

Thematic brief 3

Rethinking labour recruitment to reduce exploitation and trafficking of migrants

Henrik Alffram, Lisa Denney, Pilar Domingo and Sasha Jespersen

May 2023



Labour migration and trafficking in persons: a political economy analysis

Key messages

The labour migration regimes that have emerged in Southeast Asia over the past 20 years have repeatedly failed to protect workers against trafficking and other forms of exploitation.

In practice, migration often takes place in parallel to the formal channels laid down in domestic legislation and regulated in the memoranda of understanding (MoUs) between countries of origin and destination.

It has been argued that it is safer for labour migrants to use these state-sanctioned regimes than irregular channels of migration, but this thematic paper shows that even where labour migrants do use regular migration channels, they are still at risk of abuse, exploitation and trafficking.

Regular migration processes will contribute effectively to reducing and ending human trafficking and labour exploitation only if they are fundamentally reformed.

Readers are encouraged to reproduce material for their own publications, as long as they are not being sold commercially. ODI requests due acknowledgement and a copy of the publication. For online use, we ask readers to link to the original resource on the ODI website. The views presented in this paper are those of the authors and do not necessarily represent the views of ODI or our partners.

This work is licensed under CC BY-NC-ND 4.0.

Alffram, H., Denney, L., Domingo, P. and Jespersen, S. (2023) 'Rethinking labour recruitment to reduce exploitation and trafficking of migrants'. ODI Thematic brief. London: ODI (<https://odi.org/en/about/our-work/political-economy-of-labour-exploitation-and-trafficking-in-persons-in-southeast-asia/>)

This is an ODI publication, produced in partnership with ASEAN-ACT. ASEAN-ACT is supported by the Australian Government and implemented by DT Global. The Australian Government funded this publication through the Department of Foreign Affairs and Trade. The views expressed are the authors' alone and are not necessarily the views of the Australian Government.

Acknowledgements

The authors would like to thank Paul Buckley, Naruephon Boonyaban, Marika McAdam and Lucia Pietropaoli for their support and valuable insights, as well as the wider ASEAN-ACT team. We also thank Kathryn Nwajiaku-Dahou for quality assurance. We would also like to recognise the support of Maegan Rodricks and Rawena Russell in the publication process, Deborah Eade for copy-editing, and Elaine Antwi for managing the project.

The thematic brief was funded by the Australian Government through the ASEAN-Australia Counter Trafficking (ASEAN-ACT) program.

About this publication

This publication has been developed through a research partnership between ASEAN-ACT and ODI. The research involved conducting an applied political economy analysis to understand the dynamics of labour exploitation and trafficking in persons in Southeast Asia in order to: 1) improve the evidence base for ASEAN-ACT and partners' programming and policy engagement; and 2) develop and implement a process for feeding that evidence into ASEAN-ACT and partners' programming and consultations on a regular basis.

The research seeks to advance understanding of the vulnerabilities of labour migrants to exploitation and trafficking. This can contribute to improved response capabilities of state agencies and international programmes to address these issues and strengthen protection and support for labour migrants and victims of trafficking in persons.

Phase 1 of the research project includes four country studies: Cambodia, Laos, Thailand and Vietnam.

This thematic brief is the third of four in Phase 1 of the research project.¹ Thematic briefs distil findings from across the four country studies on key cross-cutting issues. This brief focuses on the vulnerabilities and protective capacities of labour migrants.

The research team

Henrik Alffram, Lisa Denney, Pilar Domingo, Sasha Jespersen, T.M. Huong Ngo, Kuanruthai Siripatthanakosol, Leang Sok, Cong Giao Vu, and Siliphaithoun Xayamoungkhoun.

¹ For brief 1 see S. Jespersen, H. Alffram, L. Denney and P. Domingo (2022) 'Labour migration in Cambodia, Laos, Thailand and Vietnam: migrants' vulnerabilities and capacities across the labour migration cycle.' Thematic Brief 1. London: ODI and ASEAN-Australia Counter Trafficking. For brief 2 see Denney, L., Alffram, H., Domingo, P. and Jespersen, S. (2023) 'Addressing exploitation of labour migrants in Southeast Asia: Beyond a counter-trafficking criminal justice response'. ODI Thematic brief. London: ODI.

Contents

Acknowledgements.....	4
Contents.....	5
Acronyms.....	6
1 Introduction.....	7
2 Regular and irregular migration.....	8
3 The recruitment process.....	10
4 Abuse, flaws and challenges in the regular migration process.....	13
4.1 Unscrupulous and negligent recruitment agencies.....	13
4.2 Debt bondage.....	14
4.3 Insufficient pre-departure training.....	15
4.4 Risks due to increased contact with authorities.....	15
4.5 Non-payment and substitution of contracts.....	15
4.6 Confiscation of documents.....	16
4.7 Absence of opportunity to change employer.....	16
5 Required reforms.....	17
References.....	21

Acronyms

CSO	Civil society organisation
ILO	International Labour Organization
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NGO	Non-government organisation
TIP	Trafficking in persons

1 Introduction

The governments of Cambodia, Lao PDR and Vietnam all promote labour migration – with varying levels of prioritisation– and have done so through official policies at least since the 1990s and early 2000s in the case of Laos. They see migration as a strategy for addressing insufficient domestic employment, attracting remittances, alleviating poverty and increasing economic development (Kingdom of Cambodia, 2018; Anh, 2008).

A range of mechanisms has been set up by the three governments to facilitate labour migration – including memoranda of understanding (MOUs) with destination countries, and government-registered recruitment agencies that facilitate employment and travel between source and destination countries. With growing concerns about the risks of human trafficking and labour exploitation in the region, there has been increased emphasis on the importance of these mechanisms in offering protections to labour migrants. Yet there remain significant challenges to attract prospective migrants to use the regular migration system, and to ensure that it does indeed provide greater protection than irregular channels. This thematic briefing paper sets out these challenges and makes recommendations for how regular migration channels might be improved.

This brief draws on research undertaken by ODI for the ASEAN-Australia Counter Trafficking (ASEAN-ACT) Program, looking at the political economy of vulnerability to trafficking of labour migrants in ASEAN countries. To date, country studies have been undertaken in Cambodia, Laos, Thailand and Vietnam, with additional studies planned for 2023. The paper synthesises findings from the first four country studies with the aim of distilling key messages for the counter-trafficking community.

2 Regular and irregular migration

Labour migration can be divided into two main categories – regular and irregular. Regular migration is ‘migration that occurs in compliance with the laws of the country of origin, transit and destination’ (IOM, 2019). It typically follows the process set out in a bilateral agreement or MOU signed by the source and destination countries. While bilateral agreements are legally binding, MOUs are ministerial-level agreements that do not have legal force and therefore do not have primacy over national legislation. In Southeast Asia, MOUs have been the main instruments for regulating cross-country cooperation on migration for at least 20 years (ILO, 2015). According to the International Labour Organization (ILO), the Asia-Pacific countries of destination tend to prefer MOUs over bilateral agreements ‘probably because as non-binding agreements they are easier to negotiate and implement – and to modify according to changing economic and labour market conditions’.² Thailand, as a major destination country, has signed MOUs with several countries in the region, including Cambodia, Laos, Myanmar and Vietnam.

The degree to which the domestic legislation provides a comprehensive framework for migration varies from country to country, but gaps and inconsistencies are common, which contributes to difficulties in addressing human trafficking and related challenges of exploitation. Even when legal frameworks are comprehensive, implementation is inconsistent and partial.

While there is no generally accepted definition of irregular migration, the International Organization for Migration (IOM) describes it as the ‘movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination’ (IOM, 2019). In Southeast Asia this often means that labour migration that does not follow the process set out in a MOU is considered irregular by the two parties to the memorandum. However, the fact that people migrate for labour purposes but does not follow the process set out in a MOU does not necessarily mean that they are working irregularly in the country of destination. Neighbouring countries sometimes have special sub-regional arrangements and agreements that aim to regulate border and seasonal migration. Thai legislation includes a so-called border

² https://www.ilo.org/asia/areas/labour-migration/WCMS_161105/lang-en/index.htm

employment regulation under which employers in some provinces can legally hire migrants on three-month visas. Over the years, Thailand has also used amnesties and other ad-hoc measures to give legal status to workers who have entered the country without the required permits.

The degree to which migration follows a regular process varies between different migration corridors. Although the number of regular migrants has increased over the years, irregular labour migration continues to predominate on certain routes, such as those from Cambodia, Laos and Myanmar to Thailand. In relation to other migration routes, such as those to South Korea, Japan and Taiwan, regular migration dominates, not least because air travel makes it impossible to cross borders without proper documentation. However, there are cases where migration begins through regular channels, but becomes irregular. For example, the visas of Vietnamese workers going to South Korea and Taiwan are tied to a particular employer. There are many instances where workers have changed employers, either because of poor conditions, a desire or need to extend their stay, or when they have found better-paid employment. These workers are classified as 'runaway workers' and have soured relations between the host country and Vietnam (Hoang, 2020; Ishizuka, 2013).

The extent to which migration is regularised also differs according to the employment sector. ILO's analysis shows that regular migration to Thailand is more common among manufacturing and construction workers than among fishers and domestic workers (ILO, 2015). It is also more common for year-round agricultural workers to have regular status than it is for seasonal agricultural workers. One reason for these differences is that countries of origin have placed restrictions on the type of work that their citizens can perform abroad. Under the Thai–Laos MOU, for instance, domestic workers were initially not included, and thus any migrants travelling to Thailand for domestic work were not covered by the legal framework. This was later rectified, and domestic workers are now included under the MOU and thus able to migrate regularly.

In the case of Cambodia, the government has prohibited placement of Cambodian workers in the fishing sector in Thailand and the domestic sector in Malaysia (Tunon and Rim, 2013). In 2011, following several reports of physical and mental abuse, the Cambodian government barred recruitment agencies from sending domestic workers to Malaysia, although the ban did not stop Malaysia from accepting Cambodian domestic workers. According to a study by the ILO and UN Women, the ban, which was lifted in 2017, resulted in an increase in unlicensed recruitment agencies and individuals in Cambodia advertising for domestic workers to go to Malaysia. It also led to a proliferation of deceptive recruitment practices, including contract substitution (Napier-Moore, 2017).

3 The recruitment process

In most labour migration regimes in Southeast Asia, recruitment agencies play a key role. In Cambodia, Laos and Vietnam these agencies are typically private businesses that operate under government-issued licenses. The agencies recruit, train (sometimes), organise the required paperwork (passports, work permits) and send workers to employers abroad. They also have formal obligations relating to the workers' situation once they have reached the workplace and for their repatriation, although these obligations are often not fulfilled in practice. Under the legislation in force in Cambodia, for example, private recruitment agencies should among other things ensure that the workers receive the social security benefits to which they are entitled in the country of destination, assist in resolving any disputes arising between the worker and the foreign employer and bear the costs for legal assistance if required, and ensure workers' safe return to Cambodia at the end of their employment contracts.

Judging from the rapid increase in the number of private recruitment agencies, substantial profits can be made in the recruitment business. As of 2022, there are 135 registered agencies (of which 119 are operational) in Cambodia (Alffram and Sok, forthcoming), 38 in Laos (Denney and Xayamoungkhoun, forthcoming) and 491 in Vietnam (Jespersion, Ngo and Vu, forthcoming). The size of the recruitment industry and the degree to which the government regulates the operations of the private recruitment agencies vary from country to country, as do their reputations.

A major challenge for the formal recruitment and migration processes is that they are comparatively slow and costly. Many of those who decide to migrate face desperate economic hardship and pressing debt and urgently need to secure an income. For them, regular migration may not be an option. They regard the regular MOU-guided process to be too slow. In Cambodia and Laos, a potential worker typically has to wait three to six months from first contacting a recruitment agency to when they can travel abroad. According to one study, the MOUs Laos and Cambodia have with Thailand 'require complicated submissions and approvals processes involving workers, employers, recruitment agencies on both sides of the border, provincial and central level labour ministries in both origin countries

and Thailand, ministries of foreign affairs, and various other ministries and departments' (ILO, 2015: 11).

Even when workers can afford to wait, they may not have the upfront funds required to migrate regularly. It is estimated that a Cambodian worker who goes through a migration agency to find a job in Thailand has to pay between USD 600 and 800 (Alffram and Sok, forthcoming). In Laos, it is estimated that the average worker pays slightly less – about USD 542 – for regular migration to Thailand (ILO, 2020; IOM 2021: 19). The high costs are partly related to the substantial administrative costs for obtaining the requisite official documents, such as passports. Vietnam has the highest recruitment fees in the region. Despite a government cap on brokerage commissions, which should be the equivalent of one month's salary for each year of the contract, Hoang and Yeoh (2015) found that most pay between five and 15 times this amount. Japan is the most expensive destination, averaging between USD 8,000–10,500 (CREST, 2021). Additional amounts have been charged as service fees, which are not capped, and are retained by the recruitment agency. As discussed below, new legislation which came into force in January 2022 removed the requirement for migrant workers to pay these service fees. Given that recruitment agencies have previously used false documentation to disguise how much migrants have paid, there may still be loopholes in the new legislation (see Zhang et al, 2021).

Alongside this regular recruitment process, a far higher number of migrants seek recruitment through informal processes. As of April 2022, Thailand had roughly 1.8 million registered migrant workers. Of these, 23% had entered Thailand through the MOU process. (ILO, 2022). Prior to the Covid-19 pandemic, in August 2019, Thailand had 2.9 million documented migrant workers from Myanmar, Cambodia and Laos.³ Of these, 34% had entered Thailand through the MOU process and 2% worked there under a border employment scheme. The remaining 63% had found work through irregular channels and subsequently obtained a work permit under a Thai policy allowing for the regularisation of irregular migrants. The number of workers who entered Thailand irregularly and did not use the regularisation process, and thus remained undocumented, is not known (ILO, 2020). Of those who enter Thailand irregularly, roughly half resort to a recruitment agency when they are in Thailand and not prior to their journey in the country of origin (ILO, 2020b).

Irregular migration is often facilitated by relatives, friends or other brokers from within the community. Brokers facilitate travel to or employment in a destination country for a fee. As there is a tendency among governments and other stakeholders to see regular migration as safe migration, brokers may be labelled 'traffickers' simply because they facilitate irregular migration (Denney and

³ More recently, considerably lower figures have been reported. As of April 2022, Thailand had according to one study roughly 1.8 million registered migrant workers in total. Of these, 23% were MOU migrants. (ILO, 2022).

Xayamoungkhoun, forthcoming; Denney et al., 2023). Indeed, brokers are often the focus of criminal investigation and prosecution for crimes of trafficking – not least because they are the easiest targets for the criminal justice systems in source countries (US Department of State, 2022; Denney et al., 2023). Yet often, brokers are people from the community, generally known to the prospective migrant – and frequently a friend or family member (Haughton, 2006: 4). They are often people with some connections in the destination countries – either through family or having previously been labour migrants themselves (Molland, 2010; Rigg, 2007).

Brokers can, however, also be the first link in a chain of abuse and exploitation. With promises of high salaries and good working conditions, brokers working for recruitment agencies have, for instance, contributed to the recruitment of children as workers and subsequently confined in pre-departure training centres and subjected to various other forms of abuse and exploitation, as noted below.

Among irregular Cambodian migrants going to Thailand are those who already have a job offer when they depart, as well as those who start looking for a job once they arrive. Many are repeat irregular workers who know how to navigate the migration system by themselves. Some irregular migrants cross the border through the official border crossings with a passport or a border pass, while others circumvent these and enter Thailand without documentation.

In Vietnam, some brokers tend to rely on ‘word of mouth’ to access new migrants, and they have been reported sometimes to be more responsive to migrant workers than registered recruitment agencies (Hoang, 2020). Licensed agencies have also sought to tap into the networks of brokers to identify new recruits, and have even sold their licenses to unregistered agencies (Hoang, 2020).

4 Abuse, flaws and challenges in the regular migration process

Governments and some commentators often argue that it is predominantly irregular migrants who are vulnerable to trafficking and other forms of exploitation, and that the government-sanctioned formal processes provide a high degree of protection for the labour migrants (Alffram and Sok, forthcoming). There is ample evidence, however, that the regular migration processes often fail to ensure that migrants' rights are upheld and protected. Indeed, the laws in force often regularise practices that increase vulnerabilities to exploitation and human trafficking.

4.1 Unscrupulous and negligent recruitment agencies

In Cambodia, recruitment agencies have over the years been accused of various forms of misconduct and of illegal actions. Accusations include recruitment on false promises regarding salaries and living conditions, and sending people abroad without the required documentation (Blomberg, 2014a; Blomberg, 2014b; HRW, 2011). Cambodian women sent to Malaysia for domestic work have reported debt bondage, forced confinement, underage recruitment and passports being withheld (Blomberg, 2014b; David, 2012).

In Vietnam, studies have found that many migrant workers using licensed recruitment agencies pay in excess of legal limits for their services as there is a lack of transparency on fees and costs (CREST, 2021). While recruitment agencies are usually legally or contractually obliged to assist workers until they return to their own country, there are many reports of agencies ending their support after having transported the workers abroad (Jespersion, Ngo and Vu, forthcoming; Alffram and Sok, forthcoming). For instance, although in theory, recruitment agencies have a complaints mechanism for labour migrants working abroad, in practice these do not appear to offer meaningful protections or recourse (Jespersion, 2022).

The laws and policies regulating the establishment and management of recruitment agencies tend to lack effective safeguards to reduce trafficking risks (ASEAN-Australia Counter Trafficking n.d.; McAdam n.d.). There is also little evidence of effective government oversight of

the recruitment agencies in the region (ILO, 2015), and agencies and their representatives are rarely sanctioned or punished in the event of illegal activity or misconduct. According to human rights workers and other observers, in Cambodia there are close links between recruitment agencies and senior government officials, which makes law enforcement officials reluctant to investigate allegations of criminal conduct (Alffram and Sok, forthcoming). There are also instances in which law enforcement officers collude with recruitment agencies and act as their official representatives. Among the few examples of owners or managers of recruitment agencies being held to account is the 2011 conviction in Cambodia of a manager of VC Manpower, who was sentenced to 13 months' imprisonment for detaining child recruits at a training centre in Phnom Penh (HRW, 2011).

There are also indications that some recruitment companies have started taking more responsibility for working conditions, and face increased demands on pre-departure preparations by the destination country (Jespersion, Ngo and Vu, forthcoming). In Laos, recruitment agencies themselves report varying standards among agencies – with some viewed as particularly lax with weak standards and protections (Interviews with recruitment agencies, Laos, January 2022). In 2020, two Cambodian industry associations for private recruitment agencies adopted a joint code of conduct developed in cooperation with the government and the ILO. As far as the Research Team is aware, however, the extent to which the code has contributed to changed practices has yet to be assessed.

4.2 Debt bondage

The high and sometimes excessive fees charged by recruitment agencies and passed on to prospective labour migrants can contribute to situations akin to debt bondage. It is not unusual that migrants have to work for months to pay back recruitment agencies and employers for costs associated with their recruitment and migration. This, in effect, means they are indentured labour for that period of time. In Vietnam, the government also requires labour migrants to pay a safety deposit when migrating to some countries to prevent them from leaving their jobs and this deposit is returned only on completion of the labour contract. Situations of debt bondage also put labour migrants at greater risk of exploitation and trafficking because they are more inclined to put up with poor treatment or conditions in order to get out of debt (Jespersion, 2022).

While debt bondage can also be a problem in relation to irregular migration, the higher costs typically associated with regular migration make the problem particularly severe. The ILO Private Employment Agencies Convention (No. 181) of 1997 states that 'private employment agencies shall not charge any fees or costs to workers'. None of the countries in Southeast Asia is a party to the convention. Thai legislation establishes the principle of zero recruitment fees for

migrant workers, but the wording is unclear, and in practice agencies charge workers for their services (Domingo and Siripatthanakosol, forthcoming; Verité, 2019). Vietnam has had some of the highest fees for migrant workers, although new legislation which came into force in January 2022 removes the obligation on migrant workers to pay brokerage commissions and service fees, which should address this (ILO, 2022).

4.3 Insufficient pre-departure training

The recruitment agencies typically provide some training to workers they send abroad. However, in Cambodia it has been found that training fails to meet the legally required content⁴ and the needs of workers (Alffram and Sok, forthcoming). In Laos, the training is sometimes limited to only a couple of hours (Denney and Xayamoungkhoun, forthcoming). Some Vietnamese recruitment companies sending migrants regularly have been found to take more responsibility for working conditions, and face stricter controls on pre-departure preparations by the destination country. They provide training, including basic language training, skills required for the role, working discipline, and Vietnamese law and host-country law related to labour export. Other recruitment agencies provide unsuitable training to prepare migrants to work in another country, and the living conditions during the training impose restrictions on them (Jespersion, Ngo and Vu, forthcoming). Generally, the lack of effective avenues for workers to seek justice and obtain redress also undermines the relevance of training as a counter-trafficking measure.

4.4 Risks due to increased contact with authorities

For some labour migrants, the authorities in both origin and destination countries are a significant source of abuse and exploitation. This may be rent-seeking border officials during transit, or abusive or rent-seeking police or workplace inspectors at the destination. Some organisations argue that the regular migration process in fact increases the migrants' risk of being subjected to corruption and intimidation as it increases their exposure to the authorities (ILO, 2015). Interviews with Cambodian civil society representatives and former migrant workers in Thailand testify to regular police raids, arrests and payment of bribes and arbitrary fees to Thai law enforcement officials (Alffram and Sok, forthcoming).

4.5 Non-payment and substitution of contracts

There are many reports of migrants being assigned to a different job with different working conditions than the one they signed up to. Related to this are labour rights violations such as non-payment or

⁴ Official regulations require that pre-departure training includes training on 'work system, customs and traditions, and basic laws of the country in which they will be working, as well as health issues, safe migration and labor rights' (The Asia Foundation, 2011).

underpayment of salaries and excessively long working hours (Alffram and Sok, forthcoming; Bengsten, 2022).

Regular migration assumes that employers will adhere to legislation. The migration of Vietnamese migrants to Japan is through a programme formerly called the Technical Intern Training Programme (TITP), where workers are required to go to a supervisory organisation to meet the ‘training’ requirements of the visa, with pay deducted for that period. In some instances, employers have not provided any training, and workers were instead working on production lines (Bengsten, 2022).

4.6 Confiscation of documents

Many migrants report that their employers confiscate their passports, work permits and other documents. Reportedly, the basis for the confiscation is that the employer wants to ensure that the migrant does not leave before paying any recruitment-related debt. A study on forced labour among Vietnamese workers in Japan and Taiwan found that the confiscation of identification documents was the most frequent restriction of personal freedom, experienced by 18% of workers in Taiwan (Zhang et al., 2021).

4.7 Absence of opportunity to change employer

As the irregular migration process is often based on recommendations made by relatives, friends or acquaintances, prospective migrants often have a reasonable picture of their employer and the conditions under which they will be working. If the employment does not meet the migrant workers’ expected conditions, they can often leave and find another job. The regular migration process, however, typically ties the employee to a particular job for a particular employer for a certain period of time, often two years. Thus, a migrant who is dissatisfied with their working conditions or is being exploited or otherwise abused is usually unable to leave to take up other employment during this period without losing their status as a regular migrant.

For migrants travelling to Japan and South Korea, and to Taiwan from Vietnam, contracts are signed before departure, which guarantees the job on arrival. However, these conditions also place restrictions on migrants, as they cannot change employers and cannot return home before completing their contract (Mekong Migration Network, 2022).⁵ With the high fees for recruitment to these countries, migrants often seek out better-paid employment, or additional work once their contract ends. This results in a breach of contract, however, and they move from being regular to irregular migrants.

⁵ Interview with returned migrant workers, Vietnam January 2022.

5 Required reforms

Since MOUs were introduced and domestic legislation strengthened and developed to regularise migration in relation to some of the largest migration corridors in Southeast Asia, there have been few serious attempts to create effective migration regimes that ensure the benefits of migration while at the same serving to prevent exploitation and human trafficking. As a consequence, irregular migration remains the primary form of labour migration in major migration corridors, such as those between Cambodia and Thailand and between Laos and Thailand, and migrants remain vulnerable to exploitation and abuse. If regular migration is to meet expectations that it offers safe migration that protects labour migrants from exploitation or trafficking – or indeed from negligence and other unsafe work practices – then fundamental reform is required.

Thailand introduced measures through a Royal Ordinance in 2017 which moved in the direction of establishing that neither employers nor recruitment agencies should charge a recruitment fee to migrant workers. It also introduced some qualified flexibility to change employment. Such legal changes are important. However, implementation is not effective, practices vary and secondary legislation to clarify what constitutes recruitment costs is still pending (ILO, 2020b).

The recommended reforms that follow would go some way to addressing the deficits of regular migration models and provide greater protection to labour migrants. They are grounded in the fact that existing regular migration regimes often fail to facilitate safe migration and that current legislation often contributes to exacerbating vulnerabilities to trafficking. The recommendations focus on the need to pursue legal reforms centred on the needs and rights of migrants, and the need to develop and strengthen formal and informal oversight mechanisms, and to build broad-based national and regional coalitions to advocate for and promote the necessary changes.

- **Simplify and speed up the migration process:** Unlike irregular recruitment, the regular recruitment process is complex and often takes months to complete. For a prospective migrant in urgent need of an income, regular migration is therefore not an option. Source and destination countries should review MOUs and the various stages in recruitment processes in order to simplify and reduce the time needed for the regular migration process. At the same time, it should take account of the entrenched practice of

relying on informal brokers, working *with* them to better support migrant labourers and avoid exploitative employers.

- **Ensure employers bear the costs of recruitment:** With the exception of special sub-regional arrangements and agreements that aim to regulate the border and seasonal migration, regular migration processes are largely managed by government-sanctioned private recruitment agencies. As the fees these agencies charge workers often lead to a situation of debt bondage, ensuring that recruitment costs are borne exclusively by the employer would be an important step in reducing the vulnerability of regular labour migrants. Such a move would address a key barrier to labour migrants' use of regular systems and could potentially foster a shift towards using these rather than risking irregular migration. One step towards changing current practice for recruitment fees would be for the countries concerned to become a party to the ILO Convention on Private Recruitment Agencies, 1997 (No. 181), which states that 'Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers'. Recruitment agencies could initially be encouraged to voluntarily opt in to the arrangement of employers carrying recruitment costs, which might well attract many more prospective migrants to their business. As soon as possible, countries should, however, legislate for recruitment costs to be borne by the employer in the destination country. Where the resistance to changes in legislation have proven difficult to overcome, where possible, further efforts should be made to increase civil society and public pressure for reform. Where there is already appropriate legislation on the books, it would be helpful support the monitoring and complaints capacity of civil society and labour migrants, where these fees are charged formally or informally.
- **Explore alternative migration processes:** As regular migration processes are typically managed by government-licensed private recruitment agencies, governments should consider allowing alternative recruitment and migration processes. They should, for instance, explore direct recruitment by accredited employers and government-funded recruitment systems, including at ASEAN level. Within the ASEAN context, encouraging a harmonisation of recruitment legislation across the region would contribute to strengthening this approach.
- **Promote mechanisms for migrants to share experiences about recruitment agencies:** Establish or promote existing systems through which migrant workers can share experiences and obtain information about and rate the performance of different recruitment agencies.
- **Develop and enforce strict licensing criteria and establish a consultative process relating to renewal of licenses.** The fact that recruitment agencies in some contexts frequently change

their names and operate under different identities should be addressed and stringent criteria for allowing companies and individuals to obtain licenses as private recruitment agencies should be developed and effectively enforced. Licenses should be regularly reviewed and a system for consulting migrant networks, human rights groups, and trade unions in the renewal process should be considered.

- **Sanction non-adherence to agreed employment conditions:** When migrant workers' salaries, working hours and other employment conditions do not comply with legal requirements and contractual commitments, recruitment agencies and employers, and their individual representatives, should be held to account and sanctioned appropriately. This might involve working through embassies and governments of source countries to blacklist employers that violate workers' rights; and preventing recruitment agencies in source countries from sending labour migrants to such employers. Recruitment agencies that do not take adequate action to ensure that the contractual rights of recruited workers are respected should lose their license. Individuals engaging in acts that constitute trafficking in persons (TIP) or other criminal activities should be punished in accordance with the criminal laws in force. Considering the de facto impunity often enjoyed by individuals in positions of financial and political power, further support should be given to enhance the capacity of human rights groups, legal aid groups and investigative media, where possible, to raise national and international awareness about human trafficking and other forms of labour-related abuse and to expose complicity among government agencies and actors formally mandated to address such abuse.
- **Allow workers to change employers:** The visas of migrant workers should not be tied to a specific employer, as it increases power asymmetries, increases risks of exploitation and creates incentives for regular migrants to become irregular. Safeguards should, however, be put in place to ensure that employers are compensated for costs incurred in the recruitment process.
- **Make complaints systems robust and easy to navigate:** Ensure that a complaints mechanism is available at all stages of the migration process and that workers have free access to lawyers, ombudsmen or similar actors who can assist them in navigating the complaints process. Establish and support the operations of legal assistance organisations with a presence in both countries of origin and destination. Work with civil society organisations (CSOs) to strengthen complaints and oversight capabilities across different jurisdictions, including labour law on observing zero recruitment fees principle. Consider supporting recruitment agencies that want to improve their performance by providing better services to labour migrants; and tackle vulnerabilities to human trafficking and labour exploitation,

including by assisting migrant workers who need to use existing complaints mechanisms.

- **Establish a multistakeholder coalition for migrant worker recruitment reform:** Over the years, there have been various recommendations on how to reform labour recruitment to reduce exploitation and address trafficking of migrants. However, there have been few targeted multi-stakeholder campaigns to effectively push for such reforms and key recommendations have not been implemented. To promote essential reforms of laws and practices, the establishment of an ASEAN regional multi-stakeholder coalition for the reform of migrant worker recruitment should be supported. The coalition should set recruitment reform priorities to counter trafficking and exploitation and develop and implement related advocacy strategies at the regional and national levels. It should ideally bring together migrant workers' networks, trade unions, legal aid organisations, lawyers working pro bono, human rights groups, researchers and politicians, as well as any private-sector actors concerned with such reforms.

References

- Alffram, H. and Sok, L. (forthcoming) 'Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Cambodia'. London: ODI and ASEAN-Australia Counter Trafficking.
- ASEAN-Australia Counter Trafficking (n.d.) 'Briefing Note on Draft Law on Vietnamese Workers Working Abroad Under Contract of the Socialist Republic of Viet Nam (Draft Law 72): Implications for Workers' (<https://aseanactpartnershiphub.com/resource/vt-briefing-note-on-law-72/>).
- Bengsten, P. (2022) 'The Vietnamese debt bondage gamble', *The Diplomat* (<https://thediplomat.com/2022/06/the-vietnamese-debt-bondage-gamble/>).
- Blomberg, M. (2014a, 4 July) 'Maids forced into debt bondage in Singapore', *Cambodia Daily* (<https://english.cambodiadaily.com/news/maids-forced-into-debt-bondage-in-singapore-63194/>).
- Blomberg, M. (2014b, 24 April) 'Concern over migration chief's family connections', *Cambodia Daily* (<https://english.cambodiadaily.com/news/concern-over-migration-chiefs-family-connections-57202/>).
- Buth, R. K. and Laignee, B. (2014, 30 April) 'Trafficker gets 10 years', *Phnom Penh Post* (<https://www.phnompenhpost.com/national/trafficker-gets-10-years>).
- Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) (2021) Vulnerabilities and risks to exploitation of Vietnamese migrant workers. IOM CREST (<https://publications.iom.int/books/vulnerabilities-and-risks-exploitation-encountered-vietnamese-migrant-workers>).
- David, S. (2012, 19 March) 'Family's bleak vigil ends', *Phnom Penh Post* (<https://www.phnompenhpost.com/national/family's-bleak-vigil-ends>).
- Denney, L., Alffram, H., Domingo, P. and Jespersen, S. (2023) 'Addressing exploitation of labour migrants in Southeast Asia: Beyond a counter-trafficking criminal justice response'. ODI Thematic brief. London: ODI (<https://odi.org/en/about/our-work/political-economy-of-labour-exploitation-and-trafficking-in-persons-in-southeast-asia/>).
- Denney, L. and Xayamoungkhoun, S. (forthcoming) 'Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Laos'. London: ODI and ASEAN-Australia Counter Trafficking.
- Domingo, P. and Siripatthanakosol, K. (forthcoming) 'Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Thailand'. London: ODI and ASEAN-Australia Counter Trafficking.
- Haughton, J. (2006) 'Situational analysis of human trafficking in the Lao PDR: with emphasis on Savannakhet'. Bangkok: World Vision.

- Hoang, L. A. (2020) 'Debt and (un)freedoms: the case of transnational labour migration from Vietnam' *Geoforum* 116: 33-41 (<https://doi.org/10.1016/j.geoforum.2020.08.001>).
- Hoang, L.A. and Yeoh, B. S.A. (2015) 'Transnational labour migration, debts, and family economics in Vietnam', in Hoang, L. A. and Yeoh, B. S.A. (eds.), *Transnational labour migration, remittances and the changing family in Asia*. New York: Palgrave Macmillan.
- HRW (2011) *'They deceived us at every step': abuse of Cambodian domestic workers migrating to Malaysia*. Washington, DC: Human Rights Watch.
- ILO Regional Office for Asia and the Pacific (2015) 'Review of the effectiveness of the MOUs in managing labour migration between Thailand and the neighbouring countries'. Bangkok: International Labour Organization.
- ILO (2020a) *A global comparative study on recruitment fees and related costs*. Geneva: International Labour Organization.
- ILO (2020b) *Recruitment fees and related costs: what migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand*. Geneva: International Labour Organization.
- ILO (2022) 'TRIANGLE in ASEAN Quarterly Briefing Note: Thailand (April-June 2022)'. Bangkok: International Labour Organization Regional Office for Asia and the Pacific.
- IOM (2019) International migration law: glossary on migration. Geneva: International Office for Migration.
- IOM (2021) 'An analysis of migration trends of Lao Migrants for Lao People's Democratic Republic in two selected provinces: Savannakhet and Xayaboury'. Vientiane: International Office for Migration.
- Ishizuka, F. (2013) 'International labor migration in Vietnam and the impact of receiving countries policies'. Institute of Developing Economies Discussion Paper No. 414. Chiba: Institute of Developing Economies (IDE), JETRO.
- Jespersion, S., Alffram, H., Denney, L. and Domingo, P. (2022) Labour migration in Cambodia, Laos, Thailand and Vietnam: migrants' vulnerabilities and capacities across the labour migration cycle. ODI Thematic brief. London: ODI (<https://odi.org/en/about/our-work/political-economy-of-labour-exploitation-and-trafficking-in-persons-in-southeast-asia/>)
- Jespersion, S., Ngo, T.M.H. and Vu, C.G. (forthcoming) 'Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Thailand'. London: ODI and ASEAN-Australia Counter Trafficking.
- McAdams, M (n.d.) 'Briefing Note on Human Trafficking Implications of Draft Agreement on the Establishment and Management of the Employment Service Enterprise of the Lao People's Democratic Republic (Agreement 43). ASEAN-Australia Counter Trafficking (<https://aseanactpartnershiphub.com/resource/briefing-note-lao-agreement-43/>).
- Mekong Migrant Network (2022) 'Longitudinal study on the roles of countries of origin (ROCO) in protecting their nationals who migrate to work in other countries' (https://mekongmigration.org/?page_id=464).

- Molland, S. (2010) 'The perfect business: human trafficking and Lao-Thai cross-border migration', *Development and Change* 41(5): 831-855 (<https://doi.org/10.1111/j.1467-7660.2010.01665.x>).
- Napier-Moore, R (2017) 'Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries'. Bangkok: International Labour Organization and UN Women.
- Rigg, J. (2007) 'Moving lives: migration and livelihoods in the Lao PDR', *Population, Space and Place* 13: 163-178 (<https://doi.org/10.1002/psp.438>).
- The Asia Foundation (2011) 'Cambodia's labor migration: analysis of the legal framework'. The Asia Foundation (<https://asiafoundation.org/2016/12/14/cross-border-labor-migration-surges-cambodia-raising-risk-human-trafficking/>).
- Tunon, M. and Rim, K. (2013) 'Cross-border labour migration in Cambodia: considerations for the national employment policy'. Bangkok: ILO Regional Office for Asia and the Pacific.
- United States (US) Department of State (2022) *2022 Trafficking in Persons Report*. Washington, DC: US Department of State.
- Verité (2019) *Thailand bound: an exploration of labor migration infrastructures in Cambodia, Myanmar, and Lao PDR*. Amherst, MA: Verité.
- Zhang, S. et al. (2021) 'Estimating the prevalence of forced labour among Vietnamese adult migrant labourers to Japan/ Taiwan'. Global Fund to End Modern Slavery (<https://www.gfems.org/wp-content/uploads/2021/08/VietnamMigrantLaborStudy-Final-Report-Final-1.pdf>).