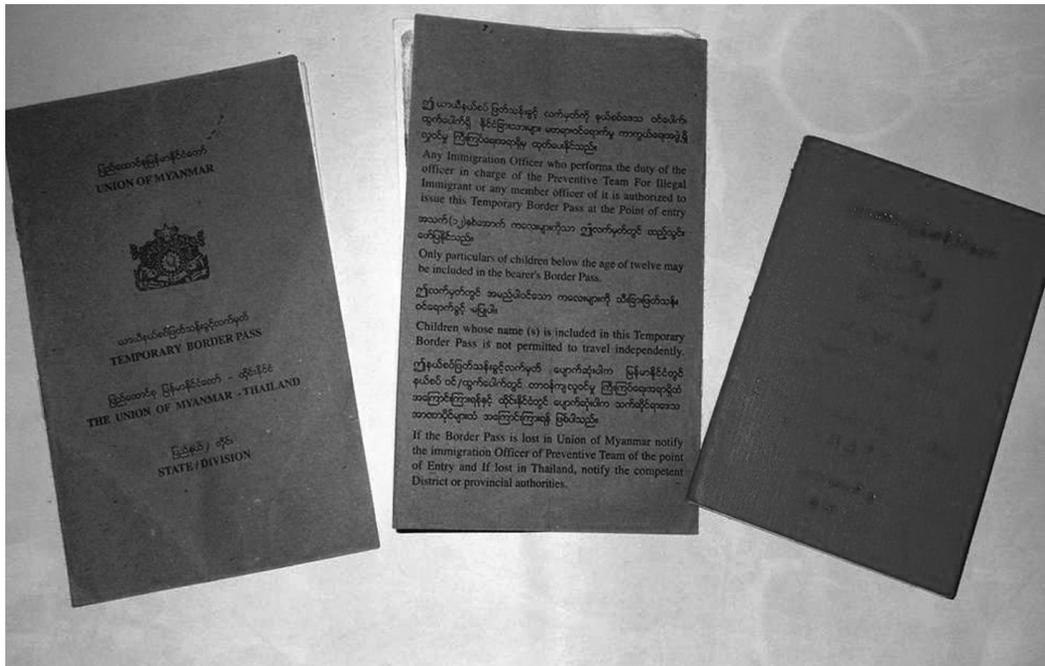


Photo Courtesy of IAP Foundation



Migrants may obtain a temporary border pass. 2006.

# Overview of Migration: Burma

## 1. Background

Myanmar/Burma is the single-largest source country of migrants in the GMS. It is estimated that approximately two million Burmese have sought refuge or a livelihood abroad, with over a million of them currently living in Thailand.

Ethnic minority groups such as the Kayin, Shan, Mon and Kachin have been forced to flee their homes to escape various forms of persecution in their traditional land. In 2006, when the capital city was relocated from Rangoon to Pyinmana in the interior of Burma, ethnic Kayin in Toungoo, Nyaunglaypin, Kyawtkyi, Thandaung within a 150 mile radius of the new city were forced to flee to neighbouring Thailand.

The UNHCR estimates that around 10,000 Rohingyas were granted asylum in Malaysia in 2006.

## 2. Labour Migration

The State Peace and Development Council (SPDC) has only very recently acknowledged the fact that there are millions of Burmese migrants living abroad. Following similar Memorandum of Understanding (MOUs) between Thailand and Lao PDR and Thailand and Cambodia, Myanmar signed an MOU with Thailand on the Cooperation in Employment of Workers during a meeting of the Asia Cooperation Dialogue Forum in Chiang Mai, Thailand in June 2003. In cooperation with Thai authorities, sending countries agreed, first, to verify the nationalities of workers already working in Thailand who had registered under the Thai government's periodic registration



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Photo Courtesy of MIMN



Migrants before crossing the border to Thailand. 2006.

schemes, and, second, to begin sending workers to Thailand lawfully under the processes established under the MOU.

While the Lao PDR and Cambodian governments have begun carrying out these processes, albeit slowly, the SPDC has taken little or no action in this respect. The SPDC has, however, conducted further meetings with the Thai authorities concerning the implementation of the MOU. On 28-29 January 2004 the first meeting took place between Thai and Burmese senior officials for the implementation of the MOU on Cooperation in the Employment of Workers between the Kingdom of Thailand and the Union of Myanmar, and on 15 December 2005 the Senior Officials' Meeting on Myanmar Illegal Workers in Thailand took place in Yangon.<sup>1</sup> However, no progress has been made regarding the implementation of the MOU on the Burmese side: as of February 2008, Burmese authorities had not verified the nationality of any migrants from Burma, nor had any Burmese lawfully migrated to Thailand under the terms of the MOU.

On the other hand, since 2005, the SPDC has sanctioned recruitment by overseas employment agencies. In October 2006 *News Magazine* reported that more than 70 labour-recruitment agencies operate from Yangon and Mandalay.<sup>2</sup> Announcing Thailand's need for as many as 10,000 workers, the labour ministry invited applications from interested parties. A further positive development has been the acceleration of the application process for a passport. Whereas in 2004 a passport required three months to obtain, applicants can now expect delivery of the travel document within thirty days.

In regards to sending Burmese migrant workers to countries outside the GMS, the *7 Days News* reported that demand for Burmese workers in Qatar, for example, is equivalent to that in Malaysia,

while the benefits and earning potential for migrants in the former are higher. The impact of policies related to the exportation of migrants to countries outside the GMS on policies toward Burmese nationals migrating to Thailand and other GMS countries in the future remains to be seen.

### 3. Trafficking

In sharp contrast to the SPDC's long silence on the issues of labour migration, the country has been quite visibly active in responding to trafficking issues.

Following the 1995 Fourth World Conference on Women, which resulted in the Beijing Declaration, the Myanmar National Committee for Women's Affairs (MNCWA) was established in 1996. Simultaneously, the Working Plan of Action, which comprises the prevention of trafficking, prosecution of traffickers, protection, repatriation, return and reintegration of trafficked women, was created, the elements of which follow the provisions in the international conventions concerning trafficking. The Myanmar Women's Affairs Federation (MWAFF) was formed in 2003, and both the MNCWA and the MWAFF implement various programs for women aimed at the prevention of trafficking.

The Department of Social Welfare (DSW) has also carried out tasks related to the repatriation, reintegration and rehabilitation of trafficking victims since 1992, collaborating with the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Health, the Ministry of Education, the Ministry of the Progress of Border Areas, the Ministry of National Races and Development Affairs, MWAFF, UNIAP, Save the Children-UK and World Vision.

The country's recent actions have been focused on exposing and apprehending human traffickers. Between 2004 and 2006, 1,362 human traffickers in 677 cases were arrested, and altogether 3,471 victims were rescued.

Following the first Coordinated Mekong Ministerial Initiative on Trafficking (COMMIT) meeting held in Bangkok on 28-30 July 2004, Yangon hosted the second COMMIT meeting on 27-28 October 2004, where six GMS countries signed a MOU on Cooperation against Trafficking in Persons in the GMS and Sub-regional Action Plan.<sup>3</sup>

In August 2005, the SPDC passed an Anti-Trafficking in Persons Law to prevent and suppress human trafficking, particularly targeting acts that victimise women, youths and minors. Persons found violating the law can be subject to punishments ranging from a minimum of three years imprisonment to the maximum penalty of death. The law also imposes a maximum of seven years imprisonment for officials who demand or accept bribes in cases related to human trafficking.<sup>4</sup>

### Endnotes

<sup>1</sup> Ms. San San, Myanmar Department of Labour, Ministry of Labour, "Myanmar Policies on Transborder Migration", presented during the Policy Dialogue on Transborder Migration Policy Implementation and Monitoring: Its Effectiveness and Current Policy Gaps in the Greater Mekong Sub-region, Khon Kaen, Thailand, 15-17 November 2007.

<sup>2</sup> *News Magazine*, 7 October 2006.

<sup>3</sup> See MMN & AMC, *Resource Book: Migration in the Greater Mekong Subregion*, 2005, p. 19.

<sup>4</sup> Kyodo, "Myanmar enacts anti-human trafficking law" in *Asian Political News*, 19 September 2005. Last accessed on 9 April 2008 at: <[http://findarticles.com/p/articles/mi\\_m0WDQ/is\\_2005\\_Sept\\_19/ai\\_n15403916](http://findarticles.com/p/articles/mi_m0WDQ/is_2005_Sept_19/ai_n15403916)>.

Photo Courtesy of Cambodian Women for Peace and Development (CWPD)



Migrants leaving Cambodia en route to Thailand, Prey Veng, Cambodia, 2006.

# Overview of Migration: Cambodia

Cambodia is both a sending and receiving country of migrant labour. Thailand is the primary destination for Cambodians, while Cambodia is home to a large number of Vietnamese migrants. Cambodia is also commonly used as a transit point by criminal syndicates involved in the trafficking of people to third countries, especially en route to the West.

## 1. Cambodia as a Sending Country

### 1-1. Background

According to the Cambodian Ministry of Labour and Vocational Training (MLVT), the country has officially sent a total of 6,620 Cambodian workers to Malaysia between 1998 and 2006. However,



Photo courtesy of Cambodian Women for Peace and Development (CWPD)



This post represents the land division between Cambodia and Vietnam. People can simply walk through this division and enter Vietnam without an investigation from the authorities on both sides. Cambodia, 2006.

NGOs in Malaysia estimate that there are between 10,000 to 20,000 Cambodian workers employed in the country.<sup>1</sup> Among the total documented 6,620 Cambodian migrant workers, 4,908 of them are female and 1,712 male. In terms of work sector, 3,705 of them, all of whom are women, went there to work as domestic workers, while 2,915 were employed in factories. Cambodia has also sent a total of 2,462 workers to South Korea between 2003 and 2006.<sup>2</sup>

Cambodian workers primarily go to nearby Thailand for employment. Out of the total 394,443 migrants who registered for a work permit effective from July 2007 to June 2008 in Thailand, 14,469 were Cambodian. During the registration period in February 2008 (work permit effective from March 2008 to February 2009), an additional 135,004 workers registered, 3,786 of whom were Cambodian.

Thailand is easily accessible to Cambodians. Eight of Cambodia's 24 provinces – Preah Vihear, Uddor Meanchey, Banteay Meanchey, Battambang, Pailin, Pursat, Koh Kong and Sihanoukville – border Thailand. There are three formal border crossings at which tourists and traders are required to enter Cambodia: 1) Poipet gate in Banteay Meanchey linked to Rong Kleau gate in Sa Gaew on the Thai side; 2) Chamyeam gate in Koh Kong linked to Hat Lech gate in Trat on the Thai side; and 3) Preah Sihanu Harbour in Preah Sihanu Province.

An estimated 3,000 to 8,000 people pass through the Poipet-Rong Kleau checkpoint each day. People travel from Thailand into Cambodia mainly to visit casinos in the Poipot area as well as other tourist attractions such as resorts and temples, but they also conduct their business activities

and transport goods and construction materials. Cambodian migrants arrested in Thailand may also be deported through this gate. Many migrants going to Thailand through this checkpoint work as seasonal or daily labourers, employed as porters, construction workers, and farm labourers. To enter Thailand, they must purchase a one-day border pass costs THB10 or KHR1,000 (USD0.25), which does not require any forms filling. A one-week pass that costs THB700, and applicants are required to present their identity card and documents at the migration office in Khbal Spean Village, Poipet Commune in O Chrov District before the pass is issued.

At the Chamyeam-Hat Lech checkpoint, between 100 to 300 people pass through every day. Most of the travellers are fruit or vegetable merchants and consumers. There are a few casinos in this area, but these attract only a small number of visitors. The border crossing procedure there is similar to the one at the Poipet-Rong Kleau Checkpoint. The border checkpoint in Preah Sihanu is primarily for cargo ships and tourist boats.

According to a military police officer in O Chhreu District interviewed in May 2006, both migrants and agents bribe the police force with sums ranging from THB50 to 100 per station at the checkpoints. There are six stations on both the Cambodian and Thai sides of the border. According to the police official, there are no more illegal entries to Thailand in the populated areas of Poipet, which cover the North and South checkpoints. Since 2006, people have bought the inexpensive formal border passes which cost KHR1,000 (USD0.25) each to cross into Thailand through the international crossing point in Poipet. This area is frequented by traders, porters, and merchants who travel daily to Rong Kloe market. Migrant workers who intend to remain in Thailand to work are not supposed to use this border pass to cross into Thailand through Poipet; however, the police have acknowledged that they could not distinguish migrants from merchants.<sup>3</sup>

In addition to these formal crossing points, there are hundreds of unofficial crossing points. A number of migrant workers from Prey Veng Province heading to Thailand pass through an informal channel called “Banlem.” This informal checkpoint is located in Doung Village, Beung Reang Commune, Kumrieng District in Battambang Province. Malai District in Banteay Meanchey Province has the second largest number of informal checkpoints.

Prey Veng Province is considered to be the province that produces the largest number of migrant workers. Migrants from Prey Veng work mainly in the fishing industry, especially in Rayong and Pattani in southern Thailand. Prey Veng Province has 12 districts, 116 communes and 1,136 villages with a population of 946,042, of whom 445,140 are female, according to the 1998 census. The province has the fourth largest population in the country and is the third poorest. More than 55% of the heads of household are women. The districts that produce the most migrants include Pearaing, Prey Veng, Kampong Leav, Sithor Kandal, Kamchay Mear, Kanchreach, and Mesang.

In Kampong Cham Province, another major source of migrants going to Thailand, there are 16 districts, 173 communes and 1,748 villages, with a total population of 1,608,914 of whom 775,796 are female: it has the second largest population in the country - of whom 775,796 are female.<sup>4</sup> More than 65% of the heads of household are women. The majority of migrants originating from this province have left to work in the fishing industry. Most of those engaged in farming in Thailand migrated through the border areas such as Sa Gaew, Chonburi and Burinam on the Thai side of the border. Tbong Khmum District, especially Sralob Commune, reports the highest number of migrants moving to Thailand for work.

Photo Courtesy of Cambodian Women for Peace and Development (CWPD)



Many migrants travel to Thailand at night to avoid inspection by authorities. Prey Veng, Cambodia, 2006.

### ***Reasons for Migration***

In the past, Cambodians decided to go to Thailand because they were convinced by agents' accounts of the benefits to be earned from working abroad. Agriculture and the Cambodian economy have also played important roles in their choice to move to Thailand. When droughts and floods caused the land to become infertile, many simply did not have enough to eat, which prompted large numbers of people to migrate to find work in Thailand. There are other factors influencing this decision; for example, in Kampong Cham Province, although the land remains fertile, many families own only small plots for farming, which do not produce a large enough harvest to feed the household.

'Because the plots of land they owned were small – six acres per family – they could only harvest rice once a year. They made just enough to cover everyday expenses and eat. So those men who were the heads of households decided to go find work in Thailand. People would work at a farm for 3-6 months or as a fisherman for 1-2 years before they returned home'.<sup>5</sup>

### ***Moving Across the Border***

According to interviews conducted by the Cambodia CRT in Prey Veng and Kampong Cham provinces, people migrate to Thailand with the assistance of agents as well as family and friends who have been to Thailand before. In Kampong Cham, a person typically pays between USD100-200 to an agent for assistance, and in Prey Veng, less than USD100. Typically, a van picks up

the workers at around 2 am and they drive for about one day to the border. A group of at least 50 people usually cross the border by walking through the Banlem crossing point at night. Many male workers who were interviewed stated that they had completed only grade 4 or 5 in primary school. Some had been ordained as monks for one or two years before going to work in Thailand. Migrants from certain ethnic groups, who moved to Thailand between the age of 17 and 19 could not speak the Khmer language.

## 1-2. Policies Regarding Outwards Migration

### *Sub-Decree 57(20 July 1995)*

The country's key policy document governing the recruitment and sending of Cambodian workers abroad is Sub-Decree 57 on Sending Khmer Migrants to Work Abroad, issued on 20 July 1995.

The objectives of the Sub-Decree include:

1. Allowing sending Cambodian migrant workers to work abroad, when the local labour market does not meet the demand.
2. Improving the national income and increasing the professional skill level of Cambodian migrant workers.<sup>6</sup>

The Sub-Decree serves as a guideline for the procedural measures of the MOLTV and private recruitment agencies. Companies are required to first register with the Ministry of Commerce (MOC) before proceeding to apply for a license from the MOLTV.<sup>7</sup>

There are currently 12 authorised recruitment companies in Cambodia, eight of which actively recruit and send Cambodian workers to work in Thailand through official channels. Cambodian applicants must be 18-years old or over. The MOLTV works closely with the Ministry of Interior in the processing and issuing of passports, and with the Ministry of Foreign Affairs and International Cooperation for monitoring overseas work.<sup>8</sup>

This Sub-Decree is an outdated policy document, which may not necessarily reflect the current migration dynamics and realities of today's Cambodia. Only five articles out of 22 refer directly to the worker, namely Article 9 on the employment contract, Article 10 on the rights of annual leave, Article 14 on pre-departure training, Article 19 on missing workers, and Article 20 on violations of provisions. Yet these provisions are so broad that they do not provide much protection to workers.<sup>9</sup>

### **Government's Rectangular Strategy (16 July 2004)**

In its Rectangular Strategy released in 2004, the Cambodian government states that the exportation of workers is one of their key strategies to achieve poverty reduction. The government 'encourages official labour exports to increase welfare, improve capacity, reduce unemployment, and increase revenue.'<sup>10</sup> The Strategy also stipulates that employment and training-related policies and programs should aim to improve job mobility, information technology and vocational/skill training, while effectively linking them to education programs.

### *Sub-Decree 70 (July 2006)*

In recognition of the limitations of Sub-Decree 57, the MOLTV has issued several Sub-Decrees and Prakas that complement Sub-Decree 57.<sup>11</sup> Sub-Decree 70 on the creation of the Manpower Training and Overseas Sending Board (MTOSB) was issued in July 2006. The MTOSB serves

as a public employment agency; one of its first tasks was to recruit, train and send workers to South Korea.<sup>12</sup>

### ***Prakas 108***

Prakas 108 on the Education on HIV/AIDS, Safe Migration, and Labour Rights for Cambodian Workers Abroad was issued in May 2006. It aims to promote pre-departure training of migrant workers on the above mentioned issues, thus reducing their vulnerabilities.

### ***Prakas 012/07***

Prakas 012/07 on the Creation of a Labour Migration Taskforce was announced in January 2007 to develop and implement policy and action plans under the Labour Migration Section of the MOLVT.<sup>13</sup>

In a recent meeting, a representative from the MOLVT stated that the ministry's strategic goals are as follows:

1. To improve the management of overseas employment services through recruitment agencies.
2. To establish a public system of overseas employment services and protect migrant workers abroad.
3. To establish a management office for workers belonging to the category of daily and seasonal cross-border workers.
4. To improve the recruitment agencies' practices consistent with principles and policies of the government, national law and other international conventions.
5. To set up networking services to protect migrant workers and establish effective networks for the management of overseas employment data and information.
6. To improve awareness of HIV/AIDS and protect the rights and benefits of migrant workers.

## **1-3. Implementation of the MOU on Cooperation in the Employment of Workers**

Following the signing of the MOU with the Royal Government of Thailand, the Royal Government of Cambodia set up the Inter-Ministerial Working Group to issue Certificates of Identity (CI) for Cambodian workers already in Thailand. A total of 47,982 Cambodian workers have been issued such CIs.<sup>14</sup>

The MOU also aimed to establish legal migration channels through which prospective Cambodian workers can obtain legal documents prior to departure. As mentioned above, eight recruitment agencies are recruiting and sending legal Cambodian workers to Thailand. As of January 2008, there were a total of 8,173 Cambodian migrant workers who had migrated legally to Thailand under the process established by the MOU. Among them, 5,926 were male and 2,247 female.<sup>15</sup>

## **2. Cambodia as a Receiving Country and as a Transit Country**

The overwhelming majority of cross-border migrants in Cambodia come from Vietnam. Estimates of the number of Vietnamese in Cambodia vary greatly, ranging from 150,000 to more than a million. Data is not available as to how many Vietnamese are long-term residents who moved to Cambodia during the 1970s and 1980s, and how many of them are temporary migrants who recently moved to Cambodia.<sup>16</sup>

*Endnotes*

<sup>1</sup> CARAM-Asia.

<sup>2</sup> MoLVT, 2006.

<sup>3</sup> Captain Chao Khoeun, Cambodia-Thai Border Coordination Office, Nimit Commune, Ochrove District, Banteay Meanchey Province, interviewed by Cambodia CRT in May 2006.

<sup>4</sup> Mr. Ea Art. Assistant Chief of Thmor Penh, interviewed by Cambodia CRT in May 2006.

<sup>5</sup> *ibid.*

<sup>6</sup> Mr. Khoun Saingpanarith, Ministry of Labour and Vocational Training, Cambodia, “Cambodia National Policies on Transborder Migration”, prepared for Transborder Migration Policy Implementation and Monitoring: Its Effectiveness and Current Policy Gaps in the Greater Mekong Sub-region, Khon Kaen, Thailand, 15-17 November 2007.

<sup>7</sup> Chen Chen Lee, “Exploitative Labour Brokerage Practices in Cambodia: The Roles and Practices of Private Recruitment Agencies”, presented at the 8th International Conference of Asia Pacific Migration Research Network (APMRN), Fujian, China, 26-29 May 2007.

<sup>8</sup> See No. 6.

<sup>9</sup> See No. 7.

<sup>10</sup> See No. 6.

<sup>11</sup> A regulation issued by a Minister.

<sup>12</sup> See No. 6.

<sup>13</sup> See No. 6.

<sup>14</sup> See No.6.

<sup>15</sup> As of April 2008.

<sup>15</sup> Office of Foreign Workers Administration, Thailand. January 2008.

<sup>16</sup> See MMN and AMC, *Resource Book: Migration in the Greater Mekong Subregion*, p. 133-134.

Photo Courtesy of MAP Foundation



Many Laotian migrants in Thailand work as domestic workers without legal protection of their labour rights. Demanding recognition of domestic work as work is one of the key demands made by migrant and local worker advocates. Bangkok, May 2006.

## Overview of Migration: Lao PDR

The vast majority of Laotian migrant workers within the GMS can be found in Thailand. Lao PDR and Thailand share a common border, 1,835 km in length. Journeys across the Thai-Lao border can be made from either side of the Mekong River or at the numerous official and unofficial land crossings. Such journeys are commonplace and casual, especially for those who live along the banks of the Mekong. Many Laotian people have longstanding relationships with Thai people, including kinship and marriage ties. The majority of Laotian migrant workers enter Thailand either by crossing the Mekong River or by walking through the forest.

The main reasons for migration are a function of the economic disparities that exist between the two countries. Since the enactment of the Lao labour law in 1991, the Prime Minister's office has issued four additional decrees to set and amend the minimum wage for workers employed in the private sector. The Prime Minister's decree on the Minimum Wage of Workers in the Business Sector No. 64/PM, dated 21 March 2005, sets the minimum wage in Lao PDR at LKP290,000



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(USD26.84) per month. Though the minimum monthly salary level in Kips has increased from LKP26,000 in 1991 to LKP290,000 in 2005, if compared in real terms to the current US dollar exchange rate, the minimum monthly salary in 2005 is the equivalent of only USD26.84, which is USD9.78 less than what had been fixed as the minimum monthly salary 15 years ago (USD36.62). Although the minimum wage offers some level of protection, many Laotian workers, particularly those working in unskilled sectors, are employed as temporary workers. They typically receive payment on a daily or weekly basis and generally lack written contracts or fixed terms and conditions of employment. As such they have little or no job security.<sup>1</sup> Many employers only pay a monthly wage of around USD11.50. On the other hand, the law on minimum wage in Thailand, which entered into force on January 2007, is THB143-191 (depending on province) or USD3.9-5.2 per day, much higher than the wage in Lao PDR. Although most migrant workers in Thailand do not receive the minimum wage stipulated by Thai law, on average their earnings are still much higher than what they would expect to receive in Lao PDR. For example, a migrant labourer in the agricultural sector earns on average THB1,500-4,500 (USD39-USD118); a labourer in the construction sector receives THB2,500-3,900 (USD65-102); workers in private households average THB1,000 (USD26); and those in the manufacturing sectors are paid around THB2,300 (USD60).<sup>2</sup>

During the March 2007 round of the migrant registration programme in Thailand (as required by the Cabinet Resolution, dated 19 December 2006, for those requiring valid identification from March 2007-February 2008), a total of 9,519 Laotians registered with the Thai Government. During the July 2007 round (as required by the same Cabinet Resolution, for those requiring identification valid from July 2007-June 2008), a further 12,140 Laotian workers registered.<sup>3</sup> The provinces of Lao PDR that sent the most migrants to Thailand were Bokeo, Xayabouly, Vientiane, Vientiane Capital, Borikhamxay, Khammoune, Savannakhet, Saravanh and Champassack.<sup>4</sup> According to the registration data in 2007, 43 percent of all the registered Laotian female workers were employed as domestic workers while 14 percent worked in agriculture and animal husbandry. Among the Laotian male workers registered in 2007, 26 percent worked in agriculture and animal husbandry, 11 percent in construction, and 10 percent in domestic work.

### **1. Migration-Related Policies in Lao PDR**

In the past most of the migration flows from Lao PDR to Thailand were through informal channels as there were limited opportunities for officially sanctioned cross-border migration. Since 1992, the Thai Government initiated a policy to register migrants with irregular status in the country, and the policies that have followed since 1996 allow Laotian migrants, along with migrants from Burma and Cambodia, to regularise their status. In 1999, the Lao PDR government, along with other governments from the Asia Pacific region, adopted the Bangkok Declaration on Irregular Migration, which was the outcome of the 'Symposium on Migration Towards Regional Cooperation on Irregular/Undocumented Migration' organised by the Royal Thai Government and the IOM in April 1999. From 2000 onward, the Lao PDR government began implementing its own policy measures.

The Lao PDR government set up a fact-finding team in 2002 in response to a proposal by the Thai government. During the First ASEAN Senior Labour Official Meeting and the 16th ASEAN Labour Ministers Meeting of May 2002 in Vientiane, the Minister of Labour for Thailand reported

that nearly 1,200,000 undocumented migrant workers had been registered, of which approximately 59,000 were Laotian migrant workers, and that there were many more undocumented Laotian migrant workers who had not registered.

The Labour Employment Division of the Lao PDR government of proposed regulations and procedures for sending Laotian workers abroad, and on 28 May 2002 the Prime Minister issued Decree No. 68/PMO on 'Sending Lao Workers to Work Abroad'. The Decree sets out the foundations and guidelines for the legal migration of Lao workers to work abroad.

On 29 July 2002 the Minister of Labour and Social Welfare issued the Directive for the Implementation of Decree No. 68/PMO, or No.2417/MLSW. To finalise the matter, the Regulator for the Minister of Labour and Social Welfare on the Types of Jobs and Regions Prohibited for Sending Lao Workers to Work was issued as No.3824/MLSW.

The Lao Ministry of Labour and the Thai Ministry of Labour signed a Memorandum of Understanding (MOU) on Employment Cooperation on 18 October 2002. According to the MOU, both governments must take measures to open legal channels for migration.<sup>5</sup>

Following the fact-finding mission of 2002, the Minister of Labour and Social Welfare issued a Decree for the creation of a Special Task Force for Solving the Problems associated with Lao Migrant Workers in Thailand (No.102/MOLSW, dated 13 January 2003). The taskforce was mandated to facilitate cooperation among concerned agencies of the Laotian and Thai governments as well as relevant international agencies.

Although the MOU was signed in October 2002, due to the complexities of the process, the verification of nationality of Laotian migrant workers in Thailand only began in May 2005. As of October 2005, 33,937 migrants in Thailand had been interviewed and 33,908 had been verified as Laotian migrants. Twenty-eight were refused, and one remaining on a waiting list.<sup>6</sup> As of February 2007, approximately 48,000 Laotian migrants had been interviewed and had obtained temporary passports. Among the interviewed migrants, more than 70 percent were women, and among these women migrant workers, 90 percent worked as domestic workers in private households.<sup>7</sup>

Other developments following the MOU have included the fresh recruitment of workers from Lao PDR and the involvement of recruitment agencies in the migration process, beginning in January 2006. As of October 2006, 3,090 Laotian workers had been permitted to work in Thailand. Nine private labour recruitment agencies have been approved by the government to recruit workers.<sup>8</sup> According to the Ministry of Labour and Social Welfare, by June 2007 the nine Laotian recruitment agencies had sent a total of 9,412 Laotian workers to Thailand. The majority of workers were sent to work in the construction (296), food-processing (2,386), and industrial sectors (2,130), while other migrants were employed in various other sectors (4,600).<sup>9</sup>

There have been nine meetings between the two governments. The Lao PDR government regards the MOU on Employment Cooperation as an official instrument aimed at regularising migrant workers currently registered and working in Thailand. It establishes the legal framework for future labour recruitment cooperation, and seeks solutions to prevent and combat the expansion of undocumented migration and illegal recruitment networks.

To date, Decree Nos.68/PMO, 2417/MLSW (Directive for implementation of No.68/PMO), 3824/MLSW (Regulations on the type of jobs and regions excluded from receiving Laotian migrant workers) are the main instruments employed by the Lao PDR government to facilitate and manage labour migration and the employment of Laotian nationals abroad.

***The government's role in sending Laotian workers abroad***

The responsibilities of the Ministry of Labour and Social Welfare (MOLSW) are as follows:

- To issue permits for recruitment and employment agencies;
- To establish clear regulations to manage these agencies;
- To monitor the deployment of Laotian nationals employed abroad;
- To contact and cooperate with concerned organisations; and
- To formulate action plans in sending Laotian workers abroad in accordance with the five year and annual plans.

While there has been an increase in the number of recruitment agencies, the MOLSW has found it difficult to carry out inspections to monitor the practices of these agencies, largely due to the limited number of staff assigned to this task posted within the Department of Labour. It is difficult for the MOLSW to make any plans of action, since no labour attachés have been appointed in the receiving countries. This makes it difficult for the MOLSW to fully understand the intricacies of the foreign labour markets.

***The criteria, rights and duties of Laotian workers permitted to work abroad***

The Lao PDR government has established the following criteria for Laotian workers to become eligible to work abroad:

- They must have full Laotian nationality;
- They must be at least 18 years of age;
- They must have completed primary education or higher;
- They must be in good health; and
- They must be a 'good' citizen.

The condition stating that potential migrants must have completed a minimal level of education in effect prevents many women from migrating, as the primary school completion rate for females in Lao PDR is just 14.4 percent.<sup>10</sup>

The decrees acknowledge the following rights for Laotian workers abroad:

- To receive wages and other bonuses as stated in their contracts of employment;
- To receive the protection of personal benefits according to their contracts and applicable laws; and
- To sign a contract with a recruitment agency engaged in sending workers abroad.

Generally speaking, existing labour laws cover Laotian workers abroad, but in practice, different recruitment agencies employ different practices. Moreover, domestic work, the sector that employs the largest number of Laotian migrants, is not covered by either Laotian or Thai labour law. Laotian migrants employed in this sector are therefore left unprotected. In all sectors, consistent practices in terms of income tax, service fees, social security, welfare, protection strategies and legal benefits have yet to be implemented.

The decrees create the following duties for Laotian migrant workers abroad:

- To strictly obey the working rules and regulations of the receiving country;
- To comply with the terms and conditions as agreed upon under their contract of employment;
- To respect the rules, laws and traditions of Lao PDR as well as those of the receiving country; and
- To pay income tax to the government in accordance with the relevant regulations.

In this context, the migrant workers may have to pay income taxes in both countries, i.e. to the government of Lao PDR as well as to the government of the receiving country.

***The criteria, rights and duties of the recruitment agencies sending workers abroad***

The recruitment agencies sending workers abroad must be authorised by the government, possess liability endowment insurance, and have competent and knowledgeable staff. However, Decree No. 68/PMO does not clearly outline the amount of liability endowment required, which is important for paying legal settlements in the case of labour disputes involving Laotian migrant workers, or payments necessary in case of emergency.

Decree No.68/PMO and Directive No.2417/MLSW permit agencies to undertake the following:

- To explore foreign labour markets and sign contracts with companies abroad;
- To deploy workers abroad as per the conditions stated in their contract of employment;
- To receive a service fee; and
- To protect the interests of the company in accordance with the law.

Charging service fees for recruitment to work abroad is explicitly prohibited for government organisations, but there is no similar law applicable to service fees charged by private companies. The Lao PDR government plans to issue a supplementary decree to close the loopholes that currently exist.

According to the decree, the agencies have the following duties:

- To manage the Lao workers;
- To respect the tradition, laws and regulations of Lao PDR as well as the country where the Lao workers have been sent to work;
- To provide information to the Ministry of Labour and Social Welfare;
- To be responsible for the welfare of the Lao workers that have been sent to work abroad;
- To organise training for the Lao workers prior to departure as supervised by the Ministry of Labour and Social Welfare;
- To pay income tax in accordance with the law.

Since there are currently no independent organisations responsible for the protection, benefits and welfare of Laotian migrant workers, the decree has spelled out that the recruitment and employment agencies should be responsible for the protection of workers' rights.



Many of the construction and renovation of houses are funded by migrant remittances. North of Lao PDR, 2006.

The agencies are required to file the following documents:

- A request letter for permission to send workers abroad submitted to the MOLSW;
- A business license for sending workers abroad;
- Employment contracts between the Laotian workers and the agency;
- A contract between the agency and the company in the receiving country that wishes to recruit workers.

The Laotian government is aware that contracts can be fraudulently obtained in order to smuggle people out of the country. Therefore, additional provisions should clearly spell out which government agencies are responsible for certifying the contracts.

There are numerous obstacles in popularising the use of official channels of migration. First, the legally sanctioned processes of recruitment and approval are slow, bureaucratic and expensive. Second, Laotian migrant workers are required to travel all the way to Vientiane to enlist with recruitment agencies to initiate the necessary procedures. Those who live in southern provinces tend to avoid this route, simply crossing the border of their own volition.

Moreover, as pointed out by a UNIFEM study, domestic work has not been recognised and approved as an official sector of employment under the MOU, despite being a recognised sector for registration in Thailand.<sup>11</sup> As mentioned earlier, more than 90 percent of the 48,000 Laotian

women migrant workers already working in Thailand whose nationality has been verified by the government of Lao PDR are employed as domestic workers. Laotian migrant domestic workers are preferred by employers in Thailand because of similarities in language and culture. However, the rights of domestic workers are not properly protected by either Thai or Laotian labour laws, nor is it common for domestic workers to possess proper contracts of employment. Lack of protection and lack of access to the newly established legal migration channels are likely to leave the Laotian migrants working as domestic workers vulnerable to exploitation.

### **2. Counter-Trafficking Measures in Lao PDR**

In response to the issues of trafficking in children, the Lao PDR government has produced a national work plan and established national committees comprising high-level officials from relevant ministries, organisations and unions. One of these organisations is the Lao Anti-People Trafficking Unit (LAPTU), which investigates cases of human trafficking and cooperates with relevant national, regional and international organisations to assist victims of trafficking. The Unit belongs to the Ministry of Public Security and seeks to strengthen national defences in order to keep the peace and develop the nation.

In 2004 a Law on the Development and Protection of Women was passed which criminalises trafficking and aims to protect victims.

Lao PDR ratified the ILO Convention 182 (concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour) as well as Convention 138 (concerning Minimum Age for Admission to Employment). As of March 2005, the ILO provides technical assistance regarding the implementation of these two conventions to the Lao PDR government through its International Programme on the Elimination of Child Labour project (IPEC).<sup>12</sup>

In July 2005, the Laotian Ministry for Social Development and Human Security and the Thai Ministry of Labour and Social Welfare signed an MOU to Combat Trafficking in Persons, especially Women and Children. The MOU aims at the prevention and suppression of trafficking and the protection of victims, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000).<sup>13</sup>

### **3. Immigration into Lao PDR**

Lao PDR is predominantly a sending country of migrants. However, there are a small numbers of migrants in Lao PDR from other GMS countries, including professionals, immigrants, and temporary migrant labourers. As of 2003, the number of foreign workers registered at the Ministry of Labour and Social Welfare in Lao PDR was 1,731, including 685 Chinese, 319 Vietnamese, 367 Thai and 360 from other countries.

The Lao PDR government applies the following strict working regulations for foreigners:

- 1) Any foreign company wishing to conduct business in Lao PDR must obtain a license from the Government's Foreign Investment Management Department, Committee for Planning and Investment;
- 2) Foreign employees must also apply for a license granting them permission to work from the Labor Department, Ministry of Labor and Social Welfare;

- 3) They must furthermore apply for a two-year national residents permit; and
- 4) They must apply for a multiple visa from the Ministry of Foreign Affairs.

Most of the registered foreign workers who satisfy these regulations are businessmen or professionals. According to other available data, out of a total of 13,210 foreign workers in Lao PDR, 3,257 work in Vientiane, the capital city. The Chinese Association in Vientiane, on the other hand, estimates the number of Chinese in Vientiane to be around 11,300, most of whom are immigrants.<sup>14</sup> Chinese authorities estimate that there are 80,000 Chinese professionals and labourers scattered throughout the country, working in architecture, mine development, and construction work.<sup>15</sup> The Laos-Vietnam Co-operation Agency estimates the number of Vietnamese in Lao PDR to be around 15,000 as of 1999. While the majority of the Chinese migrant population has obtained Laotian citizenship, only around 5 percent of Vietnamese migrants are known to have Laotian citizenship.<sup>16</sup> Many of these Vietnamese migrants are employed in the construction industry, retail trading sector, and factory production, while others work as street vendors. UNICEF and MLSW report that there are Vietnamese women sex workers in Southern Lao PDR, mostly serving other Vietnamese migrant labourers.<sup>17</sup>

### **Endnotes**

<sup>1</sup> Inthasone Phetsiriseng, “Gender Concerns in Migration in Lao PDR”, a study conducted for UNIFEM, Lao PDR, February 2007.

<sup>2</sup> Averages as of the first quarter of 2004. Source: Action Network for Migrants, *Passport to Health*, July 2004. This average wage earned by migrants is much lower than that earned by their Thai counterparts.

<sup>3</sup> MAP Foundation, Registration for Migrant Work Permit 2004-2007. Last accessed on 22 February 2008 at: <<http://www.mapfoundationcm.org/Eng/registration.html>>.

<sup>4</sup> Report on Lao Illegal Migration in Thailand, NO. 909/2003.

<sup>5</sup> For full details of the MOU please see MMN and AMC, *Resource Book: Migration in the Greater Mekong Subregion*, 2005.

<sup>6</sup> MAP Foundation, “THE REGULARISATION OF MIGRANT WORKERS FOLLOWING THE MOUs: 1. Lao PDR” Last accessed at: <<http://www.mapfoundationcm.org/Eng/MOUupdate.html>>.

<sup>7</sup> Ministry of Labour and Social Welfare, Lao PDR, cited in Inthasone Phetsiriseng, February 2007.

<sup>8</sup> See No. 6.

<sup>9</sup> Kabmanivanh Phouxay, *et al*, “Whether you go illegally or legally in the end it’s the same, you’re cheated”, A study of formal and informal recruitment practices of Lao workers migrating to Thailand, prepared for ILO, Vientiane, January 2008.

<sup>10</sup> See the country’s overview, page 22.

<sup>11</sup> See No. 1.

<sup>12</sup> ILO-IPEC, “Where We Work: Lao PDR”, updated March 2006. Last accessed at: <<http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-laosdetail.htm>>.

<sup>13</sup> UNIAP, “Lao PDR: National Plans and Policies”. Last accessed at:  
<[http://www.no-trafficking.org/content/National\\_Plan/national\\_plan\\_lao.htm](http://www.no-trafficking.org/content/National_Plan/national_plan_lao.htm)>.

<sup>14</sup> MMN & AMC, *Resource Book: Migration in the Greater Mekong Subregion*, 2005, p. 69.

<sup>15</sup> AMC & MMN, *Migration Needs, Issues, and Responses in the Greater Mekong Subregion*, 2002.

<sup>16</sup> MMN & AMC, 2005, p. 70.

<sup>17</sup> UNICEF and MLSW, 2001, p.27 cited in *ibid*, p.70.