

# Mekong Migration Network Policy Brief

## Regulation of Recruitment Agencies in the Greater Mekong Subregion



### BACKGROUND

Private recruitment agencies (also referred to as private employment agencies, or simply recruitment agencies) are a common means of facilitating international labour migration. They play a crucial function in the process by connecting workers in countries of origin with employers in countries of destination. Agencies can play numerous roles throughout the process, from finding labour markets and employers, to recruiting workers, to providing financial and practical assistance, protecting and advocating for migrants' rights, and also providing training. However, in many contexts, the relationship between workers and agencies, characterised

by this dependence and often power imbalance, can become exploitative or abusive.<sup>1</sup> Workers are left in a highly vulnerable position, to the point that the recruitment business has been described as “characterised by rent-seeking behaviour and corruption”.<sup>2</sup>

Abuses by agencies commonly include overcharging (including for items like passports for which governments have set prices) or charging for services not provided,

- 1 Rannveig Agunias, Dovelyn, “What We Know About Regulating the Recruitment of Migrant Workers”, Migration Policy Institute, *Migration Policy Brief No. 6 September 2013*, p. 1.
- 2 Asian Development Bank Institute, International Labour Organization, and Organisation for Economic Co-operation and Development, “Labour Migration in Asia: Building Effective Institutions”, 2016, <https://www.oecd.org/migration/labor-migration-in-asia-building-effective-institutions.pdf>, p. 18.

offering usurious loans, and debt bondage. They may also fail to fulfil responsibilities with regards to appropriate training and medical checks, falsify documents and deploy underage workers, place workers in dangerous jobs or with exploitative employers, or substitute a contract at destination with unagreed terms that are unfair to the worker.<sup>3</sup>

There is therefore a tension between the utility of recruitment agencies and acknowledging their nature as profit making endeavours. This heightens the need for regulation to ensure that migrant workers' rights are protected throughout the process and that they are not exploited by dishonest agencies. Regulatory efforts must take into account the many different influences on recruitment irregularities, which include power disparities between worker and agency, the relationship between agencies

3 ILO Report on Progress of AFMLs, p. 34; Al Jazeera, "Maid in Singapore", 29 Sep 2016, available at <http://www.aljazeera.com/programmes/101east/2016/09/maid-singapore-160928090502296.html>, accessed 27 October 2016.

in origin and destination countries, asymmetry of information and knowledge, and economic factors such as supply and demand.<sup>4</sup>

The largest movement of migrant workers within the GMS is to Thailand from Burma/Myanmar, Cambodia and Lao PDR; and the vast majority of workers migrates informally, as is the case for most intra-GMS migration.<sup>5</sup> However, a minority migrates throughout the region using formal channels. For those travelling outside the GMS,<sup>6</sup> recruitment agencies are usually a necessity. All countries in the GMS have enacted laws governing formal recruitment processes.<sup>7 8</sup>

4 Rannveig Agunias (2013), op. cit., p. 1.

5 The majority of Lao migrant workers, for example, migrate informally to Thailand. Mekong Migration Network, Migration in the Greater Mekong Subregion Resource Book, December 2012, [www.mekongmigration.org/finalised%20BEZ%20pdf%20file.pdf](http://www.mekongmigration.org/finalised%20BEZ%20pdf%20file.pdf), p. 118.

6 Most Vietnamese migrant workers migrate outside the region.

7 ILO (2015), op. cit., p. 34.

8 Although there are Thai migrant workers abroad in countries including Taiwan and Israel, this policy brief focuses only on Cambodia, Vietnam, Lao PDR, and Myanmar, as origin countries within the GMS and ASEAN contexts.

## International Standards on Regulating Recruitment Agencies

The International Labour Organisation's Private Employment Agencies Convention (C181) 1997 and accompanying Recommendation Concerning Private Employment Agencies (R188) 1997 set minimum standards for country of origin regulation of recruitment agencies.

The Private Employment Agencies Convention envisages a system of licensing/certification for agencies,<sup>9</sup> which ensures transparency and facilitates the monitoring of their activities. Migrant workers themselves should be charged no placement fee, unless the charges are considered "in the best interests of workers, after consulting with employers and worker groups".<sup>10</sup>

The Conventions are silent on what other costs may be charged to workers, which commonly include training and deployment costs, but these should also be regulated to avoid excessive charging so that migrants do not find themselves in a position of extreme indebtedness. It is also essential that workers are aware in advance of what costs they are to pay, and that the fees are transparent so they cannot be charged twice or be charged for services not received.<sup>11</sup> The Special Rapporteur for Migrant Rights has suggested that eliminating recruitment fees altogether is the most straightforward and fair approach.<sup>12</sup> Responsible agencies should therefore charge placement fees on a business-to-business basis through the employer or local agency.<sup>13</sup>

More generally, the ILO Private Employment Agencies Convention states that countries are to adopt measures to protect workers from abuse by agencies,<sup>14</sup> and such measures must include the imposition of penalties and sanctions, including banning of agencies who conduct illegal activities. Further to that, countries must ensure there are adequate mechanisms and resources to investigate illegal practices.<sup>15</sup> The Recommendations to ILO Convention 181 add that workers should have a written contract, and be informed in their own language of the nature and conditions of their job, and that countries should combat "misleading and unfair" advertisements,

9 Article 3.

10 Consultation Meetings with Migrant Workers organised by MMN member organisations in Poipet, Cambodia and Rayong, Thailand, between November 2015 and February 2016. Reports from other MMN members in Cambodia accord with these accounts.

11 Rannveig Agunias, D. "Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor", Migration Policy Institute, August 2012, p. 6.

12 UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants: note by the Secretary-General*, 11 August 2015, A/70/310, available at: <http://www.refworld.org/docid/55f2cb0d4.html>, accessed 28 October 2016, p. 15.

13 *Ibid.*, p. 7.

14 Article 8.

15 Article 10.

## Cambodia

The majority of Cambodian migrant workers go to Thailand through informal channels. However, as of July 2016, there were 132,442 Cambodians in Thailand who had migrated through the formal system under the Memorandum of Understanding between the two countries.<sup>17</sup> Other destination countries where placement of Cambodian workers is primarily managed by private recruitment agencies authorised by the government include Malaysia, Japan, and recently a small pilot scheme to Singapore. Cambodia has a number of regulations under Sub-Decree 190 on the Management of Sending Cambodian Workers Abroad Through Private Recruitment Agencies. The sub-decree and implementing regulations include licensing requirements that recruitment agencies will verify job conditions, and regulations on job advertisements to prevent misleading job ads. As recruitment agencies provide pre-departure training, there are also regulations to monitor pre-departure training programmes and centres. The Association of Cambodian Recruitment Agencies, a voluntary industry association, also has its own Code of Conduct. There are provisions for monitoring of recruitment agencies, as well as specified penalties.

Currently there is a significant gap between policy and practice. Recruitment agencies violate regulations on advertising, fees,

17 Thai Government, Department of Employment, Office of Foreign Workers Administration Statistics, <http://wp.doe.go.th/wp/images/statistic/sm/59/sm0759.pdf>



training, and the ban on sub-licensing. Workers become indebted due to overcharging, and are placed in unsafe, exploitative work environments.<sup>18</sup> Cambodia's legislative regime is commendable, but it urgently needs to direct efforts and resources into effective monitoring and enforcement of the laws in place.

## Lao PDR

The majority of Lao migrant workers travel to Thailand by informal means, most on their own with a minority, 20% of men and 8% of women, using an unlicensed broker to travel to the border, and just under 25% of all workers using a broker in Thailand to travel from the border to a job site.<sup>19</sup> As of 2013, there were 12 licensed recruitment agencies in Laos.<sup>20</sup> The development of Lao labour migration governance is still therefore in its early stages, and it is far from a comprehensive framework. However there are some limited Lao laws concerning deployment of workers overseas. The ILO has also developed an Operations Manual compiling Lao policies and laws, as well as information on international standards and practice for the use of the three implementing ministries, Ministries of Labour and Social Welfare, the Ministry of Foreign Affairs, and the Ministry of Public Security. Recruitment agencies are to "provide protection" and "respect the law and safety of the workers without being cheated or lured into trafficking".<sup>21</sup> They must disseminate information and counsel workers, monitor and ensure the safety of workers, and are responsible for sending them home in the event of contract termination.<sup>22</sup> Workers cannot be deployed to unsafe countries or to unsafe jobs.<sup>23</sup> It is envisaged that fees cannot be charged above regulations.<sup>24</sup>

18 Mekong Migration Network, *Safe From the Start: The Role of Countries of Origin in Protecting Migrant Workers 2017* (forthcoming); See also MMN Consultation Meeting with CSOs on the Roles of Countries of Origin, 21 January 2016, Phnom Penh, Cambodia, available at <http://www.mekongmigration.org/?p=4873>

19 Consultation Meetings with Migrant Workers organised by MMN member organisations in Mae Sot, Chiang Mai, and Phang Nga, Thailand; and Hpa An, Myanmar; between November 2015 and February 2016; See also Finnwatch and Swedwatch, "Trapped in the kitchen of the world: The situation for migrant workers in Thailand's poultry industry", November 2015, [www.swedwatch.org/sites/default/files/tmp/76\\_thaikyckling\\_151123\\_ab.pdf](http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf)

20 Consultation Meetings with Migrant workers referenced above and reports from MMN member organisations in Myanmar.

21 According to reports from MMN member organisations in Myanmar.

22 *Ibid.*

23 Article 2 and 3 of Decree of the Minister of the MOLSW on forbidden occupations and regions to export Lao labourers working abroad, cited in ILO Operations Manual, op. cit., p. 24.

24 ILO (2015), op. cit., p. 36.

## Regional Standards and Recommendations

The ASEAN Declaration on the Protection and Promotion of Migrant Workers and their Families (2008) specifies as one of the obligations of countries of origin that they should “establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.”<sup>25</sup>

The ASEAN Forum on Migrant Labour (AFML) has also, over the years, produced a number of recommendations with regards to recruitment agencies. The 5th AFML in particular was focused on recruitment practices, and its recommendations included setting up transparent and streamlined recruitment procedures, establishing fee limits, and specifying whose responsibility various costs belonged to. In addition, there was a call for national labour laws to align with ILO standards, and for member countries to improve information dissemination on migration; license agencies; establish effective monitoring practices and imposition of penalties; and enhance complaint mechanisms. The 6th AFML included the recommendation that states should work towards collecting and sharing migration data, not only on general information such as inflows and outflows, but on recruitment channels, licensed agencies, fees, and costs.<sup>26</sup>

25 Article 14.

26 International Labour Organisation (ILO), *Background Paper to the 7th ASEAN Forum on Migrant Labour: Progress of the implementation of Recommendations adopted at the 3rd – 6th ASEAN Forum on Migrant Labour meetings*, 2015, p. 34.

### Myanmar

There are considerable numbers of Myanmar citizens working abroad, with Thailand being the most common destination country. Other destinations include Malaysia, Singapore, South Korea, and Japan.<sup>27</sup>

Myanmar recently enacted laws that provide regulations including licensing requirements, and sanctions for violation of laws, ranging from fines to licence cancellation and other available charges.<sup>28</sup> There are fee limits imposed, however in practice agencies regularly charge three times as much. The Myanmar Overseas Employment Agencies Federation (MOEAF) is tasked with supervising recruitment agencies, although only the Ministry of Labour, Immigration and Population has the legal power to sanction them. There is no formal investigative branch or monitoring system, and agencies which close can easily re-open under new names. As a result, there is consistent overcharging of fees, overcharging of expenses, debt bondage, underpayment, and deployment to jobs with exploitative conditions.<sup>29</sup>

The use of local brokers is widespread as employment agencies have few procedures or offices for recruiting outside the area of their established office. As a result, workers incur greater expenses, waiting times, and

are often deployed to jobs to which they did not agree. In addition, there is a significant problem with provision of information to workers, as agencies rarely provide correct and detailed information on issues such as laws and policies, rights and responsibilities, destination country language and practices, and job skills. Workers face problems in destination countries as a result.<sup>30</sup>

Recruitment agencies often fail to assist workers to obtain passports, leading to workers using brokers to obtain passports and being deployed in destination countries with passports that are specified as passports for the purpose of “visits”. In the absence of a passport issued for the purpose of “jobs”, workers face difficulty renewing visas. The government intends to enforce laws requiring that only those with job passports may be deployed, starting from 1<sup>st</sup> January 2017.<sup>31</sup>

MOEAF launched a voluntary Code of Conduct in 2016 as a means of regulating the actions of recruitment agencies. The Code contains best practices that signing agencies agree to adhere to, which provide additional protection for workers above currently legislated provisions, such as informing them clearly of their rights and providing a breakdown of fees. In August 2016, 129 of Myanmar’s 260 registered agencies signed an agreement with the government to abide by national legislation and be subject to a Code Compliance Monitoring Committee.<sup>32</sup>

27 Mekong Migration Network (2012) op. cit., p. 82.

28 Article 4.

29 MMN (2017) (Forthcoming); See also Finnwatch and Swedwatch, “Trapped in the kitchen of the world: The situation for migrant workers in Thailand’s poultry industry”, November 2015, [www.swedwatch.org/sites/default/files/tmp/76\\_thaikyckling\\_151123\\_ab.pdf](http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf)

30 According to reports from MMN members in Myanmar.

31 According to reports from MMN members in Myanmar.

32 According to reports from MMN members in Myanmar.

## Protecting Migrant Workers through Recruitment Regulation

A number of countries implement laws to protect migrant workers and regulate recruitment workers in accordance with the ILO and ASEAN recommendations.

Licensing requirements are commonly implemented, as they establish transparency and enable monitoring.<sup>33</sup> Licensing requirements may also impose additional requirements on agencies which can further protect workers and minimise misconduct. It is common for countries to require that license holders have no criminal record and have not committed any fraudulent recruitment activities in the past. In order to avoid opportunities for corruption, it can also be prohibited for anyone who is connected to government agencies involved in labour migration to hold a recruitment license.<sup>34</sup>

As envisaged by the ILO, fees can be regulated, with transparent cost structures being an effective way to ensure that workers do not pay for services they have not received, or pay twice. Fee ceilings are also a commonly instituted good practice, and legislation may specify what costs can be borne by the worker and what must be the employer's or agency's responsibility.<sup>35</sup>

Countries may also require that agencies purchase insurance or contribute to a compensation fund. The Philippines uniquely makes agencies jointly liable with employers so that if necessary, workers can sue the agency for harms caused by the employer abroad.<sup>36</sup> While a valuable initiative, it has some limitations, as the legal process is extensive and complicated and often the company may be wound up, or its remaining security deposit for claims insufficient, so that the worker may not receive any compensation.<sup>37</sup>

As envisaged in the ILO's Multilateral Framework on Migration, the ranking of recruitment agencies and incentives for well-performing agencies is a common practice, as well as blacklisting for agencies violating the law. The Special Rapporteur on the Human Rights of Migrants calls for rankings and blacklists as an effective means of regulation.<sup>38</sup>

Legislation that sets out legal and illegal recruitment acts and specifies penalties for breaches is necessary. Sanctions may be administrative or criminal, and involve fines, and suspension or cancellation of a licence, and even imprisonment.<sup>39</sup> However, care should be had for practical consequences of measures on migrant workers. If a recruitment agency's licence is suspended or cancelled, the welfare of migrant workers deployed by that agency must be ensured. Most crucially, establishing effective and strong agencies and mechanisms to actually monitor, enforce, and punish is key to ensure that the legislation is meaningful. There must be no conflict of interest between the agencies and the government departments or officials empowered to oversee them. Each actor must have clearly mandated tasks and resources to carry them out.<sup>40</sup> Monitoring must also be linked to a complaint mechanism that can be accessed by individual workers to assist them in obtaining redress against the agencies or employers.<sup>41</sup>

Agencies may also self-regulate by adopting an industry Code of Conduct, and ensuring members adhere to it. Research indicates that Codes of Conduct are most successful when the contents are discussed with other stakeholders including government, workers, and civil society; there are independent monitoring mechanisms stipulating sanctions of some kind; and the code is disseminated to the public, along with information on non-complying agencies.<sup>42</sup>

33 ILO, IOM, and OSCE, "Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination", 2006, available at: <http://www.osce.org/eea/19242?download=true>, p. 45.

34 *Ibid.*, pp. 46-47.

35 *Ibid.*, pp. 46-47.

36 *Ibid.*, p. 49-51.

37 Migrant Forum Asia, "Joint and Several Liability of Recruitment/Placement Agencies with the Principal/Employer Under Philippine Laws", Policy Brief No. 11, Winter 2014, p. 4.

38 UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants: note by the Secretary-General*, 11 August 2015, A/70/310, available at: <http://www.refworld.org/docid/55f2cb0d4.html>, accessed 28 October 2016, p. 20.

39 *Ibid.*, p. 48-49.

40 *Ibid.*, p. 45.

41 *Ibid.*, p. 48.

42 *Ibid.*, p. 51.



## Vietnam

Migrant workers are a significant part of the Vietnamese economy. They travel to countries including Japan, South Korea, Taiwan, and Malaysia.<sup>43</sup> In 2013, there were over 180 recruitment agencies licensed to send workers abroad.<sup>44</sup>

Vietnamese law provides for penalties for agencies if they violate laws on recruitment practices, including fines, blacklisting, and compensation.<sup>45</sup> The Vietnamese Government has also issued a number of regulations with regard to fees, certification, the obligations of the recruitment agencies and Vietnamese embassies in receiving countries, contracts, medical check-ups, penalties, and the use of the Overseas Employment Support Fund. In addition, a Code of Conduct for Vietnamese recruitment agencies was adopted by the industry group Vietnamese Association of Manpower Supply in 2010, which incorporates monitoring and ranking of agencies.<sup>46</sup>

In practice, many workers incur large debts due to excessive fees charged either by recruitment agencies or informal sector brokers. There are also numerous reports of workers being underpaid or placed in poor or unsafe working conditions.<sup>47</sup> In addition, despite an ILO study finding that many workers were unhappy with their migration experience, most did not complain, and of those who did, only 30% received a response.<sup>48</sup> Recruitment agencies are mandated by law to receive complaints and must improve their internal processes.<sup>49</sup>

In the near future, the Law on Vietnamese Guest Workers will undergo government review. The Ministry of Labour, Invalids and Social Affairs is assessing implementation of the law and reviewing other policies. In this regard, the government must carefully review current laws on recruitment agencies so that amendments prioritise worker protection and take the welfare of workers into better account.<sup>50</sup>

43 Mekong Migration Network (2012) op. cit., p. 151.

44 ILO, *Complaint Mechanisms for Vietnamese Migrant Workers: an Overview of Law and Practice*, GMS Triangle Project, 2015, p. xiv.

45 *Ibid.*, p. xiv.

46 *Ibid.*, p. 2.

47 *Ibid.*, p. 2.

48 *Ibid.*, p. 2.

49 *Ibid.*, p. xiv.

50 According to reports from MMN members in Vietnam.



## The Importance of Co-operation

Inter-state co-operation is important to any efforts to improve the welfare of migrant workers and better regulate recruitment agencies. This applies not only to countries of origin and countries of destination, but between countries of origin, who can share technical expertise, experiences, best practices, and unite to collectively negotiate with destination countries, rather than compete on the basis that their workers work for the lowest wages. Given that so many different actors take part in international labour migration, which is by definition multi-jurisdictional, strong co-operation between countries, employers, agencies, and civil society bolsters efforts to regulate agencies and reduce inconsistency of regulations or policy. The Special Rapporteur on the Human Rights of Migrants has stated that in order to institutionalise ethical recruitment “international and regional cooperation is essential” and has called for the development of country level and regional action plans bringing together the views of multiple stakeholders to articulate a clear vision for ethical recruitment system.<sup>51</sup> Similarly, the ILO has suggested that ASEAN member states could in the future establish a regional common code of conduct for recruitment agencies.<sup>52</sup>

Domestically, consultation with migrant groups and co-operation with civil society and unions will also contribute to effective and responsive regulations. In addition, efforts at self-regulation through industry-led codes of conduct, with monitoring mechanisms and consequences and co-operation from other sectors is another means of creating a culture among agencies which does not tolerate illegal or exploitative practices.

51 UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants: note by the Secretary-General*, 11 August 2015, A/70/310, available at: <http://www.refworld.org/docid/55f2cb0d4.html>, accessed 28 October 2016, para 62-64.

52 ILO *Managing Labour Mobility: Opportunities and challenges for employers in the ASEAN region*, 28 March 2016, [www.ilo.org/asia/whatwedo/publications/WCMS\\_464049/lang-en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_464049/lang-en/index.htm), p. 41.

# RECOMMENDATIONS

Although some countries in the Mekong subregion have made laudable efforts in the regulation of recruitment agencies, there is still much work to be done. National governments must make regulation of recruitment agencies for the protection of workers a priority and work to develop and maintain political will to ensure these goals are accomplished.

1. National legislation should be brought in line with international standards and best practice. This includes:
  - (a) Strict, transparent, and enforced regulation of fees and costs;
  - (b) The use of standard contracts which adhere to at least a minimum welfare standard;
  - (c) Provision of accurate information to workers about the terms of their contract and job conditions.
2. Resources and energy must be directed to actively monitor and enforce the laws currently in place. Agencies which fail to comply with regulations must be sanctioned and penalised, while ensuring that workers are not inadvertently harmed by any sanctions taken.
3. Civil society must be consulted by government when determining regulations and worker protection measures. Co-operation between civil society and government should be enhanced to protect and support workers, especially women.
4. Governments must work towards better data collection and sharing, including on recruitment practices and exploitative agencies.
5. National governments should adopt a policy of zero recruitment fees charged to workers; recruitment fees should be borne by employers in destination countries.
6. National governments must strongly pursue regulations and enforcement to eliminate the practice of contract substitution.
7. Governments should aim to reduce the role of local brokers in the recruitment process, as they often contribute to additional debt and exploitation.
8. Governments should focus on dissemination of correct information to workers regarding recruitment agencies, and enforce laws that require agencies to accurately and comprehensively provide information to workers.
9. In the long-term, the region should work towards establishing a regional set of standards and monitoring body for recruitment agencies.



Mekong Migration Network (MMN)

**“The Mekong Migration Network (MMN) is a subregional network of migrant support NGOs, migrant grassroots groups, and research institutes working together to promote and protect rights of all migrants in the GMS”**

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