) lack of training among medical staff to deal with migrants from different cultural and linguistic backgrounds.

(ii) Social Security Scheme

This scheme is only open to new workers coming to Thailand under MoU processes or those workers who have completed the nationality verification processes. Under this scheme, the

⁶⁰⁵ *Financing Healthcare for Migrants: A case study from Thailand*, op. cit., p. 26.

⁶⁰⁶ For fishermen, this is extended to include an additional 22 provinces, *Ibid.*, p. 26.

⁶⁰⁷ "Policy Brief: HIV and Labour Migration in the GMS: Myanmar", op. cit.

⁶⁰⁸ Limanonda, B. and Peungposop, N., 2009, "Policy Review on Access to Health Care Service and Health Insurance among Migrant Workers in Thailand", p. 29, cited in *A Situation Analysis on Health System Strengthening for Migrants in Thailand*, op. cit.

⁶⁰⁹ *Thailand Migration Report 2011*, op. cit., p. 86.

employer pays 5 percent of a worker's salary, while the employee and the government each contribute 3 percent, for a total of about 2,160 baht (\$65) per year.⁶¹⁰

According to provisions of the *Social Security Act*, benefits include comprehensive medical services, access to accident compensation for death and disability, maternity leave and birth-related services, and children's allowances.⁶¹¹ The provision of antiretroviral treatment for HIV infection is also included, but there are issues with implementation.

It is important to note that discussions with migrants suggest that this may not be the preferred method of health coverage for a variety of reasons, including: (i) the level of expense, for both workers and employers, compared to the 1,300 baht scheme; (ii) the liability of employers to enrol migrant employees, and their failure to fulfil this requirement; and (iii) the unnecessary inclusion of long-term benefits that relatively short-term migrants will be unable to access.

Although each of these schemes demonstrates progress in the provision of health care for migrant workers, commentary notes a recognized lack of long-term planning and policy coherence across the ministries of Interior, Labour, and Public Health, making it difficult to plan for migrant health needs and ensure better health security for all in Thailand.⁶¹²

Further accessibility-related issues include the fact that hospitals and health care providers are unable to hire migrant workers to work as translators due to restrictions on the type of work migrants may carry out.⁶¹³ Although this latter issue has been addressed partially with the assistance of international NGOs and donor support,⁶¹⁴ and by the placement of migrant worker volunteers and migrant health assistants, there is no clear policy approach from the government on the provision of care and support in the language of migrant workers.

Most recently, in September 2013 Ministers of Health from Thailand and Myanmar signed a memorandum of understanding for strengthening border health collaboration between the two countries.⁶¹⁵

610 Panitchpadki, P., 2011, "Thailand: Sharing of Initiatives on Improving Migrant Workers' Health and Access to HIV Services, presentation delivered at Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services", November 2011.

611 *A Situation Analysis on Health System Strengthening for Migrants in Thailand*, op. cit., p. 30.

612 *WHO Country Cooperation Strategy: Thailand, 2012–2016*, op. cit.

613 *Good Practices to Protect and Promote Migrant Workers' Rights in Thailand*, op. cit., p. 8.

614 For example, through the Prevention of HIV/AIDS Among Migrant Workers in Thailand programme, funded by the International Organization for Migration and the Global Fund.

615 "Policy Brief: HIV and Labour Migration in the GMS: Myanmar", op. cit.

Migrant-sensitive health systems

While Thailand's models of health care provision for migrant workers have been used as best practice examples in a variety of forums, arguments put forward within the political sphere against the improvement of health services for migrants include the notion that such improvement may increase the number of migrants coming to Thailand from abroad,⁶¹⁶ which could place extra strains on the health system and thus possibly have a detrimental impact on the health of Thais.⁶¹⁷ A recent survey of Thai public opinions on Myanmar refugees and displaced persons, led by the Institute for Population and Social Research at Mahidol University, found that while a majority of Thai respondents supported registered migrant workers being provided with the same standard of health care as Thais, most preferred that health care be provided via separate facilities and that workers themselves should finance such services.⁶¹⁸

At the same time, strong examples of the push for more migrant-sensitive health systems include programmes run by the International Organization for Migration and the Prevention of HIV/AIDS Among Migrant Workers in Thailand (PHAMIT) programme run by the Raks Thai Foundation (CARE Thailand), through which migrant worker volunteers and migrant health assistants have been installed as volunteers in provincial hospitals to bridge the linguistic and cultural gaps between Thai service providers and migrant workers.

Partnerships, networks, and multi-country frameworks

Although the Ministry of Labour has successfully established MoU on labour migration management with the key sending countries Myanmar, Lao PDR, and Cambodia, as well as the key host countries for Thai migrant workers Taiwan and South Korea, within the Thai context there is limited coordination between the three ministries concerned with migrant workers — Labour, Public Health, and Immigration — and this has led to a degree of policy confusion.⁶¹⁹ At the same time, it is important to note that Thailand's coordination of migrant health policy at high levels suggests a strong commitment to multisectoral cooperation and recognition of its importance in addressing the health vulnerabilities of migrant workers.

Within the subregional group of Thailand, Myanmar, Lao PDR, and Cambodia, a number of consultations have also been held to look at cross-border partnerships in this area.⁶²⁰ In addition, non-government partnerships also include the Migrant Working Group, composed of Thai NGOs working on migrant issues, and the UN Thematic Working Group on Migrants, composed of United Nations agencies in Thailand working on migrant issues.

⁶¹⁶ Baker et al., *Research Gaps Concerning the Health of Migrants*, op. cit., p. 5.

⁶¹⁷ Ibid.

⁶¹⁸ *The Survey of Thai Public Opinions on Myanmar refugees and displaced persons*, op. cit., p. v.

⁶¹⁹ Huguet, J., 2008, "Do International Migration Policies in Thailand Achieve their Objectives?", p. 8–9, cited in *A Situation Analysis on Health System Strengthening for Migrants in Thailand*, op. cit.

⁶²⁰ For example: (i) *Consultation on Migrants' Access to Anti-Retroviral Treatment Along the Migration Continuum in Four Greater Mekong Subregion Countries*, see www.junima.org; and (ii) *Consultation on Memorandum of Understanding to Reduce HIV Vulnerability Associated with Population Movement*, see <http://regionalcentrebangkok.undp.or.th/practices/hiv/aids/GMSMOUConsultationJuly2012.html>.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Design and implement a nationally standardized system for the collection, analysis, and dissemination of disaggregated data collected at the provincial level on migrant workers, examining health care needs and health-seeking behaviour throughout the migration cycle.

Policies and legal frameworks affecting migrant health

- 2 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and the *ILO Convention Concerning Decent Work for Domestic Workers*.
- 3 Mainstream migrant health and welfare issues within the development and review of MoUs and bilateral and multilateral agreements.
- 4 Simplify and streamline registration and national verification systems for migrant workers in order to improve their accessibility and affordability for migrant workers.

Migrant-sensitive health systems

- 5 Improve understanding of financial and practical requirements for the provision of migrant health care in order to formulate policies that are responsive to migrants' needs.
- 6 Increase collaboration between Thailand and neighbouring source countries in the provision of migrant-sensitive health services throughout the migration cycle.
- 7 Strengthen multisectoral collaboration and clarify roles of key stakeholders in the management of migrant workers throughout the migration cycle.

Partnerships, networks, and multi-country frameworks

- 8 Develop and strengthen intersectoral and intercountry health partnerships.



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Viet Nam



LABOUR MIGRATION OVERVIEW

Social and economic context of migration

While cross-border labour migration from Viet Nam has increased significantly since the late 1990s, the country remains one of the smaller source countries for migrant workers in the ASEAN region. The Vietnamese Government actively promotes labour migration as part of its poverty reduction and economic development strategies, and data from the World Bank estimates that remittances from migrant workers constituted seven percent of GDP in 2009.⁶²¹ Broadly speaking, labour export is aimed at contributing to: (i) the development of human resources and technical skills, (ii) employment creation and greater income for workers, (iii) increased foreign currency earnings, and (iv) enhanced international relations.⁶²²

In terms of push factors for individual migrants, research among Vietnamese labour migrants travelling to Malaysia, Taiwan, and South Korea found that beyond migrating to earn more income, workers hoped to use money earned overseas to pay family debts, children's education costs, make home improvements, and pay health care expenses.⁶²³

⁶²¹ World Bank, 2011, *Migration and Remittances Factbook 2011*.

⁶²² Dang, N. A., 2008, *Labour Export from Vietnam: Issues of Policy and Practice*, at <http://apmrn.anu.edu.au/conferences/8thAPMRNconference/10.Dang%20Anh.pdf>.

⁶²³ Bélanger, D. et al., 2010, *International Labour Migration from Vietnam to Asian Countries: Processes, Experience and Impact*, report presented at the International Workshop "Labour Migration from Vietnam to Asian Countries: Sharing research findings and NGOs experiences", Hanoi, March 15, 2010, p. 22.

Out-migration overview

There are currently approximately a half-million Vietnamese workers employed in roughly 40 countries, with the most significant numbers in Malaysia, Taiwan, South Korea, and the Gulf States.⁶²⁴ Documented workers are currently deployed at an annual rate of fewer than 80,000 workers per year, with recent government estimates suggesting that a total of approximately 25,000 workers were deployed abroad during the first four months of 2012.⁶²⁵ As is the case for other ASEAN source countries, research suggests that the total number of workers moving abroad is actually much higher than official figures, since many will migrate through informal channels.⁶²⁶

Primary destination countries for Vietnamese workers in East Asia are Taiwan, South Korea, and Japan, while destination countries in the ASEAN region include Lao PDR and Malaysia. The feminization of Vietnamese labour migration has recently increased, with more women migrant workers heading to Malaysia and Taiwan in particular.⁶²⁷

In the case of Taiwan, Viet Nam has been a major source of labour since 2000;⁶²⁸ and as of June 2011, Taiwan was host to approximately 87,000 Vietnamese migrant workers,⁶²⁹ with a reported 39,000 new or return workers deployed each year.⁶³⁰ More than half of all documented workers deployed to Taiwan from Viet Nam are female and work predominantly as domestics, while others are engaged in manufacturing, fisheries, and farming.⁶³¹

In the case of South Korea, approximately 13,000 Vietnamese workers are admitted annually to the country under the Employment Permit System.⁶³² At the end of 2010 approximately 57,000 Vietnamese workers were in South Korea, 8,000 of whom were undocumented. These workers were engaged primarily in the manufacturing, agricultural, fishing, and construction sectors.⁶³³

In the case of destination countries within ASEAN, Malaysia is host to the largest number of Vietnamese workers. Reports suggest that since 2002, 190,000 workers have been officially deployed to Malaysia,⁶³⁴ while approximately 100,000, 60 percent of whom are women, are

624 Abella, A. and Ducanes, G., 2009, "The Effect of the Global Economic Crisis on Asian Migrant Workers and Government Responses", ILO.

625 MoLISA, "Over 25,000 Vietnamese workers working abroad", op. cit.

626 Van, N., 2010, "Labour Migration in East-West Economic Corridor: A Case Study of Vietnam", Mekong Institute Research Working Paper Series 2010.

627 Dang, *Labour Export from Vietnam*, op. cit.

628 Wang, H. and Bélanger, D., 2011, "Exploitative Recruitment Processes and Working Conditions of Vietnamese migrant workers in Taiwan", in Chan, A. (ed.), *Labour in Vietnam*.

629 Ibid., p. 5.

630 *Tuoi tre news*, "Taiwan may limit entry to Vietnamese workers", 7 April 2012, at <http://www.tuoi tre news.vn/cm link/tuoi tre news/society/taiwan-may-limit-entry-to-vietnamese-workers-1.67812>.

631 Wang and Bélanger, "Exploitative Recruitment Processes", op. cit., p. 313.

632 Batistella, "Labour Migration in Asia", op. cit., p. 4 Under the Employment Permit System, South Korean government agencies administer the hiring of foreign workers. For further information see <https://www.eps.go.kr/ph/index.html>

633 Lee, B. and Kim, S., 2011, "South Korea's Developmental Democracy and Migrant Workers' Policy", *Pacific Focus: Inha Journal of International Studies*, vol. 26(3), pp. 428-455

634 *Vietnam Business Forum*, "Promoting Vietnamese Manpower Export to Malaysia", 21 April 2011, at http://www.vccinews.com/news_detail.asp?news_id=23003.

currently working there.⁶³⁵ Vietnamese workers in Malaysia work primarily as domestics, in the service industry, in garment and electronics factories, and in construction.

LABOUR MIGRATION GOVERNANCE

The *Law on Vietnamese Workers Working Overseas Under Contract 2006*, which came into effect in July 2007, regulates recruitment, contracting, pre-departure training, fee payments, and migrant rights' protection while overseas. Under this legislation, cross-border labour migration is managed within Viet Nam by the Department of Overseas Labour, within the Ministry of Labour, Invalids, and Social Affairs (MoLISA), and by provincial departments of MoLISA. MoLISA is responsible for granting licenses to recruitment enterprises, which are then responsible for the entire recruitment process, including pre-departure training, contract signing, collection of commissions, overseeing rights of workers while in country, liaising with embassies and consulates, reporting back to MoLISA, and arranging repatriation where necessary.

In the case of workers deployed to the East-Asian destination countries Taiwan, Japan, and South Korea, MoLISA also carries out bilateral negotiations to agree on specific regulations supplementary to those included in labour export legislation. Essentially, according to legislation and bilateral negotiations, Vietnamese migrant workers can travel overseas to work via four channels: (i) through Vietnamese enterprises licensed to provide labour services according to contracts signed with foreign partners; (ii) through Vietnamese enterprises and/or individuals with labour-supply contracts or investments overseas; (iii) through Vietnamese enterprises that send workers overseas for skill-improvement internships; or (iv) under labour contracts signed by individual workers directly with employers overseas.⁶³⁶

Neither Viet Nam nor any of the primary destination countries for low-skilled Vietnamese labour migrants have ratified the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* or the ILO's *Migration for Employment Convention (No. 97)* or *Migrant Workers (Supplementary Provisions) (No. 143)*.

Law on Vietnamese Workers Working Overseas Under Contract

This law defines the forms of temporary overseas employment for Vietnamese workers⁶³⁷ and regulates the behaviour of "enterprises engaged in services of sending workers to work overseas", providing conditions for licensing⁶³⁸ and reasons for temporary suspension of licenses.⁶³⁹ It also

⁶³⁵ *Herald Malaysia Online*, "Vietnamese migrant women treated like slaves in Malaysia", 11 June 2012, at <http://www.heraldmalaysia.com/news/Vietnamese-migrant-women-treated-like-slaves-in-Malaysia-11966-36-1.html>.

⁶³⁶ Van, "Labour Migration in East-West Economic Corridor", op. cit.

⁶³⁷ *Law on Vietnamese Workers Working Overseas Under Contract*, article 6.

⁶³⁸ *Ibid.*, article 9.

⁶³⁹ *Ibid.*, article 14.

stipulates those conditions that contracts must include, stating that they must be in line with the laws of Viet Nam and the laws of the labour receiving country,⁶⁴⁰ and include salary, working conditions and environment, medical check-up and treatment, social insurance, and working hours.

In addition to regulations regarding contracts, there are stipulations regarding various fees to be collected during the migration cycle, including commission fees between enterprise and broker and service fees between worker and recruitment enterprise—both of which the worker is responsible for. Workers are also liable to pay a deposit for collateral security to the enterprise, in the event the worker violates his or her contract.⁶⁴¹ Subsequent regulations, released by MoLISA, placed a cap on such fees—for example, capping broker commissions at one month's salary per worker per year.⁶⁴² Nevertheless, it is unclear how well such regulations are monitored; and Vietnamese workers, many of whom are unaware of such regulations, continue to incur very high pre-migration debts as a result of some of the highest fees in the Asian region.⁶⁴³ Average pre-departure costs have ranged between \$2,000 and \$5,600 over the past 10 years. Research suggests that most workers pay a higher recruitment fee than what is lawful to the recruitment agencies;⁶⁴⁴ and that a number of migrant workers are asked to sign more than one contract—one when recruited and then another a few days or even a few hours before departing for the host country, which generally stipulates different, less beneficial conditions than the earlier one.⁶⁴⁵

According to this legislation, before a worker can sign a contract he/she must receive pre-departure training and to pass pre-departure tests on rights and responsibilities, contracts, and culture in the destination country. Established in 2007, the regulations cover the content of training and time to be devoted to various topics, including: basic content of labour law; labour contracts; labour discipline, safety, and occupational health.⁶⁴⁶ Commentary notes that the delivery of effective pre-departure training for all workers has been a challenge for a variety of reasons,⁶⁴⁷ including the fact that responsibility for certification of completion lies with the recruitment agencies, rather than independent and/or government bodies.

Nevertheless, certain recent initiatives have the potential to increase the protection of migrant workers' rights. For example, in 2012, MoLISA opened a Migrant Resource Centre in Viet Nam, in partnership with the International Organization for Migration, the aims which include the protection of migrant rights and the prevention of exploitation and illegal employment of

640 Ibid., article 17.

641 Ibid., article 23.

642 Discussion paper based on an online discussion on "Improving and Regulating Recruitment Practices in Asia and the Pacific", op. cit.

643 Martin, P., 2009, "Migration in the Asia-Pacific Region: Trends, factors, impacts", Human Development Research Paper (2009/32), at http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_32.pdf.

644 Angsuthanasombat, K., 2008, *Situation and Trends of Vietnamese Labour Export*, at http://www.asianscholarship.org/asf/ejournal/articles/kannika_a.pdf.

645 Bêlanger et al., *International Labour Migration from Vietnam to Asian Countries*, op. cit., p. 34.

646 Decision No. 18/2007/QĐ-BLDTBXH of July 18, 2007, "Promulgating the programme on providing labourers with necessary knowledge before they go to work abroad", *Viet Nam Law Legal Forum*, Government of Viet Nam, pp. 1 2, at <http://thuvienphapluat.vn/archive/Quyêt-dinh/Quyêt-dinh-18-2007-QĐ-BLDTBXH-chuông-trinh-boi-duong-kien-thuc-can-thiet-nguoi-lao-dong-truoc-khi-di-lam-viec-nuoc-ngoai-vb53578t17.aspx>.

647 *Viet Nam News*, "Experts discuss overseas workers issues", 23 April 2012, at <http://vietnamnews.vnagency.com.vn/opinion/in-the-spotlight/223827/experts-discuss-overseas-worker-issues.html>.

migrant workers.⁶⁴⁸ The International Labour Organization has also worked in partnership with Viet Nam's Department of Overseas Labour to establish Migrant Worker Resource Centres within Employment Service Centres throughout the country, providing information, counselling, and assistance to potential migrants, migrants, and members of their families.⁶⁴⁹

Also, in 2010 the Vietnamese Association of Manpower (VAMAS) produced a code of conduct for enterprises sending workers overseas, calling for better coordination between recruitment agencies in Viet Nam and their foreign counterparts, as well as full and detailed disclosure of all working conditions to migrant workers within a reasonable period prior to their departure.⁶⁵⁰ VAMAS also recommends that agencies recruiting and placing workers provide additional support during the migration cycle, including support for interpreters and legal representatives who speak Vietnamese.⁶⁵¹



LABOUR MIGRATION AND THE RIGHT TO HEALTH

In terms of international standards on the right to health for all, Viet Nam has not ratified the *International Convention on Economic, Social and Cultural Rights*, which provides the most comprehensive provisions for protections of right to health. Viet Nam is also not a State Party to most of the core United Nations conventions that provide for right of access to health care and medical treatment. Nevertheless, it has ratified *Convention on the Elimination of All Forms of Discrimination against Women*, which provides for the right to access health-care services on a basis of gender equality (theoretically including migrant workers beyond national citizens).

As a WHO Member State, the country is committed to the WHO *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in 2008, which recognizes increased health risks for groups of migrants and calls for the promotion of migrant-sensitive health policies and equitable access to health promotion, disease prevention, and care.⁶⁵²

Monitoring migrants' health

While documented Vietnamese migrant workers must undergo health examinations prior to departure for work abroad, it is the responsibility of labour export enterprises to record results of such data, only as a means to demonstrate compliance in carrying out the mandatory health

648 MoLISA, "First Migrant Resource Centre Opens in Viet Nam", 4 June 2012, at <http://english.molisa.gov.vn/news/viewdetail/tabid/339/newsid/54946/seo/First-Migrant-Resource-Center-MRC-opens-in-Viet-Nam/language/en-US/Default.aspx>.

649 Viet Nam News, "Experts discuss overseas workers issues", 23 April 2012, at <http://vietnamnews.vnagency.com.vn/opinion/in-the-spotlight/223827/experts-discuss-overseas-worker-issues.html>.

650 Vietnamese Association of Manpower, 2010, *Code of Conduct Applied to Vietnamese enterprises sending workers for overseas employment*.

651 Ibid.

652 WHA 61.17, *Resolution on Health of Migrants*.

examination. The government itself keeps no data on the health of migrant workers,⁶⁵³ and there is also no mechanism for monitoring migrant workers' health once they are deployed or upon return. Although in particular cases where workers are deployed in a group a Vietnamese doctor may be sent to provide clinical health care,⁶⁵⁴ there is no mechanism for data collection and reporting on health care needs in these cases either.⁶⁵⁵

Policies and legal frameworks affecting migrant health

Under the *Law on Vietnamese Workers Working Overseas under Contract*, enterprises engaged in the recruitment of workers are mandated to ensure that workers have access to periodic health checks, consultation, and hospitalization in case of sickness and accidents. In the event that the worker is incapable of performing work abroad, the enterprise must also arrange and bear all expenses for the worker's return.⁶⁵⁶ In reality, however, a lack of human resources and capacity to address and monitor issues related to migrant health care results in cases of migrants being left without access to legislated protections.⁶⁵⁷

Migrant-sensitive health systems

Much of the limited research that exists on the health access and experiences of Vietnamese migrant workers abroad focuses on those who migrate via informal channels, rather than those who are deployed via official, registered channels. In the case of the latter group, feedback from the Vietnamese Ministry of Labour, Invalids, and Social Affairs suggests that almost all such workers are covered by health insurance in host countries. In addition, many Vietnamese recruitment enterprises buy their workers voluntary health and medical insurance during their stay overseas.⁶⁵⁸

On the other hand, surveys that also include those workers who migrate via informal channels identify key challenges in accessing health systems and services during the migration cycle. For example, a survey of more than 600 returned workers and more than 600 households with a migrant worker abroad found that approximately 8 percent of Vietnamese migrant workers experienced physical abuse while deployed abroad, while verbal abuse was experienced by one third. Work related injuries were also found to be common, with one in six reporting having been injured in the workplace, and only 20 percent of these workers having received some form of compensation.⁶⁵⁹ In terms of medical care, workers tended only to attend hospital when a health

653 *Report of Multi-Stakeholder Dialogue*, op. cit.

654 *Ibid.*, p. 63. The practice of sending an accompanying doctor generally occurs only for large contracts on construction sites in destination countries, such as South Korea and Taiwan.

655 *Ibid.*

656 *Law on Vietnamese Workers Working Overseas Under Contract*, article 30.

657 *Report of Multi-Stakeholder Dialogue*, op. cit., p. 50.

658 Feedback provided to UNDP by Department of Overseas Labour within the Ministry of Labour, Invalids, and Social Affairs.

659 Bélanger et al., *International Labour Migration from Vietnam to Asian Countries*.

issue became very serious; and their major concern was how to pay for treatment, given the fact that more than 98 percent of respondents had no insurance.⁶⁶⁰

Research also suggests that many Vietnamese workers are not aware of their rights in terms of access to health systems and services when abroad, nor do they understand the functions of organizations such as embassies, consulates, and civil society organizations in host countries, who may be able to provide them with assistance.⁶⁶¹

Partnerships, networks, and multi-country frameworks

The establishment of partnerships, networks, and multi-country frameworks to assist migrant workers in accessing health systems and services throughout the migration cycle is still in its very nascent stages, as per the relatively recent formalization of cross-border labour migration processes in legislation. For example, research among 220 Vietnamese workers migrating along the East-West economic corridor, primarily those migrating via informal channels, found that they received little assistance from embassies, consulates, or civil society organizations in destination countries when faced with social welfare issues. Discussions in multi-stakeholder meetings suggest that there is a need in Viet Nam for learning from other sending and receiving countries in order to address migrant health issues, and a need to both improve human resources and increase capacity to address issues related to migrant health.⁶⁶²

At the same time, some strong recent examples of partnerships within Viet Nam that might assist migrant workers during the migration cycle include: (i) the establishment of a Migrant Resource Centre in Hanoi, in partnership of the International Organization for Migration, the Department of Overseas Labour, and the Viet Nam Women's Union; and (ii) the related creation of awareness programmes on the risks of cross-border labour migration aimed at source communities, government officials, and recruitment agencies.⁶⁶³

660 Nguyen, V., 2010, "Labor Migration in East-West Economic Corridor: A Case Study of Vietnam", Mekong Institute Research Working Paper Series 2010, p. 27.

661 Ibid.

662 *Report of Multi-Stakeholder Dialogue*, op. cit.

663 IOM, 2012, "Info Sheet: The Migrant Resource Centre, Promoting Safe and Regular Labour Migration from Viet Nam", at <http://www.iom.int/developmentfund/files/infosheets/MRCinfosheet.pdf>.



RECOMMENDATIONS

Monitoring migrants' health

- 1 Develop and agree on standard migrant health indicators (access, quality, and cost).
- 2 Establish multi-stakeholder collaboration in data collection processes, involving the health, labour, immigration, and security sectors, consulates, civil society organizations, employers and recruitment agencies.^a
- 3 Raise awareness and reach out to migrant populations, both documented and undocumented, regarding the importance of data collection to improve health interventions.

Policies and legal frameworks affecting migrant health

- 4 Ratify the *International Convention on the Protection of Rights of All Migrant Workers and Members of their Families* and the *ILO Convention Concerning Decent Work for Domestic Workers*.
- 5 Identify existing legislative frameworks, mechanisms, and best practices as guidance on improving health access for migrants.
- 6 Improve monitoring processes and enforcement of liability for migrant welfare for private recruitment agencies.

Migrant-sensitive health systems

- 7 Increase awareness among foreign service personnel, the health workforce, migrants, and other stakeholders about health entitlements in countries of origin, transit, and destination.
- 8 Increase collaboration among countries of origin, transit, and destination, and involve migrants in the promotion of culturally and linguistically sensitive health systems.

Partnerships, networks, and multi-country frameworks

- 9 Develop and strengthen intersectoral and intercountry health partnerships.
- 10 Support and participate in ongoing migration health dialogues and cooperation across sectors and among key cities, regions, and countries of origin, transit, and destination.
- 11 Involve migration communities and civil society organizations as active partners, in particular for advocacy and service delivery.



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Annex: Rights Framework

The right to health and decent work in conventions

International Covenant on Economic, Social and Cultural Rights (ICESCR)

It is widely agreed that the ICESCR provides the most expansive definition of the right to health. This definition is based in article 12.1 of the convention, which notes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, including the need for State Parties to take the necessary steps towards “the creation of conditions which would assure access to all medical service and medical attention in the event of sickness.” Since the entry of this treaty into force, article 12 has been extensively expanded on by the Committee on Economic, Social and Cultural Rights (CESCR), in terms of both normative content and State Parties’ obligations, defining what constitutes a violation of the right to health, and directions for implementation at the national level.⁶⁶⁴

Articles that might better provide access to health protections throughout the migration cycle include article 7, which “recognizes the right of everyone to the enjoyment of just and favourable conditions of work” and ensures, among other things, “safe and healthy working conditions”⁶⁶⁵ and “rest, leisure and reasonable limitation of working hours and periodic holidays with pay.”⁶⁶⁶ The right to social security, including social insurance, is also noted,⁶⁶⁷ as is “paid leave or leave with adequate social security benefits” for working mothers, before and after child birth.⁶⁶⁸

⁶⁶⁴ Committee on Economic, Social and Cultural Rights, 2000, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights”, General Comment No. 14.

⁶⁶⁵ *Ibid.*, article 7 (ii) (b).

⁶⁶⁶ *Ibid.*, article 7 (ii) (d).

⁶⁶⁷ *Ibid.*, article 9.

⁶⁶⁸ *Ibid.*, article 10.2.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 11 of CEDAW guarantees the right to safe working conditions, while article 12 guarantees the right of access to health-care services, including family planning services, on a basis of gender equality. This provision is particularly pertinent, as migrant women and girls face specific challenges in the field of health. They may be subject to sex- and gender-based discrimination, such as mandatory pregnancy or other testing without their consent, as well as sexual and physical abuse by agents and escorts during transit.

CEDAW General Comment No. 26 on Women Migrant Workers provides specific recommendations concerning women workers for the governments of countries of origin, transit and destination. It calls on states “to formulate a gender-sensitive, rights-based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access of women migrant workers to work opportunities abroad, promoting safe migration and ensuring the protection of the rights of women migrant workers.”

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Article 5 of ICERD guarantees the right of everyone to public health, medical care, social security, and social services, without distinction as to race, colour, or national or ethnic origin.

The ICERD Committee has also noted in its General Recommendations No. 30 that although some rights, such as voting, are restricted to citizens, in general there should be no discrimination between citizens and non-citizens for the purposes of ensuring human rights,⁶⁶⁹ and that States Parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law.⁶⁷⁰

In particular, article 33 of Recommendation No. 30 calls for parties to “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.” Article 34 calls for parties to “take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault.”

Convention on the Rights of the Child (CRC)

Article 24 of the CRC guarantees the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

⁶⁶⁹ Committee on the Elimination of Racial Discrimination, 2004, “General Recommendation No. 30: Discrimination Against Non-Citizens”, at <http://www.unhchr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d>.

⁶⁷⁰ *Ibid.*, point 3.

Migrant-specific conventions

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICMW) came into force in 2003. This convention sets standards for the rights protection of migrant workers, irrespective of their status, recognizing them as a population vulnerable to human rights abuses and setting out a framework for “sound, equitable and humane conditions of international migration”.⁶⁷¹ Although many of the rights detailed in the convention are already detailed in other core treaties, the purpose of the ICMW is to emphasize the specific link between migration and human rights.⁶⁷²

Since its inception, the ICMW has faced issues with ratification, and to date no sending states, either within ASEAN or internationally, have ratified the convention. While some commentary attributes the failure of ratification to a lack of promotion and awareness,⁶⁷³ further investigations reveal that a number of countries, particularly host countries, have avoided ratification in the belief that it would significantly limit their ability to regulate the admission of migrant workers, or that the granting of rights to migrant workers would come at considerable cost to this host country.⁶⁷⁴

Although the ICMW faces certain credibility issues as a result of its low level of ratification, it nevertheless provides a useful framework to examine the range of rights violations experienced by migrant workers and the protections available in the international arena. In essence, the ICMW “grants regular migrants a number of rights on the basis of equality with nationals”, stipulating that migrant workers “shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration” and conditions of work including “overtime, hours of work, weekly rest, holidays with pay, safety, health”.⁶⁷⁵

In terms of how such protections might be realized, it recognizes that bilateral agreements will play an important role; that irregular migrants cannot be ignored in discussions on the protection of migrant workers’ rights; and that protection is not only about rights being available but also

671 Ibid., p. 9.

672 OHCHR, 2005, “The International Convention on Migrant Workers and its Committee: Fact Sheet No.24 (Rev.1)”, at <http://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf>.

673 Ruh, M., 2012, “The Human Rights of Migrant Workers: Why do so few countries care?”, *American Behavioural Scientist*, vol. 56(9), p. 1277.

674 Ibid.

675 ICMW, article 25. This article has important implications for advocacy on recognition of predominantly female foreign domestic workers, who are not recognized under employment law in any of the host countries among ASEAN Member States.

how accessible they are. The convention makes repeated reference to the provision of information and materials to migrant workers and their families in “a language they understand” and the importance of respect for cultural identity. It also notes that all migrant workers and members of their families have the “right to be informed by the State of origin, the State of employment of the State of transit” of their rights according to the ICMW.⁶⁷⁶

In 2010 the Committee on Migrant Workers also adopted the General Comment 1 on migrant domestic workers,⁶⁷⁷ which noted the absence of “express references to either domestic work or domestic workers in a broad range of national and international frameworks of law” and aimed to provide guidance on obligations with respect to migrant domestic workers. Important points included in this comment are:

- Clarification on the fact that migrant workers are protected throughout the whole migration process, which comprises preparation for migration, departure, transit, and the entire period of stay and remunerated activity in the state of employment as well as return to the state of origin or the state of habitual residence
- Clarification that migrant domestic workers are included in the term “migrant worker” and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the convention.

With regard to health-related rights for migrant workers, the ICMW recognizes the importance of providing access to social security and the right to receive emergency medical care, as well as access to other social and health services.⁶⁷⁸ It also notes that with respect to social security, migrant workers and members of their families shall enjoy the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that state and the applicable bilateral and multilateral treaties.⁶⁷⁹ Importantly, according to this treaty, access to emergency medical care should not be refused by reason of any irregularity with regard to their stay or employment.⁶⁸⁰

ILO C97 Migration for Employment Convention

This convention is based on the principle of equal treatment of nationals and regular migrant workers in labour-related areas. As per the ICMW, this convention has achieved a relatively low level of ratification. While the ILO’s eight core treaties have an average of 163 ratifications, C97

⁶⁷⁶ ICMW, article 33. Of course, there remains a grey area between the right to be informed and the realization of this right, access to information, etc.

⁶⁷⁷ Committee on Migrant Workers, 2010, “General Comment on Migrant Domestic Workers”, at http://www2.ohchr.org/english/bodies/cmww/cmww_migrant_domestic_workers.htm.

⁶⁷⁸ *Ibid.*, articles 43 and 45.

⁶⁷⁹ *Ibid.*, article 27.

⁶⁸⁰ *Ibid.*, article 28.

has received only 48.⁶⁸¹ In the ASEAN region, only the Philippines and Malaysia have ratified this convention.

The provisions of this convention only relate to regular, fully-documented migrant workers. It obliges State Parties to adhere to certain standards with regard to medical examinations, care, and hygiene before the migration journey, during the journey, and on arrival.⁶⁸² Specific protections include the requirement of State Parties to grant workers equal treatment with regard to remuneration, membership in trade unions, and enjoyment of the benefits of collective bargaining, accommodation, and social security.⁶⁸³

ILO C143 Migrant Workers (Supplementary Provisions) Convention

This convention includes rights protections for both documented and undocumented migrant workers. It has received only 23 ratifications, again significantly less than the aforementioned average of 163 ratifications for the eight core ILO treaties. Within the ASEAN region, only the Philippines has ratified this convention.

Articles of this convention call for equal treatment and equality of opportunity with regard to employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.⁶⁸⁴ Further stipulations include that host countries must not restrict a migrant's right to free choice of employment for more than two years and that loss of employment shall not, in its own, imply a loss of residence permit.⁶⁸⁵

Domestic Workers Convention, 2011 (No.189)

This is the most recent convention of the ILO, adopted in June 2011. To date, it has been ratified by just two countries, Uruguay and the Philippines. Following ratification by these two countries, it came into force mid-2013.

Although this convention is not migrant-specific, it is highly relevant within the ASEAN region given the increasing number of female foreign workers from ASEAN source countries working in this sector. Foreign domestic workers are mentioned explicitly in article 8 of the convention, which provides for the provision of a written job offer or employment contract before the workers' departure from the home country, which is enforceable in the host country.

681 Lyon, B., 2010, "The Unsigned United Nations Migrant Workers Rights Convention", *Journal of International Law and Politics*, vol. 42, pp. 389–500.

682 International Commission of Jurists, *Migration and International Human Rights Law*, p. 211.

683 C143, article 6.

684 C143, article 10.

685 C143, article 8.

The convention defines domestic work as that performed in or for a household or households, and provides for such protections as minimum wage, weekly rest periods (and freedom to move outside the household during these rest periods), and protection from abuse. Within the ASEAN region support for this convention is polarized. While the Philippines chaired the *Domestic Workers Convention* negotiating process and Indonesia expressed strong support for the convention, both Singapore and Malaysia abstained from voting on its adoption in 2011, stating that the concerns of domestic workers could be addressed within the framework of existing national laws and policies.⁶⁸⁶

ASEAN Declaration on the Protection and Promotion of Migrant Workers Rights

The *ASEAN Declaration on Migrant Workers* is a legally non-binding instrument that was adopted in 2007, recognizing migrant workers as a vulnerable group whose rights require protection. The declaration acknowledges cases of abuse and violence against migrant workers, and contains obligations for both sending and receiving states related to enhanced protection of the fundamental human rights, welfare, and dignity of migrant workers.

While the signing of this declaration in 2007 represented a particularly important step towards regional responses on the issues related to migrant workers, it is important to note that in order to implement the declaration an instrument for its implementation must still be drafted. In 2009 the ASEAN Committee on Migrant Workers (ACMW) created a drafting team consisting of both host and source countries, including Indonesia, the Philippines, Thailand, and Malaysia. In early 2011 this drafting team subsequently agreed to cover key issues related to the ASEAN Declaration and its implementing instrument over three separate phases; covering regular migrant workers in the first phase; followed by undocumented workers in the second phase; and, finally, the shape of the instrument in terms of it being legally binding or not in the third phase.⁶⁸⁷

Although the zero draft of the instrument to make the ACMW enforceable has not been made public, commentary suggests that undocumented migrant workers are not covered, and that there is disagreement about the instruments' status as either a guiding agreement or a legally binding instrument. Civil society groups have also expressed concern over the possibility that the instrument could take the form of a convention, requiring ratification by Member States before becoming legally binding.

⁶⁸⁶ Hangzo and Cook, "The Domestic Workers Convention 2011", op. cit.

⁶⁸⁷ Fernando, F., 2011, "ASEAN Blueprint 2010 2015: Health and Development Framework and Commitments on HIV/AIDS", presentation delivered at Multi-Stakeholder Dialogue on Migrant Workers' Access to Health and HIV Services, November 2011.

Additional resolutions, recommendations, and declarations concerning migrant workers' right to health

[WHA Resolution on the Health of Migrants/Operational Framework for Migrant Health](#)

All WHO Member States, including all ASEAN Member States, are committed to the *Resolution on the Health of Migrants*, adopted at the 61st World Health Assembly in May 2008. This resolution calls on Member States to take action on migrant-sensitive health policies and practices⁶⁸⁸ and to promote the exchange of information and dialogue among Member States. Specifically, it recognizes that: health outcomes can be influenced by the multiple dimensions of migration; some groups of migrants experience increased health risks; and there is a need for additional data on migrants' health and their access to health care in order to substantiate evidence-based policies.

The resolution also calls upon Member States to promote migrant-sensitive health policies;⁶⁸⁹ to establish health information systems in order to assess and analyse trends in migrants' health, disaggregating health information by relevant categories;⁶⁹⁰ to gather, document, and share information and best practices for meeting migrants' health needs in countries of origin or return, transit, or destination;⁶⁹¹ to raise health service providers' and professionals' cultural and gender sensitivity to migrants' health issues;⁶⁹² and to promote bilateral and multilateral cooperation on migrants' health among countries involved in the whole migratory process.⁶⁹³

A follow-up Global Consultation on Migrant Health in 2010 also produced an *Operational Framework for Migrant Health*, which established four priority pillars to help Member States to

688 WHO, 2008, *World Health Assembly*, at www.who.int/mediacentre/events/2008/wha61/en/index.html.

689 *Resolution on Migrant Health*, article 1.

690 *Ibid.*, article 3.

691 *Ibid.*, article 5.

692 *Ibid.*, article 7.

693 *Ibid.*, article 8.

operationalize the goals of this resolution: (i) establishment of policies and legal frameworks; (ii) monitoring of migrant health; (iii) partnerships, networks, and multi-country frameworks; and (iv) migrant-sensitive health systems.

[ILO Resolution on a fair deal for migrant workers in global economy, 2002](#)

This resolution calls for, among other things, the promotion of social welfare and social cohesion for labour migrants; recognition of the unique set of issues facing female migrant workers as an increasing proportion of the international labour migration workforce; promoting access to health care; and bilateral and multilateral agreements on social security coverage for labour migrants. In particular, article 13 states that comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted.⁶⁹⁴

[ILO Multi-lateral Framework on Labour Migration \(non-binding principles and guidelines for a rights-based approach to labour migration\)](#)

These guidelines were developed by the International Labour Organization in 2006 in order to provide a collection of principles, guidelines and best practices on labour migration policy and assist labour migration policy makers, employers, and workers to address important issues, such as labour migration governance and protection of migrant workers.

With specific regard to the protection of migrant workers, the ILO's Multilateral Framework provides guidance on the legal foundation for migrant protection found within international law,⁶⁹⁵ and emphasizes the importance of social law and regulations that cover all male and female migrant workers, including domestic workers and other vulnerable groups.⁶⁹⁶ With regard to supporting health access and care for migrant workers, the framework emphasizes the importance of bilateral, regional, and multilateral agreements to provide social security coverage and benefits,⁶⁹⁷ as well as equitable medical treatment access alongside nationals.⁶⁹⁸

[UNGASS Political Declaration on HIV/AIDS, 2011](#)

In June 2011 the United Nations General Assembly adopted this declaration in recognition of the continuing and urgent need to scale up significantly our efforts towards the goal of universal access to comprehensive prevention programmes, treatment, care and support.⁶⁹⁹ The declaration

⁶⁹⁴ *ILO Resolution*, article 13, at http://www.ilo.org/public/english/protection/migrant/download/ilcmig_res-eng.pdf.

⁶⁹⁵ ILO, 2010, "ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration", article 9.

⁶⁹⁶ *Ibid.*, article 9.8.

⁶⁹⁷ *Ibid.*, article 9.9.

⁶⁹⁸ *Ibid.*, article 9.10.

⁶⁹⁹ UNGASS, 2011, "Political Declaration on HIV and AIDS: Intensifying our efforts to Eliminate HIV and AIDS", article 3.

includes a specific commitment to address, according to national legislation, the vulnerabilities to HIV experienced by migrant and mobile populations and support their access to HIV prevention, treatment, care and support.⁷⁰⁰

In support of these aims and of the current UNAIDS strategy of *Getting to Zero: Zero New HIV infections, Zero discrimination, Zero AIDS-Related Deaths, 2011–2015* (described below), migrant and mobile populations are included as vulnerable populations under UNAIDS strategies in each of the ASEAN member countries. A key focus of UNAIDS strategy with regard to migrant and mobile populations also includes the elimination of HIV-related restrictions on entry, stay, and residence. In the ASEAN region, three of the four host countries Brunei, Malaysia, and Singapore currently have legislated restrictions against entry, stay, and residence of people living with HIV.

ILO Recommendation 200: Recommendation concerning HIV and AIDS and the World of Work (2010)

This ILO recommendation provides for universal access to prevention, treatment, care, and support services for all workers working under all forms or arrangements, and at all workplaces, regardless of their legal status or occupation. Thus, by definition, both documented and undocumented cross-border migrant workers are within its scope.

Key components of this recommendation related to migrants include: prohibition of mandatory HIV testing, screening, or disclosure at any stage of migration; prohibition of discrimination in or exclusion from migration on the basis of real or perceived HIV status;⁷⁰¹ and support for migrants to obtain universal access to HIV education, information, treatment, care, and support. It also provides for training, safety instructions, and any necessary guidance to be given in a clear and accessible form to ensure a safe and healthy work environment.⁷⁰²

ASEAN Declaration of Commitment: Getting to Zero New Infections, Zero Discrimination, Zero AIDS-Related Deaths

This ASEAN Declaration of Commitment, adopted in 2011, notes that migrant and mobile populations continue to be particularly vulnerable to HIV, and specifically commits to overcoming barriers to treatment.⁷⁰³ In a range of commitments indirectly related to migrants, it also aims to expand and promote access to HIV testing that is voluntary, confidential, and rights-based; and to make full use of existing flexibilities under the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) to secure and expand access to affordable HIV diagnostics and treatment.⁷⁰⁴

⁷⁰⁰ Ibid., article 84.

⁷⁰¹ ILO, 2010, "Recommendation Concerning HIV and AIDS and the World of Work", article 3, (c), at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142613.pdf.

⁷⁰² Ibid., article 30.

⁷⁰³ "ASEAN Declaration of Commitment: Getting to Zero New Infections, Zero Discrimination, Zero AIDS-Related Deaths", article 18(b)ii.

⁷⁰⁴ Ibid., article 18(b)iii.

ASEAN Socio-Cultural Community Blueprint (ASCC) 2009–2015

As part of the Road Map for the ASEAN Community, ASEAN's objectives and activities are divided among three communities: the ASEAN Political Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community (ASCC). Each of these three communities runs according to a blueprint that outlines ASEAN's priorities and targets. Issues of migration, health, and development come under the ASCC, and are guided by its blueprint.

Migrants are referred to specifically in action lines that come under priorities such as promotion of decent work,⁷⁰⁵ access to health care/promotion of healthy lifestyles,⁷⁰⁶ and the protection and promotion of the rights of migrant workers.⁷⁰⁷

Responsibility for driving the migration, health, and development response lies with the ASEAN Health Ministers Meeting and the Senior Officials Meeting on Health and Development. Under these guiding bodies, Thailand, the Philippines, and Indonesia are the lead countries guiding the response to migrant health, in addition to the Health and Communicable Diseases Division of the ASEAN Secretariat.

⁷⁰⁵ ASEAN Socio-Cultural Community, blueprint, section A. (3) Human Development.

⁷⁰⁶ *Ibid.*, section B. (4) Social Welfare and Development.

⁷⁰⁷ *Ibid.*, section C. (2) Social Justice and Rights.



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