

## **Migrant Labour Protection Issues and Responses in the Greater Mekong Sub-region**

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### **Context and Vulnerabilities**

The Greater Mekong Sub-region and neighbouring countries comprise one of the world's most dynamic migration hubs. There are well over two million migrants in both Thailand and Malaysia, and the traditional sending countries of China, Lao PDR and Viet Nam have also recently begun receiving low-skilled labour from abroad. Most experts predict that intra-regional migration will continue to rise. The structure of the economies and demographic evolution is driving the need for low-skilled workers in labour-intensive jobs; and established chain migration links match this demand with a steady supply of migrants attracted by the wage differential.

As the number of women and men migrants within and from the GMS grows, so do the opportunities for unscrupulous job brokers and employers to take advantage of them. Studies into the living and working conditions of low-skilled migrants in the region reveal indicators of abuse commonly associated with labour exploitation are widespread. These indicators include deception about wages, type of work and legal status; withheld wages; retained passports or identity documents; physical confinement; substandard working conditions, and threats of denunciation to the authorities. Insufficient regulation of the recruitment process and inadequate workplace protection practices are increasing the vulnerability of labour migrants to exploitation.

There is mounting evidence that in a sound policy and governance context, labour migration can deliver significant development dividends not only to migrants and their family members, but also the country of origin and destination. However, the potential development gains of labour migration in the region are being diluted by major inequities, inefficiencies, consumption and excessive rent-taking, as well as poor governance in the migration and labour protection systems.<sup>1</sup>

In recent years, the legal frameworks for governing labour migration and protecting the rights of migrant workers have been strengthened in the GMS, to varying degrees. Though gaps and inconsistencies remain, most countries have adopted or are in the process of adopting migration policies and/or laws and regulations to improve recruitment practices and rights protection. At the regional level, the ASEAN Member States are working towards an Agreement to give effect to the Declaration on the Protection and Promotion of the Rights of Migrant Workers, signed in 2007.

Despite having a more robust policy framework, there is often a failure in implementation. For example, the Thai Government has long-standing MOUs on employment cooperation with Cambodia, Lao PDR and Myanmar, but only a fraction of workers have migrated through licensed recruitment channels. There are several disincentives that make licensed recruitment or regularization unattractive to low-skilled women and men migrants. Reliable information is not readily accessible; procedures are more costly, lengthy and complicated; and even documented workers' rights are routinely violated.

In addition to recruitment policy, labour protection laws are also inadequately applied and enforced, and migrants have limited access to justice through the legal system or collective action. The labour inspectorate has limited capacity, particularly in monitoring the often isolated conditions where migrants work – within a home, locked behind factory gates, on a boat, etc. At the same time, aggrieved migrant workers are often reluctant to complain about their brokers or employers because they are afraid to lose their jobs and their work permits. Documented migrants usually have

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<sup>1</sup> Hugo and Young (eds), *Labour Mobility in the Asia-Pacific Region: Dynamics, Issues and a New APEC Agenda*, Institute of Southeast Asian Studies (ISEAS), Singapore (2008).

to accept the conditions or 'run away' to look for better remuneration (i.e. no wage deductions) as an undocumented worker. Undocumented women and men migrants are even more vulnerable and more reluctant to complain even under the most abusive circumstances because of their illegal status.

## **Responses**

### **Strengthening of legal and policy frameworks:**

In certain cases, migration-related laws and policies need to be drafted or revised – because they are ambiguous; because they contain discriminatory 'protective' measures for women; or because they need to provide more specific guidance to facilitate implementation. To ensure that policy development exercises are evidence-based and meet the needs of workers and employers, it is essential that workers' and employers' organizations are consulted, as well as civil society organizations working directly with women and men migrants and potential migrants, and that research is carried out and migration data is collected and analysed.

### **Enhancing the capacity of government and social partners**

The effective implementation of migration policies and regulations requires the development of tools and delivery of training to enable government department and social partners to carry out their responsibilities. Effective responses can not be carried out unilaterally, and the stakeholders in the different countries face common challenges; therefore, cooperation and dialogue, experience sharing and training should also be conducted bilaterally and at the regional level.

### **Improving access to support services**

Often migrant workers and potential migrant workers have limited capacity to protect themselves and hold duty bearers (recruitment agencies, employers, service welfare officers, etc.) accountable. To prevent exploitation, potential migrants and migrants must be empowered through information campaigns; pre-departure training; strengthening migrant associations to represent their rights and interests in the workplace, in society and in policy dialogue; etc. In addition, migrant women, men should be able to access complaints and dispute resolution mechanisms as well as legal assistance. The TRIANGLE project attests the ILO principle of **tripartism**, with governments, workers' and employers' organizations bringing their individual and collective strengths to bear on each of the project objectives. As promoted in the ILO Multilateral Framework on Labour Migration and the ASEAN Social-Cultural Community Plan of Action, civil society organizations (CSOs), including women's and youth groups with frontline experience will also be engaged in project activities. The ILO will work with CSOs to engage and organize migrants, and develop strategies and spaces for their input, such as focus groups, forums, and where possible, through migrant associations' participation on multi-disciplinary working groups.

### **Adopting a gender responsive approach**

Within the GMS, the migration experience – including the motivations, the vulnerabilities, the sectors of work, etc. – is different for men and women. Too often these differences are not reflected in migration laws and policies. Gender must be mainstreamed through various training materials and training programmes – for both migrants as rights bearers and service providers as duty holders. In order to ensure a gender-sensitive approach, there is a need to collect more sex-disaggregated data collection when conducting research and in M&E. Where gender inequalities are identified through research, gender specific measures will be designed and implemented.

### **Adopting a rights-based approach**

In formulating migration policies, it is important that employment promotion strategies do not outweigh the principles of rights protection. Reference should be made to the international labour

conventions and other relevant standards to which the countries are already signatories. These include the fundamental principles and rights at work, as embodied in the ILO Core Conventions, which apply to all workers, including migrant workers. It is essential to inform migrants of their rights and service providers and employers of their responsibilities in upholding those rights.

**Cooperating with range of partners**

There are a multitude of government, worker and employer organizations, CSOs and international organizations working to enhance the protection of migrant workers. It is essential that cooperation and coordination is maximized to enhance effectiveness. This can be achieved through regular networking meetings or inter-agency working groups at the national, bilateral and regional levels. In addition, women and men migrants' participation should be sought in the design, implementation and monitoring of interventions aimed at benefiting them.

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