



# Social Protection Across Borders:

Roles of Mekong Countries of Origin in  
Protecting Migrants' Rights

Mekong Migration Network  
September 2019



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The Mekong Migration Network (MMN), founded in 2003, is a subregional network of migrant support NGOs, migrant grassroots groups and research institutes. The central goal of MMN is to promote the welfare, well-being, dignity and human rights (especially labour, women's and family rights) of migrants in the GMS, and to build mutual support and solidarity among migrants and advocates within the GMS. To achieve this goal, MMN jointly carries out research, advocacy, capacity building and networking.

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The partners listed below collected case studies and carried out key informant interviews in their respective countries.

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## Myanmar

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Mekong Migration Network  
September 2019

# LIST OF ACRONYMS AND ABBREVIATIONS

ACRA	Association of Cambodia Recruitment Agencies, Cambodia
ASEAN	The Association of Southeast Asian Nations
CCMC	Code Compliance and Monitoring Committee, Myanmar
CMLTV	Cambodia, Myanmar, Lao PDR, Thailand, Vietnam
CMHI	Compulsory Migrant Health Insurance, Thailand
COC	Code of Conduct
COC-VN	Code of Conduct, Vietnam
COLAB	Centre of Overseas Labour, Vietnam
CSO	Civil Society Organisation
DOEM	Department of Employment and Manpower, Cambodia
DOLAB	Department of Overseas Labour, Vietnam
DOLISA	Department of Labour, Invalid and Social Affair, Vietnam
EIS	Employment Injury Scheme, Malaysia
EPS	Employment Permit System, Republic of Korea
FWCS	Foreign Workers Compensation Scheme, Malaysia
GMS	Greater Mekong Subregion
HICS	Health Insurance Card Scheme, Thailand
ILO	International Labour Organization
IOM	International Organization for Migration
JPY	Japanese Yen
JITCO	Japan International Training Cooperation Organisation, Japan
Law No.72	Law on Vietnamese Workers Working Abroad Under Contract, Vietnam
LROE	Law Relating to Overseas Employment, Myanmar
M&E	Monitoring and Evaluation
MAC	Manpower Association of Cambodia, Cambodia
MD	Migration Division, Myanmar
MMN	Mekong Migration Network
MOC	Memorandum of Cooperation
MOEAF	Myanmar Overseas Employment Agencies Federation, Myanmar

MOFA	Ministry of Foreign Affairs
MOL	Ministry of Labor, Thailand
MOLIP	Ministry of Labour, Immigration and Population, Myanmar
MOLISA	Ministry of Labour, Invalids and Social Affairs, Vietnam
MOLVT	Ministry of Labour and Vocational Training, Cambodia
MOPH	Ministry of Public Health, Thailand
MOU	Memorandum of Understanding
MRC	Migrant Resource Centre
MSDP	Myanmar Sustainable Development Plan, Myanmar
NEP	National Employment Policy, Cambodia
NPA	National Plan of Action, Myanmar
NSSF	National Social Security Fund, Cambodia
NSPPF	The National Social Protection Policy Framework, Cambodia
NV	Nationality Verification, Thailand
OECC	Overseas Employment Central Committee, Myanmar
OESC	Overseas Employment Supervisory Committee, Myanmar
OTIT	Organization for Technical Intern Training, Japan
PDO	Pre-Departure Orientation
PDT	Pre-Departure Training
PEO	Pre-Employment Orientation
PWDF	People with Disability Fund, Cambodia
SEDP	Socio-Economic Development Plan, Vietnam
SPIKPA	Foreign Worker Hospitalisation and Surgical Insurance Scheme, Malaysia
SSA	Social Security Act B.E. 2533(1990)
SSB	Social Security Board, Myanmar
SSS	Social Security Scheme, Thailand
THB	Thai Baht
TITP	Technical Intern Training Program, Japan
UAE	United Arab Emirates
UCS	Universal Coverage Scheme, Thailand
USD	United States Dollar
VAMAS	Vietnam Association of Manpower Supply, Vietnam
VND	Vietnamese Dong
VJEPA	Vietnam-Japan Economic Partnership Agreement
WCF	Workmen's Compensation Fund, Thailand

# EXECUTIVE SUMMARY

**A**s a network of migrant support organisations, grassroots movements, and research institutes from across the Greater Mekong Sub-region (GMS), the Mekong Migration Network (MMN) works to promote and protect the rights of migrant workers and their families. The collaborative research presented in this publication comes at a time when formal social protection schemes are taking shape across the GMS, and migrant workers from the region are travelling, in ever greater numbers, to countries where social protection programmes are well established. Access to social protection for this growing cross-border workforce requires an urgent policy response, as migrant workers risk being excluded or denied access to benefits and left insufficiently protected in terms of their life cycle needs.

The present research examines the role of GMS countries of origin in improving accesses to social protection programmes both at home and overseas. Focusing specifically on Cambodia, Myanmar and Vietnam, it scrutinises the ways in which governments and other stakeholders from these countries of origin safeguard the social protection rights of their nationals, both when migrating abroad and upon return. The country specific chapters that form the bulk of this study provides detailed analysis of the various law and policy frameworks currently in place, highlights policy gaps, and illustrates how these play out in real life through case studies of workers who have migrated to Thailand and Japan. In examining migrants' access to social protection at home and abroad, a rigorous research methodology was employed, including: desk research, key informant interviews, multi-stakeholder workshops and the collection of migrant case studies.

Among the study's key findings are the following:

- (1) Prospective migrants receive incomplete information on the social protection schemes available in destination countries during compulsory pre-departure training/orientation;
- (2) Once deployed, migrant workers are often left unaware of their social protection entitlements and assistance available to them while they are abroad. They rely on partial and fragmentary information from a variety of unofficial sources;
- (3) Upon return, migrant returnees receive little support in accessing benefits owed to them from social protection schemes abroad;
- (4) Across the three countries of origin surveyed, few mechanisms have been put in place to facilitate the transfer of entitlements from social protection schemes to migrant returnees;
- (5) The lack of portability mechanisms results in some migrant workers simultaneously liable for contributions to social protection schemes in two separate jurisdictions;
- (6) Some migrants are at risk of losing entitlements to accumulated social security contributions when forced to change immigration status; and

- (7) A range of additional barriers exist that impede migrants' access to social protection programmes.

These findings form part of MMN's ongoing Roles of Countries of Origin Project which advocates for better protection of the rights of migrants throughout the migration process from a countries of origin perspective. Confirming aspects of the project's earlier research, the present study also found that high fees charged by recruitment agencies continue to push migrant workers into debt and that legal and regulatory standards governing the sector are not rigorously enforced.

Based on the findings in this publication, MMN makes the following recommendations to relevant stakeholders:

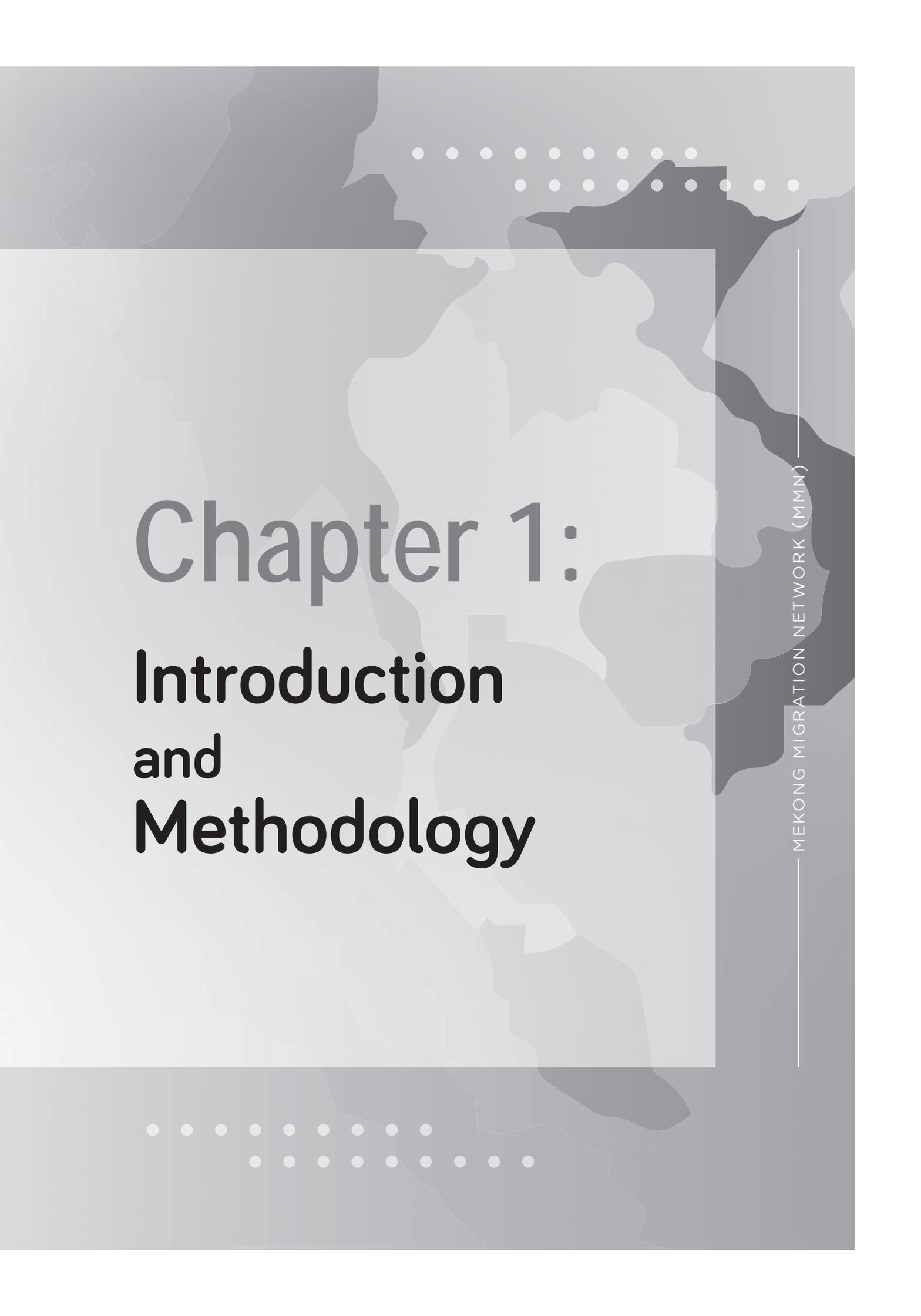
To Governments of All Countries of Origin:

- (1) Enhance information dissemination to migrants, especially with regards to the roles and responsibilities of labour attaches/ counsellors stationed at embassies and consulates in destination countries.
- (2) Effectively enforce laws and regulations regarding recruitment agencies and actively monitor their performances to ensure full compliance with all prescribed standards including recruitment fee caps;
- (3) Collectively pursue the goal of portable or transferable social security for migrant workers, and ensure migrant workers are not subject to double payment;
- (4) Advocate with governments of destination countries to reduce barriers faced by migrant workers in accessing social protection schemes and social services.
- (5) Negotiate with destination governments to ensure there is no loss of social security benefits when migrant workers change immigration status.

To Recruitment Agencies:

- (1) Improve the quality of pre-departure training/orientation to ensure that prospective migrant workers receive accurate and complete information before migrating overseas. This includes information relating to migrant workers' terms of employment, applicable labour law, their rights to contribute and benefit from various social protection schemes, and how to seek overseas assistance via embassies and consulates in the event of problems;
- (2) Strengthen assistance provided to migrant workers, including supporting access to social protection programmes of destination countries while abroad and upon return.
- (3) Make cost structures transparent, and ensure fees do not exceed government set caps.

To achieve these recommendations, governments and recruitment agencies should collaborate with migrant CSOs so that migrant workers' interests are properly represented.



# Chapter 1:

## Introduction and Methodology

# 1. Introduction and Methodology

---

## 1.1 Background

This publication builds on the Mekong Migration Network's (MMN) research and advocacy efforts to protect the rights and interests of migrants from a countries of origin perspective. Migrant workers from the Greater Mekong Subregion (GMS) play an important role in sustaining the economies of a growing number of East and Southeast Asian countries. While the economic benefits of their labour are increasingly recognised,<sup>1</sup> migrant workers remain insufficiently protected in terms of their life cycle needs. Impediments to the access to social protection schemes and the cross-border nature of migration result in migrant workers being routinely excluded from protection or denied access to entitlements. Rather than being a drain on social protection programmes, migrants are, more often than not, a net benefit to the public purse. Arriving in destination countries as adults and often leaving before retirement age, migrants tend on average, to be fitter, younger and more likely to be in full time employment than their native born peers.<sup>2</sup> What is more, the trend towards migration policies based on temporary residence makes it more difficult for migrants to ever see the fruits of their contributions. To improve migrants' access to social protection mechanisms, active support from the countries of origin is increasingly needed. This may be done, for example, by establishing migration mechanisms that facilitate participation in social protection schemes, providing necessary information to migrants, and assisting those who have problems accessing entitlement. These are viable steps towards expanding social protection in the region, meanwhile the respective governments of the region may work to ensure portability mechanisms and bilateral social security agreements are put in place.

The research presented here seeks to unpack these complex and sometimes controversial issues from a GMS country of origin perspective. Focusing on Cambodia, Myanmar and Vietnam, the study examines the ways in which the governments of these countries safeguard the social protection entitlements of their nationals abroad and upon return. As the chapters that follow illustrate, this is no small task. Each country has its own distinct legal and administrative arrangements, while the complex bilateral relations that exist between countries of origin and destination determine the nature of migration mechanisms and the portability of social protection schemes. The country specific chapters that form the bulk of this study provide detailed analysis of the various law and policy initiatives currently in place, highlight policy gaps, and illustrate how these play out in real life through migrant case studies. In the remainder of this opening chapter, we briefly introduce the background to MMN's roles of countries of origin project, elaborate on our research design, explain the methodology, justify the scope of the study, and define key terms.

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<sup>1</sup> For example, according to a study by the ILO and OECD, migrants were responsible for 4.3 - 6.6 per cent of Thailand's GDP in 2010, cited in ILO, "TRIANGLE in ASEAN Quarterly Briefing Note", April - June 2019, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_614383.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614383.pdf)

<sup>2</sup> See generally, MMN, "Self-Care & Health-Care", 2015, accessible at [http://www.mekongmigration.org/Self-Care%20and%20Health%20Care\\_final.pdf](http://www.mekongmigration.org/Self-Care%20and%20Health%20Care_final.pdf).



Participants of the MMN Policy Dialogue held in July 2017, Yangon, Myanmar. Photo: MMN

## 1.2 MMN's Roles of Countries of Origin Project

As mentioned, MMN's ongoing Roles of Countries of Origin Project seeks to protect the rights of migrants throughout the migration process from a countries of origin perspective. During the project's first phase, between April 2015 and May 2017, MMN conducted a comparative study into the labour migration mechanisms of several Southeast Asian countries of origin. The study highlighted the need for: (1) More effective Pre-Departure Training (PDT) and information dissemination; (2) Clear mandates and co-ordination among responsible government agencies; (3) Effective regulation of recruitment agencies; (4) Comprehensive overseas assistance to migrants from Embassies and Consulates; (5) Less reliance on migration as a long-term poverty reduction strategy; and (6) Greater domestic livelihood opportunities so that migration is an option among many, rather than a survival necessity. The findings from the study were published in a report entitled *Safe from the Start: Roles of Countries of Origin in Protecting Migrants' Rights*.<sup>3</sup>

In July 2017, MMN organised a Policy Dialogue in Yangon, where representatives of the Cambodian and Myanmar governments, private recruitment agencies, the Philippine Embassy in Yangon, International Labour Organization (ILO), International Organization for Migration (IOM), and Civil Society Organisations (CSOs) from Cambodia, Myanmar, Thailand, and the Philippines gathered to discuss the findings and recommendations from MMN's study, and more generally the roles that countries of origin should play in protecting their nationals who migrate abroad. Participants at the Policy Dialogue actively discussed the issues raised and stressed the importance of continuing such regional multi-stakeholder dialogue. Amongst the wide-ranging discussion, participants noted the need for further policy research focusing specifically on the issue of social protection.

<sup>3</sup> MMN, "Safe from the Start: Roles of Countries of Origin in Protecting Migrants' Rights", 2017, accessible in English at [http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start\\_English.pdf](http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start_English.pdf). A Khmer translation is accessible at [http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start\\_Khmer.pdf](http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start_Khmer.pdf), and a Burmese translation is accessible at [http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start\\_Burmese.pdf](http://www.mekongmigration.org/wp-content/uploads/2017/07/Safe-from-the-Start_Burmese.pdf).

Participants also recommended expanding the scope of future discussion to include other countries of origin in the GMS.<sup>4</sup>

Following the successful completion of the above-mentioned initiatives, MMN embarked on the current study focusing on the roles played by countries of origin in enabling their citizens to benefit from social protection schemes while abroad and upon return. In addition to the issue being highlighted by participants at the Policy Dialogue, MMN has been increasingly aware through its ongoing work with migrant communities of the obstacles encountered by migrants enrolling in overseas social security schemes and issues impeding the receipt of benefits owed to them upon return. MMN takes the view that greater attention needs to be devoted to this aspect of the labour migration system. While much of the discourse on migration governance in the GMS centres on formalising the migration process, a specific focus on facilitating migrants' access to social protection is needed to enhance the benefits that regularised migration can bring. Promoting access to social protection schemes, moreover, provides a positive framework in which migrants can be acknowledged as key social actors who positively contribute to the social fabric of the GMS and beyond.

## **1.3 Research Design**

### **1.3.1 Objective of the Research**

The research presented in this publication aims to identify gaps in migrant workers' rights to social protection from a countries of origin perspective. For the purpose of this study, MMN focused specifically on government social protection programmes, including social security and other relevant schemes, such as workers' compensation, health insurance, pensions and unemployment benefits.

### **1.3.2 Research Questions**

The paragraphs below clarify the research questions addressed in this study. In so doing, they set out the following overarching question, supplemented by six specific sub-questions.

#### *Overarching Question*

What can countries of origin in the GMS do to improve migrant workers' access to social protection programmes?

#### *Specific Questions*

- i. What are the needs of migrant workers prior to migrating, while working abroad, and upon return in regards to social protection?
- ii. What policies and programmes are in place for migrant workers to access social protection in countries of origin and destination?

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<sup>4</sup> For further details see MMN, "Proceedings of the Policy Dialogue on Roles of Countries of Origin", August 2017, accessible at <http://www.mekongmigration.org/wp-content/uploads/2017/10/RoCoOPolicyDialogueProceedings.pdf>.

- iii. What are the roles of countries of origin with regards to supporting migrant workers' access to social protection mechanisms in countries of origin and destination?
- iv. What are the experiences of migrant workers in terms of accessing social protection mechanisms in countries of origin and destination?
- v. What are the gaps and barriers with regards to migrant workers' access to social protection, which fall under the responsibility of countries of origin?
- vi. What do countries of origin need to do in order to better protect and promote migrant workers' access to social protection?

### **1.3.3 Scope of the Research:**

#### *Geographical Scope*

The present research focuses on the following labour migration corridors:

- Cambodia and Myanmar to Thailand; and
- Cambodia, Myanmar, and Vietnam to Japan under the Technical Internship Training Programme (TITP).

As the main destination for migrants from Cambodia and Myanmar, Thailand has an established Social Security System and Workmen's Compensation Scheme for workers including migrant workers who meet certain criteria.



*A Burmese migrant in a garment factory in Komatsu, Japan. Photo: MMN/John Hulme*

The expanding migration corridor to Japan was also selected for study. Japan has become the top destination country for Vietnamese migrants. While the number of migrants going to Japan from Myanmar and Cambodia is at present relatively small, over the coming years it is expected to increase significantly in response to recent revisions to Japanese immigration law. Most notably, in November 2017, the Japanese government expanded the TITP and announced its intention to recruit hundreds of thousands of foreign workers by 2025. This has led to much anticipation in the GMS about Japan becoming a major new destination for migrant workers. Cambodia, Myanmar and Vietnam, are all considered by Japan to be key source countries for migrant workers and are reported to be among eight Asian countries in which bilateral agreements on managing labour migration have been put in place. Moreover, Japan is a suitable case for analysis as it applies its longstanding social protection programmes to migrant workers.

In addition to the above, issues related to migration from Cambodia, Myanmar, and Vietnam to Malaysia are also touched upon. Since Malaysia continues to be a major destination country for migrants from the GMS, MMN examined policies and trends concerning this migration corridor, but to a lesser extent than migration to Thailand and Japan. When the research design for this study was developed, migrant workers in Malaysia continued to be excluded from the country's social protection mechanisms. However, it should be noted that during the course of the study relevant legislation in Malaysia was amended to allow migrant workers to enrol in the country's Social Security Scheme and the Employment Injury Scheme. These changes came into effect in January 2019. Therefore, information related to Malaysia contained in the study is limited to desk research and key informant interviews. It should be noted that no case studies were collected from migrant returnees from Malaysia.

The Republic of Korea, another key destination country for the GMS migrants, is also omitted from this study. This is because the deployment of migrant workers to the Republic of Korea is administered through a specially administered government-to-government mechanism that does not lend itself to the methodology employed researching the other migration corridors.

### *Scope of Social Protection Schemes*

Social protection refers to “policies and actions which enhance the capacity of poor and vulnerable people to escape from poverty and enable them to better manage risks and shocks”.<sup>5</sup> According to the World Bank, “social protection programs comprise of both social assistance (such as cash transfers, school feeding, targeted food assistance and subsidies) and social insurance (such as old-age, survivorship, disability pensions, and unemployment insurance)”.<sup>6</sup> While traditionally associated with welfare regimes in western countries, social protection programmes have become an increasingly common feature of public policy initiatives in Asia. At the time of writing, the Ministerial Conference on Labour Cooperation among Cambodia, Lao PDR, Myanmar, Thailand and Vietnam (collectively known as the CLMTV countries) is taking place, where access to social security, especially social insurance for migrant workers when working overseas, is the main theme. This builds on the initiatives taking place at the Association of Southeast Asian Nations (ASEAN), of whom all the countries of origin in this study are members.

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<sup>5</sup> OECD, “Making Economic Growth More Pro-Poor”, 2009, p. 12, accessible at <https://www.oecd.org/greengrowth/green-development/43514554.pdf>.

<sup>6</sup> See the World Bank webpage entitled “Social Protection At-A-Glance”, accessible at <https://www.worldbank.org/en/topic/socialprotection>.



*Project partners and MMN resource persons exchange views at a research consultation meeting held in June 2018, Chiang Mai, Thailand. Photo: MMN*

In 2013, ASEAN adopted the Declaration on Strengthening Social Protection at the 23<sup>rd</sup> ASEAN Summit. The Declaration includes an acknowledgement that all people, including migrant workers, are entitled to equal access to social protection as a fundamental human right.<sup>7</sup> Such social protection at a minimum should provide social welfare and development, social “safety-nets,” social insurance, social assistance and social services.<sup>8</sup> Given that social protection is a “cross-cutting issue,” the Declaration also calls for a “holistic” and “coordinated” approach that incorporates governments, the private sector, development partners, civil society, service providers, and others.<sup>9</sup> However, for the purpose of this study, MMN considered it prudent to focus on the government schemes listed below in order to limit the number of stakeholders to whom recommendations can be addressed.

- In Thailand, the following schemes were examined:
  - Social Security System;
  - Workmen Compensation; and
  - Migrant Health Insurance Scheme.

<sup>7</sup> ASEAN, “ASEAN Declaration on Strengthening Social Protection and Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection”, p. 3 (principle 1), accessible at <https://asean.org/storage/2019/01/26-November-2018-ASEAN-Declaration-on-Strengthening-Social-Protection-1st-Reprint.pdf>.

<sup>8</sup> Ibid., p. 3 (principle 3)

<sup>9</sup> Ibid., p. 4 (principle 6)

- In Japan, the following were examined:
  - Pension Insurance;
  - Health Insurance;
  - Workers' Accident Compensation Insurance; and
  - (Un)employment insurance.

It should be noted that programmes intended to extend social protection for vulnerable groups provided by non-government actors were not covered in this study. Support systems in relation to affordable housing or child rearing were also omitted. In some instances within the report, the generic term “social protection” is used to refer to the above-listed formal schemes.

#### Scope of the Roles of Countries of Origin

For the purpose of this study, the following stages of the migration cycle were examined.

##### 1) Pre-migration stage:

- The applicability of social security systems in countries of origin to nationals migrating abroad. This includes the portability of domestic social security systems to allow nationals to continue to contribute and benefit from the scheme while overseas;
- Types of information available to prospective migrants concerning applicable social security systems. This may include information regarding the applicability of social security systems of countries of origin, as well as information about social security systems provided by the destination countries; and



*Project partners and MMN resource persons share information at a research consultation meeting held in June 2018, Chiang Mai, Thailand. Photo: MMN*

- Migrants' attitudes and understandings of social security systems.

## 2) While working abroad:

- Support provided by countries of origin i.e. through embassies and labour attachés with regards to migrant's access to social protection provided by destination countries. This may include assistance in securing documentation, as migrants may not be able to enrol in social protection in destination countries without the necessary immigration status; and
- Continued access to social security schemes provided by the countries of origin while abroad.

## 3) Upon return:

- Facilitative roles played by countries of origin governments to ease migrants' access to benefits from destination country social security systems upon return; and
- Migrant returnees' access to social protection mechanisms in countries of origin upon return.

## 1.4 Methodology

The research methodology used in this study was collectively developed by MMN and its project partners and involved desk research, key informant interviews, multi-stakeholder workshops and the collection of migrant case studies. The data collected was jointly analysed by MMN project partners at four separate research consultation meetings held periodically throughout the project period. The first meeting took place in June 2018, in Chiang Mai, Thailand. The second in August 2018, again in Chiang Mai. The third in April 2019 in Yangon, Myanmar; and the final research consultation meeting was held in June 2019 in Bangkok, Thailand.



*Representatives of recruitment agencies, the DOLAB and CSOs discuss ways to facilitate ethical recruitment during an MMN multi-stakeholder meeting entitled, "Consultation on Labour Migration from Vietnam to Japan", held in July 2019, Hanoi, Vietnam. Photo: MMN*

The paragraphs below provide further details of the methodologies employed during the data collection phase of this research.

- Desk research: At the outset of the study, MMN's research team undertook an extensive round of desk research to review the outbound migration governance policies and systems in place in Cambodia, Myanmar and Vietnam. This included a special focus on information concerning social security systems and bilateral and multilateral agreements relating to the portability of social protection systems between countries of origin and destination.
- Multi-stakeholder workshops: MMN organised a series of multi-stakeholder destination specific workshops on labour migration from respective GMS countries to Japan. Invitees included: representatives of government ministries; Japanese embassies, recruitment agencies; Civil Society Organisations (CSOs) and inter-governmental organisations such as ILO and IOM. The workshops were organised in Cambodia, Myanmar, Japan and Vietnam, in October 2018, February 2019, July 2019 and July 2019 respectively. During the visit to Japan, MMN had separate meetings with Japan International Training Cooperation Organization (JITCO) and the Federation of Workers' Union of the Burmese Citizen in Japan, and paid a home visit to Cambodian migrant workers to deepen the understanding of the TITP and migrants' conditions under the programme. These meetings provided valuable opportunities for the MMN research team to meet stakeholders and exchange and update information on deployment of migrant workers to Japan.
- Key informant interviews: MMN's research team conducted key informant interviews with various stakeholders including representatives of relevant government ministries, recruitment agencies and agency associations, local civil society organisations and international organisations. In total, 16 key informant interviews were conducted in Cambodia, Myanmar and Vietnam. Four were with government officials (including a retired government official), nine interviews with recruitment agencies and association of recruitment agencies and three with local CSOs and international organisations. MMN also sought to interview Myanmar's Labour Attaché and Cambodia's Labour Counsellor stationed at the countries' respective embassies in Bangkok. However, the interviews scheduled for 24 June 2019, were postponed at the last minute at the request of the embassies. MMN made a follow up request to reschedule the meeting in August 2019, but a response was not forthcoming. A table setting out a full list of interviewees, together with the dates that the interviews were conducted can be found in the annexes.
- Case studies were also collected by way of interviews with the following groups:
  - Cambodian migrant returnees from Thailand;
  - Cambodian migrant returnees from Japan;
  - Myanmar migrant returnees from Thailand;
  - Myanmar migrant returnees from Japan;
  - Vietnamese migrant returnees from Japan; and
  - Migrants currently working in Thailand.



*MMN project partner Ms Thet Thet Aung from the Future Light Centre, Yangon, Myanmar, delivers a presentation about conditions of Myanmar migrants during an MMN multi-stakeholder meeting entitled “Consultation on Labour Migration from Mekong Countries to Japan”, held in July 2019, Tokyo, Japan. Photo: MMN*

As mentioned earlier, no case studies were collected from migrant workers in Malaysia or migrant returnees from that country.

The objectives of these case study were as follows:

- i) To understand migrants’ perception of social protection in both countries of origin and destination;
- ii) To understand the experiences of migrants and migrant returnees with regards to their access to social protection;
- iii) To investigate the roles of countries of origin in assisting migrants’ access to social protection systems; and
- iv) To examine the gaps between existing institutional frameworks relating to migrants’ access to social protection schemes and practices on the ground.

To ensure the relevance of the case studies to the study, MMN project partners agreed to select interviewees that met the following criteria:

- i. Migrant returnees must have returned to their respective countries of origin after January 2016 from Japan or Thailand;
- ii. All migrant interviewees must be 18 years old or above at the time of the interview; and
- III. All migrant interviewees should relate their own experiences, rather than hearsay of other people’s experiences.

In order to gain a balanced understanding of the experiences of migrants, MMN project partners agreed to collect case studies with migrants with mixed experiences. Where possible, respective project partners identified migrants for case studies with the following backgrounds and/or experiences:

- Both male and female migrants;
- Migrants who have been able to enroll in the social protection schemes, and those who have not been able to do so;
- Migrants who have been able to claim the benefits of social protection schemes, and those who have not been able to do so;
- Migrants who have been able to complete their employment contracts, and those who have not;
- Migrants whose employers have deducted contributions from their salary, but have not actually paid it into the social security scheme or other insurance systems;
- Documented and undocumented migrants (excluding migrants who have entered Thailand without any documentation and have never participated in the registration processes, as it is difficult for them to relate their experiences with social protection mechanisms); and
- Migrants who are not officially registered by their employers, but by agents who act as proxy employers in Thailand.



*MMN delegates pay a home visit to Cambodian migrant workers in July 2019, Kanagawa, Japan. Photo: MMN*

In Total, 53 case studies were collected between March and August 2019. Among those interviewed, 24 were 30 years old or below, and 29 of them were older than 30 years old.

In terms of immigration status, 14 out of the 32 interviewees who migrated to Thailand did so by way of procedures established under relevant Memorandum of Understanding (MOU migrants), while others had complicated immigration histories or had registered with the authorities during Thailand's periodic registration periods for undocumented migrants.

All 21 interviewees who migrated to Japan did so through the TITP.

For a breakdown of interviewees by gender, country of destination and work sector, please see the tables below.

**Table 1.1 Breakdown of Migrant Case Study Interviewees by Gender and Country of Destination**

	Total	Male	Female
Total number of interviewees for Case study	<b>53</b>	29	24
Migrants currently in Thailand (all from Myanmar)	10	3	7
Cambodian migrant returnees from Thailand	12	7	5
Myanmar migrant returnees from Thailand	10	6	4
Cambodian migrant returnees from Japan	5	2	3
Myanmar migrant returnees from Japan	8	1	7
Vietnamese migrant returnees from Japan	8	6	2

**Table 1.2 Breakdown of Migrant Case Study Interviewees by Work Sector:**

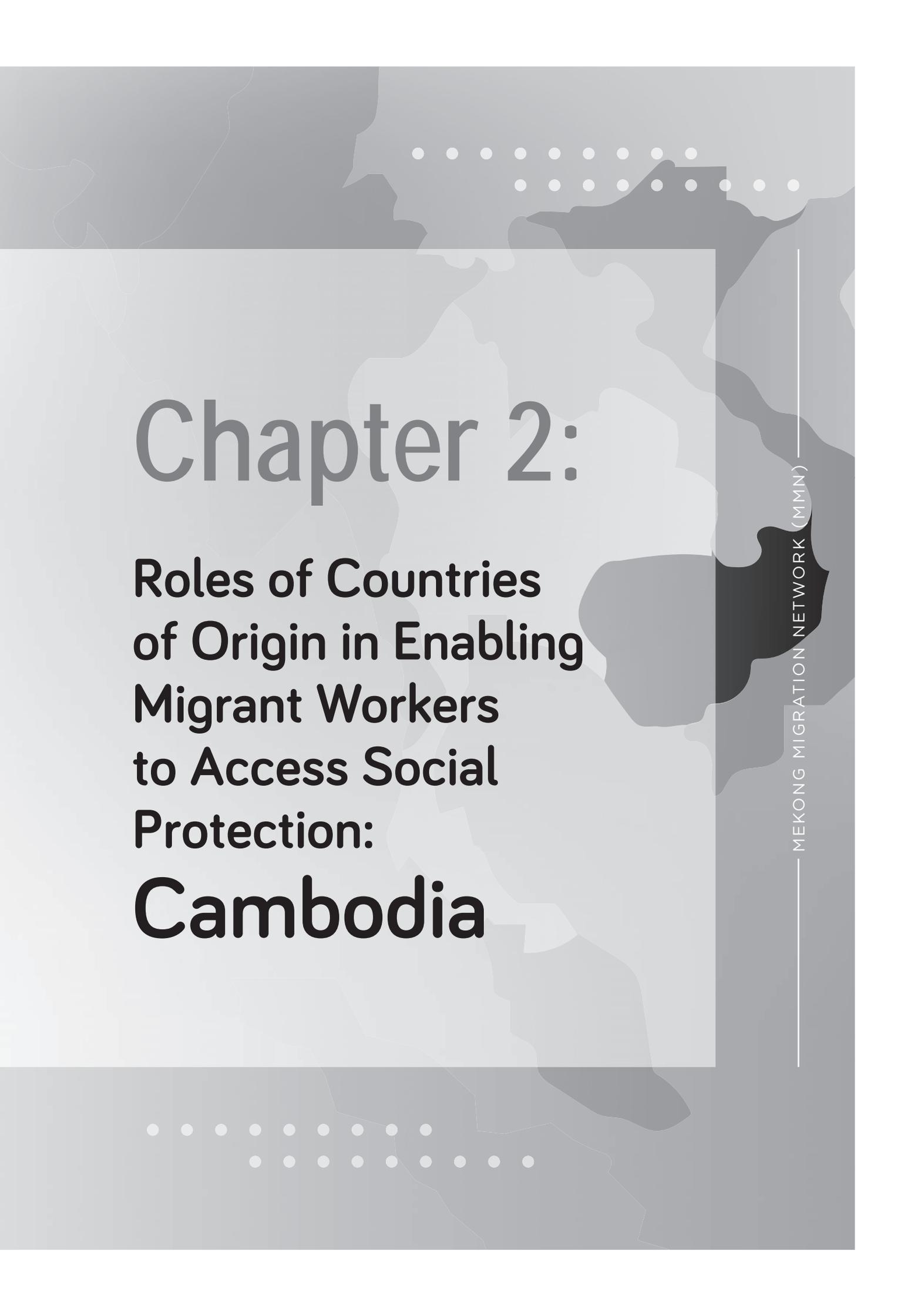
	Total	In Japan	In Thailand
Manufacturing	23	11	12
Food processing	7	3	4
Garment	7	4	3
Construction	9	2	7
Domestic work	2	0	2
Agriculture	2	1	1
Hospitality	1	0	1
Others (e.g. held multiple jobs in different sectors)	2	0	2

## 1.5 Research Limitations

As with any research project, the methodology employed was not without its limitations. Firstly, as explained above, MMN was unable to conduct interviews with the Myanmar Labour Attaché and Cambodian Labour Counsellor in Bangkok during the project period. As a result there may be gaps in the information concerning overseas assistance provided to migrants by embassies and the labour attaché/counsellor. To compensate, MMN endeavoured to gather relevant information by way of desk research including scrutinising the embassies' homepages and social media sites.

Secondly, given the relatively small number of case studies collected, our research makes no wider claims nor attempts to generalise about the experiences of migrant populations from Myanmar, Cambodia and Vietnam. Rather, the purpose of the case studies was to explore migrants' perspectives on the issues and deepen our understanding of what takes place on the ground at the implementation level.

Finally, it should be noted that law, policy and practice concerning labour migration in the GMS are subject to frequent change. MMN has endeavoured to gather information that is current and in effect at the time the research was conducted. Moreover, it should be noted that the study does not claim to present an exhaustive set of information concerning outbound migration governance and the countries' of origin's practices in facilitating their nationals working abroad in accessing social protection. Rather, the research process sought to provide critical analysis of labour migration through a lens of social protection, and develop constructive recommendations accordingly.



# Chapter 2:

## **Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Cambodia**

## 2. Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Cambodia

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### 2.1 Migration from Cambodia to Thailand, Malaysia and Japan

A recent government estimate reveals that in excess of 1.8 million Cambodian nationals currently work overseas.<sup>1</sup> According to an earlier joint survey conducted by the ILO and IOM, less than one-third of Cambodian migrants move abroad through formal channels. The majority continue to rely on a combination of unlicensed brokers and social networks to reach their destination countries.<sup>2</sup> Neighbouring Thailand remains the most popular destination for Cambodian migrant workers, followed by other affluent East and Southeast Asian countries such as the Republic of Korea, Malaysia, Japan and Singapore.<sup>3</sup>

As of May 2019, 243,465 Cambodian nationals migrated to Thailand through processes established under a Memorandum of Understanding (MOU) signed between Cambodia and Thailand in 2015.<sup>4</sup> Meanwhile, 158,828 Cambodians are completing the nationality verification process as part of the registration process for undocumented migrants inside Thailand. A further 9,126 Cambodians have migrated temporarily to Thailand as seasonal workers.<sup>5</sup> Including undocumented workers, there are an estimated 400,000 to 500,000 Cambodian nationals working in Thailand.<sup>6</sup> The majority are employed in the fisheries, agriculture, livestock, construction, manufacturing and service sectors, including domestic work.<sup>7</sup>

Cambodia officially began sending workers to Malaysia in 1998. Between 1998 and 2016, 46,541 documented migrant workers migrated to Malaysia, of whom 86% were women and 70% domestic workers.<sup>8</sup> More recent figures from 2017 put the number of documented Cambodian workers in Malaysia at 5,995, the overwhelming majority of whom (4,643) are women.<sup>9</sup> In 2011, following widely reported cases of Malaysian employers abusing their Cambodian domestic workers, the Cambodian government issued a moratorium on the “first time” migration of domestic workers to Malaysia. Despite the ban, more than 8,000 Cambodian nationals were believed to have

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<sup>1</sup> Figures from the first half of 2018 contained in a report by the Cambodian National Committee for Counter Trafficking, cited in Sen David, “Migrant worker numbers rise”, *Khmer Times*, 5 November 2018, accessible at <https://www.khmertimeskh.com/547009/migrant-worker-numbers-rise/>.

<sup>2</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, “Cambodia (April - June 2019)”, 2019, p. 1, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_614380.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614380.pdf).

<sup>3</sup> Ibid.

<sup>4</sup> Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation, 2015.

<sup>5</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, “Cambodia (April - June 2019)”, p. 2, above.

<sup>6</sup> The Economist Intelligence Unit, “Cambodian Exodus from Thailand”, July 2014, accessible at <http://country.eiu.com/article.aspx?articleid=972098881&Country=Cambodia&topic=Politics&subtopic=Forecast>.

<sup>7</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, “Cambodia (April - June 2019)”, p. 1, above.

<sup>8</sup> Serey Sok, “Cambodian Workers in Malaysia: Challenges and Constraints in Achieving Appropriate Working and Living Conditions”, *Malaysia Sustainable Cities Program*, Working Paper Series, p. 3, accessible at <https://malaysiacities.mit.edu/sites/default/files/documents/Sok.pdf>.

<sup>9</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, “Cambodia (April - June 2019)”, p.2, above.



*Cambodian workers process squid in Rayong, Thailand. Photo: MMN/ John Hulme*

continued their employment in Malaysia.<sup>10</sup> The ban was eventually lifted in 2015 when the Cambodian government signed an MOU with its Malaysian counterparts concerning the recruitment of domestic workers and a separate agreement concerning migrant workers in non-domestic work sectors.<sup>11</sup> According to the Immigration Department of Malaysia, migrant workers from Cambodia are currently permitted to work in construction, on plantations, in agriculture, and in the service and manufacturing sectors.<sup>12</sup>

Cambodia began sending workers to Japan in 2007 under the TITP.<sup>13</sup> As of December 2017, 6,180 Cambodian workers had been recruited under the programme.<sup>14</sup> In 2018, an additional 3,328 Cambodian workers migrated to Japan under the TITP.<sup>15</sup> All the recruitment agencies interviewed by MMN for the study stated that the number is expected to grow rapidly, as migrants see Japan and the Republic of Korea as attractive destination countries in terms of safety and benefits. Currently, migrant workers in Japan are permitted to engage in 133 categories of work under 77 sectors. For Cambodians, agriculture (34%), textile (26%), construction (18%) and food manufacturing (11%) are among the most popular.<sup>16</sup>

<sup>10</sup> Chhay Channyda and Alice Cuddy, "Malaysia maid pipeline resumes", *Phnom Penh Post*, 11 December 2015, accessible at <https://www.phnompenhpost.com/national/malaysia-maid-pipeline-resumes>.

<sup>11</sup> Ibid.

<sup>12</sup> See the webpage of the Immigration Department of Malaysia's website entitled, "Foreign Worker", accessible at <https://www.imi.gov.my/index.php/en/foreign-worker.html>.

<sup>13</sup> Sry Bopharath, "Current Status and Policy Challenges of Labour Migration in Cambodia", 2016, p.5, accessible at <https://www.jcer.or.jp/eng/pdf/Sry2016eng.pdf>.

<sup>14</sup> Immigration Bureau, Ministry of Justice Human Resources Development Bureau, Ministry of Health, Labour and Welfare, PowerPoint presentation entitled "Technical Internship Training Program", 2018, slide 2, accessible at <https://www.otit.go.jp/files/user/190408-1.pdf>.

<sup>15</sup> Preliminary figures in 2018 cited during a meeting with JITCO, conducted in July 2019, Tokyo, Japan.

<sup>16</sup> Figures in Financial Year 2017 cited during a meeting with the JITCO, above.

## 2.2 Impact of Existing Migration Mechanisms

### 2.2.1 Bilateral Agreements with the Destination Countries

Cambodia signed separate MOUs with Thailand and Malaysia in 2015, and a Memorandum of Cooperation (MOC) with Japan in 2017. Replacing a prior MOU, the new MOU between Cambodia and Thailand outlines the responsibilities of both governments in the migration of Cambodian nationals to Thailand through recruitment agencies. While the MOU does not mention specific social protection programmes in Thailand, it notes within its preamble that one of its missions is to “enhance skills of manpower, social security and to strengthen transparency and efficiency in the sending and receiving process of workers between the two countries.”<sup>17</sup> The document also states that workers migrating through MOU processes are entitled to “fair treatment in the workplace subject to national laws, regulations and policies of the receiving country.”<sup>18</sup>

In 2015, pursuant to Article 6 of the MOU, Cambodia and Thailand signed a separate “Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand”. This provides further guidance on the implementation of the MOU. The agreement states that workers are “entitled to the same fair treatments as enjoyed by local workers based on the basic principles of non-discrimination and equality, regardless of gender, ethnic and religious differences”.<sup>19</sup> In addition, migrant workers are entitled to “protection, rights and benefits in accordance with employment contracts, labour laws and regulations in force in the receiving country.”<sup>20</sup> A change of employer is permitted if work conditions are “abusive, exploitative or become untenable” or if a migrant worker’s employment contract has been terminated not due to a fault of her/his own.<sup>21</sup>

Other provisions with implications for Cambodian migrant workers’ access to social protection programmes in Thailand include:

- Article 4(3): “The workers shall contribute to the funds, if any, in pursuant to the laws and regulations of both countries.”
- Article 7(4): “In the event of an accident, serious illness or death of the employees during the term of employment contract, the employers shall notify the competent authority of the receiving country and the Embassy of the sending country located in the receiving country. The employer shall also be responsible to make necessary medical care and compensation for the affected workers according to the laws of the receiving country.”
- Article 9(1): “The competent authorities shall provide their counterparts with information on language, religion, living and working in the receiving country, including information on workers’ rights, and complaint mechanisms, workers’ duties and benefits under the laws and regulations of the receiving country.”

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<sup>17</sup> Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation, 2015, preamble.

<sup>18</sup> Ibid., Article 6.

<sup>19</sup> Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand, 2015, Article 5(1).

<sup>20</sup> Ibid., Article 5(2).

<sup>21</sup> Ibid., Article 5(5).



*Migrant workers show their documents to enter Thailand from Cambodia at the Poi Pet border crossing. Photo: MMN/ John Hulme*

- Article 9(2) “The sending agency shall conduct a mandatory orientation free of charge for the workers concerning the information as prescribed in paragraph 1 of Article 9(1) including contents of the employment contract or written offer of employment sent by the employers to the workers to ensure that workers have a clear understanding of the terms and conditions of their employment.”
- Article 10: “The competent authorities shall coordinate with their authorities concerned to ensure that workers, who have been selected and duly permitted pursuant to the laws and regulations of the sending country, have fulfilled in pursuant of the laws and regulations of the receiving country, inter alia, the following requirements: 1. Visa; 2. Work Permit; 3. Health insurance or health services as required.”

In 2015, Cambodia signed two separate MOUs with Malaysia: one on the recruitment of Cambodian domestic workers and another on the recruitment of migrant workers in other sectors. The MOU on the recruitment of domestic workers establishes a “framework on the recruitment, employment and repatriation of the Domestic Worker”.<sup>22</sup> Under the agreement, domestic workers must be between the ages of 21 and 45, have undergone pre-departure training on Malaysian laws, cultures and social practices alongside training in domestic work, and must not possess any previous criminal records.<sup>23</sup> The MOU further outlines the responsibilities of the employer, the Malaysian recruitment agency, the Cambodian recruitment agency and the domestic worker.<sup>24</sup> In particular, Cambodian recruitment agencies are expected to arrange documents, medical examinations and

<sup>22</sup> Memorandum of Understanding between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Domestic Workers, 2015, Article 2, accessible at <http://apmigration.ilo.org/country-profiles/mou-on-recruitment-of-cambodian-domestic-workers-sent-to-malaysia/view/++widget++form.widgets.multifile/@@download/0>.

<sup>23</sup> Ibid., Article 5.

<sup>24</sup> Ibid., Appendix A.

pre-departure training for prospective domestic workers, as well as explain the terms of the employment contract.<sup>25</sup> Providing domestic workers with insurance to “cover medical treatment expenses and risk compensation” falls under the employer’s responsibility.<sup>26</sup>

The MOU on the recruitment of Cambodian Workers stipulates that workers must be between the ages of 18 and 45 years old, possess relevant qualifications and skills, have completed pre-orientation programmes in Cambodia and must not possess any previous criminal records.<sup>27</sup> As per the MOU applicable to domestic workers, it makes recruitment agencies responsible for arranging documents and medical examinations and explaining terms of the employment contract to prospective workers. However, there is no mention of Cambodian recruitment agencies’ role in providing pre-departure training.<sup>28</sup> The MOU also specifies that employers are expected to pay into the Foreign Workers Compensation Scheme (FWCS), and if necessary, the Foreign Worker Hospitalisation and Surgical Insurance Scheme (SPIKPA).<sup>29</sup> Effective as of 1 January 2019, employers hiring incoming migrant workers (excluding domestic workers) must enrol their migrant worker employees in the Employment Injury Scheme (EIS) under the Employees’ Social Security Act 1969,<sup>30</sup> which previously only applied to Malaysian nationals.<sup>31</sup> Employers of existing migrant workers under the FWCS have to enrol them in the EIS once the FWCS expires before 31 December 2019. By 1 January 2020, all existing migrants (excluding domestic workers) must be registered in the EIS even if the FWCS continues to be valid.<sup>32</sup>

The MOC on the TITP was signed between Cambodia and Japan in 2017. The instrument sets out the commitments and responsibilities of both countries regarding Cambodian migrant workers participating in the TITP. Under the MOC, the Cambodian government has committed to screen and approve recruitment agencies according to a set of approving standards, make public the list of approved recruitment agencies, provide supervision to approved recruitment agencies, and, in cases where a recruitment agency is found to have violated the approving standards, to revoke their credentials.<sup>33</sup> Approving standards include conditions that require recruitment agencies to specify cost structures of fees collected from prospective migrant workers and to help migrant returnees find employment opportunities in Cambodia in which they can utilise the skills they

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<sup>25</sup> Ibid., Appendix A, C(ii), C(iii) & C(v).

<sup>26</sup> Ibid., Appendix A, A(vii).

<sup>27</sup> Memorandum of Understanding between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Workers, 2015, Article 5, accessible at <http://un-act.org/publication/view/memorandum-of-understanding-between-the-government-of-malaysia-and-the-government-of-the-kingdom-of-cambodia-on-the-recruitment-and-employment-of-workers/>.

<sup>28</sup> Ibid., Appendix B, D(iii) & D(iv).

<sup>29</sup> Ibid., Appendix B, A(vi)(d).

<sup>30</sup> “Foreign workers to be covered under Socso effective”, *drawn from Bernama by the Star Online*, 21 November 2018, accessible at <https://www.thestar.com.my/news/nation/2018/11/21/foreign-workers-to-be-covered-under-socso-effective-jan-1>.

<sup>31</sup> ILO, “Social protection for migrant workers in ASEAN: Developments, challenges, and prospects”, 2018, p.60, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_655176.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_655176.pdf).

<sup>32</sup> See the webpage of the Social Security Organisation of Malaysia’s website, entitled “Social Protection for Foreign Worker”, accessible at [https://www.perkeso.gov.my/index.php/en/our-services/benefits/employees-social-security-act-1969-act4/skim-bencana-kerja-pekerja-asing?fbclid=IwAR1yfBNN\\_bpHIW\\_QV8IzYxZT2PXNd2VdnmlhL6Cj6XSfn2nNHTWvqCybxWM](https://www.perkeso.gov.my/index.php/en/our-services/benefits/employees-social-security-act-1969-act4/skim-bencana-kerja-pekerja-asing?fbclid=IwAR1yfBNN_bpHIW_QV8IzYxZT2PXNd2VdnmlhL6Cj6XSfn2nNHTWvqCybxWM).

<sup>33</sup> Memorandum of Cooperation on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour and Vocational Training of Cambodia, 2017, pp. 3-4, accessible at <http://www.moj.go.jp/content/001229407.pdf>.

have acquired in Japan.<sup>34</sup> Recruitment agencies that have, in the past five years, collected deposits from prospective TITP workers, violated the human rights of TITP workers or used forged or false documents during the recruitment process cannot be approved to recruit workers to Japan.<sup>35</sup> The MOC contains no specific provisions regarding migrant workers' access to social and labour insurance programmes in Japan. As of July 2019, 77 recruitment agencies in Cambodia have been approved to send workers to Japan under the TITP.<sup>36</sup>

## 2.2.2 National Legislation, Policies and Institutions

### *Legislation*

Formal labour migration in Cambodia is governed by Sub-Decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies (17 August 2011) and *prakas* (or regulations) issued by the MOLVT. Together, the sub-decree and complementing regulations outline responsibilities of government ministries and recruitment agencies at various stages of the migration cycle, licencing conditions of recruitment agencies and recruitment procedures. The relevant *prakas* include:

- *Prakas* 45/13 on the Use of Terms (13 February 2013);
- *Prakas* 46/13 on Recruitment Process and Pre-Departure Orientation Training (13 February 2013);
- *Prakas* 47/13 on Private Recruitment Agencies (13 February 2013);
- *Prakas* 249 on Complaint Receiving Mechanism for Migrant Workers (23 September 2013);
- *Prakas* 250 on Inspection on Private Recruitment Agencies (23 September 2013);
- *Prakas* 251 on Penalty and Reward to the Private Recruitment Agencies (23 September 2013);
- *Prakas* 252 on Onsite service of the Private Recruitment Agencies and repatriation (23 September 2013); and
- *Prakas* 253 on Promulgation of Minimum Standards of Job Placement (23 September 2013)

A *prakas* on the use of recruitment agency deposits to compensate workers and another *prakas* on regulating training centres are currently in the drafting process.<sup>37</sup>

Regarding migrants' access to social protection in destination countries, Sub-Decree 190 states that recruitment agencies are “responsible for making arrangements to ensure that workers who are sent abroad will receive appropriate social security regimes in accordance with the applicable laws and regulations of the receiving country.” Sub-Decree 190 also accords the MOLVT the task of monitoring “the performance of the recruitment agencies in securing social security regimes

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<sup>34</sup> Ibid., pp. 6-7.

<sup>35</sup> Ibid., p.7.

<sup>36</sup> Organization of Technical Internship Training (OTIT), Japan, “Full list of approved sending organization of Cambodia”, July 2019, accessible at <https://www.otit.go.jp/files/user/190717-3.pdf>.

<sup>37</sup> MMN Key Informant Interview with a representative of the Department of Employment and Manpower (DOEM) under the MOLVT, conducted in October 2018, Phnom Penh, Cambodia.

for the workers as well as in cooperating with the receiving country.”<sup>38</sup> The Cambodian government is in the process of drafting a new law to facilitate the transfer of social security for Cambodian migrant workers. The law would likely establish mechanisms to enable the transfer of social security benefits from destination countries to the National Social Security Fund (NSSF) in Cambodia.<sup>39</sup>

### *Policies*

In December 2018, the Cambodian government, in collaboration with the ILO, developed an updated Policy on Labour Migration for Cambodia 2019-2023.<sup>40</sup> The policy provides the main framework to protect and empower migrant workers through strengthening the mechanism for Cambodian people to migrate safely and through regular channel.<sup>41</sup> In general, the draft Policy’s 15 goals follow nine broad categories that include looking at the international, institutional, and legislative/regulatory frameworks, supervising recruitment and placement and supporting return and reintegration. Specific action points are developed under each goal to coordinate efforts of relevant government agencies.<sup>42</sup> Compared to the Policy on Labour Migration for Cambodia 2014-2018, the new draft policy updates provisions relating to improving skills recognition programmes, reducing the cost of migration, strengthening support and reintegration services, expanding available options for women to migrate through formal channels and enhancing access to social protection.<sup>43</sup>

To expand the accessibility of social protection programmes, the draft policy calls for more robust consular services and the establishment of offices in destination countries to provide shelter, labour dispute assistance, intervention in urgent situations, social protection and repatriation facilities to all migrant workers, regardless of their migration status.<sup>44</sup> In examining social protection mechanisms, the government plans to conduct a pilot project with migrants from selected provinces to evaluate the viability of establishing a migrant welfare fund.<sup>45</sup> There are also plans to expand membership of the National Social Security Fund to all migrant workers regardless of their working status,<sup>46</sup> hold dialogues with destination countries to discuss the portability of social protection benefits,<sup>47</sup> negotiate with employers in destination countries to ensure migrant workers are enrolled in the social protection schemes they are entitled to,<sup>48</sup> and create an annex for the MOU with Thailand and Malaysia that ensures the portability of social protection benefits from the two

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<sup>38</sup> Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, 2011, Articles 33 and 34, accessible at <http://www.mekongmigration.org/wp-content/uploads/2008/05/PDF49.2KB.pdf>.

<sup>39</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT, conducted in July 2019, Phnom Penh, Cambodia.

<sup>40</sup> Kong Meta, “MoL and ILO vow improved migrant workers support”, *Phnom Penh Post*, 20 December 2019, accessible at <https://www.phnompenhpost.com/national/mol-and-ilo-vow-improved-migrant-workers-support>.

<sup>41</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (October 2018), above.

<sup>42</sup> The Royal Government of the Kingdom Cambodia, “Draft Policy on Labour Migration for Cambodia 2019-2023 (Unofficial Translation)”, 2019, pp. 9-10.

<sup>43</sup> *Ibid.*, p. 8.

<sup>44</sup> *Ibid.*, p. 39 (Policy Goal 7).

<sup>45</sup> *Ibid.*, p.41 (Policy Goal 11.1).

<sup>46</sup> *Ibid.*, p.41 (Policy Goal 11.2).

<sup>47</sup> *Ibid.*, p.41 (Policy Goal 11.3).

<sup>48</sup> *Ibid.*, pp.41-2 (Policy Goal 11.4).

destination countries to Cambodia.<sup>49</sup> In terms of return and reintegration, the draft policy calls for strengthened services targeting migrant returnees, including services to facilitate social protection benefits transfer.<sup>50</sup>

In practice, financial constraints have been pointed out as one of the main challenges in implementing the new Policy. The MOLVT's budget is currently insufficient to conduct a nationwide campaign on safe labour migration. Another challenge is the limited capacity of officers from the MOLVT and identified development partners to carry out activities outlined in the Policy.<sup>51</sup>

Aside from the Policy on Labour Migration for Cambodia 2019-2023, the 2015-2025 National Employment Policy (NEP) more broadly contemplates the development of Cambodia's labour market. It lists three main targets as its primary focus: (1) increasing decent and productive employment opportunities, (2) amplifying skills and human resource development, and (3) enhancing labour market governance.<sup>52</sup> Under the last goal, the NEP seeks to "oversee and protect migrant workers in obtaining decent employment and skill recognition."<sup>53</sup> To achieve this objective, the NEP calls for the governance of labour migration, the protection and empowerment of migrant workers, strengthened service provision for social and economic reintegration for migrant returnees, improved management of information on migrant workers abroad and migrant returnees and the enforcement and promotion of labour laws in Cambodia.<sup>54</sup> The draft Policy on Labour Migration for Cambodia 2019-2023 envisions that a subcommittee to the NEP will actively monitor implementation of the Policy,<sup>55</sup> which includes overseeing the Policy's initiatives to enhance access to social protection. Eventually, Cambodia hopes to formally streamline labour migration into national policies, including the NEP.<sup>56</sup>

### *Institutions*

Sub-Decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies accords the MOLVT the main role of overseeing the sending of migrant workers abroad.<sup>57</sup> Among other tasks, the MOLVT is mandated to authorise and monitor recruitment agencies, regulate pre-departure training, certify employment contracts, and resolve disputes between workers and employers, and workers and agencies. In terms of cross-ministry coordination, the MOLVT works with the Ministry of Foreign Affairs and International Cooperation to prepare bilateral agreements with destination countries to establish formal migration channels.<sup>58</sup> According to the final draft Policy on Labour Migration for Cambodia 2019-2023, the MOLVT is

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<sup>49</sup> Ibid., p.35 (Policy Goal 3.5).

<sup>50</sup> Ibid., p.43 (Policy Goal 14).

<sup>51</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (October 2018), above.

<sup>52</sup> The Royal Government of the Kingdom of Cambodia, "The 2015-2025 National Employment Policy (Unofficial Translation)", 2014, p. 4, accessible at <http://extwprlegs1.fao.org/docs/pdf/cam169450.pdf>.

<sup>53</sup> Ibid., p.12. (Objective 3.6)

<sup>54</sup> Ibid.

<sup>55</sup> The Royal Government of the Kingdom Cambodia, "Draft Policy on Labour Migration for Cambodia 2019-2023 (Unofficial Translation)", p.36 (Policy Goal 4.2), above.

<sup>56</sup> Ibid., p. 42 (Policy Goal 12.1).

<sup>57</sup> Sub-decree 190, Article 5, above.

<sup>58</sup> Ibid., Article 14.



*The General Department of Labour under the MOLVT in Phnom Penh, Cambodia. Photo: MMN*

also made responsible for the implementation of most of its policy goals, including social protection-related initiatives mentioned in the previous section.

The Department of Employment and Manpower (DOEM) is one of the departments under the General Department of Labour of MOLVT. The DOEM has the mandate of managing migration flows and developing measures to protect Cambodian outbound migrant workers.<sup>59</sup> Among its tasks, the department works with its counterparts in destination countries to ensure that Cambodian migrant workers receive social protection and benefits as stated under laws and policies of destination countries. Another main role of the DOEM is to strictly conduct labour inspection in relation to the performance of recruitment agencies which are licensed by the MOLVT.<sup>60</sup> In terms of pre-departure orientation (PDO), the department provides PDOs for prospective migrant workers and assists recruitment agencies in developing training programmes.<sup>61</sup>

## **2.3 Information Dissemination**

### *Migrant Resource Centres*

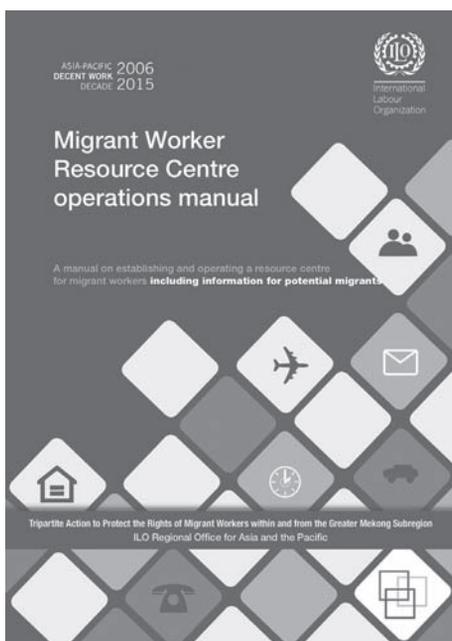
One of the primary means employed by the Cambodian government to disseminate information to the public at the pre-migration stage is through the use of Migrant Resource Centres (MRCs), established with the assistance of the ILO and IOM. Currently, MRCs are located in Battambang, Kampong Cham, Prey Veng, Phnom Penh, Poipet, Kampong Thom and Kampot. The centres have

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<sup>59</sup> The Royal Government of the Kingdom Cambodia, “Draft Policy on Labour Migration for Cambodia 2019-2023 (Unofficial Translation)”, p. 21, above.

<sup>60</sup> MMN Key Informant interview with a representative of the DOEM under the MOLVT (July 2019), above.

<sup>61</sup> The Secretariat of the Association of Southeast Asian Nations (ASEAN), “Compendium on Migrant Workers’ Education and Safe Migration Programmes”, 2017, p. 42, accessible at <https://asean.org/wp-content/uploads/2012/05/ASEAN-Compendium-on-Workers-Education-and-Safe-Migration-Programmes.pdf>.



*The Migrant Worker Resource Centre Operations Manual developed in 2014.  
Photo: MMN Screenshot*

four objectives: (1) counselling prospective migrants; (2) receiving and resolving complaints; (3) training and building the capacity of local commune leaders and family members; and (4) disseminating general information on migration.<sup>62</sup>

In 2014, the ILO developed an MRC Operation Manual to serve as a guide for organisations and community leaders to set up MRCs and provide services to migrant workers and their family members. Information for prospective migrant workers is also available as part of the manual.<sup>63</sup> After reading the document, staff members of MRCs are expected to have a basic understanding of social protection programmes in major destination countries, such as Malaysia and Thailand. Sections on Malaysia explain the benefits and compensation available under the FWCS, methods to process insurance claims and ways to file complaints to the Malaysian Office of Labour Protection and Welfare if employers do not purchase the mandatory insurance for their workers.<sup>64</sup> Concerning

social security programmes in Thailand, the manual explains the contributory-based social security system, ways for migrants to access social security benefits and alternative methods to obtain health insurance if employers do not enrol them in the system.<sup>65</sup>

### *Pre-Departure Orientation*

According to *prakas* 46/13 on Recruitment Process and Pre-Departure Orientation Training, recruitment agencies are required to provide “pre-departure orientation to workers in accordance with pre-departure orientation curriculum as determined by the Ministry of Labour and Vocational Training”.<sup>66</sup> Sub-decree 190 also states that recruitment agencies should cooperate with the MOLVT when conducting PDOs and provide contact information of the Cambodian Embassy, labour counsellors and the MOLVT during PDO courses.<sup>67</sup>

PDOs reportedly vary in quality, length and duration across different recruitment agencies, but usually last between one and three days. Some PDOs only take place one, or one and a half days before deployment.<sup>68</sup> There have been a few cases where migrant workers going to Thailand were

<sup>62</sup> MMN, “Safe From the Start”, p. 32, above.

<sup>63</sup> ILO, “Migrant Worker Resource Centre Operations Manual”, 2014, p. 1, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_312450.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_312450.pdf).

<sup>64</sup> *Ibid.*, p. 131.

<sup>65</sup> *Ibid.*, pp. 123-124.

<sup>66</sup> *Prakas* no. 046/13 on Recruitment Process and Pre-Departure Orientation Training, 2013, Article 9, accessible at <https://drive.google.com/file/d/1eR1TeheTpneHZhbGDzI9NBoyoNyMdiK8/view?usp=sharing>.

<sup>67</sup> Sub-Decree 190, Articles 20 & 23, above.

<sup>68</sup> The Secretariat of the ASEAN, “Compendium on Migrant Workers’ Education and Safe Migration Programmes”, pp. 42-43, above.



*Migrant workers study the laws, lifestyle and culture of Japan at a PDO session for Japan-bound workers at the DOEM in Phnom Penh, Cambodia. Photo: MMN”*

not offered any training whatsoever.<sup>69</sup> While the DOEM under the MOLVT has monitoring and inspection mechanisms in place, ASEAN notes that the monitoring of training providers remain weak and infrequent.<sup>70</sup>

The ILO has assisted in the development of a curriculum for PDOs focusing on migration to Thailand and Malaysia alongside a manual for the Training of Trainers for recruitment agencies to implement. The ILO noted a high level of commitment to the curriculum from the Association of Cambodian Recruitment Agencies (ACRA), but lamented a failure on the part of the government to disseminate and implement the curriculum universally.<sup>71</sup> The ILO’s PDO curriculum focusing on migration to Thailand includes modules on 1) preparation for employment in Thailand; 2) geography, environment and culture of Thailand; 3) laws and regulations of Cambodia; 4) travel abroad and arrival in Thailand; 5) working in Thailand; 6) money management; 7) health and hygiene; 8) return and reintegration; and 9) safety and support services. Under the “working in Thailand” module, the curriculum explains the social security system in Thailand, including information on the amount of contribution that is deducted from workers’ monthly salary, ways to verify whether employers have enrolled workers in the scheme and methods to make claims under the Workmen Compensation Fund.<sup>72</sup>

In addition to recruitment agencies, Provincial Departments of Labour and Vocational Training under the MOLVT are required to deliver training. Due to budget constraints, training quality and

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<sup>69</sup> Ibid., p. 43.

<sup>70</sup> Ibid.

<sup>71</sup> MMN, “Safe From the Start”, p. 34, above.

<sup>72</sup> Based on a draft version of the Pre-Departure Orientation Curriculum for Migrant Workers going to Thailand, developed by the ILO.

quantity remains low.<sup>73</sup> Recently, the MOLVT began offering a half-day PDO for workers travelling to Japan at the DOEM in Phnom Penh, Cambodia. The curriculum was developed with the input of the Cambodian Embassy in Japan.<sup>74</sup> If the class size exceeds 20, representatives of the MOLVT will deliver courses at recruitment agencies' training centres. Modules of the PDT include content on labour rights, employment contracts, life and culture in Japan, working in Japan, available on-site support, visas and return and reintegration.<sup>75</sup> Migrants are also informed about the provision of health insurance and pensions in Japan and are told that their contract of employment should contain clauses regarding these schemes.<sup>76</sup>

Despite attending PDOs, migrant returnees noted that the information they received on social protection programmes of destination countries is insufficient, especially with regards to the amount of contributions and benefits under these programmes.

*"I did not receive information about the insurance schemes nor the benefits for migrant workers. I think that it is a weakness of the recruitment agency for not providing enough information. If I received that information it would be useful for me and I could get more benefits"*

Cambodian migrant returnee from Japan (Male, 39 years old)

Without receiving complete information during the pre-departure stage, a majority of interviewed migrant workers in Thailand gathered information from their employers to learn about Thai social protection programmes. However, the information provided is usually not comprehensive and does not explain benefits that migrant workers are entitled to.

*"The company told us that we can use the social security card when we are sick... We can go to the hospital free of charge."*

Cambodian migrant returnee from Thailand  
(Male, 39 years old, migrated through processes established by the MOU)

### *Social Media*

Both the MOLVT and the Cambodian Labour Counsellor in Japan maintain separate Facebook pages aimed at migrant workers travelling to Japan. Created in August 2018, the MOLVT's page shares information on the list of recruitment agencies that are allowed to send workers to Japan, changes to the minimum wage across Japan and updates on Japan's immigration system. There are also regular alerts on severe weather conditions and earthquakes and educational posts teaching migrant workers useful Japanese phrases that can be used when they access health services.<sup>77</sup> The information on the Facebook page of the Labour Counsellor in Japan, created in February 2017, has similar content, with additional reports on embassy outreach missions to

<sup>73</sup> The Secretariat of the ASEAN, "Compendium on Migrant Workers' Education and Safe Migration Programme", p. 43, above.

<sup>74</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (July 2019), above.

<sup>75</sup> MMN Key Informant Interview with a representative of a recruitment agency, conducted in February 2019, Phnom Penh, Cambodia.

<sup>76</sup> Based on MMN observation of a Pre-Departure Training for migration in Japan, conducted in February 2019 at the DOEM under the MOLVT, Phnom Penh, Cambodia.

<sup>77</sup> The MOLVT's Facebook page in Japan is accessible at <https://www.facebook.com/ការិយាល័យ-ជំនុំ-នៃ-អង្គការ-អន្តរជាតិ-សម្រាប់-ការ-ការពារ-សិទ្ធិ-មនុស្ស-កម្ពុជា-Japan-Office-943702815836821/>.



The Facebook page of the Labour Counsellor in Japan. Photo: MMN Screenshot

worksites in Japan and warnings about the consequences of migrant workers leaving their jobs without terminating their contracts. As of August 2019, nearly 13,000 people have “liked” the page. The Labour Counsellor typically replies to messages via Facebook within a day.<sup>78</sup>

In Thailand, the Facebook page of the Cambodian Embassy was created in September 2015 and has over 20,000 people following the page as of August 2019. The page provides updates on meetings and activities organised by the Embassy.<sup>79</sup> The Cambodian Labour Counsellor in Thailand hosts a separate Facebook page containing video clips about the minimum wage and social security schemes in Thailand. There are posts on successful cases where the embassy facilitated the compensation of workers for unpaid overtime wages, occupational injuries and workplace deaths. The page also reports on the labour counsellor’s outreach missions to educate workers about their rights.

The Facebook page of the Embassy of Cambodia in Malaysia contains information on official meetings and activities organised by the Embassy. The page has no information related to migrants’ access to social protection schemes available in Malaysia. In November 2016, the Embassy announced that it would discontinue using the Facebook page.<sup>80</sup>

<sup>78</sup> The Labour Counsellor’s Facebook page in Japan is accessible at <https://www.facebook.com/Labourcounsellorinjapan/>

<sup>79</sup> The Facebook page of the Embassy of Cambodia in Thailand is accessible at <https://www.facebook.com/Royal-Embassy-of-Cambodia-in-Bangkok-515427841947524/>

<sup>80</sup> The Facebook page of the Embassy of Cambodia in Kuala Lumpur, Malaysia is accessible at <https://www.facebook.com/Royal-Embassy-of-Cambodia-Kuala-Lumpur-200711693281092/>.

## **CASE STUDY 1 – Cambodian migrant returnee from Japan (Female, 32 years old)**

S.T., female, 32 years old, returned to Cambodia in April 2019 after 3 years of being a technical trainee in a garment factory in Fukui Prefecture, Echizen city, Japan under the TITP.

S.T. decided to work in Japan to earn a higher salary to help her family, but also to experience working life in a foreign country. Initially, she learned of the possibility of working in Japan through her sister who had previously worked there. Then she decided to pursue this opportunity through a recruitment agency. She paid the recruitment agency USD 6,000 to arrange for her to work in Japan. She had a successful interview with a Japanese employer and then passed a medical check-up. Prior to travelling she spent 5 months learning the Japanese language.

Before arriving in Japan, she was informed of the salary she would earn, and the need to pay into the health insurance, working injury, and pension insurance schemes. Information on reclaiming a lump sum on her pension contributions upon return was also provided. However, there was no information about exactly how much migrant workers were required to contribute towards the various Japanese insurance schemes. Furthermore, the recruitment agency did not provide her with information as to how to enrol in the system. S.T. thought that this information was very important. She wished to learn more about her salary in Japan; the various insurance schemes and the contributions she was required to make in the pre-departure process.

*“I think that it is useful for me [to obtain information], because it could help me know more about working in Japan.”*

During her first month in Japan, she learnt about everyday Japanese life, such as traffic law, lifestyle, how to use a fire extinguisher, and Japanese culture. She also received a health check-up. This was a requirement of the garment factory, who required that new workers spend 1 month learning about life in Japan. Following this orientation, she began work in the garment factory. At the end of the first year, she was required to take and pass a Japanese language exam in order to continue to work in Japan for the next 2 years. Every year, she signed a new employment contract at an increased salary.

For S.T., contributing towards insurance schemes helped her a lot.

*“For example, if I went to hospital, without insurance, it would be too expensive to pay for treatment at the full price. But with my coverage under the insurance programme, all my previous treatment is recorded on the health insurance card.”*

During her employment in Japan, S.T. enrolled in Japan's insurance schemes. Every month, her contributions were directly deducted from her salary of which USD 70 was for health insurance and USD 110 for pension insurance. However, she did not clearly know much she contributed towards her employment insurance. In total, her employer deducted USD 200 per month from her salary.

During the entirety of her stay in Japan, S.T. used her health insurance 3 or 4 times when going to hospital and for follow-up health check-ups. With the support of the Supervising Organisation,<sup>81</sup> she could claim money back from the health insurance scheme. However, she was of the opinion that she contributed more towards the health insurance scheme than benefitted from it.

*“For health insurance, I used it just 3 or 4 times, but I paid for it for 3 years.”*

Upon her return to Cambodia, she successfully claimed her pension lump sum with the help of her Supervising Organisation and recruitment agency. The money was transferred to her bank account.

*“I received 100% of my contribution toward pension insurance scheme. The first time, I got 80% and second time the remaining 20% more. The recruitment agency helped me to claim the money back from pension insurance.”*

To support migrant workers in Japan in terms of enrolling and claiming benefits from insurance schemes, S.T. thought both Supervising Organisation and employer could help. Additionally, on the Cambodian side, the Embassy of Cambodia in Japan and Cambodian recruitment agencies can provide assistance.

*“Recruitment agencies have connections with Supervising Organisations. That is the reason why agencies can help migrant workers to claim the benefits from Japans’ insurance schemes.”*

In terms of her future plan, S.T. wants to work abroad again in order to earn more money to support her family.

## 2.4 Overseas Assistance

By law, consulates or embassies of Cambodia in destination countries are mandated to work with recruitment agencies to respond to complaints,<sup>82</sup> and resolve disputes between migrant workers and overseas employers.<sup>83</sup> Consulates and embassies should also intervene in cases of “abuse and violation against workers”,<sup>84</sup> death of workers,<sup>85</sup> and unpaid wages.<sup>86</sup> Cambodia currently

<sup>81</sup> Under the TITP, “implementing organisations” implement the training plans of workers. “Supervising Organisations” are nonprofit organizations such as business cooperatives and societies of commerce and industry, which monitor their affiliated “Implementing Organisations” to ensure that migrant workers receive sufficient protection at their work sites. For more information on the structure of the TITP, please visit the TITP’s official website, accessible at <https://www.jitco.or.jp/en/regulation/index.html>.

<sup>82</sup> *Prakas* 249 on Complaint Receiving Mechanism for Migrant Workers, 2013, Article 10, unofficial translation accessible at [https://drive.google.com/file/d/1EGAgvNOyfydDx4snRspWP8sm5m5e64\\_G/view?usp=sharing](https://drive.google.com/file/d/1EGAgvNOyfydDx4snRspWP8sm5m5e64_G/view?usp=sharing).

<sup>83</sup> Sub-decree 190, Article 30, above.

<sup>84</sup> *Prakas* 252 on On-site service of the Private Recruitment Agency and Repatriation, 2013, Article 5, unofficial translation accessible at <https://drive.google.com/file/d/1PFM56NWjNMtGITKVtacETotn47ulNvx0/view?usp=sharing>.

<sup>85</sup> *Ibid.*, Article 7.

<sup>86</sup> *Ibid.*, Article 8.



*MMN delegates pay a home visit to Cambodian migrant workers in Kanagawa, Japan. Photo: MMN*

employs labour counsellors in Thailand, Malaysia, Japan,<sup>87</sup> and the Republic of Korea.<sup>88</sup> While there are no directives stipulating their official job descriptions,<sup>89</sup> labour counsellors generally perform the roles of mediating in labour disputes between migrant workers and employers and assisting migrant workers access complaint mechanisms in destination countries.<sup>90</sup> Occasionally, labour counsellors conduct field visits to migrant work sites to inspect working conditions and talk to migrant workers. When an emergency request from migrant workers is received, labour counsellors work with local authorities of destination countries to provide support. If necessary, labour counsellors assist migrant workers in legal processes. A representative of the DOEM under the MOLVT also stated that labour counsellors facilitate negotiations between the governments of Cambodia and destination countries, which helps fulfil some of the action plans under the draft Policy of Labour Migration for Cambodia 2019-2023 to refine existing MOUs. Throughout the above processes, the MOLVT works closely with Cambodian labour counsellors to protect migrant workers.<sup>91</sup> In June 2019, the Cambodian Embassy in Bangkok, Thailand also announced that it will conduct visits across Thailand to understand migrant workers' challenges and expand services and assistance.<sup>92</sup>

If Cambodian workers encounter problems abroad, they can reach out to the Cambodian Embassy in-person or by phone. In principle, all migrants, regardless of their migration status, can receive

<sup>87</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (October 2018), above.

<sup>88</sup> MMN, "Safe From the Start", p. 34, above.

<sup>89</sup> ILO, "Assessment of the complaints mechanism for Cambodian migrant workers", 2016, p.17, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_466494.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_466494.pdf).

<sup>90</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (October 2018), above.

<sup>91</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (July 2019), above.

<sup>92</sup> Khron Savi, "Cambodian Embassy in Bangkok to help migrants", *Phnom Penh Post*, 13 June 2019, accessible at <https://www.phnompenhpost.com/national/cambodian-embassy-bangkok-help-migrants>.

support from the Cambodian labour counsellor.<sup>93</sup> Despite this, a majority of interviewed migrant returnees, especially those from Thailand, reported not knowing the roles of embassies and labour counsellors, as well as how and who to approach in cases where they require assistance.

Cambodian migrant workers in Japan have also highlighted difficulties contacting support services partly due to the complicated procedures applicable to foreigners in Japan to obtain a telephone with a Japanese number.<sup>94</sup> However, some migrant returnees from Japan still believed that the Cambodian Embassy could play a positive role in supporting access to social protection schemes.

*“I heard from my friend who had a problem and lodged a complaint to the Cambodian embassy in Japan for help. I think the Cambodian embassy can help me, too.”*

Cambodian migrant returnee from Japan (Female, 32 years old)

*“I think that the Cambodian embassy in Japan and the MOLVT can help me enrol in insurance programmes in Japan and receive benefits because they are authorised to help migrant workers and have connections with the Japanese government.”*

Cambodian migrant returnee from Japan (Male, 31 years old)

In Malaysia, the ILO has reported that the Cambodian Embassy lacks the resources to properly support migrant workers’ access to justice, which could be one reason why abusive employers often escape sanction.<sup>95</sup>

## 2.5 Roles and Responsibilities of Recruitment Agencies

### 2.5.1 Regulation of Recruitment Agencies

#### *Licensing Conditions*

Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies (17 August 2011) outlines licencing conditions and responsibilities of recruitment agencies throughout the migration cycle. The pre-requisites to become a licenced recruitment agency in Cambodia include the possession of an office together with sufficient staff and resources, a training centre with adequate facilities for skills and pre-departure training, and the deposit of a guarantor. The deposit of USD 100,000 is held to be used to compensate workers where conciliation fails and can be used (and replenished) by the state for repatriation in cases of emergency.<sup>96</sup>

#### *Obligations*

Sub-Decree 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies and *prakas* (or regulations) issued by the MOLVT regulate the roles of recruitment agencies throughout all stages of the migration cycle.

<sup>93</sup> MMN, “Safe from the Start,” p.34, above.

<sup>94</sup> MMN field visit of Cambodian Migrant Workers, conducted in July 2019, Kanagawa, Japan.

<sup>95</sup> ILO, “Assessment of the complaints mechanism for Cambodian migrant workers”, p.17, above.

<sup>96</sup> Sub-Decree 190, Articles 7, 8 and 10, above.



*Representatives of recruitment agencies, the MOLVT and CSOs discuss opportunities and challenges faced by Cambodian migrants going to Japan during an MMN multi-stakeholder meeting entitled “Consultation on Labour Migration from Cambodia to Japan”, held in February 2019, Phnom Penh, Cambodia. Photo: MMN*

The sub-decree requires recruitment agencies to prepare employment contracts for migrant workers that clearly specify “working conditions, job status, types of work, benefits and key addresses that can be contacted.”<sup>97</sup> Recruitment agencies should also arrange documentation and health examinations;<sup>98</sup> verify working and living conditions, including details such as types of work, workplace, working hours, skills, salary, benefits, health insurance, accommodation, transport, and security and safety;<sup>99</sup> and work with the MOLVT and other relevant institutions to provide pre-departure training.<sup>100</sup> The sub-decree specifies that recruitment agencies are “responsible for making arrangements to ensure that workers who are sent abroad will receive appropriate social security regime in accordance with the applicable laws and regulations of the receiving country.”<sup>101</sup> All advertisements of recruitment agencies should be comprehensive and accurate about “selection requirements, working conditions and benefits entitled to workers.”<sup>102</sup>

*Prakas* 252 further outlines the responsibilities of recruitment agencies after migrant workers are deployed. According to the regulation, recruitment agencies should appoint at least one representative at each destination country, who is well trained on “knowledge on legislation, language, culture and tradition” of the destination country.<sup>103</sup> Recruitment agencies are expected

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<sup>97</sup> Ibid, Article 15.

<sup>98</sup> Ibid, Article 19.

<sup>99</sup> Ibid, Article 21.

<sup>100</sup> Ibid, Article 23.

<sup>101</sup> Ibid, Article 33.

<sup>102</sup> Ibid, Article 22.

<sup>103</sup> *Prakas* 252, Article 2, above.

to inspect worksites,<sup>104</sup> assist workers to access social security in the destination country,<sup>105</sup> facilitate dispute resolution in the workplace and pay necessary legal expenses,<sup>106</sup> assist workers to access complaint mechanisms in the destination country in cases of abuse,<sup>107</sup> and facilitate workers' repatriation.<sup>108</sup> In the event that a worker dies abroad, recruitment agencies are responsible for transferring benefits to the worker's family in Cambodia.<sup>109</sup>

*Prakas 250* requires that the MOLVT inspect all agencies and their training centres to ensure compliance with the law, and that special inspections must be conducted after any complaint is received.<sup>110</sup> Penalties for failing to comply can range from a written warning to a temporary suspension or revocation of the licence.<sup>111</sup>

Among migrant returnees from Thailand who migrated through processes established by the MOU, most agreed that recruitment agencies have a role to play in supporting migrant workers to access social protection schemes in Thailand.<sup>112</sup>

## 2.5.2 Migration Costs

Migration to Thailand through processes established by the MOU usually costs around 20,000 Baht (USD 647-648<sup>113</sup>).<sup>114</sup> In comparison, travelling to Thailand through informal channels costs between 1,000 (USD 32 to 33) to 3,000 Baht (USD 97 to 98).<sup>115</sup> The relatively high migration costs incurred in processes established by the MOU could be one reason why migrant workers continue to use irregular channels to migrate to Thailand.<sup>116</sup>

For migration to Japan, total migration costs range from around USD 6,000 to USD 10,000, including skill and language training fees, living costs while attending training and medical examinations.<sup>117</sup> In an interview conducted by the MMN, one migrant worker expressed difficulties paying USD 5,550 as migration fees and had to take out a loan of USD 3,000 from the recruitment agency. Instalments were deducted from his monthly salary while he worked in Japan.<sup>118</sup>

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<sup>104</sup> Ibid., Article 3.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., Article 4.

<sup>107</sup> Ibid., Article 5.

<sup>108</sup> Ibid., Article 8.

<sup>109</sup> Ibid., Article 7.

<sup>110</sup> *Prakas 250 on Inspection on Private Recruitment Agency*, 2013, Articles 2 and 3, unofficial translation accessible at <https://drive.google.com/file/d/19koV4tyH2VBWaxO5Z-WOQ4p-93xpUgJS/view?usp=sharing>.

<sup>111</sup> Sub-Decree 190, Article 39, above.

<sup>112</sup> Based on MMN Case Studies of Cambodian migrant returnees from Thailand, conducted in June and July 2019, Cambodia.

<sup>113</sup> At the time of writing (1 August 2019), 1 USD was equal to 30.88 Thai Baht.

<sup>114</sup> Kyoko Kusakabe, Khamnuan Kheuntha, Raksa Sok, Apimuk Wichasorn, Thanchanok Khawngoenyuang and Veena N., "Labour Migration and Human Trafficking: An Analysis of Laws, Regulations and Policies in Thailand and Cambodia", 2018, p. 16, accessible at [https://drive.google.com/open?id=1Olx\\_u--ugXW\\_02NQLuRGzWQ\\_Rrx1cjf](https://drive.google.com/open?id=1Olx_u--ugXW_02NQLuRGzWQ_Rrx1cjf).

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> MMN field visit of Cambodian Migrant Workers, above.

<sup>118</sup> Based on a MMN Case Study of a Cambodian migrant returnee from Japan, female, 26 years old, conducted in June 2019, Phnom Penh Cambodia.



*Prospective migrants recite Japanese phrases during a language training course provided by a recruitment agency.  
Photo: MMN*

### 2.5.3 Pre-Departure Training

Under the TITP, some prospective migrants choose to attend language training at their own expense before securing employment in Japan to improve their chances of being selected by an employer. At one recruitment agency visited by MMN, a pool of around 30 prospective workers are usually available for interview when there is demand from employers in Japan. Prospective migrant workers who have successfully passed the interview and have been selected by employers in Japan attend language training courses that usually last between four and eight months. Language training courses also offer modules on Japanese culture to prepare migrant workers for life in Japan.<sup>119</sup> At some recruitment agencies, dormitories are available to prospective migrants when training is in session.<sup>120</sup> In addition to language training, some recruitment agencies offer skills training to prospective migrant workers, the duration of which differ according to the requirements of employers in Japan. Some can last between two and 35 days, while others last between three and six months.<sup>121</sup>

For migration to Thailand, employers generally do not have skills or language requirements and recruitment agencies do not provide training. Less stringent requirement is one reason why migration from Cambodia to Thailand continues to be popular.<sup>122</sup>

<sup>119</sup> MMN Key Informant Interview with a representative of a recruitment agency (February 2019), above.

<sup>120</sup> Based on MMN observation of a Japanese Language Class at a training centre set up by a recruitment agency, conducted in May 2019, Phnom Penh, Cambodia.

<sup>121</sup> The Secretariat of ASEAN, “Compendium on Migrant Workers’ Education and Safe Migration Programme”, p. 113, above.

<sup>122</sup> MMN Key Informant Interview with the ACRA, above.

## **CASE STUDY 2 – Cambodian migrant returnee from Japan (Male, 39 years old)**

C.S., male, 39 years old, returned to Cambodia in March 2019 after 3 years of being a technical trainee in construction sector in Sendai city, Japan.

*“I decided to work in Japan because I want to earn a higher salary to support my family. I also want to know how developed Japan is.”*

C.S. initially learnt about working in Japan through his neighbour who, then, brought him to the recruitment agency. His neighbour received USD 50 from the recruitment agency as commission for introducing a new worker.

C.S. failed his first interview but was selected to work in Japan after the second try with a different employer. He then began attending pre-departure training courses conducted by the recruitment agency for four months. There, he learnt basic Japanese language, information on the culture of Japan, communication, etc. However, he was not informed about insurance schemes in Japan.

*“I did not receive the information about the insurance schemes nor the benefit for migrant workers. I think that it is the weakness of recruitment agency who did not provide more information. If I received that information it would be useful for me and I could get more benefits.”*

In order to work in Japan, C.S. had to pay USD 5,800 in total. He borrowed the money from his relative. If he borrowed money from the recruitment agency, he would have to pay the interest of 2.5 per cent.

C.S. signed an employment contract, however, he did not have a copy of it and did not understand the contents due to language barriers.

*“I signed the employment contract, but the employer did not give me a copy. The contract was written in Japanese and I did not understand what it mentioned.”*

In Japan, he spent his first month learning about everyday Japanese life, such as traffic law, lifestyle, how to use a fire extinguisher, and Japanese culture.

During his employment in Japan, C.S. did not receive any information about insurance schemes in Japan, nor whether he was enrolled in the system or not.

*“While I was working in Japan, I did not receive any information about insurance schemes in Japan either. My employer or recruitment agency never mentioned it. Also, I did not know if I had enrolled in the insurance programmes or not, but I think I did. Every month, the employer deducted my salary. However, I was not clear what kind of programme I had contributed towards. The employer never told me about it. In addition, once a year, I got a medical check-up at the hospital.”*

He was of the opinion that he contributed more towards the insurance scheme than benefitted from it.

*“I just got a medical check-up once a year. I think that I lose a lot of benefits from the insurance programme. During three years in Japan, I went to hospital to have medical check-up 3 times”*

Furthermore, after arriving in Japan, C.S. realised that some information provided by the recruitment agency before departing was not true.

*“The private recruitment agency told me that the employer would provide water, food, electricity and housing free of charge. In fact, the employer charged all of it from me and other migrant workers who were working in Japan. That was not what I was told by the recruitment agency before leaving for Japan.”*

C.S. also faced some problems while working in Japan.

*“The employer was very strict in giving permission for me to take leave when I asked for it. And the employer limited my freedom. The employer did not allow me and other migrant workers to go out after work. The employer just wanted us to stay in the room and inside the house.”*

After returning to Cambodia, C.S. is not sure if he could claim the lump sum from his contribution to the pension scheme in Japan or not.

*“When I returned to Cambodia, the recruitment agency helped me to claim the lump sum from my pension insurance. But until now, I have not received the money. I do not know if I will get that money or not.”*

From his experience, C.S. offers the following recommendations to recruitment agencies:

- Recruitment Agencies should teach the technical words and provide technical training to potential migrant workers;
- Recruitment Agencies should provide sufficient information about the insurance schemes, including benefits of each scheme in Japan, to all potential migrant workers;
- Recruitment Agencies should provide accurate information about living and working in Japan and salary deduction to all migrant workers; and
- Recruitment Agencies should share some experiences faced by migrant workers in Japan to potential workers.

## 2.5.4 Industry Initiatives

The ACRA and the Manpower Association of Cambodia (MAC) are two associations set up by recruitment agencies in Cambodia. Membership of these groups is voluntary. The two associations have collaborated with the MOLVT and the ILO to develop a voluntary Code of Conduct (COC), and are in the process of finalising the document.<sup>123</sup> The updated COC will be implemented alongside a ranking system to rate subscribing recruitment agencies' compliance with the code.<sup>124</sup>

### *Industry MOUs*

In 2016, ACRA signed an MOU with the Malaysia National Association of Employment Agencies, setting out the roles and responsibilities of recruitment agencies on both sides in ensuring the benefits and health and safety of Cambodian workers (including domestic workers) throughout the migration cycle.<sup>125</sup> MAC and ACRA also concluded an MOU in November 2018 with the Thai-Cambodian Relations Association with the aim of increasing benefits of Cambodian migrant workers in Thailand.<sup>126</sup> In December of the same year, the two associations signed an additional MOU with three Malaysian associations of recruitment agencies to promote the rights and welfare of Cambodian workers in Malaysia.<sup>127</sup>

## 2.6 International Cooperation

Existing bilateral agreements between Cambodia and Japan, Malaysia and Thailand require regular meetings between official representatives of Cambodia and the respective destination countries to discuss implementation. The MOC between Cambodia and Japan stipulates that the MOLVT and the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan should hold “periodic meetings” to review arrangements made under the agreement.<sup>128</sup> Between Cambodia and Malaysia, both MOUs on the recruitment of domestic workers and non-domestic workers establish a joint working group to discuss issues relating to labour recruitment under the MOU.<sup>129</sup> The working group is to convene twice every year.<sup>130</sup>

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<sup>123</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, “Cambodia (April - June 2019)”, p.3, above.

<sup>124</sup> See the webpage of the Mekong Migration Network website entitled, “MMN holds Workshop on Labour Migration from Mekong Countries to Japan in Tokyo, Japan”, 23 July 2019, accessible at <http://www.mekongmigration.org/?p=7384>.

<sup>125</sup> “Agreement Signed to Protect Migrant Workers”, *Khmer Times*, 30 May 2016, accessible at <https://www.khmertimeskh.com/24334/agreement-signed-to-protect-migrant-workers/>.

<sup>126</sup> Kong Meta, “MoU aims to protect migrants in Thailand”, *Phnom Penh Post*, 9 November 2018, accessible at <https://www.phnompenhpost.com/national/mou-aims-protect-migrants-thailand>.

<sup>127</sup> Mom Kunthear, “Migrant worker protection MoU signed”, *Khmer Times*, 6 December 2018, accessible at <https://www.khmertimeskh.com/556474/migrant-worker-protection-mou-signed-2/>.

<sup>128</sup> Memorandum of Cooperation on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour and Vocational Training of Cambodia, p. 4, above.

<sup>129</sup> Memorandum of Understanding between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Workers, Article 9, above; and Memorandum of Understanding between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Domestic Workers, Article 11, above.

<sup>130</sup> *Ibid.*, Appendix C, p. 24; and *Ibid.*, Appendix C, p. 31.



*Cambodian migrant workers relax on their day off in Rayong, Thailand. Photo: MMN/ John Hulme*

Under the MOU between Cambodia and Thailand, labour officials of both countries should meet yearly.<sup>131</sup> The MOLVT held a negotiation with the Thai government in 2018 to enhance the accessibility of Thailand's complaint mechanism by allowing migrant workers to submit complaints online or through a third party, such as the labour counsellor in Thailand. Prior to the negotiation, workers could only submit complaints to the Ministry of Labour in Thailand in person during working hours when they had little opportunities to leave the workplace.<sup>132</sup> In 2019, representatives of the Cambodian and Thai governments, the European Union, the UN and the private sector met for the "Cross-Border Cooperation on Labour Migration and Human Trafficking between Cambodia and Thailand: From policy framework to the implementation". During the meeting, participants discussed ways to improve the implementation of the policy framework for Cambodian migrant workers.<sup>133</sup>

The National Social Security Fund (NSSF) under the MOLVT, the main government agency overseeing the implementation of Cambodia's social security system, works with other destination countries to protect Cambodian migrant workers and ensure that they have access to social protection in these countries. In addition, the NSSF has begun discussions with governments of destination economies such as Malaysia, Singapore, Japan and Hong Kong SAR to establish

<sup>131</sup> Agreement on the Employment of Workers between The Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand, Article 8(c), above.

<sup>132</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (October 2018), above.

<sup>133</sup> Ry Sochan, "Siem Reap holds labour migration meet", *Phnom Penh Post*, 26 April 2019, accessible at <https://www.phnompenhpost.com/national/siem-reap-holds-labour-migration-meet>.

transferable social security benefits through bilateral agreements. Similar discussions are set to take place in the near future with governments of Middle Eastern countries, including Kuwait, Qatar and Saudi Arabia<sup>134</sup>

Regionally, delegates from Cambodia, Lao PDR, Myanmar, Thailand and Vietnam met at the Senior Labor Officials' Meeting under the theme of "Social Welfare: Connectivity of Social Insurance for Migrant Workers in the CLMTV region" in August 2018. At the meeting, government officials discussed their country's social security systems and ways to ensure migrants can receive benefits when abroad. Labour authorities at the CLMTV meeting were reportedly working towards an agreement that would guarantee migrant workers' access to social security when overseas.<sup>135</sup>

In addition, the government of Cambodia is cooperating with the governments of Myanmar, Lao PDR and Vietnam to negotiate with Thailand to establish a system that would allow migrants to transfer their contributions toward Thailand's pension fund back to countries of origin. Doing so would allow Cambodian migrant workers to continue to contribute toward social security scheme in Cambodia upon return.<sup>136</sup>

## 2.7 Assistance Upon Return

The Cambodian government's draft Policy on Labour Migration 2019-2023 plans to hold dialogues with destination countries to discuss the possibilities for the portability of social protection benefits.<sup>137</sup> The draft policy also envisages better service provision to migrant returnees, such as social protection benefits transfer.<sup>138</sup>

In Thailand, the Social Security Act (2015) allows non-Thai nationals who cease to be insured and do not wish to stay in Thailand to receive an old-age lump sum for their contributions, however there are no mechanisms in place that allow migrants to access these benefits. There are currently plans to create an annex for the respective MOUs with Thailand and Malaysia that ensures the portability of social protection benefits from the two destination countries to Cambodia.<sup>139</sup>

Migrant workers leaving Japan after completing the TITP are also entitled to withdraw their contributions made to Japan's pension scheme. Even though none of the migrant returnees interviewed by the MMN approached the Cambodian government for assistance, they have cited a number of different ways to claim the lump sum, including through recruitment agencies and third-party companies.

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<sup>134</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (July 2019), above.

<sup>135</sup> "Migrant social security discussed at CLMTV meeting", *The Nation*, 21 August 2018, accessible at <http://www.nationmultimedia.com/detail/asean-plus/30352626>.

<sup>136</sup> MMN Key Informant Interviews with a representative of the DOEM under the MOLVT (October 2018 and July 2019), above.

<sup>137</sup> The Royal Government of the Kingdom Cambodia, "Draft Policy on Labour Migration for Cambodia 2019-2023 (Unofficial Translation)", p.41 (Policy Goal 11.3), above.

<sup>138</sup> *Ibid.*, p.43 (Policy Goal 14).

<sup>139</sup> *Ibid.*, p.35 (Policy Goal 3.5).



*A Cambodian migrant worker repairs a fishing net in Rayong, Thailand. Photo: MMN/ John Hulme*

*“The benefit that I received is the lump sum of my contributions towards the pension insurance scheme. After I returned from Japan, I contacted the recruitment agency for help without paying any fees. The amount is paid in two instalments. I already received the first 80% (around USD 3,000) but have not claimed the remaining amount yet.”*

Cambodian migrant returnee from Japan (Female, 26 years old)

*“I returned to Cambodia from Japan in March [in 2019] and I needed to wait for 6 months to claim this benefit. I am using another agency to help to claim this benefit.”*

Cambodian migrant returnee from Japan (Male, 31 years old)

### **CASE STUDY 3 – Cambodian migrant returnee from Japan (Female, 26 years old)**

*S.V., female, 26 years old, returned to Cambodia in October 2018 from Japan after 3 years of working in a garment factory under the TITP.*

S.V. decided to migrate to Japan because she wanted to know more about the country, which is modern and developed. She hoped to earn a higher salary so that she could save money to help her family.

Before S.V. went to work in Japan, she had helped her mother sell groceries. One day, she told her neighbour that she wanted to go to another country such as Korea, China, or Malaysia. Then her neighbour told her about the recruitment agency, owned by a relative of hers that was sending workers to Japan. Her neighbour thought that she had a good chance to find employment in Japan as she was young and smart.

She visited the branch of the recruitment agency, and paid USD 150 there. She was required to pay USD 5,550 in total to the main office of the recruitment agency to arrange for her to work in Japan.

After S.V. passed the employer's interview in June 2015, she paid around USD 500 to the main office of the recruitment agency for medical check-ups (USD 45), registration fees (USD 20), and tuition fees. She studied for less than 3 months, but the Japanese garment factory was in urgent need of workers, so she migrated without completing her final class. Additionally, she paid USD 2,000 for her air ticket to Japan. As a first instalment, she already paid USD 2,500 to the main office of the recruitment agency, and owed the remaining USD 3,050, which was deducted from her salary while working in Japan.

Before deployment, S.V. obtained information about Japan from different sources, including the recruitment agency.

*“The Agency told me that the salary in Japan was more than USD 1,000 per month. I only had to work overtime for 1 to 2 hours per day in the garment factory. However, the agency did not mention the overtime salary. I heard from other people that if a worker had had an accident at work or became disabled, the garment factory would pay compensation of USD 70,000”.*

She was given a paper mentioning that the employer would deduct money from her salary for housing, water, internet, pension insurance and health insurance. However, she was not clear how much she needed to contribute toward each insurance scheme. After she finished reading the paper, the recruitment agency took it back.

In her opinion, transparent information regarding deductions from salary is very important.

*“I think that information [on salary deductions] is very useful. If I had learnt about the information before going to Japan, I should have known how much*

*my salary was deducted. Other workers mostly did not know how much the employer deducted from their salaries.”*

Then she agreed and signed the contract to work in Japan for 3 years. At that time, if she had decided not to sign the contract, she would have had to pay a compensation to the recruitment agency. She did not know how much it would be.

*“I was not clear about the contract. In Cambodia, I signed a contract to work in Japan for 3 years. If I had run away or had not done the job properly, the garment factory would have been able to fire me. In Japan, I signed a document for insurance programmes.”*

In October 2015, she departed to work in Japan.

For the first month in Japan, she attended training in Nagoya to learn about Japanese culture, language and the traffic law. After one month, she began work in the garment factory.

During the 3 years she worked in Japan, S.V. worked in different parts of the country, as the company she was employed by has different factories and wanted workers to understand the business of each branch. In the first year, she worked in Akita Prefecture, then in the second and third year moved to Aomori Prefecture.

Regarding insurance schemes in Japan, her employer prepared all the documents and enrolled her in health insurance, pension insurance and work injury insurance. However, she was unclear how much she contributed toward each insurance scheme.

S.V. experienced using the health insurance when working in Japan. Because of the cold, she would often use a hot water bottle to keep warm. One day, she burnt her leg with the hot water while sleeping at home. Her employer took her to hospital for treatment. Her leg required surgery. It took her 20 days to recover. Under her health insurance coverage, she paid 30 per cent of total payment for treatment and the insurance covered the remaining 70 per cent. However, she did not receive any wages during the time spent off work for treatment.

To receive support in enrolling and claiming benefits from Japan's various insurance schemes, migrants may be assisted by their Supervising Organisation, employer and Cambodian recruitment agency. In S.V.'s case, the recruitment agency helped her as it has connections with her Japanese employer.

After returning to Cambodia, S.V. contacted the recruitment agency and asked for assistance in claiming the pension lump sum she was owed for her contribution to the Japanese pension scheme. After 6 months, she received 80 per cent of her contribution (nearly USD 3,000) and has yet to claim the remaining 20 per cent.



A Cambodian migrant worker processes seafood in Rayong, Thailand. Photo: MMN

## 2.8 Conclusion

The Cambodian government has worked towards improving protections for Cambodian migrant workers through existing and forthcoming measures. Sub-decree 190 and complementing *prakas* provide the main legal framework for migration governance and outline responsibilities of recruitment agencies in protecting migrant workers throughout their migration cycle. In particular, the sub-decree makes recruitment agencies responsible for ensuring migrants have access to social protection programmes in destination countries and designates the MOLVT the role to monitor recruitment agencies in doing so. Under the draft Policy on Labour Migration for Cambodia 2019-2023, the Cambodian government has also committed to improving skills recognition programmes, reducing the cost of migration, strengthening support and reintegration services and expanding available options for women to migrate through formal channels. The draft Policy specifically calls for enhancing migrants' access to social protection through action plans such as expanding the membership of the NSSF to all migrant workers, negotiate with destination countries to enable portable social security benefits and conduct a pilot project to establish a migrant welfare fund. Currently, the Cambodian government conducts PDOs for prospective migrants going to Japan and, although not always effectively enforced, requires recruitment agencies sending workers to Thailand and Malaysia to organise PDOs based on a fixed curriculum. Regarding on-site support, sub-decree 190 and a number of *prakas* mention the roles of embassies and consulates in providing support to migrant workers. Labour counsellors have also been despatched to several destination countries with various duties to support migrant workers. Embassies and labour counsellors in Japan and Thailand, in particular, make good use of social

media platforms, such as Facebook pages, to disseminate information and update migrant workers on recent policy changes in destination countries. Through negotiations with destination countries, the NSSF has also begun discussions with some destination countries to facilitate the transfer of social security benefits, which creates possibilities for enhanced portability between social protection programmes of Cambodia and destination countries.

Through interviews with migrant returnees from Japan and Thailand, MMN noted several gaps in existing efforts to protect migrant workers. While *prakas* 46/13 requires recruitment agencies to provide PDOs to migrant workers based on a curriculum determined by the MOLVT,<sup>140</sup> migrant workers who went to Thailand and Japan through formal channels reported receiving very limited information from their recruitment agencies about social protection programmes in destination countries. Instead of gathering information from recruitment agencies, a majority of migrant workers in Thailand said they learnt about social protection programmes through their employers. However, in many cases, migrants are still not aware of the full range of benefits they are entitled to. Insufficient information migrants receive at the pre-departure stage may indicate that recruitment agencies have not properly carried out PDOs according to the standard curriculum (for Thailand) that contains sections on social protection programmes in the destination country. A report by ASEAN also noted that the MOLVT did not monitor the implementation of PDOs frequently and effectively, which could result in varying qualities of orientation courses.

Despite requirements under *Prakas* 46/13 for recruitment agencies to ensure workers have clearly understood their work in destination countries before departing Cambodia,<sup>141</sup> interviewed migrants in Japan and Thailand highlighted that recruitment agencies provided insufficient and/or inaccurate information about the details of work in destination countries. In particular, information on salary deductions is often not transparent and migrants reported not knowing what deductions entail. And even though recruitment agencies have a broad range of responsibilities in providing assistance to workers when they are overseas as set out by sub-decree 190 and *prakas* 252, in Thailand, a majority of migrant returnees stated that their recruitment agencies provided little assistance to them when they were abroad and agreed that recruitment agencies should play a larger role in supporting migrants. Common across migration to different destination countries, migrants continue to pay high migration costs, and some have taken out loans to migrate. In the absence of any mechanisms to control recruitment fees and other related costs that recruitment agencies can charge, prospective migrants are likely to continue to pay high, and at times exorbitant, rates to migrate.

The various types of assistance that Cambodia embassies and consulates are required to provide to migrant workers are outlined in sub-decree 190 and *prakas* 249 and 252. During PDOs, sub-decree 190 also requires recruitment agencies to provide the contact information of embassies/consulates, labour counsellors and the MOLVT to migrant workers.<sup>142</sup> Despite these legal stipulations, migrant returnees, especially those from Thailand, were not aware of the roles of embassies in supporting them or how to approach Cambodian government institutions when they needed assistance. This could stem from a lack of publicity about the roles of embassies and labour counsellors or information dissemination by recruitment agencies at the pre-departure

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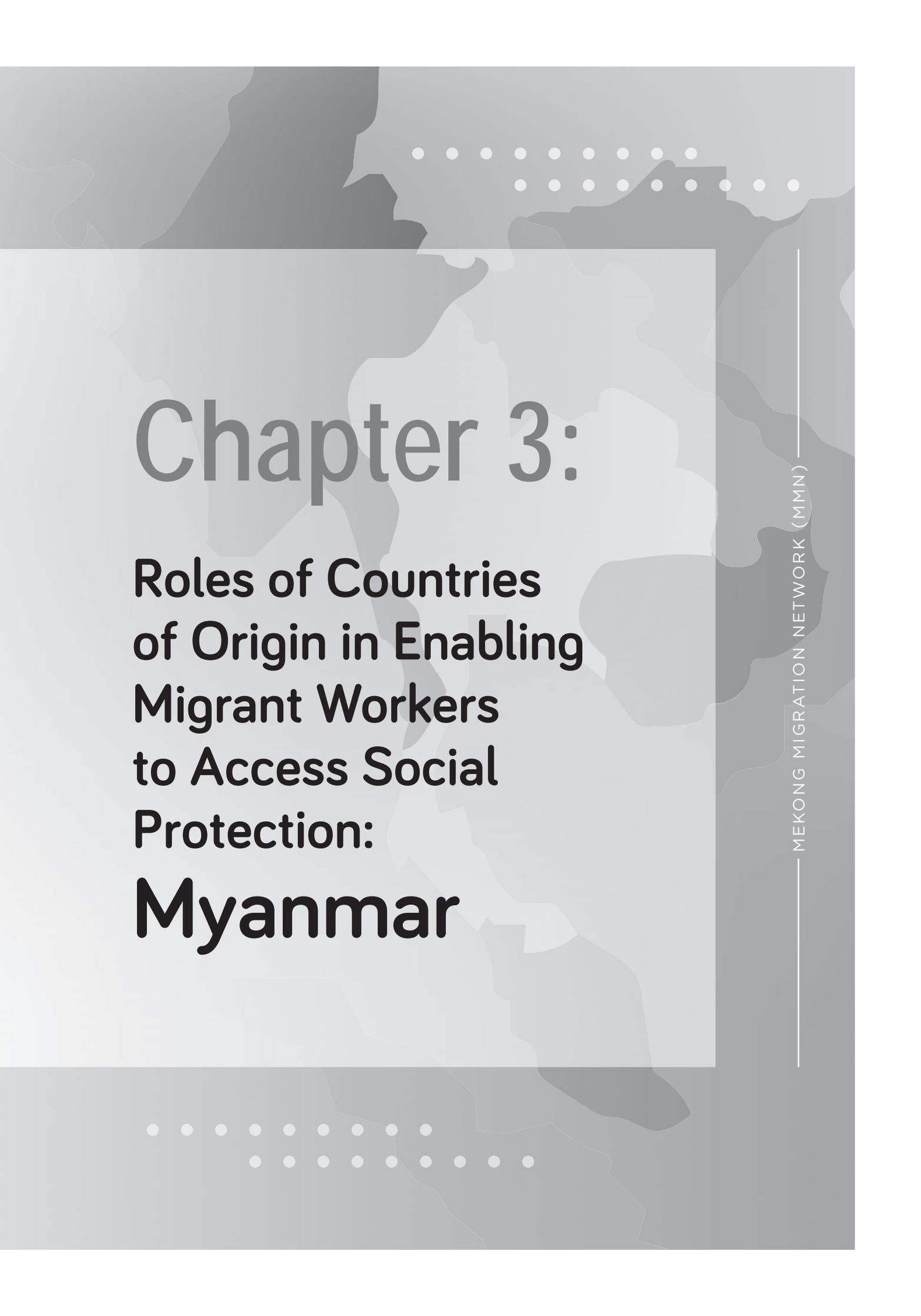
<sup>140</sup> *Prakas* no. 046/13, Article 9, above.

<sup>141</sup> *Ibid.*, Article 4

<sup>142</sup> Sub-decree 190, Article 20, above.

stage. In Japan, migrant workers also expressed difficulties contacting embassies or other responsible actors for services and support because of complicated procedures applicable for foreigners to apply for a phone with a Japanese number.

Both in terms of policy and practice, efforts to facilitate migrant returnees' reintegration in Cambodia remain limited. Interviewed migrant returnees from Thailand and Japan were generally unaware about Cambodia's developing social protection programmes. Regarding the transfer of social security benefits, migrant returnees from Thailand did not know returning migrants are entitled to withdraw a lump sum of their contributions paid into the pension scheme of Thailand. The absence of any mechanisms to facilitate this transfer could also contribute to this lack of awareness. For migration to Japan, migrant returnees interviewed by MMN have withdrawn their contributions to the pension scheme with the help of recruitment agencies.



# Chapter 3:

## **Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Myanmar**

## 3. Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Myanmar

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### 3.1 Migration from Myanmar to Thailand, Malaysia and Japan

Over recent decades, migration has become a way of life for many families in Myanmar. The latest government census from 2014—the first in 30 years—revealed that 3.9% of Myanmar's population resides overseas, 69% of whom were men and 43% women.<sup>1</sup> However, the ILO estimates that as many as 10% of the country's labour force resides abroad.<sup>2</sup> Neighbouring Thailand is by far the most popular destination country for Myanmar workers. Other destination countries for labour migration include Malaysia, Singapore, the Republic of Korea and Japan.<sup>3</sup>

In Thailand, accurate data concerning the number of Myanmar migrants is hard to come by as many migrants remain undocumented. As of December 2018, 437,471 migrants had migrated through processes established by an MOU signed between Myanmar and Thailand in 2016,<sup>4</sup> while 765,640 were completing the nationality verification process that allows undocumented migrants in Thailand to register with the authorities and regularise their status.<sup>5</sup> Estimates suggest there are at least as many undocumented workers in the country.<sup>6</sup> Construction and manufacturing are among the most popular industries for Myanmar migrant workers.<sup>7</sup>

As of October 2018, 138,492 Myanmar migrants are officially working in Malaysia, including 22,605 women and 115,887 men.<sup>8</sup> However, a recent report revealed that the number of documented and undocumented migrant workers could actually be as high as 420,000.<sup>9</sup> According to the Immigration Department of Malaysia, migrant workers from Myanmar are permitted to work in construction, on plantations, in agriculture, and the services and manufacturing sectors.<sup>10</sup> In 2016, the Myanmar government banned its nationals from migrating to Malaysia following

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<sup>1</sup> ILO, "Migration Data for Policy Development: An Appraisal of Data and Statistics on International Labour Migration in Myanmar", 2018, p. 21, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms\\_672535.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_672535.pdf).

<sup>2</sup> ILO, "TRIANGLE in ASEAN – Myanmar" webpage, accessible at [https://www.ilo.org/asia/projects/WCMS\\_622433/lang--en/index.htm](https://www.ilo.org/asia/projects/WCMS_622433/lang--en/index.htm).

<sup>3</sup> MMN, "Migration Resource Book: Border Economic Zones and Migration", 2013, p. 82, accessible at <http://www.mekongmigration.org/finalised%20BEZ%20pdf%20file.pdf>.

<sup>4</sup> Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar, 2016.

<sup>5</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, "Myanmar (April-June), 2019", p. 2, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_614382.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614382.pdf).

<sup>6</sup> See MMN, "Safe from the Start", p. 37, above.

<sup>7</sup> IOM, "Flow Monitoring Surveys: Insights into the Profiles and Vulnerabilities of Myanmar Migrants to Thailand (Round Two)", December 2018, p. 2, accessible at [https://migration.iom.int/system/tdf/reports/IOM%20-%20DTM%20report%20A4\\_2019-01-09.pdf?file=1&type=node&id=4968](https://migration.iom.int/system/tdf/reports/IOM%20-%20DTM%20report%20A4_2019-01-09.pdf?file=1&type=node&id=4968).

<sup>8</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, "Myanmar (April-June), 2019", p. 2, above.

<sup>9</sup> Peter Zsomber, "Myanmar Workers Bound for Malaysia Stuck with Stifling Fees", *The Irrawaddy*, 5 April 2019, accessible at <https://www.irrawaddy.com/news/burma/malaysiamyanmar-workers-bound-for-malaysia-stuck-with-stifling-fees.html>.

<sup>10</sup> See Immigration Department of Malaysia webpage entitled "Foreign Worker", accessible at <https://www.imi.gov.my/index.php/en/foreign-worker.html>.



*A Burmese migrant fishes in Mae Sot, Thailand. Photo: MMN/John Hulme*

political tensions between the two governments,<sup>11</sup> The Myanmar government officially lifted the ban in January 2018.<sup>12</sup>

Japan is an emerging labour market for migrant workers from Myanmar. As of December 2017, 6,144 Myanmar workers were employed in Japan under the TITP.<sup>13</sup> In 2018, an additional 3,692 migrant workers moved to Japan under the same programme.<sup>14</sup> Most Myanmar workers under the TITP are engaged in food manufacturing (38%), textile (23%), construction (13%), machinery and metals (6%) and agriculture (5%).<sup>15</sup> In January 2019, Myanmar also sent the first group of care workers to Japan following revisions of the legislation on the TITP to enable workers to migrate as care workers.<sup>16</sup> To plug gaps in Japan's shrinking labour market, Japan created a new migration pathway for migrant workers, including those from Myanmar, who are considered "Specified Skilled Workers." In March 2019, the governments of Myanmar and Japan signed an MOC on a Basic Framework for Information Partnership for Proper Operation of the System

<sup>11</sup> Ye Mon, "Govt cuts flow of migrant workers to Malaysia amid diplomatic spat", *Myanmar Times*, 7 December 2016, accessible at <https://www.mmmtimes.com/national-news/24084-govt-cuts-flow-of-migrant-workers-to-malaysia-amid-diplomatic-spat.html>.

<sup>12</sup> Zaw Zaw Htwe, "Myanmar lifts worker ban to Malaysia", *Myanmar Times*, 11 January 2018, accessible at <https://www.mmmtimes.com/news/myanmar-lifts-worker-ban-malaysia.html>.

<sup>13</sup> Immigration Bureau, Ministry of Justice Human Resources Development Bureau, Ministry of Health, Labour and Welfare, PowerPoint presentation entitled "Technical Internship Training Program", 2018, slide 2, accessible at <https://www.otit.go.jp/files/user/190408-1.pdf>.

<sup>14</sup> Preliminary figures in 2018 cited during an MMN meeting with the Japan International Training Cooperation Organization (JITCO), conducted in July 2019, Tokyo, Japan.

<sup>15</sup> Figures for Financial Year 2017 cited during an MMN meeting with JITCO, above.

<sup>16</sup> "Myanmar nursing care trainees arrive in Japan", *Myanmar Times*, 8 January 2019, accessible at <https://www.mmmtimes.com/news/myanmar-nursing-care-trainees-arrive-japan.html>.

Pertaining to Foreign Human Resources with the Status of Residence of “Specified Skilled Worker” to implement the new migration channel.<sup>17</sup>

## 3.2 Impact of Existing Migration Mechanisms

### 3.2.1 Bilateral Agreements with Destination Countries

Myanmar has concluded bilateral agreements with Japan and Thailand to outline recruitment procedures through recruitment agencies, but has not signed any agreement with Malaysia at the time of writing. In April 2018, Myanmar and Japan signed an MOC regarding the TITP, which lays out the commitments and responsibilities of both governments in the participation of Myanmar migrant workers in Japan’s TITP. Under the MOC, the Myanmar government agrees to screen and approve recruitment agencies according to a set of approving standards, make public the list of approved agencies, provide supervision to those who have been approved, and, in cases where an agency is found to have violated the approving standards, to revoke their status.<sup>18</sup> Approving standards include conditions that require recruitment agencies to specify the cost structures of fees collected from prospective migrant workers and to help migrant returnees find employment opportunities in Myanmar through which they can utilise their skills acquired in Japan.<sup>19</sup> Recruitment agencies that have, in the past five years, collected deposits from prospective TITP workers, violated the human rights of TITP workers, or used forged or false documents during the recruitment process cannot be approved to recruit workers for Japan.<sup>20</sup> The MOC contains no specific provisions on migrant workers’ access to social and labour insurance programmes in Japan. As of July 2019, 231 recruitment agencies in Myanmar have been approved to send workers to Japan under the TITP.<sup>21</sup>

In June 2016, Myanmar and Thailand concluded a new MOU on Labour Cooperation, replacing an earlier MOU signed between the two countries. Along with the MOU, the two countries signed a separate “Agreement on the Employment of Workers between Myanmar and Thailand” to outline details for implementing migration procedures. The document states that workers are “entitled to the same fair treatments as enjoyed by local workers based on the basic principles of non-discrimination and equality, regardless of gender, ethnic and religious differences”.<sup>22</sup> In addition, workers should “obtain protection, rights and benefits in accordance with employment contracts, labour laws and regulations in force in the receiving country”.<sup>23</sup> A change of employer is permitted

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<sup>17</sup> Memorandum of Cooperation between Japan and Myanmar on a Basic Framework for Information Partnership for Proper Operation of the System pertaining to Foreign Human Resources with the Status of Residence of “Specified Skilled Worker”, March 2019, accessible at <https://www.mofa.go.jp/files/000462638.pdf>.

<sup>18</sup> Memorandum of Cooperation on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour, Immigration and Population of Myanmar, pp. 3-4, accessible at <https://www.mhlw.go.jp/file/06-Seisakujouhou-11800000-Shokugyounouryokukaihatsukyoku/0000205715.pdf>.

<sup>19</sup> Ibid., p. 7.

<sup>20</sup> Ibid., pp. 7-8.

<sup>21</sup> OTIT, “Full list of approved sending organization of Myanmar”, July 2019, accessible at <https://www.otit.go.jp/files/user/190717-4.pdf>.

<sup>22</sup> Agreement on the Employment of Workers between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar, Article 5(1).

<sup>23</sup> Ibid., Article 5(2)

if the employer “could not protect the worker according to the existing laws” or if the business closes down.<sup>24</sup>

Other clauses that may have implications on migrant workers’ access to social protection programmes in Thailand include:

- Article 6(3): “In the event of an accident, serious illness or death of the employees during the term of employment contract, the employers shall notify the competent authority of the receiving country and the Embassy of the sending country located in the receiving country. The employer shall also be responsible to make necessary medical care and compensation for the affected workers according to the laws of the receiving country.”
- Article 7(2): “The employees shall contribute to the funds, if any, in pursuant to the laws and regulations of both countries.”
- Article 9(1): “The competent authorities shall provide their counterparts with the information on language, religion, living and working in the receiving country including information on workers’ rights, duties and benefits under the laws and regulations of the receiving country.”
- Article 9(2): “The competent authority of the sending country or the sending agency shall conduct a mandatory orientation free of charge for the workers concerning the information as prescribed in paragraph 1 [article 9(1)] of this article including contents of the employment contract or written offer of employment sent by the employers to the workers to ensure that workers have a clear understanding of the terms and conditions of their employment.”
- Article 10: “The competent authorities shall coordinate with their authorities concerned to ensure that workers, who have been selected and duly permitted pursuant to the laws and regulations of the sending country, have fulfilled in pursuant of the laws and regulations of the receiving country, inter alia, the following requirements: 1. Visa; 2. Work Permit; 3. Health insurance or health services as required.”

### 3.2.2 National Legislation, Policies and Institutions

#### *Legislation*

The 1999 Law Relating to Overseas Employment (LROE) is the guiding piece of legislation governing outbound labour migration from Myanmar. The law outlines procedures for prospective migrants to apply for work overseas,<sup>25</sup> licensing conditions of recruitment agencies,<sup>26</sup> and the duties and rights of workers and recruitment agencies.<sup>27</sup> While the LROE does not specifically rule on migrant workers’ right to access social protection, one of the law’s central aims is to “ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to.”<sup>28</sup> The law requires recruitment agencies to “communicate with the overseas employer concerned and undertake responsibility for obtaining in full the rights and privileges in

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<sup>24</sup> Ibid., Article 6(2)

<sup>25</sup> Law Relating to Overseas Employment, 1999, Chapter V, accessible at <https://asean.org/storage/2012/05/Law-Relating-to-Overseas-Employment.pdf>.

<sup>26</sup> Ibid., Chapter VI.

<sup>27</sup> Ibid., Chapter VIII & IX.

<sup>28</sup> Ibid., Article 3(c)



*A representative from the Ministry of Labour, Immigration and Population explains existing protections offered to migrant workers going to Japan during an MMN multi-stakeholder meeting entitled “Consultation on Labour Migration from Myanmar to Japan”, held in October 2018, Yangon, Myanmar. Photo: MMN*

the case of loss of rights and privileges of workers.”<sup>29</sup> Through recruitment agencies, migrants enjoy the right to claim compensation for injuries sustained at worksites overseas. They may also take civil or criminal action for any “loss of his [*sic*] rights and privileges relating to overseas employment.”<sup>30</sup> At the time of writing, the LROE is under review and amendments to the law are forthcoming.<sup>31</sup> Through the update, the Myanmar government hopes to strengthen protection mechanisms in the recruitment of workers and to ensure the law’s coherence with other bodies of laws that are related to the protection of workers’ rights.<sup>32</sup>

### *Policies*

The first National Plan of Action (NPA) for the Management of International Labour Migration for 2013-2017 provided the overarching framework to coordinate government and non-government actors in improving various aspects of labour migration. The NPA encompassed four areas, namely 1) the governance of migration; 2) the protection and empowerment of migrant workers; 3) labour migration and development; and 4) data collection and management. Several activities under the NPA were directly concerned with enhancing migrant workers’ access to social protection, including proposals to hold negotiations with destination countries on the “portability of public/social benefits accumulated by migrant workers abroad”,<sup>33</sup> and plans to consider establishing “a welfare fund for

<sup>29</sup> Ibid., Article 25(d)

<sup>30</sup> Ibid., Article 24.

<sup>31</sup> MMN Key Informant Interview with a representative of the Ministry of Labour, Immigration and Population (MOLIP), conducted in August 2019, Naypyidaw, Myanmar.

<sup>32</sup> The Government of the Republic of the Union of Myanmar, “Five-year National Plan of Action for the Management of International Labor Migration 2018-2022”, published in 2019.

<sup>33</sup> The Government of the Republic of the Union of Myanmar, “Five-year National Plan of Action for the Management of International Labor Migration 2013-2017”, p. 19 (Action plan 1.3.5).

Myanmar migrant workers and their families”.<sup>34</sup> Some activities were specific to migrant workers’ access to social protection in Thailand, with one proposal calling for improved access to “existing support resources in Thailand for irregular Myanmar migrants, including hotlines, shelters and social services”.<sup>35</sup> Another proposal advocates for “all migrants’ access to basic social services in Thailand, including education, health and social security.”<sup>36</sup>

In 2019, the Myanmar government launched the second NPA for the Management of International Labour Migration for 2018-2022.<sup>37</sup> Activities under the new NPA encompass a number of aspects to improve migration mechanisms and enhance protections for migrant workers throughout their migration cycle. These strategies include improving existing MOUs with destination countries through negotiations, strengthening and improving the efficiency of complaint mechanisms, developing a commonly agreed cost structure of recruitment fees, strengthening the roles of labour attaches in providing legal assistance, supporting irregular migrants in accessing hotlines, shelters and social services and strengthening planning for return and reintegration during PDTs. Regarding migrant workers’ access to social protection programmes in destination countries, the NPA continues to call for negotiations with destination countries regarding the portability of social security benefits and the possibility of establishing a welfare fund for migrants. There is an additional activity to collect information on the needs of migrant families and coordinate with destination countries to provide welfare and social services to these groups.<sup>38</sup>

Also of relevance is the Myanmar Sustainable Development Plan (MSDP) 2018-2030, the nation’s overall development strategy aimed at providing coherence in different policy areas. The plan is structured around three “pillars”, namely 1) peace and stability; 2) prosperity and partnership; and 3) people and planet, with corresponding strategies and goals developed under each pillar. Under “People and Planet”, the MSDP sets out to “protect the rights and harness the productivity of all, including migrant workers”.<sup>39</sup> To achieve this, the MSDP recommends action plans such as providing a legal identity to all, promoting legal, affordable and secure migration services, protecting labour rights and promoting safe and secure working environments.<sup>40</sup> While there are no specific provisions for enhancing migrant workers’ access to social protection when abroad, Pillar 3, Goal 4, of the MSDP focuses on improving the quality and access to social services and expanding and strengthening social protection programmes in Myanmar.

In 2016, the Myanmar government also released the Economic Policy of the Union of Myanmar aimed at achieving inclusive and sustainable development and establishing the country’s economic

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<sup>34</sup> Ibid., p. 25 (Action plan 4.1.13).

<sup>35</sup> Ibid., p. 20 (Action plan 1.4.4).

<sup>36</sup> Ibid., p. 20 (Action plan 1.4.10).

<sup>37</sup> Zaw Zaw Htwe, “Govt, UN agency launch plan to protect migrants”, *Myanmar Times*, 14 May 2019, <https://www.mmmtimes.com/news/govt-un-agency-launch-plan-protect-migrants.html>.

<sup>38</sup> The Government of the Republic of the Union of Myanmar, “Five-year National Plan of Action for the Management of International Labor Migration 2018-2022”, published in 2019.

<sup>39</sup> Ministry of Planning and Finance of The Government of the Republic of the Union of Myanmar, “Myanmar Sustainable Development Plan (2018-2030)”, adopted in August 2018, p. 41, accessible at [http://themimu.info/sites/themimu.info/files/documents/Core\\_Doc\\_Myanmar\\_Sustainable\\_Development\\_Plan\\_2018\\_-\\_2030\\_Aug2018.pdf](http://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf).

<sup>40</sup> Ibid., p. 49.

framework to support balanced growth. The Policy lays out 12 priorities, one of which calls for creating employment opportunities for both prospective and migrant returnees.<sup>41</sup>

### *Institutions*

The LROE sets up the Overseas Employment Central Committee (OECC) and the Overseas Employment Supervisory Committee (OESC), both of which are chaired by representatives of the Ministry of Labour, Immigration and Population (MOLIP) and comprise officials from various government agencies.<sup>42</sup> According to the LROE, part of the OECC's mandate is to communicate and coordinate with "government departments, organizations and persons concerned to ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to".<sup>43</sup> The OECC achieves this by developing and coordinating the implementation of policies related to labour migration.<sup>44</sup>

On the ground, the OESC is the main coordination platform to monitor and supervise various aspects of labour migration. The OESC is comprised of three further sub-committees, namely the Administration Committee, which formalises bilateral agreements with destination countries and supervises recruitment practices; the Workers' Benefits Committee, which ensures migrant workers receive insurance as part of its mandate; and the Workers' Rights Protection Committee, tasked with appointing labour attachés abroad and ensuring that migrant workers are protected according to labour laws of destination countries.<sup>45</sup>

The Migration Division (MD) within the MOLIP is the central technical actor tasked with contributing expertise to all components of international labour migration, from policy development to implementation. The MD oversees the revision of the LROE, participates in discussions regarding MOUs, approves, supervises and runs pre-employment orientation and PDT,<sup>46</sup> and reviews recruitment agencies' employment arrangements with overseas employers.<sup>47</sup> If recruitment agencies do not meet relevant standards during the review, the MD is authorised to suspend and blacklist recruitment agencies that habitually exploit workers.<sup>48</sup>

The MOLIP currently has 83 offices at the district level and 15 at the state and regional levels. Migrant workers can submit complaints at MOLIP offices in person, through a representative, such as a labour organisation, or by calling one of five national phone lines. A representative of the MOLIP admitted that offices are understaffed to address all complaints and shared that "migrant workers are usually scared" to follow through with their cases. Many workers instead settle for compensation from their recruitment agencies due to financial hardship, which makes

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<sup>41</sup> The Government of the Republic of the Union of Myanmar, "The Economic Policy of the Union of Myanmar", 2016, accessible at [https://themimu.info/sites/themimu.info/files/documents/Statement\\_Economic\\_Policy\\_Aug2016.pdf](https://themimu.info/sites/themimu.info/files/documents/Statement_Economic_Policy_Aug2016.pdf).

<sup>42</sup> Law Relating to Overseas Employment, Articles 4 & 7, above.

<sup>43</sup> Ibid., Article 6(c).

<sup>44</sup> ILO, "Building Labour Migration Policy Coherence in Myanmar", 2017, p. 16, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms\\_566066.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_566066.pdf).

<sup>45</sup> Ibid., p. 17.

<sup>46</sup> ASEAN, "Compendium on Migrant Workers' Education and Safe Migration Programme", p. 62, above.

<sup>47</sup> ILO, "Building Labour Migration Policy Coherence in Myanmar", p. 15, above.

<sup>48</sup> Ibid.



*Information cards containing contact information to access compliant mechanisms. These cards were distributed at a recruitment agency. Photo: MMN*

it difficult for the MOLIP to successfully prosecute recruitment agencies or intermediaries that have engaged in illegal acts.<sup>49</sup>

### *Deployment Bans*

In 2014, following widespread reports on the abuse of migrant domestic workers in Asia, the Myanmar government issued a ban on women from Myanmar migrating for domestic work in any location. The Cabinet lifted the ban in April 2019 on domestic workers migrating to Singapore, Thailand, Hong Kong and Macau. However without the MOLIP issuing instructions to the overseas agencies on procedure for deploying domestic workers, the agencies cannot go ahead.<sup>50</sup> The 2016 ban on Myanmar nationals migrating Malaysia, mentioned in an earlier section above, was officially lifted in January 2018.<sup>51</sup>

Reports have pointed out that such bans have been largely ineffective in preventing Myanmar citizens migrating abroad for work. During the Myanmar government's ban on deploying domestic workers, estimates revealed that as many as 28,000 undocumented domestic workers worked in Thailand and between 30,000 and 40,000 moved to work in Singapore.<sup>52</sup> While bans are in force, migration continues unabated through underground and unregulated channels operated

<sup>49</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>50</sup> Zaw Zaw Htwe, "Govt to resume sending maids to Singapore, three other areas", *Myanmar Times*, 26 April 2019, accessible at <https://www.mmmtimes.com/news/govt-resume-sending-maids-singapore-three-other-areas.html>.

<sup>51</sup> Zaw Zaw Htwe, "Myanmar lifts worker ban to Malaysia", *Myanmar Times*, 11 January 2018, accessible at <https://www.mmmtimes.com/news/myanmar-lifts-worker-ban-malaysia.html>.

<sup>52</sup> UN Women, "Study on the impact of protective policies for Myanmar migrant domestic workers in Thailand and Singapore", June 2017, p. 18, accessible at [http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2018/04/mig-dw-research\\_english-r02x.pdf?la=en&vs=1903](http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2018/04/mig-dw-research_english-r02x.pdf?la=en&vs=1903).



*Migrant workers from Myanmar relax on their day off in Singapore. Photo: MMN*



*MMN members and partner organisations discuss the impact of the migration ban during an MMN workshop at the ASEAN Civil Society Conference/ASEAN People's forum in 2018. The Workshop was entitled, "Examining the impact of social exclusion on ASEAN migrants". Photo: MMN*

by unlicensed brokers or licensed agents acting illegally.<sup>53</sup> Before departure, domestic workers from Myanmar reportedly paid high and unregulated recruitment fees to “doctor” their documents and/or pay bribes and were provided little to no pre-departure training.<sup>54</sup> Once overseas, Myanmar domestic workers were found to be more prone to abuse and exploitation. In Singapore, a study reported that Myanmar domestic workers were among the lowest-paid workers of all foreign domestic workers.<sup>55</sup> They were also the least likely group to maintain contact with social structures

<sup>53</sup> Ibid., p. 28.

<sup>54</sup> Ibid., pp. 29-31.

<sup>55</sup> Ibid., p. 36.

outside of their place of employment, which created situations conducive to abuse.<sup>56</sup> When Myanmar domestic workers made arrangements to return home, the ban prevented them from accessing mechanisms to transfer social benefits they might have accrued during their tenure abroad.<sup>57</sup>

### 3.3 Information Dissemination

#### *Migrant Resource Centres*

There are currently 12 MRCs throughout Myanmar. The ILO has supported the establishment of MRCs with Labour Exchange Offices in Dawei, Meiktila, Myingyan, Kyaukse, Chan Aye Tha San, and Taunggyi Shan State. The IOM supports MRCs with LEOs in Mawlamyine, Magway, Hpa An, Myawaddy, and Yangon. The Myanmar Decent Work Country Programme 2018-2021, which is agreed by the Myanmar government, employers and workers organisations and the ILO, plans to have 20 MRCs in operation by 2021.<sup>58</sup> Through training, counselling services and community outreach, MRCs disseminate information on the opportunities and risks associated with migration, return and reintegration.<sup>59</sup> Migrant workers may also access information of social protection programmes in destination countries at MRCs.<sup>60</sup>



*MMN secretariat and member organisation, Future Light Centre, set up an information booth for prospective migrants and migrant returnees at an event in Yangon, Myanmar to celebrate International Migrant's Day. Photo: MMN*

<sup>56</sup> Ibid, p. 37.

<sup>57</sup> Ibid, p. 37.

<sup>58</sup> "The Myanmar Decent Work Country Programme 2018-2021: A Tool to Advance Decent Work and Sustainable Development", endorsed by the National Tripartite Dialogue Forum (Myanmar) on 16 January 2019, p.28 (target 1.2.4), accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms\\_645042.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_645042.pdf).

<sup>59</sup> See MMN, "Safe From the Start", p. 40, above.

<sup>60</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

### *Pre-Employment Orientation*

Beginning in 2017, the Department of Labour under the MOLIP begun conducting Pre-Employment Orientation (PEO) for potential migrant workers requiring information before making the decision to migrate. PEOs are held twice every week at training centres in Yangon and Mandalay. An entire orientation course lasts for three days, with participants in attendance for seven hours each day.<sup>61</sup>

### *Pre-Departure Orientation*

On top of PEOs, the MOLIP conducts a one-day Pre-Departure Orientation (PDO) for those travelling to Thailand and a three-day course for those going to Malaysia.<sup>62</sup> A three-day PDO focused on migration to Japan is also offered at the Migrant Training Centre in North Dagon.<sup>63</sup> The MOLIP issues an Overseas Workers Identification Card to those who have successfully completed PDOs, which all outbound migrant workers must obtain before departure.<sup>64</sup>

The ILO has developed a PDO curriculum for migrants travelling to Thailand and Malaysia, which has been approved by MOLIP, and has been running Training-of-Trainer programmes according to the curriculum free of charge. The curriculum includes modules on 1) Information on legal migration and safe migration process; 2) General information on geographical, traditional and cultural awareness of countries of destination; 3) Occupational health and safety; 4) Relevant information on labour laws in countries of destination; 5) General terms and conditions of the employment contract; 6) Knowledge on family remittance through the formal banking system; and 7) Important contact addresses and information of organisations providing support.<sup>65</sup> In particular, the PDO curriculum offered to migrant workers travelling to Thailand dedicates a section explaining Thailand's social security system. This includes information on monthly contributions, minimum contributions before migrant workers are entitled to receive benefits, and procedures to verify whether employers have enrolled workers in the social security system. The curriculum also mentions that workers are entitled to compensation for workplace injuries and deaths under the Workmen Compensation Fund.<sup>66</sup>

Despite requirements for migrant workers to attend PDTs, migrant workers who went to Thailand through processes established by the MOU were either unaware or had incomplete knowledge of social protection programmes in Thailand before leaving.

*"I only learnt of it [the Thai social security system] after I received the social security card and noticed contributions were deducted from my salary."*

Myanmar migrant returnee from Thailand  
(Female, 27 years old, migrated through processes established by the MOU)

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<sup>61</sup> See The Secretariat of ASEAN, "Compendium on Migrant Workers' Education and Safe Migration Programme", p. 64, above.

<sup>62</sup> MMN Key Informant Interview with the Myanmar Overseas Employment Agencies Federation (MOEAF), conducted in October 2018, Yangon, Myanmar.

<sup>63</sup> MMN email correspondence with a representative of the MOEAF Japan Division, dated 6 August 2019.

<sup>64</sup> See The Secretariat of ASEAN, "Compendium on Migrant Workers' Education and Safe Migration Programme", p. 64, above.

<sup>65</sup> Ibid.

<sup>66</sup> ILO and the MOLIP, "Pre-Departure Training Curriculum for Thailand (in Burmese)", p. 27.



The PDO curricula for migrant workers travelling to Thailand and Malaysia. Photo: MMN

*“I did not receive any information about the social security system in Thailand before migrating. I did not know how much I had to contribute or what benefits I could get. It would have been useful to receive some information about it. It was beneficial to be enrolled in the system.”*

Myanmar migrant returnee from Thailand  
(Male, 21 years old, migrated through processes established by the MOU)

*“I did not know the social security system was for both men and women. I thought it was only for women.”*

Myanmar migrant returnee from Thailand  
(Male, 30 years old, migrated through processes established by the MOU)

Migrants who arrived in Thailand undocumented, but later went through national verification processes also had little opportunities to learn about such programmes in Thailand.

*“No one explained workers’ compensation to me, so how was I supposed to be aware of its benefits?”*

Myanmar migrant worker in Thailand  
(Female, 36 years old, completed the nationality verification process)

*“I did not know anything about social protection programmes [in Thailand] when I was in Myanmar. I learnt that information from a non-governmental organisation in Thailand. [Social protection programmes] are useful for people who are poor and don’t have any money. You can use social security at hospitals in cases of emergency.”*

Myanmar migrant worker in Thailand  
(Female, 23 years old, holder of a ten-year card to stay in Thailand)

While migrant returnees from Japan who were interviewed for this study were generally more aware of the insurance schemes in Japan before they departed Myanmar, some recognised that their knowledge was incomplete. One migrant worker commented:

*“I knew I had to pay into the pension scheme, health insurance and employment insurance, but I did not know how much.”*

Myanmar migrant returnee from Japan (Female, 43 years old)

### Websites

Although the respective Embassies of Myanmar in Thailand and Malaysia operate websites, there is an absence of information on relevant social protection programmes in the two destination countries.<sup>67</sup> The website of the Embassy of Myanmar in Japan<sup>68</sup> contains a link to the “Technical Intern Trainee Handbook” developed by the Human Resources Development Bureau under the Ministry of Health, Labour and Welfare (Japan), which is available in Burmese, English and Japanese. The handbook provides information on the various Japanese insurance schemes.<sup>69</sup> In particular, there are sections explaining the procedures for migrant workers to withdraw the lump sum payment of their contributions to the Employee’s Pension Insurance System or National Pension System upon return to Myanmar.<sup>70</sup> However, the handbook available on the website was released in 2016 and does not reflect changes under the TITP’s reform that took place in 2017. The reform included components such as extending migrant workers’ maximum stay under the TITP from three to five years and establishing the Organization of Technical Internship Training as the main oversight body to monitor the operation of the programme and offer better protections to migrants in Japan.<sup>71</sup>

### Media and Social Media

The MOLIP currently broadcasts short educational programmes on television channels such as Myawaddy TV and Myanmar Radio and Television. These programmes include segments on stories and scenarios to educate workers on their rights.<sup>72</sup>

In a previous MMN policy dialogue on the roles of countries of origin, a representative of the MOLIP identified social media as a useful platform to disseminate information to migrant workers.<sup>73</sup> The Facebook page of the Labour Attaché office in Thailand, created in April 2014, currently has 3,100 “likes”. The page contains posts about the contact details of labour attachés in Thailand

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<sup>67</sup> See website of the Embassy of the Republic of the Union of Myanmar in Bangkok, Thailand, accessible at <https://mebangkok.org/index.php/en/>; and website of the Embassy of the Republic of the Union of Myanmar in Kuala Lumpur, Malaysia, accessible at <https://www.myanmarembassykl.org/>.

<sup>68</sup> See website of the Embassy of the Republic of the Union of the Myanmar in Tokyo, Japan, accessible at <http://www.myanmar-embassy-tokyo.net/>

<sup>69</sup> See Human Resources Development Bureau (HRDB), Ministry of Health, Labour and Welfare (MoHLW), Japan, “Technical Internship Trainee Handbook”, 2016, pp. 16-20, accessible at <http://www.myanmar-embassy-tokyo.net/labour/tith.pdf>. The Burmese language version is accessible at <http://www.myanmar-embassy-tokyo.net/2016/labour/TTTP-BUR.pdf>.

<sup>70</sup> Human Resources Development Bureau, MoHLW (Japan), “Technical Internship Trainee Handbook”, p. 18, above.

<sup>71</sup> MMN, “Proceedings of the Consultation on Labour Migration from Myanmar to Japan”, October 2018, pp. 8-9, accessible at <http://www.mekongmigration.org/wp-content/uploads/2019/05/Myanmar-Proceedings.pdf>.

<sup>72</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>73</sup> MMN, “Proceedings of the Policy Dialogue on Roles of Countries of Origin”, August 2017, p. 26.



The Facebook page of the Myanmar Labour Attaché in Thailand. Photo: MMN Screenshot

and the MD under the MOLIP.<sup>74</sup> The Labour Attaché office in Malaysia also has a Facebook page, although the page contains no information.<sup>75</sup> Migrants may contact both labour attaché offices using Facebook’s messenger function.

In addition, the Myanmar embassies in Japan, Malaysia and Thailand host Facebook pages.<sup>76</sup> The Embassy of Myanmar in Japan posts regular updates on the activities of the ambassador, as well as announcements relating to job demand letters. The Facebook page of the Embassy of Myanmar in Malaysia mostly contains announcements of individuals who are eligible to apply for passports and updates about Embassy activities. There is an absence of information on the Facebook page of the Embassy of Myanmar in Thailand. Among the three embassies, Facebook users may only contact the Myanmar Embassy in Thailand using Facebook’s messenger function.

Among migrant workers interviewed by the MMN, one noted the Embassy’s presence on social media:

*“I suggest people [other migrants] use Facebook. People from the Embassy use Facebook.”*

Myanmar migrant returnee from Thailand  
(Female, 27 years old, migrated through processes established by the MOU)

<sup>74</sup> The Facebook page of the Myanmar Labour Attaché Office in Thailand is accessible at <https://www.facebook.com/labourattacheth/>.  
<sup>75</sup> The Facebook page of the Myanmar Labour Attaché Office in Malaysia is accessible at <https://www.facebook.com/Myanmar-Labour-Attache-Malaysia-1639263222820041/>.  
<sup>76</sup> The Facebook page of the Embassy of the Republic of the Union of Myanmar in Tokyo, Japan is accessible at <https://www.facebook.com/mynembtoko/>; the Facebook page of the Embassy of the Republic of the Union of Myanmar in Kuala Lumpur, Malaysia is accessible at <https://www.facebook.com/Myanmar-Embassy-in-Kuala-Lumpur-Malaysia-1532321607022165/>; the Facebook page of the Embassy of the Republic of the Union of Myanmar in Bangkok, Thailand is accessible at <https://www.facebook.com/Myanmar-Embassy-Bangkok-941748929174483/>.

#### **CASE STUDY 4 – Myanmar migrant returnee from Japan (Male, 30 years old)**

*M.M.O, Male, 30 years old, returned to Myanmar in June 2016 from Japan after spending three years working in a factory producing construction material.*

M.M.O migrated to work at the factory in Fukuoka, Japan through a recruitment agency. Before departing Myanmar in 2013, he recalled that a lawyer assigned by the employer in Japan provided most of the information pertaining to the social insurance systems in Japan. The lawyer told M.M.O about the amount he had to contribute to the pension scheme and the health insurance. For the health insurance, the employer would pay 70% for the treatment of any illnesses and injuries sustained outside of work and workers had to pay the remaining 30%. For work injury, he would be compensated the full amount for any medical expenses. He was also told that he would not get any (un)employment insurance unless the company in Japan goes bankrupt and causes him to lose his job.

While information provided by the employer was helpful to M.M.O, he complained that the recruitment agency in Myanmar did not provide him with complete information:

*“The recruitment agency in Myanmar lacks responsibility and accountability [for the information it provides]...The agency did not inform us about the type of work, salary and overtime pay before we passed the interview. After you pass the interview [and learn more about the job], if you change your mind about going to Japan, the agency will just ignore you. If you tell the agency you don’t want to go to Japan because you don’t like the job that you are placed in, the agency will ask you to pay 100,000 Kyat extra (USD 65-55).”*

M.M.O also recalled that the recruitment agency promised workers they could work overtime in Japan. Many workers preferred to work more hours in order to earn higher wages. But when workers arrived in Japan, the employer did not require any overtime work from workers.

*“Recruitment agencies lie about working conditions before people leave for Japan. That’s why many people ‘run away’ from their work”.*

During his time working in Japan, M.M.O recalled positive experiences using his health insurance.

*“I was sick one time. My body had a high uric acid level—I could not urinate and my legs were swollen. The medical treatment in Japan was good. The Japanese representative from my company took me to the hospital. When you have the health insurance card, you can get treatment anywhere. Even if it’s just for a headache. My company also provided ten days of paid sick leave per year.”*

After returning to Myanmar, he contacted the recruitment agency for help to claim the lump sum of his contribution to the pension scheme. In order to make the withdrawal, he needed a bank account in Myanmar, his pension book and a copy of his exit stamp from Japan and entry stamp into Myanmar. He knew he could also apply to withdraw his pension contributions through the Embassy of Japan in Myanmar, but he heard rumours that withdrawing through the embassy meant that he would not be able to retrieve the full amount. At the end, M.M.O asked his agency to assist with the withdrawal and to his dissatisfaction only managed to get back half of his contributions.



*Migrant workers from Myanmar attend an International Women's Day event in Chiang Mai, Thailand. Photo: MMN*

### 3.4 Overseas Assistance

Myanmar began hosting labour attachés in its diplomatic missions in 2012 and currently has five labour attachés in Thailand, based in Bangkok, Chiang Mai, Mae Sot and Surat Thani, two in Malaysia, and one in the Republic of Korea. There are currently none in Japan.<sup>77</sup> All current Myanmar labour attachés in these countries are male.<sup>78</sup> While the roles and responsibilities of labour attachés are not formalised in policies or directives,<sup>79</sup> labour attachés generally perform roles that include verifying job orders from recruitment agencies, responding to complaints from migrant workers, negotiating with employers to resolve disputes, assisting in the Nationality Verification process and issuing Certificates of identity.<sup>80</sup> In cases where labour disputes arise, labour attachés may arrange meetings with workers, employers, recruitment agencies and representatives of the Myanmar Overseas Employment Agencies Federation (MOEAF) to settle disputes, and can make representations to Ministries of Labour in destination countries if cases cannot be resolved.<sup>81</sup> In 2019, it was reported that a group of recruitment agencies had accused the Labour Attaché Office in Thailand of abusing its power to extract money from recruitment agencies sending workers to Thailand, in addition to collecting 100 Baht from migrant workers. The Anti-Corruption Commission has been investigating.<sup>82</sup>

<sup>77</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>78</sup> Based on a discussion during a MMN project partners consultation meeting, conducted in April 2019, Yangon, Myanmar.

<sup>79</sup> ILO, "Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar", 2016, p.9, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms\\_545888.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_545888.pdf).

<sup>80</sup> See MMN, "Safe from the Start", p. 43, above.

<sup>81</sup> ILO, "Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar", p. 9, above.

<sup>82</sup> Zaw Zaw Htwe, "Labour Attaché Faces Allegations of Abuse of Power", *Myanmar Times*, 4 June 2019, accessible at <https://www.mmmtimes.com/news/labour-attache-faces-allegations-abuse-power.html>.

Among migrant workers in Thailand, a lack of understanding about the exact roles and support provided by the Myanmar Embassy combined with other factors, such as time and expense visiting the Embassy, could be reasons why many do not approach the Embassy for assistance when encountering problems accessing social protection programmes.

*“I did not ask for help from the Embassy because I did not think I would be able to claim any benefits from the system even if I had.”*

Myanmar migrant returnee from Thailand  
(Female, 32 years old, migrated through processes established by the MOU)

*“I did not claim any benefits from the system in Thailand. I had to pay on my own every time I visited the hospital. I never sought help from the Embassy on this. I didn’t even know where the Embassy is.”*

Myanmar migrant returnee from Thailand  
(Female, 33 years old, completed the nationality verification process)

*“I did not try to ask for support from the Embassy when claiming benefits in Thailand. I thought I couldn’t ask for help because I never finished my contract.”*

Myanmar migrant returnee from Thailand  
(Male, 40 years old, migrated through processes established by the MOU)

*“If I had to, I would have visited the Embassy for help. But I think it would be difficult because I need to spend money on transportation to get there.”*

Myanmar migrant returnee from Thailand  
(Male, 31 years old, migrated through processes established by the MOU)

In countries like Japan where a labour attaché is not present, migrant workers can approach representatives of the Myanmar Embassy, who will contact the MOLIP for further assistance.<sup>83</sup> The Embassy of Myanmar in Japan currently has a hotline to respond to complaints, inquiries and calls for assistance. However, a representative of a labour union for Myanmar workers in Japan revealed that hotlines are only open during working hours when migrants are at work and have little opportunity to make phone calls. Migrant workers also experience difficulties obtaining a mobile phone with a Japanese number because of the complicated procedures for foreigners in Japan to apply for one. Without a functioning telephone, migrant workers are not able to access hotline services.<sup>84</sup> In addition to the hotline, the Embassy also sends representatives to visit migrant work sites, although problems were seldom found during these inspections.<sup>85</sup>

If the MOLIP is notified about cases of accidents or injuries involving Myanmar workers in Japan, the Ministry contacts the Embassy of Myanmar in Japan through Myanmar’s Ministry of Foreign Affairs (MOFA). Staff members of the Embassy requests recruitment agencies in Myanmar to assist migrant workers in claiming relevant benefits. A representative of the MOLIP admitted that

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<sup>83</sup> See ILO, “Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar”, p. 9, above.

<sup>84</sup> MMN meeting with a representative of the Federation of Workers’ Union of the Burmese Citizen in Japan, conducted in July 2019, Tokyo, Japan.

<sup>85</sup> Ibid.

there is no mechanism to monitor whether migrant workers are accessing social protection programmes in Japan, as enrolling in these programmes is required in Japan and monitoring enrolment is a responsibility of actors on the Japanese side.<sup>86</sup>

In Malaysia, there were reports of complaints about migrants not receiving their certificates of identity from the embassy in time to enrol in Malaysia's "Rehiring and Allocation Integration Programme", a scheme aimed at regularising migrants in the manufacturing, construction, plantation, agriculture and service sectors between February 2016 and July 2018.<sup>87</sup> Delays in the processing of documents left migrant workers without identity papers for long periods of time and heightened risks of arrest.<sup>88</sup> In December 2017, the Myanmar Embassy altogether stopped issuing them to undocumented workers in Malaysia after discovering many applicants submitted false information.<sup>89</sup> In a later statement issued in February 2018, the MOLIP announced that the government would only issue certificates of identity to nationals who have lost their passports or identity cards in order for them to return to Myanmar to reapply for nationality documents.<sup>90</sup>

## 3.5 Roles and Responsibilities of Recruitment Agencies

### 3.5.1 Regulation of Recruitment Agencies

#### *Licensing Conditions*

In 2014, the MOLIP issued the Rules and Regulations for Overseas Employment Agency License, which outlines licensing procedures and conditions of agencies. Licence holders must be Myanmar citizens or Myanmar-owned companies.<sup>91</sup> Those previously sanctioned for sending workers abroad while unlicensed, or who have been blacklisted, are barred from holding a license.<sup>92</sup> Licence holders must deposit 50 million Myanmar kyat (USD 32,900)<sup>93</sup> into a government account, which is forfeited if their license is cancelled for any fault of their own.<sup>94</sup> Agencies that are found to have violated the rules and regulations may incur sanctions ranging from a fine and a warning to temporary suspension or cancellation of their licenses. If an agency engages in illegal recruitment, the MOLIP reserves the right to strip its licence without warning.<sup>95</sup> Between 2014 and 2017, the MOLIP cancelled over 40 overseas employment licences, 10 of which related to violations of

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<sup>86</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>87</sup> Chester Tay, "Rehiring Programme for Illegal Workers to end on June 30", *The Edge Market*, 31 May 2018, accessible at <http://www.theedgemarkets.com/article/rehiring-programme-illegals-end-june-30>.

<sup>88</sup> Zaw Zaw Htwe, "Myanmar Migrants in Malaysia Face Imprisonment over Passport Delays", *Myanmar Times*, 13 July 2016, accessible at <https://www.mmmtimes.com/national-news/21351-myanmar-migrants-in-malaysia-face-imprisonment-over-passport-delays.html>.

<sup>89</sup> Zaw Zaw Htwe, "Embassy Stops ID Certificate Service in Malaysia", *Myanmar Times*, 14 December 2017, accessible at <https://www.mmmtimes.com/news/embassy-stops-id-certificate-service-malaysia.html>.

<sup>90</sup> Hoo Thant, "No talks with Malaysia on migrant worker documents", *Myanmar Times*, 16 February 2018, <https://www.mmmtimes.com/news/no-talks-malaysia-migrant-worker-documents.html>.

<sup>91</sup> Rules and Regulations for Overseas Employment Agency License, 2014, Article 1.

<sup>92</sup> Ibid., Article 2.

<sup>93</sup> At the time of writing (1 August 2019), USD 1 was equivalent to 1,518 Myanmar Kyat.

<sup>94</sup> Rules and Regulations for Overseas Employment Agency License, Article 4, above.

<sup>95</sup> Ibid., Article 7.



*Prospective migrants who are about to depart for Japan attend an information session provided by their recruitment agency on the laws, lifestyle and culture of Japan. Photo: MMN*

MOLIP regulations, a further 13 were temporarily suspended.<sup>96</sup> As of January 2019, 272 agencies in Myanmar were licenced to recruit workers abroad.<sup>97</sup>

### *Obligations*

A separate “Rules and Regulations for Licence Holders of Overseas Employment Agencies” stipulate the responsibilities of recruitment agencies at various stages of migrant workers’ migration cycle. According to the regulations, agencies should arrange medical examinations,<sup>98</sup> explain cost structures of recruitment fees and other related expenses to prospective workers,<sup>99</sup> and provide employment contracts in Burmese, English and the language of the destination country.<sup>100</sup> Unless otherwise specified in separate ministerial regulations, fees are capped at no more than four times a worker’s monthly salary.<sup>101</sup> Agencies are expected to arrange PDT on the content of the employment contract, rights and responsibilities, cultural information, protection procedures, labour laws, and working and living conditions abroad.<sup>102</sup> Once migrant workers are deployed abroad, recruitment agencies should maintain regular contact with workers,<sup>103</sup> coordinate with employers to ensure workers receive their full rights and benefits,<sup>104</sup> and in cases of injury and death, provide all necessary assistance that is required.<sup>105</sup> There are no provisions under the regulation specifying

<sup>96</sup> Zaw Zaw Htwe, “Labour Ministry Withdraws Licenses of over 40 Job Agencies”, *Myanmar Times*, 24 April 2018, accessible at <https://www.mmmtimes.com/news/labour-ministry-withdraws-licenses-over-40-job-agencies.html>.

<sup>97</sup> The MOLIP, “List of Overseas Employment Agencies (22-1-2019)”, 2019, accessible at “<https://www.mol.gov.mm/en/wp-content/uploads/downloads/2019/01/Agency-272.pdf>”.

<sup>98</sup> Rules and Regulations for Licence Holders of Overseas Employment Agencies, 2014, Article 6.

<sup>99</sup> *Ibid.*, Article 7.

<sup>100</sup> *Ibid.*, Article 8.

<sup>101</sup> *Ibid.*, Article 14.

<sup>102</sup> *Ibid.*, Article 11.

<sup>103</sup> *Ibid.*, Article 22.

<sup>104</sup> *Ibid.*, Article 18.

<sup>105</sup> *Ibid.*, Article 23.

recruitment agencies' responsibilities to support migrant workers' access to social protection programmes in destination countries or Myanmar.

Migrant returnees from Japan and Thailand reported mixed impressions of their experiences with recruitment agencies in providing support to migrant workers:

*"[After having surgery,] the owners of the recruitment agency visited me twice and helped me with everything. I had to ask them not to take the trouble to come visit me every day."*

Myanmar migrant returnee from Japan (Female, 32 years old)

*"I have never experienced any injuries or accidents... [But] when another worker from Myanmar got injured at work, people from the recruitment agency visited her and helped her access the insurance."*

Myanmar migrant returnee from Japan (Female, 33 years old)

*"Some agents are not very trustworthy...I would recommend people to thoroughly understand [migration procedures] and migrate using a good agent. Don't think about going there quickly."*

Myanmar migrant returnee from Thailand  
(Male, 34 years old, migrated through processes established by the MOU)

### 3.5.2 Migration Costs

While the Rules and Regulations for Overseas Employment Agency License stipulates that recruitment fees are limited to no more than four months of a migrant worker's monthly salary,<sup>106</sup> the MOLIP has placed a legal cap on recruitment fees for specific destination countries. Recruitment agencies sending migrant workers to Japan under the TITP can charge no more than USD 2,800.<sup>107</sup> However, in practice, it is common for migrant workers to pay as much as USD 3,800 to 4,000 in total migration costs to cover additional items such as language and skills training, as well as the living costs whilst attending these courses.<sup>108</sup>

For migration to Thailand, maximum recruitment fees are set at 150,000 Myanmar Kyat (USD 98-99).<sup>109</sup> Migrant workers are required to pay an additional 3,600 Thai Baht (USD 116-117) to the Thai government for visas, work permits and medical insurance.<sup>110</sup> However, migrant rights groups revealed that some migrant workers paid more than 800,000 Myanmar Kyat (USD 527) to migrate to Thailand. The MOEAF was quoted as saying that high processing costs and low-profit margins could be reasons why agencies charged beyond the prescribed rate. In 2019, the

<sup>106</sup> Ibid., Article 14.

<sup>107</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>108</sup> MMN Key Informant Interview with a representative of the MOEAF, above; and with a representative of a Recruitment Agency, conducted in April 2019, Yangon, Myanmar.

<sup>109</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>110</sup> Zaw Zaw Htwe, "Unscrupulous Employment Agencies Prey on Workers Despite Agreements", *Myanmar Times*, 28 May 2019, accessible at <https://www.mmmtimes.com/news/unscrupulous-employment-agencies-prey-workers-despite-agreements.html>.

MOEAF requested the MOLIP to raise the legal cap to 238,000 Myanmar Kyat (USD 156-157) and called for Thai agencies to collect the 3,600 Baht fee on the Thai side.<sup>111</sup>

The recruitment fee for migration to Malaysia is capped at USD 850.<sup>112</sup> In addition, migrant workers reportedly have to pay USD 25 in service fees, USD 26 in system fees, and USD 26 as immigration security clearance fees to the only service company in Myanmar that processes visa applications to Malaysia. Furthermore, migrant workers pay another USD 56 for a mandatory pre-departure health check.<sup>113</sup> In recent reports, migrant workers expressed difficulties meeting the costs involved in migrating to Malaysia, with some taking loans to migrate.<sup>114</sup> In 2018, some factories in Malaysia were reportedly hiring workers from Myanmar directly due to a labour shortage in the country. No recruitment fees were charged to workers in the process.<sup>115</sup>

### **CASE STUDY 5 – Myanmar migrant returnee from Thailand (Female, 19 years old)**

*Z.M.W, female, 19 years old, returned to Myanmar in August 2018 from Thailand after working for a year at an electronics factory.*

Z.M.W discovered that her family was in debt after her mother passed away. At the time, her family was building a new house and needed extra money to pay off the debt. Z.M.W decided then that she would migrate to Thailand to help alleviate her family's financial difficulties.

Through her sister, she contacted a broker who connected her to a recruitment agency. She had to pay the recruitment agency 800,000 Kyat (530-531 USD) as recruitment fees to work at an electronics factory in Thailand.

Z.M.W recalled that the most useful information she received about the social security system in Thailand was from brokers in Myanmar and Thailand:

*“At the beginning I did not know exactly how much was deducted from my salary as contributions to the social security system because the amount was in Thai Baht. Later, brokers in Myanmar and Thailand told me how much would be deducted from my salary and how and where I could use my social security to get health care. The information that brokers gave me was useful... [but] they only informed me about how much I had to contribute and not the benefits. Other social security benefits were written in the employment contract, but the*

<sup>111</sup> Ibid.

<sup>112</sup> Peter Zsombor, “Myanmar Workers Bound for Malaysia Stuck With Stifling Fees”, above.

<sup>113</sup> Ibid.

<sup>114</sup> See Ibid.; and Zaw Zaw Htwe, “Exodus of Workers Grows as Living Costs Rise in Myanmar”, *Myanmar Times*, 16 July 2019, accessible at <https://www.mmmtimes.com/news/exodus-workers-grows-living-costs-rise-myanmar.html>.

<sup>115</sup> Zaw Zaw Htwe, “Malaysian companies hire Myanmar workers directly, without broker fees”, *Myanmar Times*, 1 August 2018, accessible at <https://www.mmmtimes.com/news/malaysian-companies-hire-myanmar-workers-directly-without-broker-fees.html>.

*contract also did not state that I could claim them. I have never received complete information about the social security system.”*

After spending ten days in Thailand, Z.M.W received her social security card. Even though a 300 to 400 baht contribution was deducted from her monthly salary, Z.M.W was not aware which social security programme she was enrolled in. When she fell ill, Z.M.W never visited the hospital because she could not communicate with staff in Thai. She stated:

*“I did not go to the hospital or claim any compensation. Even when I got sick, I did not receive any treatment because of the language barrier.”*

Z.M.W returned to Myanmar at her family’s request after spending a year in Thailand. She was not aware that migrant returnees were entitled to withdraw a lump sum of their contributions to the pension system because her employment contract did not mention such information and her broker never informed her.

Since returning home, she has worked at two factories, both of which enrolled her in the social security system in Myanmar. Managers at the factories explained to her the benefits she was entitled to, but she was still not sure what the exact benefits were except for accessing healthcare. In the future, Z.M.W hopes to open her own tailor shop in Myanmar.

### 3.5.3 Pre-Departure Training

The LROE states that a recruitment agency “has the right to conduct private training courses, with the approval of the Department [Department of Labour under MOLIP], to give workers work experience and proficiency.”<sup>116</sup> Recruitment agencies offer language and skill training to migrant workers going to Japan and Malaysia, but not usually to those bound for Thailand. Depending on the sector of work and employers’ requirements, the duration of skill training varies. For language training, agencies offer a two-month course to migrant workers travelling to Malaysia and a four to six months course to those going to Japan.<sup>117</sup> Some prospective migrants also choose to attend Japanese language training on their own before securing employment in Japan to increase their competitiveness.<sup>118</sup> At one recruitment agency sending workers to Japan visited by MMN, language courses are funded by the Supervising Organisation in Japan and offered to migrant workers for free. The whole course lasts four months. In addition to Japanese language, the course includes modules on navigating immigration counters after arriving at the Japanese airport, lodging complaints to the Embassy, MOEAF or agencies, Japanese laws and culture and claiming the lump sum for pension contributions when departing Japan.<sup>119</sup> Based on the experiences of migrants, the quality of these pre-departure courses differs depending on the recruitment agency.

<sup>116</sup> Law Relating to Overseas Employment, Article 25 (i), above.

<sup>117</sup> Key Informant Interview with a representative of the MOEAF, above.

<sup>118</sup> MMN Case study of a migrant returnee from Japan, female, 32 years old, conducted in July 2019, Yangon, Myanmar.

<sup>119</sup> MMN Key Informant Interview with a representative of a Recruitment Agency, above.



Prospective migrants attend a language training course at a recruitment agency in Yangon, Myanmar. Photo: MMN

*“The agency explained to me well about the insurance schemes in Japan, so I was not surprised when I saw contributions being deducted from my salary.”*

Myanmar migrant returnee from Japan (Female, 32 years old)

*“The agency did not tell us about the type of work we would be doing and the overtime salary. They told us we could work overtime in Japan [to earn more money], but when we arrived, the employers did not let us work overtime...Many recruitment agencies lie about working conditions in Japan, that’s why so many people ‘run away’ from their jobs.”*

Myanmar migrant returnee from Japan (Male, 30 years old)

Representatives of MOEAF informed MMN of cases where recruitment agencies asked prospective workers who have not secured a job at the destination countries to stay at the training centre when training was in session. Doing so prevented other agencies or companies from recruiting prospective workers upon completion of the course.<sup>120</sup>

### 3.5.4 Industry Initiatives

All recruitment agencies in Myanmar are required to be a member of MOEAF, a non-governmental industry group created with the support of the MOLIP and tasked with monitoring and supervising agencies to ensure compliance with the law, assisting and protecting workers abroad, and assisting in the resolution of complaints.<sup>121</sup> The MOEAF has offices in both Yangon and Bangkok.<sup>122</sup> The

<sup>120</sup> MMN Key Informant Interview with a representative of the MOEAF, above.

<sup>121</sup> Rules and Regulations for License’s holder of Overseas Employment Agencies, Article 1, above.

<sup>122</sup> ILO, “Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar”, p. 10, above; and MMN Key Informant Interview with a representative of the MOEAF, above.

office in Bangkok is staffed by three people, including a lawyer, and runs a 24-hour call centre for migrants in need of assistance.<sup>123</sup> The MOEAF previously had an office in Kuala Lumpur, Malaysia, which was closed in 2015.<sup>124</sup>

Migrant workers may submit complaints to MOEAF in person, by letter or calling the 24-hour hotline.<sup>125</sup> Between 2013 and 2016, 504 complaints were submitted.<sup>126</sup> In Thailand, where an office is set up, representatives of MOEAF investigate complaints in person and visit worksites to facilitate negotiations between employers, recruitment agencies and workers.<sup>127</sup> The MOEAF in Thailand can also assist migrants file an official request to change employers if certain circumstances are met, including cases where employers fail to protect workers as required under Thai law.<sup>128</sup> In the event that MOEAF fails to settle a dispute or the worker is unsatisfied with the outcome, the worker can submit complaints directly to the MOLIP.<sup>129</sup> Due to resource constraints, MOEAF does not conduct an in-person investigation in Japan and other destination countries.<sup>130</sup> However, representatives of recruitment agencies assigned on a rotating basis are sometimes involved in the investigation.<sup>131</sup>

### *Insurance Schemes*

In 2018, MOEAF and the state-owned Myanmar Insurance Company launched an insurance programme for migrant workers going to Thailand. The programme includes life insurance and personal accident insurance, which are available to migrant workers at Kyat 30,000 (USD 19-20) per year. Under the insurance scheme, deaths as a result of workplace accidents can be compensated for up to Kyat 5 million (USD 3,293- 3,294).

### *Voluntary Code of Conduct*

In August 2016, MOEAF, in collaboration with the MOLIP and the ILO, launched a voluntary Code of Conduct (COC) to promote and establish standards for ethical recruitment practices and protect migrant workers' rights throughout their migration cycle.<sup>132</sup> Subscribers to the COC are monitored and ranked by a gender-diverse monitoring committee known as the Code Compliance and Monitoring Committee (CCMC). As of March 2018, 183 recruitment agencies in Myanmar had signed the COC.<sup>133</sup> The Myanmar Decent Work Country Programme aims to have 100 percent of recruitment agencies committed to the COC by 2021.<sup>134</sup>

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<sup>123</sup> MMN Key Informant Interview with a representative of the MOEAF, *ibid*.

<sup>124</sup> ILO, "Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar", p. 10, *above*.

<sup>125</sup> *Ibid*.

<sup>126</sup> *Ibid*.

<sup>127</sup> *Ibid*, p. 10.

<sup>128</sup> *Ibid*, pp. 12-3.

<sup>129</sup> *Ibid*, p. 11.

<sup>130</sup> *Ibid*, p. 10.

<sup>131</sup> *Ibid*.

<sup>132</sup> The MOEAF, "Code of Conduct for the Members of the Myanmar Overseas Employment Agencies Federation", 2016, p. 8, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/genericdocument/wcms\\_622961.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/genericdocument/wcms_622961.pdf).

<sup>133</sup> ILO, "Myanmar: 66 more Overseas Employment Agencies sign up to the Code of Conduct for Fairer Migration", 22 March 2018, accessible at, [https://www.ilo.org/yangon/press/WCMS\\_622783/lang--en/index.htm](https://www.ilo.org/yangon/press/WCMS_622783/lang--en/index.htm).

<sup>134</sup> "The Myanmar Decent Work Country Programme 2018 - 2021", p.28 (target 1.2.5), *above*.

A number of clauses within the COC are relevant to the roles of recruitment agencies in assisting migrant workers' access social protection programmes in destination countries. The COC states that recruitment agencies should only enter into an agreement with overseas employers who have strictly complied with national labour protection laws, have registered all of their existing workers to social security or health insurance systems of the destination country and have regularly provided workers with a detailed payslip that includes information on deductions and social security contributions.<sup>135</sup> Regarding PDT, agencies should, at a minimum, provide information about "employment contracts, labour laws and rights, complaint mechanisms, social security, health care and access to health systems, information on local currency, wages, cost of living, remittances and banking system".<sup>136</sup> In terms of employment contracts, agencies are responsible to ensure that contracts between workers and overseas employers contain information about the working and living conditions of migrant workers and comply with labour laws of the destination country.<sup>137</sup>

In cases of disputes, recruitment agencies should "respond in a timely manner to migrants' needs, facilitate dispute settlement and, where requested, facilitate access to legal assistance to lodge a complaint with relevant agencies".<sup>138</sup> Recruitment agencies are also expected to provide necessary support in case of emergency, including serious injuries or death.<sup>139</sup> After migrants return to Myanmar, recruitment agencies are responsible for assisting workers "with recovering entitlements under repatriation funds or any other lump sum payments due to migrants upon completion of their contracts".<sup>140</sup>

As part of the process to review and rank the performance of agencies who subscribe to the code, the CCMC selects agencies at random to assess their performance based on a set of 20 operational standards,<sup>141</sup> including whether they have "assisted workers with recovering entitlements upon completion of their contracts".<sup>142</sup> The results of the evaluation are verified by the CCMC, which subsequently ranks the recruitment agencies based on a three-star scale, with three stars indicating full compliance. Results of the rank are published online.<sup>143</sup> In 2018, the CCMC rated the first eight recruitment agencies sending workers to Thailand.<sup>144</sup> Another round of ranking for agencies sending workers to Japan will take place between July and September 2019.<sup>145</sup>

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<sup>135</sup> MOEAF, "Code of Conduct for the Members of the Myanmar Overseas Employment Agencies Federation", p. 20 and 22 (Article 4), above.

<sup>136</sup> Ibid., p. 14 (Article 1D).

<sup>137</sup> Ibid., p. 22 (Article 5).

<sup>138</sup> Ibid., p. 16 (Article 1F).

<sup>139</sup> Ibid., p. 18 (Article 1G).

<sup>140</sup> Ibid., p. 18 (Article 1H).

<sup>141</sup> Ibid., p. 36.

<sup>142</sup> Ibid., pp. 40-42.

<sup>143</sup> ILO, "Myanmar: 66 more Overseas Employment Agencies sign up to the Code of Conduct for Fairer Migration", above.

<sup>144</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, "Myanmar (October-December), 2018", p. 2 accessible at [https://drive.google.com/file/d/17TUoK\\_cci8\\_DiGb0QAsYAI5vFCfV63oG/view?usp=sharing](https://drive.google.com/file/d/17TUoK_cci8_DiGb0QAsYAI5vFCfV63oG/view?usp=sharing).

<sup>145</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, "Myanmar (April-June), 2019", p. 3, above.

## **CASE STUDY 6 – Myanmar migrant returnee from Japan (Female, 32 years old)**

*H, 32 years old, returned to Myanmar in January 2019 from Japan after spending three years working in agriculture.*

H decided to work in Japan because of the country's reputation. She began attending Japanese language training before securing employment in Japan. During this time, she learnt from a friend about a reputable recruitment agency and decided to migrate to Japan using its services. Shortly after, the recruitment agency successfully placed H at a job in the agriculture sector.

Before H departed for Japan, the recruitment agency explained to her about the insurance schemes in Japan. H believed the explanation provided by her recruitment agency was helpful:

*“I was informed about which schemes I had to enrol in, the percentage of contributions that would be deducted from my salary and how much it would cost when I visited the clinic...Before I went to Japan, the agency explained about the insurance schemes well, so I was not surprised when I saw contributions being deducted from my salary.”*

After arriving in Japan, H also received a one-month post-arrival training on Japanese language and culture. During the month, she received information including what to do when there is an earthquake, how to react when the fire alarm goes off and who to contact in cases of emergency. While H could not speak Japanese well at the time, a manager of the recruitment agency was there to provide interpretation for migrants. H had a good impression of the insurance schemes in Japan:

*“The scheme was very helpful to me because I had to undergo surgery in Japan. I could make full use of the Japanese health insurance system.”*

During her surgery, H's employer and recruitment agency in Myanmar provided her with all necessary assistance. The employer in Japan gave H two-weeks of leave, including five days before her surgery for her to make preparations and take a rest. Five days after the surgery, the managers at work came to the hospital to pick her up. The doctors recommended that she took another week off to rest and H's employer happily complied. The owners of the recruitment agency also visited:

*“The owner of the recruitment agency visited me twice and helped me with everything. I had to tell them not to take the trouble to come every day.”*

Since H returned to Myanmar, her recruitment agency has supported her to withdraw her contributions to the pension scheme:

*“I am waiting for the lump sum amount to get to my bank account. At the moment, all the required documents [to apply for the lump sum] have already*

*been sent...I did not have to apply on my own or ask for assistance to apply for the withdrawal. I also did not have to pay anything. The recruitment agency here helped me process all the documents and I did not pay any money. As I did not encounter any serious problems, I never had to contact the Embassy or other organisations for help.”*

Looking back, H believed her time in Japan was very valuable and opened up new opportunities for her. She also believed working in Japan can help migrants provide for their families and recommended other prospective migrants to learn Japanese well.

### 3.6 International Cooperation

Myanmar's NPA for the Management of International Labour Migration for 2013-2017 creates room for international cooperation to facilitate migrants' access to social security programmes in Thailand. Two of the NPA's action plans envision the Myanmar government working with its Thai counterpart to support “access [to] existing support resources in Thailand for irregular Myanmar migrants, including hotlines, shelters and social services”,<sup>146</sup> and “promote all migrants' access to basic social services in Thailand, including education, health and social security”.<sup>147</sup>

The MOLIP reported a good working relationship with Ministries in Thailand to facilitate migrant workers' access to social protection programmes in Thailand. When notified about cases of accidents, injuries and deaths involving Myanmar workers, the MOLIP usually requests its Thai counterpart to follow up with these incidents.<sup>148</sup> In July 2018, officials from the labour departments of Myanmar and Thailand also met to discuss a proposal to provide a short-term insurance plan to recent Myanmar migrant arrivals. The plan is said to be voluntary and provides coverage to migrants until they can receive benefits from Thailand's social security system.<sup>149</sup>

Regionally, delegates from Cambodia, Lao PDR, Myanmar, Thailand and Vietnam (CLMTV) met for the Senior Labor Officials' Meeting under the theme of “Social Welfare: Connectivity of Social Insurance for Migrant Workers in the CLMTV region” in August 2018. At the meeting, government officials discussed their country's social security systems and ways to ensure migrants receive benefits when abroad. Labour authorities at the CLMTV meeting were reportedly working towards an agreement that would guarantee migrant workers' access to social security when overseas.<sup>150</sup>

<sup>146</sup> The Government of the Republic Union of Myanmar, “Five-year National Plan of Action for the Management of International Labor Migration 2013-2017”, p. 20 (Action plan 1.4.4), above.

<sup>147</sup> Ibid., p. 20 (Action plan 1.4.10).

<sup>148</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>149</sup> Penchan Charoensuthipan, “Migrant Insurance Wins Nod”, *Bangkok Post*, 26 July 2018, accessible at, <https://www.bangkokpost.com/news/general/1510310/migrant-insurance-wins-nod>.

<sup>150</sup> “Migrant Social Security Discussed at CLMTV Meeting”, *drawn from Vietnam News, Asia News Network, Hanoi by The Nation*, 21 August 2018, accessible at <http://www.nationmultimedia.com/detail/asean-plus/30352626>.



A migrant worker at a small-scale furniture factory in Mae Sot, Thailand. Photo: MMN/ John Hulme

### **Box Article 1: Migrant Workers' Access to Social Protection Programmes Under Changing Migration Statuses**

MMN's case study interviews with on-site migrant workers in Thailand revealed that changing migration statuses may limit migrant workers' access to certain social protection programmes. In a few cases in Mae Sot, Thailand, migrant workers lost their eligibility to continue enrolling in the social security system after they changed their migration status to become seasonal workers holding border passes.<sup>151</sup> Migrant workers holding a border pass are not eligible to participate in the social security system and must instead purchase a three-month insurance plan under the Migrant Health Insurance Scheme. One migrant worker in this situation expressed concerns about losing many of the benefits she originally enjoyed under the Thai social security system:

*"I was previously enrolled in the social security system and contributed for six years while I had my temporary passport. After that, my factory manager changed my temporary passport to the border pass under section 64 so I lost many of my benefits under the system. With the border pass, I could only buy a three-month insurance plan from the Mae Sot Hospital [...]"*

*Before, I received a lot of benefits under the Social Security System. I used my social security for a surgery at the hospital and did not need to pay anything.*

<sup>151</sup> According to Section 64 of the Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), "The foreign worker being of nationality of the country having common boundary with Thailand who enters into the Kingdom with border pass or other document in the same way which are prescribed by the Director-General, may be permitted by the Registrar to work in the Kingdom temporarily through the specified period or season within the area which is specified." The law is accessible at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf>.

*I am more satisfied with the social security system than the health insurance system. [Now,] I don't think I can claim back my contributions to the pension scheme under the social security system when I return to Myanmar. I need to wait until I am 55 years old to claim it back, and even then, I cannot withdraw it because I have no valid visa to do so."*

Myanmar migrant worker in Thailand (Female, 47 years old, currently waiting for the extension of her border pass under section 64)

### 3.7 Assistance Upon Return

Measures to facilitate migrant returnees' reintegration remain limited. Currently, the MOLIP organises a programme every year to help place migrants returning from the Republic of Korea and Japan at factories in Myanmar. However, wage levels at these factories remain low and many migrant returnees prefer to re-migrate. The National Skill Standards Authority also provides vocational training to migrant returnees on various skill sets, such as hair dressing, motorcycle repair and tailoring, at government-run training schools.<sup>152</sup>

A representative of the MOLIP acknowledged that the rate of migrant returnees (re-)joining the social security systems of Myanmar remained low.<sup>153</sup> Through interviews with migrant returnees, MMN found that one reason for low rates of enrolment among migrant returnees could be due to a lack of knowledge regarding social security programmes in Myanmar.

*"I did not know anything about social security in Myanmar. No one was collecting contributions from me and no one told me about it."*

Myanmar migrant returnee from Thailand  
(Male, 31 years old, migrated through processes established by the MOU)

*"I am not enrolled because I did not know. There is no information on what you would get if you are enrolled in the social security system in Myanmar."*

Myanmar migrant returnee from Japan (Male, 30 years old)

A few migrant returnees also believed benefits under the current system of Myanmar are lacking compared to that in the destination country they have returned from.

*"Contributing to the social security system would be a big expense for families in Myanmar. In Japan, if you join the insurance scheme, you can get healthcare at any hospital. But in Myanmar, you can only access designated social security hospitals. And sometimes these hospitals close during holidays. It is difficult to access healthcare even if you are enrolled. But I think it is good to have social security."*

Myanmar migrant returnee from Japan (Female, 33 years old)

<sup>152</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>153</sup> Ibid.



*Migrant returnees and prospective workers attend an International Migrant's Day event in Yangon, Myanmar.  
Photo: MMN*

*"If the Myanmar government provided social security and health insurance like they do in Thailand, workers would be much more happy and healthy."*

Myanmar migrant worker in Thailand  
(Male, 39 years old, completed the nationality verification process)

Low rates of registration among migrant returnees could also be linked to issues relating to the documentation of Myanmar citizens. MMN's 2016 study on the impact of social exclusion found that migrant returnees and the children of migrants born outside Myanmar frequently face difficulties in applying for household registration and national identification documents upon return. Without citizenship documents, migrant returnees may face difficulties enrolling in and accessing social security programmes in Myanmar.<sup>154</sup>

Regarding mechanisms to transfer social security benefits from destination countries to Myanmar, the NPA 2013-2017 mentions this as one of its action plans to negotiate with destination countries for the portability of benefits. But as yet, the Myanmar government has not established any practical mechanisms for migrant returnees to accrue transferable benefits from destination countries.

In Thailand, the Social Security Act (2015) allows non-Thai nationals who cease to be insured and do not wish to stay in Thailand to receive an old-age lump sum of the pension to which they have contributed. However, migrant workers are only entitled to claim the lump sum amount after they

<sup>154</sup> MMN, "Permanently Temporary: Examining the Impact of Social Exclusion on Mekong Migrants", 2016, p. 30, accessible at <http://www.mekongmigration.org/wpcontent/uploads/2016/10/Permanently-Temporary-Eng-mmn-printed-version.pdf>.

reach the age of 55. There are no existing mechanisms for migrant returnees to transfer such an amount from Thailand to Myanmar.<sup>155</sup> Most interviewed migrant returnees had little knowledge that they could withdraw their pension contributions and the few who were aware of the process were not keen on withdrawing the lump sum amount.

*“I did not get the payment because I was told I did not contribute long enough to take it back. I was also told that I could only withdraw if I was over 50 years old [sic]... Because many of us contributed to the system and didn’t get anything back, we just considered it as a donation.”*

Myanmar migrant returnee from Thailand  
(Male, 31 years old, migrated through processes established by the MOU)

According to Article 20 of Thailand’s Workmen Compensation Act B.E. 2537 (1994), in the case of a worker suffering “injuries or death as the result of illness or disappearance”, dependants of the worker (i.e. parents, husband or wife, son or daughter (with specifications) are entitled to compensation from employers.<sup>156</sup> However, one interviewed migrant worker reflected that the process of transferring compensation from Thailand to Myanmar remains difficult. (Please see Case Study 7 on the next page).

Migrant workers leaving Japan after completing the TITP are also entitled to withdraw their contributions to Japan’s pension scheme. From experience, migrant returnees interviewed by MMN were aware that they could only withdraw 80% of their post-tax pension contributions and needed to apply for the remaining 20% through a representative in Japan.<sup>157</sup> While a MOLIP representative stated that recruitment agencies in Myanmar usually assist migrant returnees to apply for the lump sum,<sup>158</sup> migrant returnees cited a number of ways to claim pension contributions on their own, including by handing in an application form to the Japan Embassy in Myanmar or sending the form to Japan by post. In one case, a company offered to help a migrant returnee claim the lump sum, charging 15,000 to 20,000 Myanmar Kyat (USD 10-13) for the service.<sup>159</sup> The only interviewed migrant returnee assisted by a recruitment agency in Myanmar reported a positive experience:

*“I did not have to ask for assistance to apply for the lump sum. My recruitment agency processed all the documents for me and I did not have to pay anything.”*

Myanmar migrant returnee from Japan (Female, 32 years old)

A representative of the MOLIP explained that most migrant families are able to claim benefits in cases where workers die while working in Malaysia, although the process could often take a long time.<sup>160</sup> This was confirmed by a report suggesting that more than USD 500,000 worth of compensation paid by insurance companies for the deaths and injuries of Myanmar workers have

<sup>155</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>156</sup> Workmen’s Compensation Act B.E. 2537 (Thailand), Article 20, accessible at [http://www.mol.go.th/sites/default/files/downloads/pdf/WORKMEN\\_COMPENSATION\\_ACT\\_2537\\_SSO\\_2.pdf](http://www.mol.go.th/sites/default/files/downloads/pdf/WORKMEN_COMPENSATION_ACT_2537_SSO_2.pdf).

<sup>157</sup> Based on MMN case studies of migrant returnees from Japan, conducted in July 2019, Yangon, Myanmar.

<sup>158</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

<sup>159</sup> MMN case study of a migrant returnee from Japan, female, 33 years old, conducted in July 2019, Yangon, Myanmar.

<sup>160</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

not reached migrants and/or their families for years on end. The Myanmar Labour Attaché in Malaysia was quoted as saying that only around 80 of the 150 life insurance claims filed between 2010 and 2018 were paid out to workers' families and that the process of claiming benefits could take up to six months to complete. Some migrant families complained about not receiving any compensation even though they had provided all necessary documents to the MOFA, Myanmar and the Embassy in Malaysia. At the time of the report, one family was still awaiting compensation seven years after the death of a family member in Malaysia.<sup>161</sup>

### **CASE STUDY 7 - Myanmar migrant worker in Thailand (Female, 35 years old)**

*G.K., Female, 35 years old, currently works as a cleaner in a factory in Thailand.*

G.K. first arrived in Thailand in 2000 with the hope that she could earn more money to improve her living conditions. She sold her gold chain to pay for the costs of travelling. On the bus ride to Mae Hong Song, Thailand, she met other people who were heading for Chiang Mai and decided to go with them. In 2005, G.K. first became registered under the nationality verification process and bought insurance under the Migrant Health Insurance Scheme. Under the insurance, she only paid 30 baht when she delivered her first child.

In 2008, G.K. returned to Shan state to deliver her second child. Due to her family's poor financial situation, G.K. re-migrated to Thailand with her husband and two children in 2011. When the family came back to Thailand, G.K.'s husband was the only person who was enrolled in the Thai Social Security System and contributed around 480 Baht per month.

One day in 2016, G.K. learnt that her husband passed away during an accident at work. While the employer took care of G.K.'s husband's funeral, he did not offer any compensation to G.K. Through a relative, G.K. learnt about the MAP Foundation, a CSO providing assistance to migrants, and sought assistance. At MAP, G.K. found out that the employer misreported her husband's cause of death to be a motorcycle accident rather than a workplace accident. Representatives of the MAP Foundation accompanied her to the social security office to correct her husband's cause of death.

In order for her children to receive compensation, G.K. had to visit the Myanmar consulate in Chiang Mai to obtain a certificate as proof that her two children were the children of her husband. However, she was ineligible to receive benefits from her husband's death because she did not have a marriage certificate. Her husband's parents in Myanmar also could not access the compensation because they were old and lived outside of Thailand.

At the end, G.K. secured the funeral expenses and her two children received 1,270 Baht each month as compensation payouts for a total of eight years. The whole process took two years to complete. G.K. believed that the entire claiming process was complicated and

<sup>161</sup> Zaw Zaw Htwe, "Over \$500K for Worker Deaths and Injuries Stuck in Malaysia", *Myanmar Times*, 27 March 2019, accessible at <https://www.mmmtimes.com/news/over-500k-worker-deaths-and-injuries-stuck-malaysia.html>.

time-consuming. She also believed that the compensation for her two children was too little.

Since her husband passed away in 2016, G.K. has worked as a cleaner at a factory in the day. At night, she irons clothes at 2.5 Baht per piece. Her employer never shared with her any information about the social security system in Thailand and she learnt most information from activities organised by the MAP Foundation. In the latest round of registration in 2018, G.K. joined the Thai social security system for the first time. She noted that the social security system offered a wider range of benefits than the health insurance she used to have in Thailand. “It really helps relieve the burden,” she commented. G.K. recommended prospective migrants to get as much information about their destination country before migrating.

### 3.8 Conclusion

In recent years, the Myanmar government has demonstrated a willingness to strengthen and expand its role in protecting the rights of migrant workers throughout their migration cycle. A law and policy framework outlines migration procedures and licensing conditions and the obligations of recruitment agencies. A grievance mechanism is also operating to respond to migrants' complaints. The Myanmar government disseminates information in various ways, such as through MRCs, mandatory pre-departure orientation, websites and through social media. Though limited, some forms of overseas assistance are available to migrant workers, including embassy hotlines and the support of labour attachés in designated destination countries. Looking ahead, forthcoming amendments to the LROE are expected to establish a more robust framework to strengthen mechanisms to protect migrant workers. Under the updated NPA for the Management of International Labour Migration for 2018-2022, the Myanmar government has committed to a number of initiatives with different stakeholders to tackle critical challenges faced by migrant workers. Among these initiatives, there are plans to develop a commonly agreed cost structure of recruitment fees, strengthen the roles of labour attachés, expand overseas assistance to migrants regardless of their immigration status and better facilitate the reintegration of migrant returnees. The Myanmar government continues its commitment made in the previous NPA to consider establishing a welfare fund for migrants and negotiate with destination countries to facilitate the transfer of social security benefits.

Through interviews with migrant workers and returnees from Japan and Thailand, MMN noted various gaps in measures taken by the Myanmar government to ensure that migrant workers are protected by and benefit from formal social protection mechanisms. Chief among them is the lack of comprehensive knowledge migrant workers receive about social protection programmes in destination countries at the pre-departure stage, especially for migrants going to Thailand. Even though attending PDOs is a requirement for those migrating through processes established by the MOU, a majority of interviewed migrants reported receiving little to no information about social protection programmes. Those who became documented in Thailand through the nationality verification process also highlighted a lack of opportunities to obtain such information. Instead, migrant workers in Thailand relied on various sources, such as brokers, employers and labour

organisations, to gather information. Depending on the source, the accuracy of the information gathered can be fragmented and, in some cases, only inform migrants about contributions but not benefits they are entitled to. Many migrants having worked in Japan also said that employers were the main sources of information on insurance schemes. Without receiving complete and comprehensive information at the pre-departure stage, especially through mandatory PDOs, migrants are less likely to understand their full rights and entitlements, which could inhibit their access to social security benefits at their destination. It should be highlighted that a majority of migrant workers in Japan and Thailand considered it beneficial to enrol in social protection programmes, with some expressing a desire to receive more information on these programmes as it would be useful.

In addition, interviewed migrant returnees from Japan and Thailand reported mixed experiences using the services of recruitment agencies. While there were a few examples of good practice, some migrants complained that recruitment agencies provided inaccurate or incomplete information to migrants about working conditions in destination countries and offered little to no support to migrants on site, not to mention any support in relation to access to social protection mechanisms. A few interviewed migrant returnees from Thailand also reported paying 800,000 Kyat (USD 527) in migration costs, which exceeds the government's prescribed cap of 150,000 Kyat (USD 98-99). Based on existing reports, cases of recruitment agencies overcharging are common regardless of destination, which leads to migrants having to take out loans to meet high costs. While the Myanmar government has issued Rules and Regulations for Licence Holders of Overseas Employment Agencies to outline the responsibilities of recruitment agencies at various stages of the migration cycle, along with separate regulations to prescribe maximum recruitment fees, varying levels of commitments to these standards reflect insufficient enforcement and monitoring of compliance with existing government regulations.

For on-site migrants, the lack of any clear explanation regarding the precise roles and responsibilities of labour attachés and embassies in supporting migrant workers, and the lack of proactive efforts by the government to disseminate information to promote such services, could explain why most interviewed migrant workers in Japan and Thailand were not aware of the types of support available. An overwhelming majority of migrants also said they never contacted the Embassy for support, with only a few saying they would if they needed assistance. While Myanmar embassies in destination countries have set up hotlines to respond to calls for assistance, in Japan, a labour union reported that the Embassy hotline was always busy and only operated during the day when migrant workers were at work and had little opportunities to make calls. In Thailand, a number of migrants who were enrolled in the social security system also reported that they avoided getting treatment at public hospitals or claiming other benefits due to language barriers. The Myanmar government can work to remedy such problems by way of enhanced advocacy with their Thai counterparts.

Upon return, a majority of migrant returnees interviewed by MMN were not enrolled in social protection programmes of Myanmar mainly due to a lack of information about available schemes. A previous MMN study also found that some migrant returnees continued to face difficulties obtaining household registration and enrolling in Myanmar's social security system. Regarding the transfer of benefits from destination countries, interviewed migrants expressed difficulties withdrawing their contributions to pension schemes they have contributed towards in destination countries. Most migrant returnees from Japan had to apply for the withdrawal on their own, with

a few asking for assistance from RAs or were offered help by third party services at a price. A majority of migrant returnees from Thailand also reported not knowing they could withdraw their contributions to the pension scheme, which could stem from insufficient information about the withdrawal as well as the absence of mechanisms to facilitate the transfer of social security benefits. The portability of social security is an issue that affects not only migrants who return to Myanmar, but also migrants who change their immigration status within destination countries. For example, a few interviewed Myanmar migrant workers, who were originally enrolled in the Thai social security system, reported that they have lost their benefits after losing their eligibility to enrol in the system when they became seasonal workers with border passes under requirements established by Section 64. Without enhanced international cooperation to establish mechanisms to facilitate the transfer of social security benefits between Thailand and Myanmar, as well as between different migration statuses in Thailand, migrants are likely to lose benefits they have accrued during their tenure abroad.

# Chapter 4:

## **Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Vietnam**

## 4. Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Vietnam

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### 4.1 Migration from Vietnam to Thailand, Malaysia and Japan

Outbound labour migration has been part of official government policy in Vietnam since the 1980s, when the government sent workers to various countries in the Eastern Bloc, Persian Gulf and Africa.<sup>1</sup> In particular, since the establishment of the *Đổi mới* (reformation) policy in 1986, labour migration has played a prominent role in the party-state's development strategy including its successive five-year plans.

The National Assembly's Socio-Economic Development Plan (SEDP) for the period 2016-2020 and the government's annual resolution for national planning mention the promotion of outbound labour migration and the expansion of overseas labour markets, noting that outbound labour migration is key to boosting employment, income, and skills for Vietnamese workers.<sup>2</sup> The target number of Vietnamese citizens contracted to work overseas for the period 2016- 2020 has been set at 500,000.<sup>3</sup>

Recently, Vietnam has become a major source of low-skilled labour to higher income economies. The main sectors of employment include, among others, domestic work; manufacturing; fishing and seafood processing; nursing and care giving; agriculture, and construction. As is so often the case, the majority of Vietnamese migrant workers tend to be young and hail from less developed parts of the country.<sup>4</sup>

Official statistics show that in 2018 there were 142,860 Vietnamese migrant workers abroad, of whom 34.8% were female. Japan and Taiwan remain the two major destination economies, accounting for almost 90% of the total number of documented Vietnamese migrants deployed overseas.<sup>5</sup> Of late, there has been a dramatic rise in the number of Vietnamese migrants going to Japan, accounting for nearly 50% of the total number of deployed workers.<sup>6</sup>

While the scale of undocumented migration from Vietnam is difficult to quantify, Minister Dao Ngoc Dzung from the Ministry of Labour, Invalids and Social Affairs (MOLISA) reported to the National Assembly in June 2018 that 139,000 cross-border migrant workers were apprehended

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<sup>1</sup> Dang Nguyen Anh, "Labour migration from Vietnam: issues of policy and practice", 2008, p.1, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_099172.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_099172.pdf).

<sup>2</sup> See The National Assembly of Vietnam, "The Five-year Socio-Economic Development Plan 2016-2020", p. 12 (Primary Objective No. 5) & p. 16 (Primary Objective No. 10), accessible at <http://pubdocs.worldbank.org/en/839361477533488479/Vietnam-SEDP-2016-2020.pdf>.

<sup>3</sup> Ibid., p. 146 (Indicator 3).

<sup>4</sup> ILO, TRIANGLE in ASEAN Programme, Quarterly Briefing Note, "Vietnam (July-September 2016)", October 2016, accessible at [https://www.ilo.org/asia/publications/WCMS\\_531467/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_531467/lang--en/index.htm).

<sup>5</sup> See the webpage of the Ministry of Labour, Invalids and Social Affairs (MOLISA) entitled, "Cục Quản lý Lao động ngoài nước tổng kết công tác năm 2018, triển khai nhiệm vụ năm 2019" (The Department of Overseas Labours reports on the work in 2018 and sets targets in 2019), 9 January 2019, accessible at <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=29177>.

<sup>6</sup> Ibid.



Prospective migrants bound for Japan attend a language training course provided by a recruitment agency in Hanoi, Vietnam. Photo: MMN

without work permits in neighbouring countries, including 100,000 working without papers in China, over 20,000 in Thailand and 13,000 in Lao PDR.<sup>7</sup>

#### *Migration Corridor Vietnam – Japan*

In 2018, Japan became the largest market for overseas labour migration from Vietnam. Migrant workers can now formally go to work in Japan under two separate programmes, namely the Vietnam – Japan Economic Partnership Agreement (VJEAP) on nursing and care giving, and the TITP as discussed in earlier chapters.

#### *Vietnam – Japan Economic Partnership Agreement*

Under the terms of the VJEAP, Japan has agreed to the entry and temporary residence of Vietnamese nationals who are qualified nurses under relevant Japanese laws and regulations (commonly referred to as *Kangoshi* qualifications).<sup>8</sup> Suitably qualified individuals may practice nursing in Japan for a period of one or three years, which may be extended within a period of seven years from the date of obtaining the *Kangoshi* qualifications.<sup>9</sup> Vietnam has become the third country, following Indonesia and the Philippines, to send workers to Japan in the nursing and care giving sector. Vietnam’s Department of Overseas Labour (DOLAB) under the MOLISA was delegated responsibility for implementing this programme. The first group of Vietnamese nurses

<sup>7</sup> “Bộ trưởng Bộ Lao Động, Thương Binh và Xã hội Đào Ngọc Dung trả lời chất vấn” (MOLISA Minister Dao Ngoc Dung reported at National Assembly Session 5, Legislature XIV on 5 June 2018), *The Voice of Vietnam*, 5 June 2018, accessible at <https://vov.vn/xa-hoi/bo-truong-bo-ltdbxh-dao-ngoc-dung-tra-loi-chat-van-770571.vov>.

<sup>8</sup> See “The Vietnam Japan Economic Partnership Agreement (VJEPA)”, Annex 7, Section 5. The agreement was signed on 25 December 2008 and came into effect on 1 October 2009. The document is accessible at <http://www.wtocomer.vn/chuyen-de/12772-full-text-of-vietnam-japan-economic-partnership-agreement-vjepa>.

<sup>9</sup> Ibid.

and caregivers went to Japan under this programme in 2014. By 2017, there were 673 Vietnamese nationals working in Japan as nurses and caregivers.<sup>10</sup>

### *Technical Intern Training Programme*

Vietnam officially began sending migrant workers to Japan in 1992 under an MOC agreed between MOLISA<sup>11</sup> and the JITCO.<sup>12</sup> In 2017, Vietnam and Japan signed a new MOC to comply with the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees.<sup>13</sup> The main sectors in which Vietnamese migrant workers engage in the TITP under the MOC are the electronic, mechanical, manufacturing (garment), seafood processing, agriculture, construction, shipping, and building industries. 2018 witnessed a dramatic increase in the number of Vietnamese migrants going to Japan in this capacity, accounting for almost 70,000 new workers.<sup>14</sup>

Under the programme, trainees can go to work in Japan through approved recruitment agencies or through a supervising organization named IM Japan. The IM Japan route is based on an agreement between International Manpower Development Organization of Japan,<sup>15</sup> and MOLISA. This cooperation initiative is mentioned as one of the implementation outcomes of the Prime Minister's Decision no. 71/2009/QĐ-TTg on supporting people in poor and remote provinces to enable them to work overseas. Applicants must undergo a stringent selection process, and if successful are exempt from pre-deployment costs and receive four months of PDT and four weeks "off the job training" in Japan.<sup>16</sup> On the Vietnamese side, the Centre of Overseas Labour (COLAB) is the agency responsible for implementing the programme. Under which, migrant workers only pay for the following: (i) passport, visa and health check fees; (ii) training fee for the first 3 months of PDT; (iii) living costs while attending training in Vietnam; and (iv) fee for one month of revising lessons learnt before deployment.<sup>17</sup>

### *Migration Corridor Vietnam – Malaysia*

Vietnam officially began sending workers to Malaysia in 2002. In 2003, the first bilateral MOU between Vietnam and Malaysia on labour cooperation was signed and 220,000 Vietnamese

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<sup>10</sup> "Tuyển 240 điều dưỡng viên, hộ lý sang làm việc tại Nhật Bản" (Recruiting 240 nurses, care workers to work in Japan), *Dân Trí*, 7 October 2017, accessible at <https://dantri.com.vn/print-2017100322252869.htm>.

<sup>11</sup> See the webpage of the MOLISA website entitled "Improving the quality activity of sending and receiving Vietnamese trainees going Japan for working [sic]", 10 September 2013, accessible at <http://english.molisa.gov.vn/Pages/News/Detail.aspx?TinTucID=216820&page=15>.

<sup>12</sup> Ishizuka Futaba, "International Labour Migration in Vietnam and the Impact of Receiving Countries' Policies", *Institute of Developing Economies Discussion Paper No. 414*, March 2013, p. 8, accessible at [https://ir.ide.go.jp/?action=repository\\_action\\_common\\_download&item\\_id=37761&item\\_no=1&attribute\\_id=22&file\\_no=1](https://ir.ide.go.jp/?action=repository_action_common_download&item_id=37761&item_no=1&attribute_id=22&file_no=1).

<sup>13</sup> The Memorandum of Cooperation on Technical Training Intern Programme between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and The Ministry of Labour, Invalids and Social Affairs of Vietnam was signed on 6 June 2017 and came into effect on 1 November 2017. It is accessible at <https://www.mhlw.go.jp/file/04-Houdouhappyou-11808000-Shokugyouounouryokukaihatsukyoku-Gaikokujinkenshusuishinshitsu/0000167017.pdf>.

<sup>14</sup> See the webpage of the Ministry of Labour-Invalids and Social Affairs (MOLISA) entitled, "Cục Quản lý Lao động ngoài nước tổng kết công tác năm 2018, triển khai nhiệm vụ năm 2019" (The Department of Overseas Labours reports on the work in 2018 and sets targets in 2019), 9 January 2019, above.

<sup>15</sup> See the webpage of the IM Japan website entitled, "What is IM Japan?", accessible at <http://www.imm.or.jp/en/towa.html>.

<sup>16</sup> See the webpage of the IM Japan website entitled, "Training Program for Foreign Interns in Japan", accessible at <http://www.imm.or.jp/en/kensyu2.html>.

<sup>17</sup> See the webpage of the Centre of Overseas Labour (COLAB) website entitled, "Giới thiệu về chương trình IM Japan" (Introduction to IM Japan), accessible at <http://colab.gov.vn/tin-tuc/1309/Gioi-thieu-ve-chuong-trinh-IM-Japan.aspx>.

nationals went to work in Malaysia under the agreement.<sup>18</sup> In 2015, a new MOU on the recruitment of Vietnamese workers was signed between the two governments. Statistics, however, show that the number of Vietnamese migrant workers to Malaysia is gradually decreasing. From 2015 to 2016, there were only 9,533 migrant workers deployed to Malaysia.<sup>19</sup> In 2018, Malaysia was no longer on the list of the top five destination economies for Vietnamese migrant workers, with only 1,102 workers travelling.<sup>20</sup> The following factors appear to be responsible for this decline: (i) Vietnam has expanded its overseas labour market incorporating new destinations; (ii) migrant worker salaries in Malaysia have not kept up with other economies and are thus less attractive to migrant workers; and (iii) labour monitoring mechanisms in Malaysia remain relatively weak, making it difficult for migrants to resolve labour disputes should they arise.<sup>21</sup>

### *Migration Corridor Vietnam – Thailand*

Vietnam signed an MOU with Thailand in 2015, outlining an agreement between the two governments on labour migration from Vietnam to Thailand in the fisheries and construction sectors. The number of Vietnamese workers migrating under the mechanisms established by this MOU, however, remains very small. The fisheries and construction sectors in Thailand are unattractive to Vietnamese migrant workers as wages are uncompetitive in comparison to other overseas economies such as Taiwan and the Republic of Korea.<sup>22</sup>

It is estimated that between 20,000 and 50,000 Vietnamese nationals have migrated to Thailand through irregular channels,<sup>23</sup> mostly overland from the Lao PDR and Cambodia.<sup>24</sup> These irregular migrants mainly work in service and hospitality, and domestic work sectors.<sup>25</sup> In November 2018, the Cabinet of Thailand, in principle, approved the proposal to amend the MOU between the two governments. The new MOU is expected to allow Vietnamese nationals to work in more sectors of the Thai economy.<sup>26</sup>

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<sup>18</sup> See the webpage of the Department of Overseas Labour (DOLAB) entitled, “Việt Nam-Malaysia ký kết Bản ghi nhớ về tuyển dụng và sử dụng lao động” (Vietnam and Malaysia signed MOU on recruitment and employment), accessible at <http://dolab.gov.vn/New/View2.aspx?Key=2047>.

<sup>19</sup> See the webpage of the IOM website entitled, “Vietnam Migration Profile 2016”, 2017, accessible at [https://publications.iom.int/system/files/pdf/mp\\_vietnam.pdf](https://publications.iom.int/system/files/pdf/mp_vietnam.pdf).

<sup>20</sup> See the webpage of the MOLISA website entitled, “Cục Quản lý Lao động ngoài nước tổng kết công tác năm 2018, triển khai nhiệm vụ năm 2019” (Department of Overseas Labours reports on the work in 2018 and sets targets in 2019), above.

<sup>21</sup> See the webpage of the DOLAB website entitled, “Việt Nam-Malaysia ký kết Bản ghi nhớ về tuyển dụng và sử dụng lao động” (Vietnam and Malaysia signed MOU on recruitment and employment), above; and MMN Key Informant Interview with a retired government official, conducted in October 2018, Hanoi, Vietnam.

<sup>22</sup> MMN Key Informant Interview with a retired government official, above.

<sup>23</sup> “Bộ trưởng Bộ Lao Động, Thương Binh và Xã hội Đào Ngọc Dung trả lời chất vấn” (MOLISA Minister Dao Ngoc Dung reported at National Assembly Session 5, Legislature XIV on 5 June 2018), above; and Thu Cúc, “Đề nghị Thái Lan mở rộng ngành nghề tiếp nhận lao động Việt Nam” (Vietnam requests Thailand to open more sectors for Vietnamese workers), *Người Lao Động*, 14 August 2017, accessible at <https://nld.com.vn/cong-doan/de-nghi-thai-lan-mo-rong-nganh-nghe-tiep-nhan-lao-dong-viet-nam-20170814094518933.htm>.

<sup>24</sup> ILO, Vietnam Country Brief, “Regular and irregular migrant workers in North Central Viet Nam: Findings from household surveys”, July 2015, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_379368.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_379368.pdf).

<sup>25</sup> Thu Cúc, “Đề nghị Thái Lan mở rộng ngành nghề tiếp nhận lao động Việt Nam” (Vietnam requests Thailand to open more sectors for Vietnamese workers), above.

<sup>26</sup> “Vietnamese to get jobs boost”, *Bangkok Post*, 28 November 2018, accessible at <https://www.bangkokpost.com/news/general/1583438/vietnamese-to-get-jobs-boost>.



*Representatives of recruitment agencies, the DOLAB and CSOs discuss opportunities and challenges faced by Vietnamese migrants going to Japan during an MMN multi-stakeholder meeting entitled “Consultation on Labour Migration from Vietnam to Japan”, held in July 2019, Hanoi, Vietnam. Photo: MMN*

## 4.2 Impact of Existing Migration Mechanisms

### 4.2.1 Bilateral Agreements with Destination Countries

#### *MOC between Vietnam and Japan under the TITP*

In June, 2017, a new MOC between relevant ministries of the governments of Japan and Vietnam on the TITP was concluded in order to make arrangements compliant with new legislation on Proper Technical Intern Training and Protection of Technical Intern Trainees of Japan (sometimes referred to as Technical Intern Training Act or TIT Act) promulgated in 2016.<sup>27</sup> The purpose of this MOC is “to transfer technical skills, techniques and knowledge”, from Japan to Vietnam; “to contribute to the human resource development of Vietnam”; and “to promote international cooperation” through TITP.<sup>28</sup>

Under the MOC, the responsibilities of MOLISA in Vietnam, encompass cooperating with Vietnamese representative agencies in Japan, the relevant ministries in Japan responsible for implementing the TITP; and governing and guiding the activities of sending organisations, or Vietnamese recruitment agencies, etc.<sup>29</sup> However, the responsibility to assist trainees in accessing social security system in Japan is not clearly mentioned in specific provisions.

The MOC requires Vietnamese sending organisations to abide by a strict set of obligations when sending trainees to Japan. For example, recruitment agencies must, among other requirements:

<sup>27</sup> See Act on Proper Technical Intern Training and Protection of Technical Intern Trainees, Japan, 2017, accessible at <http://www.moj.go.jp/content/001223425.pdf>.

<sup>28</sup> The Memorandum of Cooperation on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour, Invalids and Social Affairs of Viet Nam, above.

<sup>29</sup> Ibid., pp. 4-5 (section 5(2)).

be licensed; only send motivated trainees who will return to Vietnam to make use of their acquired skills; be transparent in the calculation of recruitment fees and commissions charged; cooperate with Japanese Supervising Organisations in managing trainees and provide them with necessary support, such as finding occupations in order for them to appropriately utilize the acquired technical skills, etc. upon return; respond to requests from the Japanese authorities; and generally be of good character, having not committed a list of offences and misdemeanours set out in attachment 1 of the MOC. However, the obligation to generally assist trainees onsite in the workplace and to support trainees to access social security systems in Japan are not stated.<sup>30</sup>

In general, the MOC sets out the responsibilities of the respective government ministries to send and accept technical intern trainees.<sup>31</sup> Under current Japanese law and policy, TITP workers are entitled to the same protection, contribution arrangements, and enjoyment of the workmen's compensation insurance scheme,<sup>32</sup> health insurance scheme,<sup>33</sup> pension scheme<sup>34</sup> as Japanese employees.

Although standard contracts, information related to social security systems, social insurance, social protection are not stated in the MOC, the technical intern trainee handbook of the Organization for Technical Intern Training (OTIT) provides information on these matters, whilst highlighting issues relevant to trainees living and working in Japan.<sup>35</sup> The OTIT handbook introduces the terms of TITP workers standard employment contract, including basic information such as (i) Employment contract period; (ii) Place of employment (technical intern training); (iii) Contents of work to be engaged in (job type and work); (iv) Working hours, possibility of work exceeding prescribed working hours, break time, holidays, vacation, etc.; (v) Wages (basic wages, extras).<sup>36</sup> The written employment terms and conditions mention the relevant insurance schemes in which trainees must participate, along with details of the salary deductions for contributions.<sup>37</sup> It should be noted that benefits relating to pregnancy and childbirth, child allowance under health insurance scheme are not stated in the handbook.

#### *MOU between Vietnam and Malaysia*

In 2015, a new MOU on the employment of workers was signed between the governments of Vietnam and Malaysia.<sup>38</sup> This replaced an earlier MOU signed between the countries in 2003 and included greater protection of rights both for employers and migrant workers. The MOU also created a framework to facilitate the recruitment, employment and repatriation of Vietnamese workers. The MOU does not cover Vietnamese domestic workers in Malaysia.

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<sup>30</sup> Ibid, pp. 7-9 (attachment 1).

<sup>31</sup> Ibid, pp. 2-5 (section 5).

<sup>32</sup> See Workmen's Accident Compensation Insurance Law (Law No. 50 of 1947, amended in 2017), Japan.

<sup>33</sup> See Health Insurance Law (Law No. 70 of 22 April 1922 as amended through Law No. 108 of 10 December 1980), Japan; and National Health Insurance Law (Law No. 192 of 27 December 1958, as amended through 10 December 1980), Japan.

<sup>34</sup> Law on National Pension (Law No. 141 of 1959), Japan; and the Welfare Pension Insurance Law (Law No. 115 of 1954), Japan.

<sup>35</sup> See OTIT, "The Technical Intern Trainee Handbook", 2018, accessible at <https://www.otit.go.jp/files/user/181003-eng.pdf>.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, pp. 26 and 48.

<sup>38</sup> See the Memorandum of Understanding between the Government of the Socialist Republic of Vietnam and the Government of Malaysia on the Employment of Workers, 2015, accessible at <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Thong-bao-40-2015-TB-LPQT-Ban-ghi-nho-giua-Viet-Nam-Malaixia-tuyen-chon-va-su-dung-lao-dong-290428.aspx>.

A standard employment contract and the responsibilities of employers, migrant workers, Malaysian recruitment agencies, and Vietnamese recruitment agencies are attached to the MOU as Appendices.<sup>39</sup> The standard contract mentions the basic terms and conditions of employment, such as the duration of the contract, wages, payment method, and deductions; working hours, leave, levy and medical and accident insurance; accommodation, etc. In terms of Medical and Accident Insurance, it states that “the workers shall be insured under the Foreign Worker’s Compensation Scheme (FWCS) under the workmen’s compensation act 1952 and if applicable, the SPIKPA”.<sup>40</sup> The employer is responsible for payment into the aforementioned insurance schemes, however, the employer “may advance such payment and shall be allowed to deduct not more than 50% from the workers’ monthly wages”.<sup>41</sup> Instead of the FWCS, since 1 January 2019, migrant workers (excluding domestic workers) are eligible for the government’s Employment Injury Scheme (EIS) under the Employees’ Social Security Act 1969.<sup>42</sup> Employers hiring foreign workers must enrol them in the scheme.<sup>43</sup>

## 4.2.2 National Legislation, Policies and Institutions

### *Legislation and Policy*

With a broad definition of the term “employee”,<sup>44</sup> Vietnam’s 2012 Labour Code also regulates some aspects of outbound labour migration, such as setting restrictions on illegally sending people to work overseas, and encouraging the promotion of overseas labour markets.<sup>45</sup> Recently, the Law on Vietnamese Workers Working Abroad Under Contract (No. 72/2006/QH11) effected in 2007, often referred to as Law No. 72, is the core legal document to regulate and govern outbound labour migration.<sup>46</sup> Law No. 72 regulates different issues relating to migrant workers, including the activity of sending workers abroad, and the rights and obligations of workers and recruitment agencies and other relevant stakeholders. This law is supplemented by Decree No. 126/2007/NĐ-CP of 1 August 2007,<sup>47</sup> and Circular No.21/2007/TT-BLĐTBXH on detailing and guiding the implementation of the Law on Vietnamese Workers Working Abroad Under Contract.<sup>48</sup>

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<sup>39</sup> The Memorandum of Understanding between the Government of the Socialist Republic of Vietnam and the Government of Malaysia on the Employment of Workers, Appendixes A and B, above.

<sup>40</sup> Ibid., Appendix A.

<sup>41</sup> Ibid., Appendix B.

<sup>42</sup> “Foreign workers to be covered under Socso effective”, *drawn from Bernama by the Star Online*, 21 November 2018, accessible at <https://www.thestar.com.my/news/nation/2018/11/21/foreign-workers-to-be-covered-under-socso-effective-jan-1>.

<sup>43</sup> See Chapter 2 for details of the FWCS, SPIKPA and EIS.

<sup>44</sup> The Labour Code (Vietnam), 2012, defines an employee as “a person who is at least 15 years of age, has the ability to work, works under an employment contract, is paid and is managed and controlled by the employer”. (Labour Code, Vietnam, 2012, Article 3(1), accessible at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>).

<sup>45</sup> Labour Code, Vietnam, 2012, Articles 8(6) & 12(4).

<sup>46</sup> See the Law No. 72/2006/QH11 on Vietnamese Workers Working Abroad Under Contract, accessible at [https://asean.org/wp-content/uploads/2016/08/EN\\_-\\_Law-on-sending-Vietnamese-worker-to-work-overseas.pdf](https://asean.org/wp-content/uploads/2016/08/EN_-_Law-on-sending-Vietnamese-worker-to-work-overseas.pdf).

<sup>47</sup> Decree No. 126/2007/ND-CP on Detailing and Guiding the Implementation of a Number of Articles of the Law on Vietnamese Workers Working Abroad Under Contract, accessible at <https://vanbanphapluat.co/decreed-no-126-2007-nd-cp-detailing-and-guiding-the-implementation-of-a-number>.

<sup>48</sup> See Circular No. 21/2007/TT-BLĐTBXH on Detailing a Number of Articles of the Law on Vietnamese Guest Workers, accessible at <https://vanbanphapluat.co/21-2007-tt-blđtbxh>.



*A Vietnamese worker at a construction worksite in Hanoi, Vietnam. Photo: MMN*

Under Law No. 72, enrolling in applicable social protection schemes in destination countries is deemed a right of Vietnamese migrant workers;<sup>49</sup> however, there is no specific article relevant to assisting migrant workers to participate in insurance schemes or other social protection schemes available in destination countries, or to receive benefits that workers are entitled to. Recruitment agencies, overseas missions, embassies in foreign countries have obligations to protect the legitimate rights and benefits of migrant workers.<sup>50</sup>

Since 2011, there have been some efforts by MOLISA to lobby the National Assembly to revise and amend Law No. 72. The proposed draft amendment,<sup>51</sup> along with a report on its potential impact on Vietnamese Workers Working Abroad Under Contract,<sup>52</sup> and the evaluation report on the implementation of the current law (Law No. 72),<sup>53</sup> are published on the website of MOLISA. At the time of writing, there has been preparation on the part of MOLISA to request the National Assembly to approve the amendment. If the National Assembly agrees, the relevant amendments will be discussed in 2020. To supplement the amendment process, ILO Vietnam has implemented an independent assessment of the implementation of the law. The ILO is also advocating for greater engagement on the part of Labour unions in the amendment process.<sup>54</sup>

<sup>49</sup> Law No. 72/2006/QH11, Article 44, above.

<sup>50</sup> Ibid., Articles 27(2) & 71.

<sup>51</sup> See Draft Amendment of the Law on Vietnamese Workers Working Abroad Under Contract (in Vietnamese), accessible at <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=626>.

<sup>52</sup> See MOLISA, “Báo cáo đánh giá tác động của chính sách Dự án Luật sửa đổi, bổ sung một số điều của Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng” (Draft Report on the Impact of the Amended Law on Vietnamese Workers Working Abroad Under Contract), 2018, accessible at [http://duthaovanban.molisa.gov.vn/duthao/van-ban-lien-quan/2.%20Bao%20cao%20danh%20gia%20tac%20dong\\_14.10.docx](http://duthaovanban.molisa.gov.vn/duthao/van-ban-lien-quan/2.%20Bao%20cao%20danh%20gia%20tac%20dong_14.10.docx).

<sup>53</sup> See MOLISA, “Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007” (Draft Report on the Implementation of the 2007 Law on Vietnamese Workers Working Abroad Under Contract), 2018, accessible at <http://duthaovanban.molisa.gov.vn/duthao/van-ban-lien-quan/3.%20Bao%20cao%20tong%20ket%20thi%20hanh.docx>.

<sup>54</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi Office, conducted in October 2018, Hanoi, Vietnam.

At the end of 2017, Circular No. 35/2017/TT-BLĐTBXH was promulgated to regulate the management, operation and use of the data of migrant workers under contract.<sup>55</sup> It includes procedures for licensing recruiting agencies,<sup>56</sup> for submitting demand contracts,<sup>57</sup> information of recruitment agencies and reporting mechanism on Vietnamese overseas workers.<sup>58</sup> The Circular came into effect in February 2018.

### *Policy Incentives for Promoting Outbound Labour Migration*

Alongside policies governing outbound labour migration, the Vietnamese government has created various policy incentives designed to promote overseas labour migration. This policy trend has been especially pronounced since the turn of the decade and includes initiatives designed to encourage migration among various sections of the population, such as people living in poverty; ethnic minorities; those with close relatives of devotees to the past revolution for the independence of Vietnam; are in the situation of agricultural land acquisition.<sup>59</sup>

Some incentives include financial support, for example, for learning a foreign language, vocational training,<sup>60</sup> meal allowances while participating in training;<sup>61</sup> travelling expenses;<sup>62</sup> fees for documents;<sup>63</sup> medical check-up payments;<sup>64</sup> and low interest loans from the Vietnam Bank for Social Policies.<sup>65</sup>

Furthermore, financial support is not only directed at potential migrant workers, but also towards other activities, such as initiatives designed to expand labour markets for Vietnamese workers in other countries,<sup>66</sup> public awareness raising and capacity building for local authorities regarding outbound labour migration, and job placements for returnees to poorer provinces.<sup>67</sup>

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<sup>55</sup> See MOLISA's Circular No. 35/2017/TT-BLĐTBXH on Regulations on the Management, Operation and Use of Data of Vietnamese Workers Working Abroad under Contract, accessible at <https://thuvienphapluat.vn/van-ban/lao-dong-tien-luong/Thong-tu-35-2017-TT-BLĐTBXH-khai-thac-co-so-du-lieu-nguoi-lao-dong-Viet-Nam-lam-viec-o-nuoc-ngoai-356326.aspx>.

<sup>56</sup> Ibid., Articles 4-6.

<sup>57</sup> Ibid., Article 7.

<sup>58</sup> Ibid., Articles 8-9.

<sup>59</sup> See Prime Minister Decision No. 899/QĐ-TTg on Approving Programme on Vocational Training-Employment and Occupation Safety between 2016-2020 on 20/6/2017, accessible at <https://vanbanphapluat.co/decision-899-qd-ttg-2017-approving-target-program-for-vocational-education-employment>; and Government Decree No. 61/2015/NĐ-CP regarding Government Policy Assisting Employment Creation and National Fund on Employment, accessible at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103511/125781/F-609966344/VNM103511%20Eng.pdf>.

<sup>60</sup> Prime Minister Decision No. 46/2015/QĐ-TTg regarding Support for Basic-Level-Training, and Short-Term Training of Less Than 3-months, Article 4, accessible at <https://vanbanphapluat.co/decision-no-46-2015-qd-ttg-policies-on-support-for-basic-training-courses-short-term-training-courses>.

<sup>61</sup> Ibid., Article 5.

<sup>62</sup> Ibid.

<sup>63</sup> Government Decree No. 61/2015/NĐ-CP, Articles 10 (2), above.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., Articles 10(4)-13, 20 & 35-46.

<sup>66</sup> Ibid., Article 12; and Prime Minister Decision No. 144/2007/QĐ-TTg on the Establishment, Management and Use of Overseas Employment Fund, accessible at <https://thuvienphapluat.vn/van-ban/Ke-toan-Kiem-toan/Decision-No-144-2007-QĐ-TTg-of-August-31-2007-on-setting-up-management-and-use-of-the-overseas-employment-support-fund/85981/loi-dung.aspx>.

<sup>67</sup> Prime Minister Decision No. 71/2009/QĐ-TTg on Supporting Poor Provinces by Strengthening Exporting Labour, Contributing to Sustainable Poverty Elimination 2009-2020, accessible at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12144&Keyword=71/2009/QĐ-TTg>.



*A Vietnamese metal worker in Hanoi, Vietnam. Photo: MMN*

In general, outbound labour migration is seen as an effective policy solution to underemployment and a way of contributing to the country's socio-economic development. However, policies regulating overseas migrant workers focus more on migration management and overseas labour market promotion than on protection measures, or support for migrant reintegration upon return.<sup>68</sup>

#### *Social Insurance Policies*

The Compulsory Social Insurance scheme covers sickness; maternity; work related accidents and occupational disease; retirement; and survivorship allowance.<sup>69</sup> The compulsory scheme is designed for formal workers, including regular outbound migrant workers under fix-termed contracts.<sup>70</sup>

The 2014 Amended Law on Social Insurance states that it is obligatory for regular outbound migrant workers onsite to participate or continue to contribute to the compulsory public old-age pension fund and survivor benefits fund (social insurance).<sup>71</sup> Vietnamese outbound migrant workers can pay their contribution through social security office at province/district level or periodically via recruitment agencies for the duration of the overseas employment contract.<sup>72</sup> However, the current system highlights the double contribution problem whereby an individual is forced to contribute to social security system in two separate jurisdictions from the same salary.<sup>73</sup>

In addition, overseas migrant workers have an obligation to contribute to the Overseas Employment Support Fund.<sup>74</sup>

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<sup>68</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi Office, above; and MMN Key Informant Interview with a retired government official, above.

<sup>69</sup> Ibid., Article 4.

<sup>70</sup> For information about the social protection programmes in Vietnam, please see Annex 3.

<sup>71</sup> Law on Social Insurance (No. 58/2014/QH13), promulgated in 2014 and came into effect on 1 January 2015, Articles 2(1g) and 85(6), above.

<sup>72</sup> Ibid., Article 85 (2b).

<sup>73</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi office, above.

<sup>74</sup> See Law No. 72/2006/QH11, Article 45, above.

The Overseas Employment Support Fund is managed by MOLISA since 2007 with the aim of opening and expanding overseas labour markets, improving the quality of labour, and supporting workers and recruitment agencies.<sup>75</sup> In terms of supporting migrant workers, the fund is only used in the event that a migrant dies, becomes too sick to continue working and is repatriated before the expiry of their contract, or under other such exceptional circumstances. The fund also supports recruitment agencies in mitigating risks encountered by migrant workers. Furthermore, the fund is used to promote law and policies relevant to outbound labour migration, increasing social awareness and promoting effective models of sending workers abroad.<sup>76</sup> Both recruitment agencies and migrant workers are obligated to contribute towards the fund. Recruitment agencies contribute 1% of their total service fee per year, while migrant workers contribute 100,000 Vietnamese Dong (USD 4.5) per person per contract.<sup>77</sup>

Notwithstanding the relatively small amount, some migrant workers, regard this contribution as a form of “support” or “donation”.<sup>78</sup>

*“As I understand, it is a non-refundable payment made in order to assist some activities or workers in need.”*

Vietnamese migrant returnee from Japan (Male, 25 years old)

### *Institutions*

Generally, MOLISA is responsible for developing overseas labour markets, providing guidelines on implementation of PDT, managing the licensing of recruitment agencies, and managing the Overseas Employment Support Fund.<sup>79</sup>

The DOLAB within MOLISA has been delegated the administrative responsibility for outbound labour migration including policy-making. In so doing, its tasks include studying and proposing policies relevant to labour migration; directly managing and supervising labour migration from Vietnam, monitoring the activities of recruitment agencies; forging bilateral agreements, providing guidelines to the Management Boards of Overseas Labour, etc. In terms of structure, along with administrative sections, there are specific sections focusing on distinct labour markets such as Taiwan; the Americas; Republic of Korea- East Asia- Africa; Japan-Europe – Southeast Asia. The department’s website also publishes statistical updates of the number of Vietnamese migrant workers using formal channels by market, and sex.<sup>80</sup> The function of DOLAB is said to be similar to the Philippine’s International Affairs Service which maintains representative offices in hosting countries.<sup>81</sup>

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<sup>75</sup> Ibid., Article 66.

<sup>76</sup> See Joint Circular No. 11/2008/TTLT-BLDTBXH-BTC between MOLISA and the Ministry of Finance on Guiding the Management and Use of the Overseas Employment Support Fund, accessible at <https://vanbanphapluat.co/joint-circular-no-11-2008-ttl-t-bldtbxh-btc-of-july-21-2008-guiding-the-management-and-use-of-the-overseas-employment-support-fund>; and Prime Minister’s Decision 144/2007/QD-TTg, above.

<sup>77</sup> Prime Minister’s Decision 144/2007/QD-TTg, Article 2, above.

<sup>78</sup> MMN case study interview with a Vietnamese migrant returnee from Japan, Male, 25 years old, through IM Japan programme.

<sup>79</sup> See the webpage of the Colombo Process website entitled, “Vietnam: trends and characteristics of labour migration”, accessible at [https://www.colomboprocess.org/about-the-colombo-process/members#vietnam|ChildVerticalTab\\_112](https://www.colomboprocess.org/about-the-colombo-process/members#vietnam|ChildVerticalTab_112).

<sup>80</sup> DOLAB’s website is available at <http://dolab.gov.vn/New/Default.aspx>.

<sup>81</sup> Angie Ngoc Tran & Crinis, V., “Migrant Labor and State Power: Vietnamese Workers in Malaysia and Vietnam”, *Journal of Vietnamese Studies* 13(2), 2018, pp. 27-73, accessible at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4654&context=hpapers>.

Other relevant bodies include the COLAB, sometimes referred to as the Overseas Worker's Centre (OWC) in official documents, who play the role of a non-profit state-owned organisation recruiting and sending workers through government-to-government mechanisms (such as the Employment Permit System in the Republic of Korea) and other agreements between MOLISA and other parties, such as IM Japan.

The Vietnam Association of Manpower Supply (VAMAS), is an association of recruitment agencies, established in 2003 to protect the interests of its members, including expanding the scale and improving the quality of recruitment activities.<sup>82</sup> As of mid- 2019, VAMAS had almost 200 members.<sup>83</sup>

### *Deployment Ban*

Since 2007, the government of Vietnam has imposed a ban on Vietnamese citizens migrating to work in conflict zones; to do jobs that are dangerous to their health and safety, contrary to Vietnamese customs and traditions, or the laws of Vietnam.<sup>84</sup> Vietnam also gives the list of the work that are banned, which includes dancers, singers, or masseuses in restaurants, hotels, or entertainment entities.<sup>85</sup>

Due to the high rate of migrant workers not returning to Vietnam upon the completion of their employment contracts abroad, the MOU on labour migration to the Republic of Korea was suspended for four years between 2012 and 2016. In May 2018, a suspension on recruiting people from specific provinces of Vietnam, such as Nghe An, Ha Tinh, Thanh Hoa, Hai Duong, Quang Binh, who displayed a high rates of 'non-return' was enacted.<sup>86</sup>

Between February and June 2016, Malaysia briefly suspended its intake of all migrant workers, save for those undertaking domestic work.<sup>87</sup>

### *Complaint Mechanisms*

Law No. 72 establishes a complaint mechanism by which, migrant workers under contract with enterprises, and state-owned non-profit organisations have the right to "lodge complaints or denunciations or initiate lawsuits against illegal acts in the sending of workers abroad".<sup>88</sup>

In the first instance, recruitment agencies bear the responsibility to resolve complaints made by migrant workers. If the issue is not resolved to the satisfaction of the worker, the matter is passed

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<sup>82</sup> VAMAS's website is accessible at [http://vamas.com.vn/about-vamas\\_t629c679tn.aspx](http://vamas.com.vn/about-vamas_t629c679tn.aspx).

<sup>83</sup> Based on a presentation delivered by Mr. Nguyen Luong Trao, President of VAMAS, during a MMN multistakeholder meeting entitled, "Workshop on Labour Migration from Mekong Countries to Japan", conducted on 8 July 2019, Tokyo, Japan. More information will be available in a forthcoming proceeding of the Workshop.

<sup>84</sup> Decree 126/2007/ND-CP, Article 1, above.

<sup>85</sup> ILO and UN Women, "Protected or Put in Harm's Way? Bans and Restrictions on Women's Labour Migration in ASEAN countries", 2017, p. 18, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_555974.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_555974.pdf).

<sup>86</sup> See DOLAB Document No. 1665/LDTBXH-QLLDNN on the Suspension of Recruitment Under EPS Programme 2018 in Certain Provinces, accessible at <https://thuvienphapluat.vn/cong-van/Lao-dong-Tien-luong/Cong-van-1665-LDTBXH-QLLDNN-2018-tam-dung-tuyen-chon-lao-dong-theo-Chuong-trinh-EPS-381209.aspx>.

<sup>87</sup> Anh Chi, "Malaysia nhận lại lao động nước ngoài với ngành sản xuất, xây dựng và trồng trọt" (Malaysia receives foreign workers in the manufacturing and construction sectors and on plantations again), Nhân Dân, 9 September 2016, accessible at [https://www.nhandan.com.vn/nation\\_news/item/30645302-malaysia-nhan-lai-lao-dong-nuoc-ngoai-voi-nganh-san-xuat-xay-dung-va-trong-trot.html](https://www.nhandan.com.vn/nation_news/item/30645302-malaysia-nhan-lai-lao-dong-nuoc-ngoai-voi-nganh-san-xuat-xay-dung-va-trong-trot.html).

<sup>88</sup> Law No. 72/2006/QH11, Article 44(6), above.

on to DOLAB who will endeavour to resolve the matter.<sup>89</sup> However, it is important to note that, by law, not all migrant workers are eligible to enter this two-step resolution process. For instance, those recruited by state-owned enterprises or who are irregular migrants are excluded.<sup>90</sup> Furthermore, ILO's Vietnam representative also points out that complaints made by migrant workers after deployment are relatively few; as a result, there is lack of information on the practice of recruitment agencies once migrant workers are deployed.<sup>91</sup>

Of the 100,000s new migrants deployed every year, DOLAB's rate of complaints recorded is unexpectedly low at 0.3% of number of workers deployed.<sup>92</sup> All of the workers interviewed by ILO mentioned that they were not satisfied with existing complaint resolution mechanisms.<sup>93</sup> Issues that prevent migrant workers lodging complaints can arise from systematic problems such as an overly bureaucratic process, unfamiliarity with the language applied in the system, weak enforcement, slow or no response to the complaint; or simply that migrants often lack information as to how to lodge complaints, or simply distrust the process.<sup>94</sup>

In an attempt "to capture details of complaints and track their progress", DOLAB, in 2014, developed a database of complaints.<sup>95</sup>

While their main role is to provide information on anti-trafficking initiatives to potential migrants, MRCs also receive complaints from both potential migrant workers and migrant workers already deployed abroad. In such instances, staff will refer the case to applicable recruitment agencies or provincial government officials as labour dispute resolution is outside of their mandate.<sup>96</sup>

### 4.3 Information Dissemination

#### *Pre-Migration*

Potential migrant workers gather information from a variety of sources before deciding to migrate, including from friends and family, officials from the provincial employment bureau or Public Employment Service Centres, brokers and recruitment agencies, and from social media networks. However, word of mouth from friends and family members, tends to be the most popular and trusted source of information.<sup>97</sup>

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<sup>89</sup> See Decree No. 24/2018/NĐ-CP on Stipulating Details of Some Articles of the Labor Code, of the Law on Vocational Training, and of the Law on Vietnamese Workers Working Abroad Under Contract, Article 17, accessible at <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Nghi-dinh-24-2018-ND-CP-giai-quyet-khieu-nai-to-cao-trong-linh-vuc-lao-dong-359065.aspx>.

<sup>90</sup> ILO, "Complaint Mechanism for Vietnamese Migrant Workers: An Overview of Law and Practice", 2015, p. 20, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_482928.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_482928.pdf).

<sup>91</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi Office, above.

<sup>92</sup> ILO, "Complaint Mechanism for Vietnamese Migrant Workers: An Overview of Law and Practice", p. xi, above.

<sup>93</sup> Ibid., p. xii.

<sup>94</sup> Ibid., p. xiii.

<sup>95</sup> Ibid., p. x.

<sup>96</sup> MMN Key Informant Interview with representatives of IOM conducted in October 2018, Hanoi, Vietnam.

<sup>97</sup> See the webpage of the VAMAS website entitled, "Monitoring and Evaluation Report of the 5<sup>th</sup> Implementation of the CoC (in Vietnamese)", 2017, accessible at [http://vamas.com.vn/ket-qua-hoat-dong-giam-sat-danh-gia-viec-thuc-hien-bo-quy-tac-ung-xu-cocvn-nam-thu-5-2017\\_t221c655n44483](http://vamas.com.vn/ket-qua-hoat-dong-giam-sat-danh-gia-viec-thuc-hien-bo-quy-tac-ung-xu-cocvn-nam-thu-5-2017_t221c655n44483).

*"I migrated to Japan through a recruitment agency located in Ho Chi Minh City that was introduced to me by my friends who had been sent to work overseas via this agency."*

Vietnamese migrant returnee from Japan (Male, 26 years old)

*"I learnt about working in Japan via my elder brother and my best friends who are currently working in Japan, and from the internet."*

Vietnamese migrant returnee from Japan (Male, 25 years old)

While the fees and cost structures tend to be mentioned in the advertising and promotional material of recruitment agencies, many workers are unable to differentiate between the types of fees charged or clearly understand the cost structures levied by recruitment agencies.<sup>98</sup> Furthermore, the salaries mentioned in advertisements are frequently stated in terms of gross income, with no mention of deductions for tax, social security, or insurance contributions.

### *Migrant Resource Centres*

Currently, there are seven MRCs located across the North and Centre of Vietnam. DOLAB has been operating an MRC in Hanoi with the support of IOM for several years. The other six MRCs are operated by the Provincial Department of Labour, Invalid and Social Affairs (DOLISA) with technical support from DOLAB and ILO or IOM in Thanh Hoa, Quang Ngai, Bac Ninh, Phu Tho, Ha Tinh, Nghe An.<sup>99</sup> These MRCs play an important role in preventing potential migrants falling prey to human traffickers, as well as providing information on overseas employment, migration costs, destination countries, and opportunities upon return.<sup>100</sup>

At the MRC in Nghe An, one of the most popular labour sending provinces with almost 14,000 people accessing overseas employment in 2017,<sup>101</sup> licensed recruitment agencies can leave their brochures for potential migrants. MRCs provide one-on-one consultation on safe migration, there is regular dialogue with representatives from the local Women's Union, DOLISA and other stakeholders who can directly answer questions from potential migrant workers and returnees or family members of on-site migrant workers. This provides an opportunity for potential migrants and returnees to raise issues of misconduct such as when workers pay recruitment agencies for PDT but are not deployed after training, or when contract substitution takes place after deployment.<sup>102</sup>

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<sup>98</sup> See the webpage of the VAMAS website entitled, "Monitoring and Evaluation Report of the 5<sup>th</sup> Implementation of the CoC (in Vietnamese)", above.

<sup>99</sup> ILO, "Complaint Mechanism for Vietnamese Migrant Workers: An Overview of Law and Practice", p.20, above.

<sup>100</sup> ILO, "Progress of the Implementation of Recommendations Adopted at the 3<sup>rd</sup>-8<sup>th</sup> ASEAN Forums on Migrant Labour: Background Paper to the 9<sup>th</sup> AFML", p. 9, above.

<sup>101</sup> See the webpage of the United Nations in Vietnam website entitled, "IOM Viet Nam inaugurates relocated Migrant Resource Centre in Nghe An province", 19 April 2018, accessible at <http://www.un.org.vn/en/iom-agencypresscenter1-108/4703-iom-viet-nam-inaugurates-relocated-migrant-resource-centre-in-nghe-an-province.html>.

<sup>102</sup> MMN Key Informant Interview with representatives of IOM, above.



*PDO modules developed by MOLISA and ILO entitled, “Basic Knowledge and Information Material for Migrant Workers Travelling to Malaysia”. Photo: MMN Screenshot*

### *Pre-Departure Orientation*

Recruitment agencies are responsible for organising pre-departure orientation (PDO) and training and accreditation certificates for migrant workers relating to language skills, vocational skills and knowledge.

Recruitment agencies are required to provide 55.5-hours of pre-departure orientation to migrant workers from standardised curriculums that includes (i) Vietnamese cultural identities and traditions; (ii) Basic legislation relating to labour, criminal, personal and administration of Vietnam and receiving country; (iii) Content of guest worker service contract (between recruitment agencies and workers); (iv) Labour-related-regulations and occupational safety and sanitation in host country; (v) Traditional customs and culture of the host country; (vi) Behaviour at work and in daily life; (vii) Guidance on use of public transport, shopping, use of daily tools and equipment; (viii) Tips and skills for handling issues that may arise while living and working in host countries.<sup>103</sup>

DOLAB is responsible for developing materials providing information relating to (i), (ii), (v), (vi), (vii) and (viii) above, and recruitment agencies are responsible for numbers (iii) and (iv) focusing on guest worker service contracts and Labour-related-regulations in destination country.<sup>104</sup>

*“I only knew [about insurance schemes in Japan] at the time of signing the contract of employment. I was told about deductions, but I did not pay much attention. No one told me about it [insurance schemes in Japan] before, even when I was studying Japanese.”*

Vietnamese migrant returnee from Japan (Female, 25 years old)

### *Materials for PDO and PDT*

Though DOLAB does not directly provide PDT to prospective migrant workers, they have developed a variety of education materials, including regularly updated information specifically focusing on

<sup>103</sup> See MOLISA’s Decision 18/2007/QĐ-BLĐTBXH on Pre-Departure Orientation for Prospective Outbound Migrant Workers, 2007, Part (I), accessible at <https://thuvienphapluat.vn/van-ban/lao-dong-tien-luong/quyet-dinh-18-2007-qd-bltdtbxh-chuong-trinh-boi-duong-kien-thuc-can-thiet-nguoi-lao-dong-truoc-khi-di-lam-viec-nuoc-ngoai-53578.aspx>.

<sup>104</sup> Ibid., (IV-3).

overseas labour markets such as Japan,<sup>105</sup> Taiwan,<sup>106</sup> Malaysia,<sup>107</sup> the Republic of Korea,<sup>108</sup> Libya,<sup>109</sup> the United Arab Emirates (UAE),<sup>110</sup> and Macao.<sup>111</sup>

In addition, DOLAB, in collaboration with the Department of Labour Safety,<sup>112</sup> has developed a guidebook on Labour Safety and Sanitation for a number of professions, including: mechanics, construction, high-tech welding,<sup>113</sup> and crew on a fishing boat.<sup>114</sup> DOLAB has also collaborated with the Department of Vocational Training to develop training materials for potential overseas workers on high-tech welding, construction, and industrial tailoring.<sup>115</sup>

In terms of language, in order to improve language skills before deployment, DOLAB has developed language materials in English,<sup>116</sup> Korean,<sup>117</sup> Japanese,<sup>118</sup> and Chinese<sup>119</sup>.

### *Training Curriculum for Migrant Workers Travelling to Malaysia*

DOLAB's PDT curriculum offered to Vietnamese migrant workers bound for Malaysia consists of the following nine modules,<sup>120</sup> namely instruction in: (i) Vietnamese traditions and cultural identity; (ii) The culture and customs of Malaysia; (iii) Malaysian legislation relating to labour, the employment of foreign workers, criminal law, and immigration law; (iv) Content of the guest worker service

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<sup>105</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to Japan (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/FileType/20137123357949.pdf>.

<sup>106</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to the Republic of China (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/FileType/201371233034259.pdf>.

<sup>107</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to Malaysia (in Vietnamese)", 2010, accessible at <http://dolab.gov.vn/Uploads/FileType/20137123412050.pdf>.

<sup>108</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to the Republic of Korea (in Vietnamese)", 2008, accessible at <http://www.dolab.gov.vn/Uploads/FileType/201371233811943.pdf>.

<sup>109</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to Libya (in Vietnamese)", 2011, accessible at <http://dolab.gov.vn/Uploads/FileType/20137123138245.pdf>.

<sup>110</sup> See the education material developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to the UAE (in Vietnamese)", 2010, accessible at <http://dolab.gov.vn/Uploads/FileType/20137123138245.pdf>.

<sup>111</sup> See the education material developed by DOLAB and ILO entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to Macao Special Administrative Region of the People's Republic of China (in Vietnamese)", 2008, accessible at <http://dolab.gov.vn/Uploads/FileType/201371234019248.pdf>.

<sup>112</sup> The Secretariat of ASEAN, "Compendium on Migrant Workers' Education and Safe Migration Programmes", pp.100-101, above.

<sup>113</sup> See the guidebook developed by DOLAB entitled, "Labour Safety for High-Tech Welding (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/FileType/201371235227376.pdf>.

<sup>114</sup> See the guidebook developed by DOLAB entitled, "Labour Safety and Sanitation for Crew on a Fishing Boat (in Vietnamese)", 2012, accessible at <http://dolab.gov.vn/Uploads/Uploads/New/2013711048688.pdf>.

<sup>115</sup> The list of vocational training material developed by the DOLAB is accessible at [http://dolab.gov.vn/Documents/DocumentIndex.aspx?LIST\\_ID=1385&MENU\\_ID=1044,1046,1102&DOC\\_ID=1584](http://dolab.gov.vn/Documents/DocumentIndex.aspx?LIST_ID=1385&MENU_ID=1044,1046,1102&DOC_ID=1584).

<sup>116</sup> See the language material developed by DOLAB entitled, "English for Migrant Workers Travelling to Malaysia (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/FileType/201378154857678.pdf>.

<sup>117</sup> See the language material developed by DOLAB entitled, "Korean for Migrant Workers Travelling to the Republic of Korea (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/BU/201371143833156.pdf>.

<sup>118</sup> See the language material developed by DOLAB entitled, "Japanese for Trainees travelling to Japan (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/BU/2013723223834911.rar>.

<sup>119</sup> See the language material developed by DOLAB entitled, "Chinese for migrant workers travelling to the Republic of China (in Vietnamese)", accessible at <http://dolab.gov.vn/Uploads/BU/201371143411443.pdf>.

<sup>120</sup> See the curriculum developed by DOLAB entitled, "Basic Knowledge and Information Material for Migrant Workers Travelling to Malaysia (in Vietnamese)", 2010, accessible at <http://dolab.gov.vn/Uploads/FileType/20137123412050.pdf>.

contract (between recruitment agencies and workers); (v) Migration costs borne by migrant workers and their responsibilities; (vi) Labour-related-regulations and occupational safety and sanitation in Malaysia; (vii) Behaviour at work and in daily life; (viii) Guidance on the use of public transport, shopping, and use of daily tools and equipment; (ix) Tips and skills for handling some issues during living and working in Malaysia. The training curriculum was developed by DOLAB in 2010 and mentions that employers are duty bound to contribute towards the FWCS for migrant workers, and other applicable benefits.<sup>121</sup> Although the contacts of DOLAB, the Labour Attaché, and Embassy in Malaysia are provided,<sup>122</sup> there is an absence of information on their roles, types of support that they offer and relevant complaint mechanisms.

In 2014, ILO assisted MOLISA in the development of three out of the above nine modules (namely numbers ii; vi and ix).<sup>123</sup> The PDT curriculum – Vietnam to Malaysia: participant’s manual, explains that it is the responsibility of employers to insure migrant workers under the FWCS; to give their employees their insurance card and to report any accidents to the relevant authorities. The benefits; and the how and where to claim benefits under the insurance scheme are also explained. However, it is not made clear exactly who contributes towards to the scheme. It further explains that employers also have a duty to organise health insurance for their migrant worker employees under the compulsory SPIKPA. However, under SPIKPA it is normally migrant workers who bear the cost of contributions, except for domestic workers and migrant workers in plantation, where it is the employer who pays. Details of the benefits provided under of this scheme are also provided.

Aside from the curriculum for migrant workers, MOLISA and ILO developed a curriculum for trainers conducting PDOs.<sup>124</sup>

These materials were developed and published before the new MOU was signed in 2015. Since then, they have not been updated. DOLAB has informed recruitment agencies about the new Malaysian regulations which require Vietnamese migrant workers to enrol in the EIS under the Employees’ Social Security Act 1969, which replaces FWCS.

### *Training Curriculum on Labour Migration to Japan*

DOLAB’s PDT curriculum offered to Vietnamese trainees bound for Japan under TITP consists of the following five modules,<sup>125</sup> namely instruction in: (i) The culture, customs, and laws of Japan; (ii) Japanese legislation relating to TITP, including labour law and immigration law; (iii) Introductions to two types of contracts, employment contracts signed between trainees and employers, and service contracts signed between trainees and recruitment agencies; (iv) Behaviour at work and in daily life; (v) Guidance on immigration, the use of public transport, shopping, and use of daily tools and equipment.

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<sup>121</sup> Ibid., pp. 44-49.

<sup>122</sup> Ibid., pp. 99-100.

<sup>123</sup> See modules developed by MOLISA and ILO entitled, “Basic Knowledge and Information Material for Migrant Workers Travelling to Malaysia (in Vietnamese)”, 2014, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_336910.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_336910.pdf).

<sup>124</sup> See the curriculum for trainers developed by MOLISA and ILO, “Basic knowledge and information material for migrant workers travelling to Malaysia: Material for Trainer (in Vietnamese)”, 2014, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_336908.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_336908.pdf).

<sup>125</sup> See the curriculum developed by DOLAB, “Basic knowledge and information material for migrant workers travelling to Japan (in Vietnamese)”, accessible at <http://dolab.gov.vn/Uploads/FileType/20137123357949.pdf>.

The information on the responsibility of trainees in contributing towards insurance schemes, including Workers' Accident Compensation Insurance, Health Insurance, Pension Insurance is mentioned in the curriculum.<sup>126</sup> Brief information on objectives, benefits, coverage and use of each insurance scheme is introduced;<sup>127</sup> however, the amount of contribution is not mentioned. The information regarding the two types of contracts signed by trainees is not mentioned in detail. The module on migration costs borne by trainees is not included. Although the contacts of DOLAB, MRC, Labour Attaché, Embassy and Consulates in Japan are provided,<sup>128</sup> there is an absence of information on their roles, types of support provided and complaint mechanisms.

*“The recruitment agency did not give me any information, I only attended a training course in Japanese language after being selected by the employer. Then I departed. The information on insurance schemes in Japan was mentioned in the labor contract. However, at that time, I could not know if it was true.”*

Vietnamese migrant returnee from Japan (Male, 25 years old)

#### *Information Pamphlet on Malaysia and Japan*

Similarly, VAMAS has published pamphlets on migration to Malaysia,<sup>129</sup> and Japan,<sup>130</sup> including: information on culture, rights and obligation of migrant workers, important contacts, taking loans for labour migration; channels by which to send remittances home; and some basic language skills for use in destination countries.

The pamphlet on Malaysia partly introduces details of the country's health insurance scheme which employers are obliged to contribute towards. However, it should be noted that the pamphlet makes no mention of the benefits provided by each insurance scheme, nor how to make complaints or access support mechanisms, although the contact details of the Embassy and labour attaché and Malaysia's labour departments are provided.

The pamphlet developed by VAMAS targeting migrant workers bound for Japan under the TITP provides information on deductions, and the various compulsory insurance schemes including labour, health and pension insurance. It explains of the purpose of these schemes, what benefits they provide, who is obliged to contribute, and how a lump sum from migrants' pension contribution can be claimed upon return to Vietnam. The pamphlet



*Information pamphlet developed by VAMAS entitled, “Basic Knowledge and Information Material for Migrant Workers Travelling to Japan”. Photo: MMN Screenshot*

<sup>126</sup> Ibid., pp. 38-41.

<sup>127</sup> Ibid., p. 40.

<sup>128</sup> Ibid., pp. 68-69.

<sup>129</sup> See the pamphlet developed by VAMAS entitled, “Basic Knowledge and Information Material for Migrant Workers Travelling to Malaysia (in Vietnamese)”, accessible at <http://vamas.com.vn/Portals/0/Document/MaLaysia%20camnang.pdf>.

<sup>130</sup> See the pamphlet developed by VAMAS entitled, “Basic Knowledge and Information Material for Migrant Workers Travelling to Japan (in Vietnamese)”, accessible at <http://vamas.com.vn/Portals/0/Document/Japan.pdf>.

makes no mention of how to enrol in the schemes, make complaints or access support mechanisms, although, again, the contacts of the Embassy and labour attaché are provided.

#### 4.4 Overseas Assistance

The SEDP for 2016-2020 places emphasises on the need to “properly carry out the protection of our overseas citizens”.<sup>131</sup>

Vietnam’s diplomatic missions and consulates bear various responsibilities in terms of protecting migrant workers. These include: Imposing sanctions on those found in violation of Law No. 72,<sup>132</sup> Researching and expanding labour markets for Vietnamese workers;<sup>133</sup> Providing information and assistance to recruitment agencies and relevant government agencies;<sup>134</sup> Inspecting the activities of representatives of recruitment agencies in receiving countries;<sup>135</sup> and coordinating with different stakeholders on forced repatriation of migrant workers.<sup>136</sup>

The Vietnamese government has thus far appointed six labour attachés, who have been assigned to the Labour Management Sections of overseas missions in Malaysia, Japan, Taiwan, the Republic of Korea, Saudi-Arabia, and the UAE. Each of these labour attachés is appointed by MOLISA for a three-year-term.<sup>137</sup> In countries or jurisdictions where no labour attaché is assigned, other embassy or consulate staff are tasked with protecting and supporting Vietnamese migrant workers upon request.<sup>138</sup>

In practice, the protection offered to Vietnamese migrant workers overseas suffers from a general lack of resources, haphazard collaboration amongst different stakeholders, including recruitment agencies; and a weak and bureaucratic overseas management system.<sup>139</sup> The cases that typically receive support are usually those where the most egregious violations have taken place, or those that have affected large numbers of Vietnamese workers.<sup>140</sup> The mechanism to support Vietnamese migrant workers suffers from that fact that the process requires verification from recruitment agencies to commence. Hence migrant workers often wait a long time to receive assistance.<sup>141</sup> Moreover, there is a general absence of information on the process provided to migrant workers,<sup>142</sup>

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<sup>131</sup> The National Assembly of Vietnam, “The Five-year Socio-Economic Development Plan 2016-2020”, p. 16 (objective 10), above.

<sup>132</sup> See Law No. 72/2006/QH11, Article 71 (1), above.

<sup>133</sup> Ibid., Article 71(2).

<sup>134</sup> Ibid., Articles 71(3), (4) & (6).

<sup>135</sup> Ibid., Article 71(5).

<sup>136</sup> Ibid., Article 71(7).

<sup>137</sup> Joint Circular 07/2004/TTTL-BLĐT BXH-BNG between the Ministry of Foreign Affairs (MOFA) and MOLISA on Labour Management Section of the Embassy of Social Republic of Vietnam, IV, accessible at <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/07-2004-TTTL-BLDTBXH-BNG/76084/loi-dung.aspx>.

<sup>138</sup> Decree 126/2007/ND-CP, Article 9, above.

<sup>139</sup> See MOLISA, “Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007” (Draft Report on the Implementation of Law No. 72), p. 47, above.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., p. 48.

<sup>142</sup> Ibid.

and a lack of cooperation between Vietnamese missions and the authorities in destination countries.<sup>143</sup>

That said, the Embassy of Vietnam in Japan provides a 24/7 emergency hotline for Vietnamese citizens and another more specialised phone contact open during office hours to support Vietnamese trainees and interns.<sup>144</sup>

### **CASE STUDY 8 – Vietnamese migrant returnee from Japan (Female, 28 years old)**

H.T.M.K, female, 28 years old, returned to Vietnam in 2018 after working under the TITP for 36 months in Shizuoka, Japan.

H.T.M.K. decided to migrate to earn more and experience Japanese life. Before departure, she searched the internet to seek information about Japanese job opportunities, working conditions as well as culture, lifestyle. However, at that time, she did not obtain much information on insurance schemes in Japan.

*“Before departure, I really did not pay attention on insurance schemes in Japan. That is why I did not search for social insurance schemes... I also watched television, listened to radio and read newspaper to learn about experiences of migrant returnees from Japan. However, there was absence of information about insurance schemes in Japan.”*

She only knew about insurance schemes in Japan from the labour contract and recruitment agency after she secured a job.

*“I did not join the orientation training course. But the staff of the recruitment agency provided me with information on insurance schemes in Japan after I was selected by the employer. During an hour-long session, I learnt about salaries and contributions towards insurance schemes. The staff also gave me an information sheet introducing my Japanese employer.”*

During her employment in Japan, she did not face any issues relevant to health or work injury. However, she found that the calculation of her wage was wrong. So, she sought help.

*“My co-workers and I asked for help from the recruitment agency and Supervising Organisation. For several months, the wage was not calculated clearly and transparently. Especially, we were not paid for overtime work. We informed the recruitment agency by Facebook, who then contacted the Supervising Organisation. The Supervising Organisation inspected our*

<sup>143</sup> Ly Trinh Khanh, “The Insufficient Protection of Vietnamese Domestic Workers in Saudi Arabia”, *Global Labour Column* no. 253, November 2016, accessible at [http://www.global-labour-university.org/fileadmin/GLU\\_Column/papers/no\\_253\\_Khanh.pdf](http://www.global-labour-university.org/fileadmin/GLU_Column/papers/no_253_Khanh.pdf).

<sup>144</sup> See the webpage of the Vietnam Embassy in Japan website entitled, “Contact”, accessible at <http://www.vnembassy-jp.org/vi/liên-hệ>.

*workplace and required the employer to pay us. We were eventually paid by the employer according to the correct calculation”.*

She also explained why she did not seek assistance from her Embassy.

*“We did not ask for any support from the Vietnamese Embassy as both the recruitment agency and Supervising Organisations assisted us to solve all our problems and protect our rights.”*

On the respective roles of Supervising Organisations and recruitment agencies, she stated that:

*“The Supervising Organisation is the main actor helping Vietnamese employees in Japan. We discuss our problems with them during their regular monthly workplace inspection... Apart from Supervising Organisation, there is no other actor providing assistance to migrant workers. For serious problems, we can also contact the recruitment agency, but it doesn’t happen often.”*

## 4.5 Roles and Responsibilities of Recruitment Agencies

### 4.5.1 Regulation of Recruitment Agencies

Law No. 72 defines recruitment agencies as legal entities licensed to deploy workers abroad. They encompass registered private enterprises and state-owned/shared enterprises (joint stock companies or joint ventures),<sup>145</sup> and non-profit state-owned organisations (under ministry, ministerial-level agency, or government-affiliated agency direction).<sup>146</sup>

Non-profit state-owned organisations are permitted to act as recruitment agencies in situations that involve: (i) implementing a treaty to which Vietnam is a party; (ii) implementing agreements between ministries, ministerial – level or government -affiliated agencies and a foreign party; and (iii) in other cases as considered necessary by MOLISA.<sup>147</sup> The COLAB is the primary agent in charge of implementing programmes signed and implemented by the government of Vietnam.

#### *Licensing Conditions*

As of February 2019, there were 340 recruitment agencies or ‘service enterprises deploying migrant workers abroad’, as published on the website of DOLAB (excluding non-profit state-owned organisations). The majority, around 70%, of which are in the north of the country, while relatively few are located in the south and even fewer in the central region of Vietnam.<sup>148</sup>

<sup>145</sup> Law No. 72/2006/QH11, Article 8, above.

<sup>146</sup> Ibid., Article 39.

<sup>147</sup> Ibid., Article 40.

<sup>148</sup> See the webpage of the DOLAB website entitled, “Danh sách doanh nghiệp xuất khẩu lao động” (List of recruitment agencies), accessible at [http://dolab.gov.vn/BU/Index.aspx?LIST\\_ID=1371&type=hdmmtmn&MENU\\_ID=246&DOC\\_ID=1561](http://dolab.gov.vn/BU/Index.aspx?LIST_ID=1371&type=hdmmtmn&MENU_ID=246&DOC_ID=1561).

It is noted that under Law No. 72, deploying people to work abroad is categorised as a business service; hence, recruitment agencies or so-called “service enterprises” are viewed as service providers. As such, recruitment agencies must (i) hold legal capital of at least 5 billion Vietnamese dong (approximately USD 230,000); and (ii) be 100% Vietnamese owned.<sup>149</sup> In addition, as the government agency charged with licensing, MOLISA is responsible for ensuring that recruitment agencies meet the following conditions:<sup>150</sup> (i) have a scheme for deploying people to work overseas; (ii) employ personnel who are capable of delivering training to potential migrant workers; (iii) employ operation leaders who hold a bachelor’s degree or higher and have at least three years of experience in deploying outbound migrant workers or in international cooperation and relations; and (iv) have deposited 1 billion Vietnamese dong (around USD 50,000) which can be used by Director General of DOLAB for compensation.<sup>151</sup>

However, it should be noted that there are various shortcomings and ways around these regulatory requirements. First, the requirement that the agency must have a scheme for sending people to work overseas, does not require that it be in operation and may thus only exist on paper. Second, some agencies circumvent the requirement that they must employ personnel capable of providing training, by “borrowing names” to meet the requirement. Third, the leadership requirement is circumvented in a similar way, by borrowing the name of someone, who in practice does not manage the agency. Lastly, there is a loophole in the regulations given that there is no specific guideline for providing evidence of an enterprise’s legal capital.<sup>152</sup>

### *Obligations*

In term of information dissemination, recruitment agencies have an obligation to cooperate with local authorities to provide ‘comprehensive’ information regarding the number of vacancies, job requirements and working conditions of the employment available overseas. Recruitment agencies are also obliged to provide training including knowledge, skills and language training to prospective migrant workers before deployment.<sup>153</sup>

Recruitment agencies are allowed to have no more than three branches in three provinces or cities under central authority,<sup>154</sup> and have an obligation to recruit migrant workers without charging a ‘recruitment fee’.<sup>155</sup> However, prospective migrant workers can be billed for language and skill courses to prepare for job interviews with employers. In practice, some agencies use brokers to recruit more migrant workers from the grassroots.<sup>156</sup> Some agency staff also become brokers using the name of agencies to earn extra commission.<sup>157</sup> They also use other recruitment channels,

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<sup>149</sup> See Decree 126/2007/ND-CP, above.

<sup>150</sup> Law No. 72/2006/QH11, Article 9, above.

<sup>151</sup> Decree 126/2007/ND-CP, Article 5, above.

<sup>152</sup> See MOLISA, “Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007” (Draft Report on the Implementation of Law No. 72), p.13, above.

<sup>153</sup> See Law No. 72/2006/QH11, Article 27(2), above.

<sup>154</sup> *Ibid.*, Article 16.

<sup>155</sup> *Ibid.*, Article 27.

<sup>156</sup> Based on a discussion during a MMN meeting entitled “Consultation on Labour Migration from Vietnam to Japan”, conducted on 24 July 2019 in Hanoi, Vietnam. Proceedings forthcoming; and MMN Key Informant Interview with a representative of the Information Exchange Vietnam-Japan Project (IEVJ), conducted in October 2018, Hanoi, Vietnam.

<sup>157</sup> Based on a discussion during MMN meeting entitled “Consultation on Labour Migration from Vietnam to Japan”, above.



*A training centre set up by a recruitment agency in Hanoi, Vietnam. Photo: MMN*

such as through mass organisations at the provincial level, employment service centres, vocational training schools, and employment fairs.<sup>158</sup> Recruitment agencies may also cooperate with local enterprises or factories to recruit employees working there.<sup>159</sup>

Recruitment agencies are under a legal obligation to protect the rights and benefits of migrant workers; to cooperate with foreign parties in destination countries to settle disputes; and to support migrant works in case of death, work injury, accidents, occupational diseases and human rights violations; and to report to and to cooperate with diplomatic missions in receiving countries to protect migrant workers. Moreover, recruitment agencies are responsible for contributing to the Overseas Welfare Fund.<sup>160</sup>

While assisting migrant workers access overseas insurance or other relevant social protection schemes is not expressly mentioned under Law No.72, other regulations elaborate on their responsibilities in this regard. For example, under Japan's TITP, recruitment agencies are responsible for providing information on voluntary TITP insurance to technical trainees so that they can make an informed decision whether to join.<sup>161</sup> Furthermore, it is obligatory for them to negotiate with supervising organisations and employers to pay for this scheme fully or partially or at the very least, to support trainees to enrol.<sup>162</sup>

Penalties for recruitment agencies who violate Law No.72 vary depending on the severity of the breach, ranging from fines to the suspension or termination of licences. MOLISA often conducts

<sup>158</sup> See MOLISA, “Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007” (Draft Report on the Implementation of 2007 Law on Vietnamese Workers Working Abroad Under Contract), above.

<sup>159</sup> MMN Key Informant Interview with representatives of IOM, above.

<sup>160</sup> Law No. 72/2006/QH11, Article 2(2), above.

<sup>161</sup> See DOLAB Document No.1313/LĐT BXH- QLLĐNN of 17 August 2016 on guiding on implementation of sending trainees to Japan, accessible at <http://dolab.gov.vn/Uploads/BU/2016822143428530.pdf>; and DOLAB Document No.1123/LĐT BXH- QLLĐNN of 6 April 2016 on measures to send Vietnamese trainees to Japan, accessible at <http://dolab.gov.vn/Uploads/BU/201647165523878.pdf>.

<sup>162</sup> Ibid.

inspections to monitor and supervise the activities of recruitment agencies. Between 2016 and January 2018, MOLISA imposed penalties on nearly 60 agencies, including fines, suspensions, and license terminations.<sup>163</sup> However, a lack of human resources on the part of regulators remains a major constraint in terms of monitoring the activities of recruitment agencies, given that the monitoring department of MOLISA consists of just four members of staff.<sup>164</sup>

### *Migration to Malaysia*

By October 2015, there were 150 licensed recruitment agencies sending migrant workers to Malaysia.<sup>165</sup> The DOLAB has also updated policy changes relevant to sending workers to Malaysia and in January 2019 informed recruitment agencies that foreign migrant workers are eligible to join Malaysia's social insurance scheme, namely the EIS.<sup>166</sup>

### *Migration to Japan under TITP*

As of July 2019, 325 recruitment agencies had been approved to send workers to Japan under the TITP.<sup>167</sup> As the Japanese market has increased in importance, ministerial guidelines have been issued to regulate these agencies in response to emerging issues, such as high recruitment costs and the proliferation of intermediary stakeholders.<sup>168</sup>

Furthermore, to obtain approval from DOLAB to send trainees to Japan, recruitment agencies are required to include information on social insurance in the labour supply contract.<sup>169</sup> Recruitment agencies are also responsible for negotiating with supervising organisations regarding voluntary TITP insurance for trainees.<sup>170</sup>

## **4.5.2 Migration costs**

Brokerage commissions are permitted under Law No.72 and other regulations. These are defined as “an amount a licensed enterprise shall pay to the broker in order to sign and perform a labor supply contract” [sic].<sup>171</sup> Migrant workers are made liable to refund a part or the whole of the

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<sup>163</sup> “Công khai chi phí đưa lao động đi nước ngoài” (Transparency in Costs Relevant to Sending Outbound Migrant Workers), *Người Lao Động*, January 2018, accessible at <https://nld.com.vn/Print.aspx?NewsID=20180131112455575>.

<sup>164</sup> MMN Key Informant Interview with a retired government official, above.

<sup>165</sup> See the webpage of DOLAB's website entitled “Danh sách các doanh nghiệp đưa lao động đi làm việc tại Malaysia” (List of Recruitment Agencies Sending Migrant Workers to Malaysia), accessible at [http://www.dolab.gov.vn/New/TongQuanTTLD.aspx?&LIST\\_ID=1069&MENU\\_ID=248&Key=2168](http://www.dolab.gov.vn/New/TongQuanTTLD.aspx?&LIST_ID=1069&MENU_ID=248&Key=2168).

<sup>166</sup> “Chính sách mới cho lao động nước ngoài tại Malaysia” (New Policies for Migrant Workers in Malaysia), *Người Lao Động*, 20 February 2019, accessible at <https://nld.com.vn/cong-doan/lao-dong-viet-nam-tai-malaysia-se-duoc-mua-bhxh-20190220090356548.htm>.

<sup>167</sup> See the webpage of the OTIT website entitled, “List of Approved Recruitment Agencies”, available at <https://www.otit.go.jp/files/user/190823-1.pdf>.

<sup>168</sup> See MOLISA Document No.4732/LĐTĐBXH- QLLĐNN of 18 November 2015 on Redressing the Activities of Sending Workers to Japan, accessible at <https://thuvienphapluat.vn/cong-van/Lao-dong-Tien-luong/Cong-van-4732-LĐTĐBXH-QLLĐNN-chan-chinh-hoat-dong-dua-thuc-tap-sinh-Viet-Nam-sang-Nhat-Ban-2015-295736.aspx>; DOLAB Document No.1313/LĐTĐBXH- QLLĐNN, above; DOLAB's Document No.1123/LĐTĐBXH- QLLĐNN, above; DOLAB Document No. 2456/ QLLĐNN-NBCADNA of 21 December 2017, accessible at <https://thuvienphapluat.vn/cong-van/Lao-dong-Tien-luong/Cong-van-2456-QLLĐNN-NBCADNA-2017-dang-ky-hop-dong-dua-thuc-tap-sinh-di-Nhat-Ban-373179.aspx>; and DOLAB Document No. 2525/ QLLĐNN-NBCADNA of 28 December 2017, accessible at <http://dolab.gov.vn/Uploads/BU/201811817833301.pdf>.

<sup>169</sup> DOLAB Document No. 2456/ QLLĐNN-NBCADNA, above.

<sup>170</sup> DOLAB Document No.1123/LĐTĐBXH-QLLĐNN, above.

<sup>171</sup> See Law No. 72/2006/QH11, Article 20, above.

brokerage commission to recruitment agencies. The size of the brokerage commission must not exceed the limits prescribed within MOLISA's Decision No.61/2008/QĐ—BLĐTBXH, which are USD 1,500 for Japanese market, USD 300 and USD 250 for respective men and women travelling to Malaysia and zero for domestic workers in Malaysia.<sup>172</sup> These fee ceilings are set subject to negotiation by recruitment agencies and foreign partners.<sup>173</sup> Recruitment agencies are not allowed to collect brokerage commissions unless their foreign counterparts require it.<sup>174</sup> Migrant workers refund the brokerage commissions when they obtain their visa or work permit and sign the service contract with the recruitment agency.<sup>175</sup>

Despite the prescribed limits to these commissions,<sup>176</sup> in practice, many recruitment agencies are willing to accede to demands from their foreign partners and raise or lower their brokerage commissions accordingly to secure contracts. In most cases, this leads to increased costs passed down to migrant workers.<sup>177</sup>

While there is no recruitment fee payable, the act of sending workers overseas is viewed as a service, hence, according to Law No.72, migrant workers are required to pay recruitment agencies a so-called “service fees” to implement the guest worker contract.<sup>178</sup> The exact amount charged is subject to negotiation between workers and recruitment agencies but must not exceed one month's salary for one working year and the total must not exceed three months.<sup>179</sup> Migrant workers pay service fees once they obtain their visa or work permit and sign the service contract with the recruitment agency.<sup>180</sup>

These upper limits to fees and costs set out in Vietnamese law and policy seek to regulate the market and prevent the systematic overcharging of migrant workers. As one former government official acknowledged, a completely unregulated market would result in more abusive and exploitative situations.<sup>181</sup>

In addition to the above mentioned costs, workers are sometimes also required to pay a deposit to be used as compensation to an employer should an infringement be caused by the worker.<sup>182</sup> The amount, payable before deployment, is subject to negotiation between recruitment agencies

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<sup>172</sup> See MOLISA Decision No.61/2008/QĐ—BLĐTBXH on 12 August 2008 on Brokerage Commission in a Number of Markets, accessible at <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Quy-dinh-61-2008-QD-BLDTBXH-muc-tien-moi-gioi-nguoi-lao-dong-hoan-tra-cho-doanh-nghep-tai-thi-truong-69396.aspx>.

<sup>173</sup> Law No. 72/2006/QH11, Article 20(2), above.

<sup>174</sup> Joint Circular No. 16/2007/TTLT-BLĐTBXH-BTC between MOLISA and the Ministry of Finance on 4 September 2007 on Regulation on Brokerage Commission and Service Fee in Outbound Labour Migration under Contract, Section II(1), accessible at <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Thong-tu-lien-tich-16-2007-TTLT-BLDTBXH-BTC-quy-dinh-cu-the-tien-moi-gioi-va-tien-dich-vu-hoat-dong-dua-lao-dong-Viet-Nam-di-lam-viec-o-nuoc-ngoai-54985.aspx>.

<sup>175</sup> *Ibid.*, Section I (3).

<sup>176</sup> See MOLISA's Decision No.61/2008/QĐ—BLĐTBXH, above.

<sup>177</sup> See MOLISA, “Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007” (Draft Report on the Implementation of Law No. 72), above.

<sup>178</sup> Law No. 72/2006/QH11, Article 21, above.

<sup>179</sup> See Joint Circular No. 16/2007/TTLT-BLĐTBXH-BTC, Section III (2), above.

<sup>180</sup> *Ibid.*, Section I(3).

<sup>181</sup> MMN Key Informant Interview with a retired government official, above.

<sup>182</sup> Law No. 72/2006/QH11, Article 23, above.

and workers,<sup>183</sup> but must not exceed the limit prescribed in MOLISA's Circular 21/2013/TT-BLĐTBXH, which is for instance, USD 300 for deployment to Malaysia. This money is held in a separate bank account opened by the recruitment agency and will be returned, with interest, to migrant workers once they successfully complete their employment contract and return to Vietnam.<sup>184</sup> It should be noted that deposits are not allowed in some destination countries, such as Japan under TITP.

In order to work overseas, migrant workers also pay fees for language training and work skills. These training courses may last for up to twelve months. In addition to the course fees, migrants must also pay for living expenses during the training period, visa costs, documentation and health check-up costs, contribution to Overseas Employment Support Fund and social insurance in Vietnam. To pay this long list of expenses, many prospective migrant workers take out loans, which encumbers them with interest payments that only add further to the cost of migration.<sup>185</sup>

High migration costs and the debts incurred are today one of the biggest problems with this increasingly common form of temporary outbound labour migration.<sup>186</sup> In a recent ILO study, four out of five migrant workers interviewed stated that they were still in debt upon return.<sup>187</sup> Earnings from overseas labour migration are mostly spent on debt repayment, housing, health care and education for children.<sup>188</sup> The IOM and ILO's surveys in 2016 show that, the average cost of going to work in Malaysia was USD 1,166, which is more expensive than migrating from other neighbouring countries of origin, such as Cambodia and Myanmar.<sup>189</sup> The cost of migrating to work in Taiwan and Japan are even higher, between USD 3,000 and USD 5,000, and USD 3,500 and USD 6,000 respectively.<sup>190</sup> High migration costs are seen as a major reason for the high rate of Vietnamese migrant workers overstaying or leaving their job before completing their contracts in high-income destination economies such as the Republic of Korea, Taiwan and Japan.<sup>191</sup>

In 2015, MOLISA issued a ministerial instruction limiting the cost of migration to Japan under TITP to no more than USD 3,600 for a three-year contract.<sup>192</sup> However, it has had little impact on the ground, with costs commonly exceeding this limit,<sup>193</sup> even reaching USD 8,000.<sup>194</sup>

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<sup>183</sup> See MOLISA, Circular 21/2013/TT-BLĐTBXH of 10 October 2013 on Prescribed Limits to Deposit and Markets Where Deposit is Allowed, Article 3, accessible at <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Thong-tu-21-2013-TT-BLĐTBXH-muc-tran-tien-ky-quy-thi-truong-lao-dong-Doanh-nghiep-thoa-thuan-209674.aspx>.

<sup>184</sup> *Ibid.*, Sections I(4) and III(3), above.

<sup>185</sup> IOM and ILO, "Risks and Rewards: Outcomes of Labour Migration in South-East Asia", 2017, p.xvi, accessible at [https://www.ilo.org/asia/publications/WCMS\\_613815/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_613815/lang--en/index.htm).

<sup>186</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi Office, above.

<sup>187</sup> ILO, "Complaint Mechanism for Vietnamese Migrant Workers: An Overview of Law and Practice", p.xii, above.

<sup>188</sup> DOLAB and IOM, "Returning Vietnamese Migrant Workers: Policy and Practice", 2012, p.18, accessible at [https://vietnam.iom.int/sites/default/files/IOM\\_Files/Projects/Labour\\_Migration/RMW\\_eng.pdf](https://vietnam.iom.int/sites/default/files/IOM_Files/Projects/Labour_Migration/RMW_eng.pdf).

<sup>189</sup> IOM and ILO, "Risks and Rewards: Outcomes of Labour Migration in South-East Asia", p.40, above.

<sup>190</sup> Ly Trinh Khanh, "The insufficient protection of Vietnamese domestic workers in Saudi Arabia", p. 1, above.

<sup>191</sup> Ishizuka Futaba, "International Labour Migration in Vietnam and the Impact of Receiving Countries' Policies", p.15, above.

<sup>192</sup> See MOLISA Document No. 4732/LĐTBXH-QLLĐ, above; and DOLAB Document No.1123/LĐTBXH-QLLĐNN, above.

<sup>193</sup> MMN Key Informant Interviews with representatives of Vietnamese Recruitment Agencies, conducted in July 2019, Hanoi, Vietnam.

<sup>194</sup> MMN Key Informant Interview with a representative of the IEVJ, above.

*“In total, I paid to the recruitment agency more than 100 million VND (USD 4,300), including 6 million VND for health check and training courses; 15 million VND right after being selected by the employer. Then I paid more than 60 million VND right before departure.”*

Vietnamese migrant returnee from Japan (Male, 26 years old)

#### 4.5.3 Pre-Departure Training

Recruitment agencies are responsible for organising PDT and accrediting migrant workers for language and vocational skills training. To provide these services, recruitment agencies are required to set up a training centre or training school. These centres are required to be well-equipped with qualified staff and suitable facilities including accommodation for prospective migrants.<sup>195</sup>

##### *Migration to Japan*

After securing a job in Japan, Vietnamese migrant workers are required to attend Japanese language courses and skills training, paid for by supervising organisations,<sup>196</sup> at a rate of at least JPY 15,000 per person for 120 hours of training.<sup>197</sup> Depending on the job requirements, Vietnamese migrant workers may need to learn Japanese before their interviews with Japanese employers. In such cases, fees for Japanese language training are capped at VND 5,900,000 (USD 255) for 390 hours.<sup>198</sup> It should be noted that this cap is usually below the cost of running the language classes, hence the difference is typically made up in “service fees”.

Under the terms of the VJEPA, workers are given 12 months of Japanese language training without paying a fee. Under the IM Japan programme, potential trainees spend 7 months learning Japanese, in which they have to pay a language tuition fee for the first three months, with IM Japan covering the cost of the remaining four months.<sup>199</sup>

In some cases, migrant workers learn about insurance schemes in their Japanese language class.

*“I learnt about insurance schemes from my Japanese teacher who taught us about it for one week in the last month of the course.”*

Vietnamese migrant returnee from Japan  
(Male, 25 years old, migrated under TITP through IM Japan programme)

The time devoted to learning Japanese and work skills differs by individual recruitment agency. Based on MMN’s research, the average time is currently between four and six months.<sup>200</sup>

<sup>195</sup> See MOLISA Decision No. 19/2007/QĐBLDTBXH promulgated on 18 July 2007, accessible at <https://vanbanphapluat.co/decision-19-2007-qd-bltdtbxh-essential-supplemental-training-workers-prior-to-overseas-employment>.

<sup>196</sup> Under the TITP, “implementing organisations” conducts the technical intern training. “Supervising organisations” are non-profit organizations such as business cooperatives and societies of commerce and industry, which monitor their affiliated “implementing organisations” to ensure that migrant workers receive sufficient protection at their work sites. For more information on the structure of the TITP, please visit <https://www.jitco.or.jp/en/regulation/index.html>.

<sup>197</sup> See DOLAB Document No.1123/LĐTBXH- QLLĐNN, above.

<sup>198</sup> Ibid.

<sup>199</sup> See MOLISA Document No. 915/LĐTBXH-QLLĐNN on cooperation to select trainees to Japan, promulgated on 14 March 2017, accessible at <https://thuvienphapluat.vn/cong-van/Lao-dong-Tien-luong/Cong-van-915-LĐTBXH-QLLĐNN-phi-hop-chi-dao-viec-tuyen-chon-thuc-tap-sinh-di-Nhat-Ban-2017-342598.aspx>.

<sup>200</sup> MMN Key Informant Interviews with representatives of Vietnamese recruitment agencies, above.



Prospective migrants bound for Japan attend a language training course provided by a recruitment agency in Hanoi, Vietnam. Photo: MMN

### **CASE STUDY 9 – Vietnamese migrant returnee from Japan (Male, 27 years old)**

P.N.C, male, 27 years old, returned to Vietnam in 2018 after working as a mechanic under the TITP for 36 months in Osaka, Japan.

He initially heard about the possibility of working in Japan from his cousin who had worked there and returned. His cousin was generally positive about life in Japan but warned him that Japan's working culture could be strict and disciplinarian. Later, one of his neighbours also returned from Japan and introduced him to a recruitment agency, which he looked up online.

However, neither his cousin, neighbour nor the agency's website provided him with any information on insurance schemes in Japan

*“Nobody, even relatives of mine told me about insurance schemes, only after I arrived [in Japan], did I find out about it.”*

In the end, P.N.C. decided to use the services of the recruitment agency recommended by his neighbour. He was eventually selected by a Japanese employer and went on to sign a contract of employment with them. However, at the time of signing the contract, he was still not conscious of insurance schemes in Japan, nor the deductions that would come out of his salary.

*“When signing the contract, I was not aware of social protection schemes in Japan. I only paid attention to how much salary I would receive and how much tax I would pay, although the employment contract did provide detailed information of the other deductions.”*

After signing the contract, P.N.C. attended PDT. In the morning, he learned Japanese, in the afternoon, he exercised to improve his physical condition. On one evening per week, he attended a pre-departure orientation course. This provided him with information on Japan's labour law, public transportation rules, and civil law, focusing on how to avoid problems in Japan. The course also provided information on insurance schemes, including health insurance, occupational accident insurance, pension insurance and unemployment/job loss compensation due to bankruptcy or business failure.

He found the information provided during PDT generally useful:

*“The information I received before departure was relevant to what I found in Japan. It was useful for me and did not make me feel embarrassed when I encountered the realities of the working environment in Japan”*

However, the information he received on Japan's insurance schemes was less useful, as he only understood what it was all about after arriving in Japan and experiencing the system first-hand.

*“The information on health insurance, workers' accident compensation insurance, and pension insurance I received was clear, but not very detailed. However, it only fully made sense when I experienced it there.”*

During his employment in Japan, P.N.C. experienced sickness and work injuries twice and did not face any problems using his insurance.

Upon return, P.N.C. was able to claim a lump sum payment for his contributions towards the pension insurance scheme in Japan. He managed to reclaim the first instalment by himself, but for the second, he used the services of an agency as he had problems completing the form in Japanese. For this service he was charged VND 1 million Vietnam Dong (around USD 45).

#### 4.5.4 Standard Supply and Service Contracts

While there is no standardised contract of employment for all Vietnamese workers going overseas, labour supply contracts and guest worker service contracts relating to the activity of sending workers abroad are subject to regulation. The labour supply contract refers to the written agreement between Vietnamese recruitment agencies and receiving parties in destination countries on the conditions and obligations in the supply and receipt of Vietnamese workers. The contract must cover information relevant to employment duration; working conditions, working hours and rest time, holiday and paid annual leaves, occupational health and safety; salary, overtime, bonus and deductions; insurance; and accommodation in destination countries. The existence and amount of the brokerage fee, if any, must also be stated.<sup>201</sup>

<sup>201</sup> MOLISA Circular No. 22/2013/TT-BLDTBXH Prescribing the Form and Content of Labour Contracts and Supply Contracts of Workers Sent to Work Abroad, Articles 4-6, accessible at <https://ilo.org/dyn/natlex/docs/MONOGRAPH/97044/128482/>



*Dormitories at a training centre set up by a recruitment agency in Hanoi, Vietnam. Photo: MMN*

The guest worker service contract, on the other hand, refers to the agreement between recruitment agencies and the individual worker regarding the rights and obligations of each party. The contract must mention, among others, the employer's name and address; occupation or job title and employment duration; working conditions; working time, rest time, holiday and paid annual leave; salary, bonus (if any), deductions and method of payment in destination countries; overtime; living conditions; transportation fee; expenses borne by workers such as brokerage fee (if any), service fee (if any), deposit (if any), training fee, and contributions towards Overseas Employment Support Fund.<sup>202</sup>

It should be noted that social insurance or relevant social protection systems applicable in destination countries must be mentioned in both labour supply contracts and guest worker service contracts.<sup>203</sup> There is no obligation to state entitlement to maternity leave in both contracts.

The contract of employment is required to include the stipulations complying with those in the labour supply contract.<sup>204</sup>

In some cases, migrant workers learn about social protection schemes when they are selected for employment and are preparing to sign the labour contract.

*"After being selected, the employer gave me the draft labour contract which mentioned clearly the monthly salary with a detailed calculation; the number of working days per month; the number of working hours per day, contributions towards insurance schemes; monthly deductions for meals, electricity and water, etc... That was the first*

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<sup>202</sup> Ibid., Articles 7-9.

<sup>203</sup> Ibid., Articles 5 & 8.

<sup>204</sup> See Law No. 72/2006/QH11, Article 17, above.

*time I learnt about insurance schemes in Japan. Then the recruitment agency explained to me the process of claiming the lump sum for my pension insurance contributions after completing the contract and returning home... According to the labour contract, I had to contribute towards pension insurance and health insurance. For health insurance, I was covered for 100% of expenses for the first year, 80% for the second year, and 50% for the third year. If I wanted to be covered 100%, I had to pay by myself [under the voluntary scheme]. I was told that I could ask the Supervising Organisations to help me do this."*

Vietnamese migrant returnee from Japan (Male, 26 years old)

#### 4.5.5 Industry Initiatives

In 2010, the VAMAS developed and adopted a Code of Conduct (COC-VN), alongside a ranking system on the implementation of the COC-VN. In 2014-2015, 66 agencies were assessed under the system, and in 2015-2016, 90 recruitment agencies were monitored and assessed, including 24 new agencies. Representatives from DOLAB and the Vietnam General Confederation of Labour have been appointed to the Evaluation Board.<sup>205</sup> The latest available rankings for 2017 graded 106 recruitment agencies. It was the first time that two agencies received the exclusive rank of six stars.<sup>206</sup>

The COC-VN was updated and re-launched in 2018 including amendments and the incorporation of provisions on gender equality, Sustainable Development Goals (SDGs), and the application of the ILO Convention on Domestic Workers, 2011 (Convention No. 189) and ILO's initiatives on fair recruitment.<sup>207</sup> The COC-VN contains fundamental principles for recruitment agencies, though it should be emphasised that the code's application is voluntary. Rather than considering themselves legally bound, recruitment agencies see the code more as a tool to help them comply with the law and regulations of Vietnam, to operate better, and to prevent forced labour and human trafficking.<sup>208</sup> The COC-VN includes twelve principles applicable to recruitment agencies at every step of the migration cycle, from before deployment to upon return, such as: (i) Legal compliance;<sup>209</sup> (ii) Business standards;<sup>210</sup> (iii) Job advertisements;<sup>211</sup> (iv) Recruitment;<sup>212</sup> (v) Training;<sup>213</sup> (vi) Sending workers abroad;<sup>214</sup> (vii) Protection of workers abroad;<sup>215</sup> (viii) Contracts;<sup>216</sup> (ix) Return and

<sup>205</sup> ILO, "Progress of the Implementation of Recommendations Adopted at the 3rd-8th ASEAN Forums on Migrant Labour: Background Paper to the 9th AFML", p.16, above.

<sup>206</sup> See the webpage of the VAMAS website entitled, "The 2017 Vietnamese Recruitment Agency Rank Released", 2018, accessible at [http://www.vamas.com.vn/the-2017-vietnamese-recruitment-agency-rank-released\\_t221c682n44481](http://www.vamas.com.vn/the-2017-vietnamese-recruitment-agency-rank-released_t221c682n44481).

<sup>207</sup> VAMAS "Code of Conduct Applied to Vietnamese agencies sending workers for overseas employment", 2018, p.2, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/projectdocumentation/wcms\\_626512.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/projectdocumentation/wcms_626512.pdf).

<sup>208</sup> Ibid., p.5.

<sup>209</sup> Ibid., p.8 (Article 1).

<sup>210</sup> Ibid., p.8 (Article 2).

<sup>211</sup> Ibid., p.9 (Article 3).

<sup>212</sup> Ibid., p.9 (Article 4).

<sup>213</sup> Ibid., p.10 (Article 5).

<sup>214</sup> Ibid., p.11 (Article 6).

<sup>215</sup> Ibid., p.12 (Article 7).

<sup>216</sup> Ibid., p.13 (Article 8).



*A representative from VAMAS shares about an initiative to rank recruitment agencies' compliance with the COC during an MMN multi-stakeholder meeting entitled "Consultation on Labour Migration from Mekong Countries to Japan", held in July 2019, Tokyo, Japan. Photo: MMN*

Reintegration;<sup>217</sup> (x) Dispute settlement;<sup>218</sup> (xi) Partnership development;<sup>219</sup> and (xii) Fair competition amongst Vietnamese recruitment agencies.<sup>220</sup>

Furthermore, VAMAS has developed a Monitoring and Evaluation (M&E) system regarding the application of the CoC-VN and the annual system of scoring and ranking recruitment agencies. The VAMAS publishes the ranking list of recruitment agencies.<sup>221</sup> As the diagram below illustrates, in theory, the scoring and ranking system operates as a self-reinforcement mechanism that pushes agencies to improve the quality of their services. Moreover, it provides an important reference source for potential migrant workers, and foreign counterparts such as employers and supervising organisations.<sup>222</sup>

<sup>217</sup> Ibid., p.15 (Article 9).

<sup>218</sup> Ibid., p.16 (Article 10).

<sup>219</sup> Ibid., p.16 (Article 11).

<sup>220</sup> Ibid., p.16 (Article 12).

<sup>221</sup> See the webpage of the VAMAS website entitled, "The 2017 Vietnamese Recruitment Agency Rank Released", above.

<sup>222</sup> Based on a presentation delivered by Mr. Nguyen Luong Trao, President of VAMAS, during the MMN multi-stakeholder meeting entitled, "Workshop on Labour Migration from Mekong Countries to Japan", above.

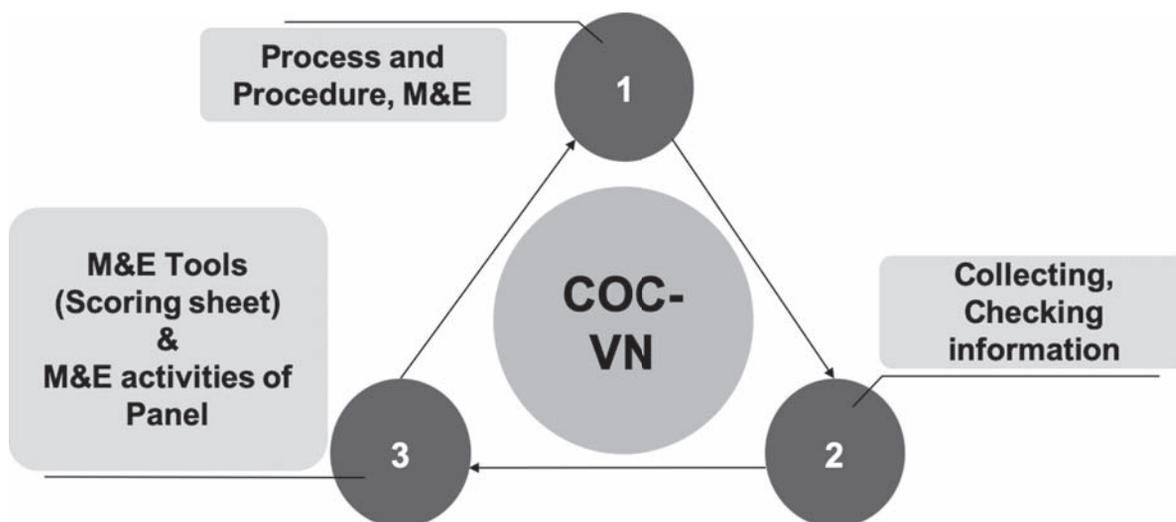


Figure 1: Monitoring and evaluation on the application of CoC-VN<sup>223</sup>

#### 4.6 International Cooperation

In 2014, Japan’s Ministry of Health, Labour and Welfare (MHLW) and Vietnam’s Ministry of Health agreed a non-binding MOC in which both parties sought to “explore opportunities to enhance cooperation in the field of health care”, including in the “social security system: [through the] realisation of universal health coverage through sharing Japan’s experiences in public health insurance system”.<sup>224</sup> In the same year, both ministries signed another non-binding MOC “to promote cooperation in the field of labour and social welfare” in areas such as (i) Occupational health and safety, industrial relations and wage policy; (ii) Skills development, vocational training and national trade skill test systems linked to employment; (iii) Laws, policies and relevant practices on social insurance and unemployment insurance; (iv) Social welfare systems to prepare for aging; and others.<sup>225</sup>

According to MOLISA in 2017, Vietnam was in the process of negotiating bilateral social insurance agreements with Germany and the Republic of Korea,<sup>226</sup> with negotiations completed in 2018. The process of information exchange and negotiation with the Japanese government has also begun.<sup>227</sup> At the time of writing, Vietnam has yet to sign any agreement with destination countries to avoid situations where workers make two social insurance payments out of the same income.<sup>228</sup>

<sup>223</sup> Ibid.

<sup>224</sup> Memorandum of Cooperation in the Field of Healthcare between the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour, Invalids and Social Affairs, signed on 18 March 2014.

<sup>225</sup> Memorandum of Cooperation in the Field of Labour and Social Welfare between the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour, Invalids and Social Affairs, signed on 13 May 2014, accessible at <https://www.mhlw.go.jp/file/04-Houdouhappyou-10501000-Daijinkanboukokuksaika-Kokusaika/0000045844.pdf>.

<sup>226</sup> ILO, “Social Protection for Migrant Workers in ASEAN: Developments, Challenges, and Prospects”, 2018, p.99, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_655176.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_655176.pdf).

<sup>227</sup> Nguyen Thi Thanh Huong and Doan Thi Thanh Ha, “Foreign Employees Start Paying Compulsory Social Insurance in Vietnam”, 2019, accessible at <https://www.iftr1000.com/NewsAndAnalysis/Foreign-employees-start-paying-compulsory-social-insurance-in-Vietnam/Index/9616>.

<sup>228</sup> Ibid.



A street vendor in Hanoi, Vietnam. Photo: MMN

#### 4.7 Assistance Upon Return

Migrant returnees to Vietnam from Japan largely claim the pension lump sum owed to them from Japan's pension insurance by themselves. However, in cases where they do not have enough information, or are otherwise unable to do so, they can request assistance from service agents including recruitment agencies or others, who typically charge a service fee of between 10 and 15 per cent of the received amount.

*"To claim the lump sum from pension insurance in Japan, I had intended to ask the recruitment agency, but the fee was high as much as 20% of the amount of the second instalment. Then I decided to ask another service company with the service fee of 14-15% of the second payment."*

Vietnamese migrant returnee from Japan in 2018 (Female, 28 years old)

Some recruitment agencies assist returnees free of charge. Vietnamese recruitment agencies are not authorised to process the application directly on behalf of migrant returnees and the lump sum must be paid into a bank account under the returnees' own name.<sup>229</sup>

*"I received a lump sum for my contributions towards pension insurance in Japan, which was paid between 4 and 6 months after I return to Vietnam. The procedure is simple. The first instalment was transferred to my bank account, amounting to 80% of the total amount. For the second instalment, I had to use the service of an agency. The company charged me 15% of the remaining amount (of the second instalment). I used the service for second instalment because the process required me to complete many forms in Japanese."*

Vietnamese migrant returnee from Japan (Male, 26 years old)

<sup>229</sup> Based on the information shared by representatives of Vietnamese recruitment agencies during an MMN meeting entitled "Consultation on Labour Migration from Vietnam to Japan", above; and MMN Key Informant Interviews with representatives of Vietnamese recruitment agencies, above.

Disseminating information regarding available employment opportunities is considered one of the main forms of support offered to returnees. This is typically provided by way of a job fair or labour exchange platform. Local enterprises also cooperate with public employment service centres to recruit returnees; however, these initiatives mainly focus on returnees from the Republic of Korea under the EPS. In practice, more than 57 per cent of general returnee migrant workers face difficulties finding a suitable job, for reasons including a lack of information, and being underqualified.<sup>230</sup>

Furthermore, Vietnamese legislation makes provisions designed to encourage: enterprises to recruit returnees; returnees to migrate again by offering discount fees; and provide credit or micro-finance to support returnees establish their own business.<sup>231</sup> However, a lack of detailed guidelines makes it difficult to implement these aspirations in practice. There have been no specific regulations to support returnee migrants, especially those who have been repatriated because their contracts had been terminated. A general lack of official data on returnee migrants and the ineffectiveness of job market information in Vietnam are also factors limiting the implementing of these incentive policies.<sup>232</sup>

In addition to the paucity of information regarding the Vietnamese job market, unemployment and underemployment amongst returnees is exacerbated by the mismatch between the skills acquired working overseas and those required by the jobs available in Vietnam.<sup>233</sup> Migrant returnees, moreover, have changed aspirations having worked abroad for an extended period, aspirations that are often not satisfied by the jobs available to them upon return.<sup>234</sup> These issues are illustrated by the fact that 61 percent of returnees do jobs that are not related to those they used to in Japan, according to the research on TITP returnee published in 2017 by Vietnam Institute for Economic and Policy Research.<sup>235</sup>

Vietnam's household registration system, namely the "ho khai" system also represents a barrier to successful reintegration for some returnees. Problems can occur when returnees who have been overseas for some time do not come back to their place of origin, or who have lost their personal documents. The inflexibility of the current "ho khai" system prevents returnees accessing myriad social services for themselves and their children, as well as accessing loans, and employment opportunities in some sectors.<sup>236</sup>

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<sup>230</sup> DOLAB and IOM, "Returning Vietnamese Migrant Workers: Policy and Practice", p. 12, above.

<sup>231</sup> See Law No. 72/2006/QH11, Articles 59 & 60, above.

<sup>232</sup> See "Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007" (Draft Report on the Implementation of 2007 Law on Vietnamese Workers Working Abroad Under Contract), p. 38 (section 7.2), above.

<sup>233</sup> DOLAB and IOM, "Returning Vietnamese Migrant Workers: Policy and Practice", p11, above.

<sup>234</sup> Vietnam Institute for Economic and Policy Research (VEPR), "Hội thảo Tăng cường trao đổi nhân lực Việt Nam - Nhật Bản thông qua chương trình thực tập sinh kỹ năng" (Workshop on Strengthening Japan-Vietnam Human Resources Exchange Applied to Returnees of TITP), 2017, accessible at <http://vepr.org.vn/thu-moi-tham-du-hoi-thao-tang-cuong-trao-doi-nhan-luc-viet-nam-nhat-ban-thong-qua-chuong-trinh-thuc-tap-sinh-ky-nang.html>.

<sup>235</sup> "Khó xin việc vì cái mặc thực tập sinh" (TITP Returnees Face Difficulties Applying for a Job), Người Lao Động, 2017, accessible at <https://nld.com.vn/cong-doan/kho-xin-viec-vi-cai-mac-thuc-tap-sinh-20170526145058497.htm>.

<sup>236</sup> MMN, "Self-Care & Health Care: How Migrant Women in the Greater Mekong Subregion Take Care of their Health", 2015, p.64, accessible at [http://www.mekongmigration.org/Self-Care%20and%20Health%20Care\\_final.pdf](http://www.mekongmigration.org/Self-Care%20and%20Health%20Care_final.pdf).

A draft amendment to Law No. 72, will place greater emphasis on improving the situation for returnees, by facilitating the application of their acquired skills, knowledge and experiences.<sup>237</sup>

## 4.8 Conclusion

The government of Vietnam has made efforts to protect the rights of Vietnamese nationals migrating abroad, through establishing a wide range of laws and policies and by delegating responsibilities to respective government bodies and recruitment agencies. DOLAB, as the main department in charge of overseas labour migration, along with recruitment agencies, are mandated to provide relevant information to migrant workers. However, the quality, method and the timing of information dissemination can be strengthened. For example, interviewed migrants were provided information on the social security schemes used in destination countries only at the point of signing the employment contract, and often could not fully absorb the details.

Recruitment agencies have an obligation to protect the rights and benefits of Vietnamese migrant workers and to cooperate with their foreign counterparts to support migrants when they encounter problems. However, recruitment agencies have no obligations towards migrants once they have returned to Vietnam. In the case where migrant returnees need to apply for entitlements from social protection schemes in the destination country, migrants would greatly benefit if recruitment agencies were obliged to assist them in recovering their dues.

Diplomatic missions and consulates have various responsibilities in terms of protecting migrant workers. According to the standard curriculum of PDOs, contact information of the various actors aiding migrants, such as the DOLAB, MRCs, embassies and labour attachés, is to be given to migrants during the orientations. However, the curriculum does not explain the specific roles and responsibilities of these actors. As a result, migrants may be left unsure as to whom to contact and largely rely on recruitment agencies and their counterparts in the destination countries.

In recent years, the government of Vietnam has been negotiating with a number of destination countries for bilateral social insurance agreements. However, at the time of writing, no such agreements have been put in place.<sup>238</sup> Vietnamese outbound migrant workers are obliged to contribute towards the Compulsory Social Insurance scheme in Vietnam and the Overseas Employment Support Fund. This is creating a situation whereby migrants are forced to pay into social insurance schemes in both their home and destination country. This double payment scenario can be avoided with enhanced international cooperation between Vietnam and destination countries.<sup>239</sup> Moreover, interviewed migrant returnees stated that they had little knowledge regarding the benefits of participating in their domestic schemes. They said they contributed to these programmes only because they were required to do so.

Finally, high migration costs remain one of the key factors hindering migrants' ability to benefit from their migration experience. Although recruitment costs for migration to Japan is capped at USD 3,600, migrant workers often pay beyond the prescribed rates in practice. Additionally,

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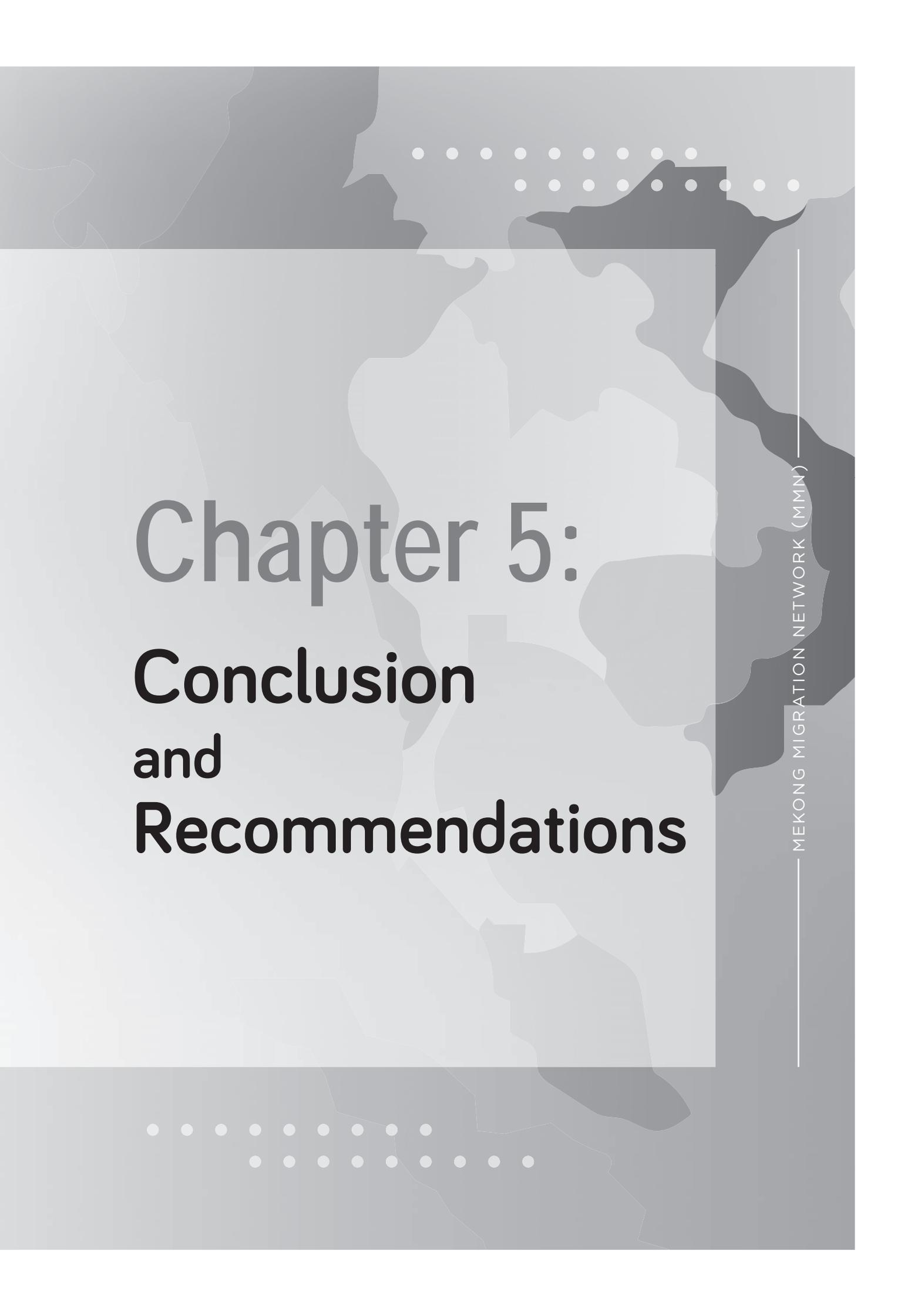
<sup>237</sup> MMN Key Informant Interview with a retired government official, above.

<sup>238</sup> Nguyen Thi Thanh Huong and Doan Thi Thanh Ha, "Foreign employees start paying compulsory social insurance in Vietnam", 2019, above.

<sup>239</sup> Interview ILO Vietnam - Hanoi office, October 2018, Hanoi.

migration cost structures in Vietnam are not transparent enough for migrant workers to understand the types of fees they are required to pay. Migrants pay recruitment agencies a lump sum without necessarily being clear on the breakdown of the cost. In some cases, interviewed migrants do not know whether they have contributed towards the Compulsory Social Insurance and the Overseas Employment Support Fund in Vietnam from this payment.

Enhanced information concerning rights and benefits migrants are entitled to, comprehensive understanding on respective roles of various stakeholders in protecting migrants' rights, and clarity in terms of various payments migrants make will all be essential in protecting migrants' rights including their right to social protection.



# Chapter 5:

## Conclusion and Recommendations

## 5. Conclusions and Recommendations

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### 5.1 Conclusions

Recent efforts on the part of Cambodia, Myanmar and Vietnam to improve migration governance mechanisms demonstrate a clear willingness on the part of countries of origin to protect the rights of their nationals who migrate abroad. While some progress has been made, this study has identified various issues throughout the migration cycle where the rights and interests of migrants are in need of greater protection. The extensive desk research, key informant interviews and case studies presented in earlier chapters highlight gaps and deficiencies in existing measures to help migrants access social protection schemes at home and abroad, as well as providing a more general critique of applicable law and policy frameworks.

#### 5.1.1 Pre-Departure Orientation

Across the three countries of origin surveyed, migrants reported receiving incomplete information on applicable social protection schemes even when they migrated through formal channels. This may indicate that orientation sessions are either not being delivered or being delivered in accordance with the standards set out within the existing PDO curricula. In some curricula, information about social protection schemes is also insufficient. Consequently, migrants reported arriving in destination countries ill prepared and with an inadequate understanding of their social protection entitlements. In order to fill gaps in knowledge, migrants relied on ad hoc information from employers, friends, and Supervising Organisations among others. On reflection, many of the migrants interviewed considered that the information they had received from these sources had been partial and fragmentary.

#### 5.1.2 Recruitment Agencies

Migrants interviewed by MMN for this study reported variable standards of service from recruitment agencies. In the three countries of origin surveyed, the most common complaint among migrants related to the provision of limited information about on-site working conditions in destination countries. Migrants also reported having received insufficient information and assistance in relation to accessing social protection entitlements while abroad and upon return. Moreover, migrants were unhappy about being charged high fees as it forced many into debt. MMN acknowledges the commitment of some recruitment agencies to upholding good practice, however, the study indicates varying levels of compliance with existing legal and regulatory standards across the sector and a general inadequacy of oversight by regulators. The quality of service provision to migrants should not depend on the goodwill of individual agencies, but on a sound regulatory framework that is rigorously enforced. In terms of fees charged by recruitment agencies, desk research revealed that relevant law and regulations place no cap on recruitment fees in Cambodia. This results in high migration costs for Cambodian migrant workers leaving the country through formal channels. While relevant laws and regulations do place a cap on recruitment fees in Myanmar and Vietnam, our research revealed that various other charges and fees levied on migrants by recruitment agencies often resulted in migrants paying over the odds. Migrants interviewed for this study related that they were often left confused as to how the various components of the fees charged had been calculated.

### **5.1.3 Official Overseas Assistance**

Once deployed, migrant workers from all three countries of origin reported being unaware of the specific roles and responsibilities of the labour attachés/counsellors stationed at their national embassies and consulates. Most of the migrants interviewed in this study reported not knowing how to access assistance from their embassy or consulate. Nonetheless, it should be stressed that a number of migrant workers recognised the positive roles that labour attachés/counsellors can play in supporting their access to social protection in destination countries. This confidence indicates that an expanded overseas assistance drive from embassies and consulates would be readily welcomed by migrants. As would a more high-profile social media presence to widen the reach of official information dissemination so that it can reach both documented and undocumented migrants.

### **5.1.4 Upon Return**

The study found that migrant returnees received little support in accessing benefits owed to them from social protection schemes abroad. Across the three countries of origin surveyed, few mechanisms have been put in place to facilitate the transfer of entitlements from social protection schemes to migrant returnees. While the responsibilities of various stakeholders at the pre-departure, and on-site stages of the migration cycle are clearly defined, the responsibilities of these actors in assisting migrant returnees remains vague. As a result, migrants interviewed in this study often related that they ended up paying recruitment agencies additional fees upon return for assistance in claiming benefits owed to them. This was typically the case for migrants returning from Japan who were entitled to lump sum payments for pension contributions made to the Japanese pension insurance scheme. Migrant returnees from Thailand, on the other hand, who had contributed to the social security system in that country were at a loss as to how the entitlements owed to them could ever be received. Inadequate mechanisms for the transfer of social security benefits is an issue that affects not only migrant returnees, but also migrant families in countries of origin. There have been documented cases of migrant dependents in countries of origin experiencing difficulties accessing entitlements and compensation from destination countries, where migrant workers have become disabled or passed away.

### **5.1.5 Portability of Social Security**

The desk research conducted in this study found that domestic social security systems in Cambodia and Myanmar are still in their infancy and do not allow migrant returnees to preserve, maintain, and transfer social security rights acquired overseas. Social protection schemes in Vietnam, however, are better developed, though require outbound migrant workers to continue paying contributions to the compulsory Social Insurance scheme while working overseas. This is detrimental to migrant workers as it places them in the position of having to simultaneously contribute to social security systems in two separate jurisdictions out of the same salary. The current lack of portability to and from all of the countries of origin surveyed highlights the need for greater bilateral cooperation with popular migrant destination countries on the issue of social protection.

### **5.1.6 Changing Immigration Status**

This study came across a number of cases whereby migrants from Myanmar working in Thailand lost their entitlements to years of accumulated social security contributions following a change of immigration status. This unsatisfactory situation was found to occur when migrant workers are forced to move onto temporary conditions of stay such as the so-called Section 64 border pass for seasonal workers. To protect the contributions of migrant workers enrolled in the Thai social security system, the governments of countries of origin should work together with their Thai counterparts to facilitate the transfer of social security benefits between different immigration statuses.

### **5.1.7 Other Barriers to Social Protection**

The detailed migrant case studies collected in this research also raised concerns about access to social protection that went beyond straightforward material entitlement. For example, migrants interviewed frequently cited problems accessing public healthcare due to language barriers or the time and costs required to visit public facilities far away from their work sites in destination countries, even though their entitlement to treatment was formally covered by social security and health insurance schemes. Other barriers preventing access to social protection schemes mentioned by migrants in the study included not being able to contact authorities because they can only be reached during office hours when migrants were busy at work. Migrants in Japan also expressed concerns that they cannot contact authorities promptly, as they cannot easily register for a local phone number. Although improvements in these areas lie chiefly with the relevant authorities in destination countries, migrant countries of origin can do much to press upon their counterparts the need to tackle additional barriers that prevent equal access to social protection.

## **5.2 Further Research**

Over the course of this study, MMN came across issues that were beyond the scope of this research project and call for further investigation. First, as mentioned above, the impact that changes to immigration status can have on migrant workers' access to social protection in destination countries needs to be explored in greater depth. This issue was raised by several migrant workers interviewed for this study in Thailand. Further research is needed to understand the technicalities surrounding how loss of social security entitlements occur and what can be done to remedy such situations. Moreover, similar issues may well exist in other popular destination countries for GMS migrants that are yet to come to light. Second, the issues of how migrant returnees receive long term support from destination countries' workers' compensation schemes upon return requires further investigation. Given the limited enforcement of occupational health and safety in many workplaces where migrant workers are employed, long-term injuries or illness are likely to be more common than among the population at large. Moreover, there is currently limited information available as to how migrant returnees in practice can receive long term support under relevant social protection schemes.

### 5.3 Recommendations

Based on our study, MMN makes the following recommendations.

#### To Governments of All Countries of Origin:

1. Enhance information dissemination to migrants, especially with regards to the roles and responsibilities of labour attaches/ counsellors stationed at embassies and consulates in destination countries.
2. Effectively enforce laws and regulations regarding recruitment agencies and actively monitor their performances to ensure full compliance with all prescribed standards including recruitment fee caps;
3. Collectively pursue the goal of portable or transferable social security for migrant workers, and ensure migrant workers are not subject to double payment;
4. Advocate with governments of destination countries to reduce barriers faced by migrant workers in accessing social protection schemes and social services.
5. Negotiate with destination governments to ensure there is no loss of social security benefits when migrant workers change immigration status.

#### To Recruitment Agencies:

1. Improve the quality of pre-departure training/orientation to ensure that prospective migrant workers receive accurate and complete information before migrating overseas. This includes information relating to migrant workers' terms of employment, applicable labour law, their rights to contribute and benefit from various social protection schemes, roles and responsibilities of responsible actors in destination countries and how to seek overseas assistance via embassies and consulates in the event of problems;
2. Strengthen assistance provided to migrant workers, including supporting access to social protection programmes of destination countries while abroad and upon return.
3. Make cost structures transparent, and ensure fees do not exceed government set caps.

To achieve these recommendations, governments and recruitment agencies should collaborate with migrant CSOs so that migrant workers' interests are properly represented.

# Annex

## Annex 1: Social Protection Programmes in Cambodia

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The National Social Protection Policy Framework (NSSPF) 2016-2025, adopted in 2017, acknowledged that the coverage of Cambodia's social protection programmes remains limited, which leaves certain groups of the population without protection.<sup>1</sup> Social protection programmes in Cambodia are currently in the developing stages, with schemes, such as health care (2016), only being established in recent years. In general, the NSSPF categorises current and future social protection programmes into two main entities: social assistance and social security. Social assistance predominantly targets those below or close to the poverty line with high vulnerability to crisis, infants, children, pregnant women, food-insecure residents, people with disabilities, and the elderly.<sup>2</sup> Social assistance programmes facilitate access to emergency response, vocational training, human capital development, and welfare provision for low-income families.<sup>3</sup>

Different Cambodian departments are in charge of the implementation of social assistance provisions. The World Food Program assists with the implementation of a School Feeding Breakfast Program and also works with the Ministry of Education, Youth and Sport in providing funding for primary school scholarships.<sup>4</sup> The Ministry of Economy and Finance works with the National Committee for Disaster Management in providing food supplies during disaster crises,<sup>5</sup> and the MOLVT oversees various skills training programmes.<sup>6</sup>

Under the NSSPF, social security is envisioned as an overarching protection mechanism for Cambodian residents, with five available schemes including pension, work injury, health care, disability services, and unemployment. The National Social Security Fund (NSSF), which is “technically under the MOLVT and financially under the Ministry of Economy and Finance”,<sup>7</sup> is the governing body responsible for implementing social security schemes for persons under the provisions of the labour law. Among its tasks, the NSSF's responsibilities include managing social security schemes established under the 2002 *Law on the Social Security Schemes for Persons Defined by the provisions of the Labour Law* (hereafter “Law on Social Security Schemes”), collecting contributions from members and employers and making health care and social services available to its members.<sup>8</sup>

### *Implications of Social Security Schemes on Migrant Workers*

There are currently no social security schemes available to outbound Cambodian migrant workers.<sup>9</sup> The *Law on the Social Security Schemes* covers workers under the scope of the labour law (not

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<sup>1</sup> Council of Ministers, Kingdom of Cambodia, “National Social Protection Policy Framework 2016-2025”, 24 March 2017, p. xvi, accessible at <http://inndec.com/library/docs/SPPF%20English%20-%20Final%20Ver.pdf>.

<sup>2</sup> Ibid., p. 12.

<sup>3</sup> Ibid., p. 9.

<sup>4</sup> Ibid., p. 14.

<sup>5</sup> Ibid., p. 12.

<sup>6</sup> Ibid., p. 16.

<sup>7</sup> Sub-decree concerning the Establishment of the National Social Security Fund, 2007, Article 1, unofficial translation accessible at <http://www.nssf.gov.kh/default/wp-content/uploads/2015/02/Sub-Decree-16.pdf>.

<sup>8</sup> Ibid., Article 3.

<sup>9</sup> MMN Key Informant Interview with a representative of the DOEM under the MOLVT (July 2019), above.

including those who are governed by the Common Statute for Civil Servants or by the Diplomatic Statute as well as officials who are temporarily appointed in the public service)<sup>10</sup> and who “perform work in the territory of the Kingdom of Cambodia for the benefit of an employer or employers”.<sup>11</sup> Under this requirement, outbound migrant workers are not eligible to participate in social security schemes established under the law. The *Law on Social Security Schemes* creates two schemes – the work injury scheme and the pension scheme. The work injury scheme was created in 2008<sup>12</sup> and provides benefits for injuries sustained at work and during the commute to work, disabilities and occupational diseases.<sup>13</sup> Employers pay the full contribution at 0.8% of the worker’s monthly salary.<sup>14</sup> As of the end of 2015, 1.2 million Cambodian workers have joined the scheme.<sup>15</sup> (According to World Bank, Cambodia’s labour force in 2015 reached 8.6 million.)<sup>16</sup> In August 2019, a new law reportedly implemented the pension scheme.<sup>17</sup> According to the *Law on Social Security Schemes*, the pension should include old age, invalidity and survivors’ benefits.<sup>18</sup>

In addition to the work injury and pension scheme, the Cambodian government created a health care scheme in 2016.<sup>19</sup> The scheme provides coverage for those under the provision of the *Law on Social Security Schemes*.<sup>20</sup> In 2017, the Cambodian government also expanded coverage to informal workers defined as a “worker [who] signs an employment contract, which is not more than 8 (eight) hours a week, a part-time work, a casual work, or a seasonal work, and has been registered in the National Social Security Fund.”<sup>21</sup> The health care scheme provides medical care for non-occupational injuries and sickness and cash benefits for sickness and maternity.<sup>22</sup> Beginning

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<sup>10</sup> Royal Kram concerning the Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law, 2002, Article 4, unofficial translation accessible at <http://www.nssf.gov.kh/default/wp-content/uploads/2015/02/NSSF-Law.pdf>.

<sup>11</sup> Ibid., Article 4.

<sup>12</sup> See the webpage of the National Social Security Fund, the Royal Government of the Kingdom of Cambodia website entitled, “Employment Injury Scheme”, accessible at <http://www.nssf.gov.kh/default/employment-injury-scheme-2/>.

<sup>13</sup> Royal Kram concerning the Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law, Article 15, above.

<sup>14</sup> Prakas 449 On Determination of Contribution Rate and Formalities and Procedures of Contribution Payment for Social Security Schemes on Occupational Risk and Health Care for Persons Defined by the Provisions of the Labour Law, 2017, Article 4, unofficial translation accessible at <http://www.nssf.gov.kh/default/wp-content/uploads/2018/02/prkas-449.pdf>.

<sup>15</sup> Council of Ministers, Kingdom of Cambodia, “National Social Protection Policy Framework 2016-2025”, p. 34, above.

<sup>16</sup> See the webpage of the World Bank website entitled, “Labour Force, Total (Cambodia)”, accessible at <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=KH>.

<sup>17</sup> Ry Sochan, “Breaking: Council of Ministers passes NSSF draft law”, *Phnom Penh Post*, 4 August 2019, accessible at <https://www.phnompenhpost.com/national/breaking-council-ministers-passes-nssf-draft-law>.

<sup>18</sup> Royal Kram concerning the Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law, 2002, Article 7, above.

<sup>19</sup> See Sub-decree On Establishment of Social Security Scheme “Health Care Scheme” For Persons Defined by the Provisions of the Labor Law The Royal Government, 2016, unofficial translation accessible at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103419/125607/F-1229514826/KHM103419%20Eng.pdf>.

<sup>20</sup> Ibid., Article 7.

<sup>21</sup> Prakas 404 on Implementation of Health Care Scheme Through Health Equity Fund System For Informal Workers and Provision of Additional Allowance for Female Workers When Delivery, 2017, Article 4, unofficial translation available at <http://www.nssf.gov.kh/default/wp-content/uploads/2019/01/404.17.pdf>.

<sup>22</sup> Prakas 184 on Revision of Articles 2, 4, 5, 6, 7, 8, And 10 of Prakas No. 109 Lv/prk., Dated 17 March 2016, On Health Care Benefits, 2018, Article 7, unofficial translation accessible at <http://www.nssf.gov.kh/default/wp-content/uploads/2019/01/404.17.pdf>.

in January 2018, employers have to pay the full contribution, at 2.6% of the worker's monthly wage.<sup>23</sup>

While the pension, work injury and health care schemes are currently not available to migrant workers, existing government policies create possibilities for outbound Cambodian migrant workers to access these schemes. For instance, the draft *Policy on Labour Migration for Cambodia 2019-2023* plans to open up NSSF membership to all migrant workers.<sup>24</sup> Under the NSSPF, the Cambodian government also plans to establish a universal pension scheme for all Cambodian citizens<sup>25</sup> and enable voluntary participation in the pension scheme for those who currently fall out of the scope of the *Law on Social Security Schemes*.<sup>26</sup> Regarding the healthcare scheme, the NSSPF contemplates expanding membership of the scheme beyond persons under the provisions of the labour law.<sup>27</sup>

In terms of disability services, the Disability Action Council is tasked with setting up the national strategy for people with disabilities regardless of the source or type, and the People with Disability Fund (PWDF) delivers rehabilitation, vocational training, and employment services to about 28,000 people annually.<sup>28</sup> PWDF's website mentions that its services are open to any disabled Cambodian citizen regardless of occupation status,<sup>29</sup> which may benefit migrant returnees who suffer from disabilities sustained from work abroad. In general, disability services are authorized by the Law on the Protection and Promotion of Rights of Persons with Disabilities (2009), which states that the State should allocate an annual budget to the elderly, the very impoverished, and the severely disabled.<sup>30</sup>

In August 2019, a new law with unemployment benefits has reportedly been passed.<sup>31</sup> The NSSPF envisions that such a scheme will be applied to workers under the provisions of the labour law,<sup>32</sup> but first Cambodia intends to conduct a feasibility study that will involve "considerable time and capacity" and will depend on the country's "economic development" before they plan on putting an unemployment insurance scheme in place.<sup>33</sup>

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<sup>23</sup> *Prakas* 449, Article 4, above.

<sup>24</sup> The Royal Government of the Kingdom Cambodia, "Draft Policy on Labour Migration for Cambodia 2019-2023 (Unofficial Translation)", p. 41 (Policy Goal 11.2), above.

<sup>25</sup> Council of Ministers, Kingdom of Cambodia, "National Social Protection Policy Framework 2016-2025", p.23, above.

<sup>26</sup> *Ibid.*, p. 24.

<sup>27</sup> *Ibid.*, p. 33.

<sup>28</sup> *Ibid.*, p. 37.

<sup>29</sup> See the webpage of the Persons with Disabilities Foundation website entitled, "PRC's Services", 2016, accessible at <http://pwwdf.gov.kh/index.php/en/ourservices/prcservice>.

<sup>30</sup> Law on the Protection and Promotion of Rights of Persons with Disabilities, 2009, Article 12, unofficial translation accessible at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86089/96925/F217191771/KHM86089%20English.pdf>.

<sup>31</sup> Ry Sochan, "Breaking: Council of Ministers passes NSSF draft law", above.

<sup>32</sup> Council of Ministers, Kingdom of Cambodia, "National Social Protection Policy Framework 2016-2025", p.35, above.

<sup>33</sup> *Ibid.*, p.36.

### *Migrant Welfare Fund and Portability of Social Security Benefits*

Under the draft *Policy on Labour Migration for Cambodia 2019-2023*, the Cambodian Government plans to roll out a pilot migrant welfare fund in select provinces with a high outbound migration rate.<sup>34</sup> There are also plans to hold dialogues with destination countries to discuss the portability of social protection benefits,<sup>35</sup> and create an annex for the MOU with Thailand and Malaysia that ensures the portability of social protection benefits from the two destination countries to Cambodia.<sup>36</sup>

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<sup>34</sup> The Royal Government of the Kingdom Cambodia, “Draft Policy on Labour Migration for Cambodia 2019-2023”, p.41 (Policy Goal 11.1), above.

<sup>35</sup> Ibid., p.41 (Policy Goal 11.2).

<sup>36</sup> Ibid., p.35 (Policy Goal 3.5)

## Annex 2: Social Protection Programmes in Myanmar

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### *Overall Social Protection Framework*

The *Myanmar National Social Protection Strategic Plan*, published in 2014, acknowledges that existing social protection programmes in the country remain limited.<sup>1</sup> Currently, Myanmar's social protection framework encompasses a number of social services and contributory and non-contributory cash benefit programmes that are available to different sections of the population. These programmes include cash benefits to mothers who have multiple births with three or more new-borns,<sup>2</sup> cash support to all primary school children,<sup>3</sup> social security for civil servants and formal workers that provides cash benefits for sickness, maternity, paternity, temporary or permanent disability, disasters and funerals,<sup>4</sup> a non-contributory pension for civil or political service,<sup>5</sup> a forthcoming contributory social security old-age pension scheme,<sup>6</sup> and programmes that provide relief and recovery assistance during times of disaster.<sup>7</sup>

The strategic plan outlines eight further “flagship programmes” to implement in the future, namely (1) cash allowances for pregnant women and children up to age two; (2) gradual extension of this to older children; (3) cash allowance for people with disabilities; (4) school feeding programmes; (5) public employment and vocational education programmes; (6) social pension; (7) older person self-help groups; and (8) integrated social protection services.<sup>8</sup> Among Myanmar's long-term goals, the government also hopes to provide universal health coverage by 2030.<sup>9</sup> Currently, a cash allowance for expectant mothers and children is being piloted in Kayah and Kayin states and will gradually expand to other regions.<sup>10</sup> An old age pension for senior citizens was made available to those over the age of 85 from 2018.<sup>11</sup>

The Social Protection Working Committee is responsible for the overall monitoring and evaluation of the implementation of Myanmar's social protection programmes.<sup>12</sup> The Committee is chaired by the Union Minister of Social Welfare, Relief and Resettlement and consists of representatives from different government ministries, such as the MOLIP as well as non-governmental organisations.<sup>13</sup> The Technical Support Group provides technical advice to the Committee and

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<sup>1</sup> The Government of the Republic Union of Myanmar, “Myanmar National Social Protection Strategic Plan”, December 2014, p. 33, accessible at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=50377>.

<sup>2</sup> *Ibid.*, p. 35.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, p. 38.

<sup>5</sup> *Ibid.*, p. 39.

<sup>6</sup> *Ibid.*, p. 40.

<sup>7</sup> *Ibid.*, pp. 41-42.

<sup>8</sup> *Ibid.*, p. 49.

<sup>9</sup> *Ibid.*, p. 67.

<sup>10</sup> Myat Thura, “More Aid in the Works for Expectant Mothers”, *Myanmar Times*, 11 June 2019, accessible at <https://www.mmmtimes.com/news/more-aid-works-expectant-mothers.html>.

<sup>11</sup> Htike Nanda Win, “Government to Lower Eligibility Age for Pension Payments to 85”, *Myanmar Times*, 22 May 2018, accessible at <https://www.mmmtimes.com/news/government-lower-eligibility-age-pension-payments-85.html>.

<sup>12</sup> The Government of the Republic Union of Myanmar, “Myanmar National Social Protection Strategic Plan”, p. 47, above.

<sup>13</sup> *Ibid.*, pp. 45-46.

has identified the said flagship programmes to expand Myanmar's social protection programmes.<sup>14</sup> Social Security Systems established under the 2012 Social Security Law, in particular, are under the purview of the Social Security Board of the MOLIP. The Social Security Board (SSB) Executive Committee consists of officials from the MOLIP and other government organisations, as well as employer and worker representatives.<sup>15</sup> As of 2015, the SSB has established 77 township offices to cover about 30% of Myanmar's existing townships within all States and regions except Chin State.<sup>16</sup>

### *Social Security System in Myanmar and Implications for Outbound Migrant Workers*

The Social Security Law 2012 makes it possible for migrant workers to participate in Myanmar's social security on a voluntary basis. The law establishes six social security systems, of which only three are active:<sup>17</sup> the Health and Social Care System, which provides medical care and cash benefits for sickness, maternity, paternity and funerals; Family Support Insurance System; and the Employment Injury Benefit System, which provides cash benefits for injuries and deaths resulting from work. The other social security systems, such as the unemployment benefit system and the Invalidity, Superannuation and Survivors' Benefit System, have not been implemented.<sup>18</sup>

Registration is compulsory for establishments, subject to exceptions,<sup>19</sup> with five or more workers.<sup>20</sup> Under the Health and Social Care System, both employer and employee each contribute 2% of the employee's monthly wage if they are under 60, and 2.5% if over 60.<sup>21</sup> For the Employment Injury Benefit System, the employer pays 1-1.5% of the employee's monthly wage, depending on the number of employees who are receiving benefits under the system.<sup>22</sup> The Social Security Law 2012 stipulates that employees who do not work in establishments covered by the law may register on a voluntary basis, including "persons who are working abroad."<sup>23</sup> Voluntary registration is currently available for migrant workers. Family members in Myanmar can help migrant workers enrol in the system and make contributions on migrants' behalf.<sup>24</sup> The Social Security Law does not specify the amount of contribution for voluntary registration, but separate *Social Security Rules* published in 2014 mentions that already insured persons at a private establishment may continue to be voluntarily insured after leaving the establishment, provided that they declare a wage that is not less than the minimum wage and pay for both the employee and the employer's

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<sup>14</sup> Ibid., p. 48.

<sup>15</sup> Ibid., p. 61.

<sup>16</sup> ILO, "Evaluation of the operations of the Social Security Board, Ministry of Labour, Employment and Social Security of Myanmar", 2015, p. 3, accessible at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=52057>.

<sup>17</sup> The Government of the Republic Union of Myanmar, "Myanmar National Social Protection Strategic Plan", p. 61, above.

<sup>18</sup> ILO, "Social Protection for Migrant Workers in ASEAN: Developments, Challenges, and Prospects", p. 64, above.

<sup>19</sup> Exceptions contained in Social Security Law (2012), Article 12a, accessible at <https://www.mol.gov.mm/en/wp-content/uploads/2016/10/Social-Security-Law-2012-E.pdf>.

<sup>20</sup> ILO, "ILO Guide to Myanmar Labour Law", 2017, p. 25, accessible at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms\\_577563.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_577563.pdf).

<sup>21</sup> Social Security Rules (2014), Article 55, accessible at <http://www.mol.gov.mm/en/wp-content/uploads/2016/10/The-Social-Security-Rules-E.pdf>.

<sup>22</sup> Ibid., Article 58.

<sup>23</sup> Social Security Law (2012), Article 20(c), above.

<sup>24</sup> MMN Key Informant Interview with a representative of the MOLIP, above.

parts of the contribution.<sup>25</sup> Any insured persons may also pay in a foreign currency if they earn wages in that foreign currency.<sup>26</sup>

The Social Security Law or the Social Security Rules contain no provisions for the portability of social security benefits. In fact, the Social Security Law 2012 states that the Social Security Board may terminate sickness cash benefits if the insured person “leaves the country for good”.<sup>27</sup> A different part of the law also states that an insured person will lose unemployment benefits if the person is leaving the country “for good” or going abroad to work.<sup>28</sup>

The Social Security Rules also states that an insured person is “temporarily suspended from the application of the provisions of the Law” if the person fails to pay contributions for 36 months consecutively.<sup>29</sup> However, if contributions are repaid after the person enters an establishment covered by the law or registers voluntarily, the person “shall have the right to join with the contribution terms paid in the past”.<sup>30</sup> In theory, therefore, migrants who cease to pay contributions for more than 36 months may resume their membership in Myanmar’s social security if they pay contributions again.

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<sup>25</sup> Social Security Rules (2014), Article 50(b), above.

<sup>26</sup> Social Security Law (2012), Article 100, above.

<sup>27</sup> *Ibid.*, Article 254(f).

<sup>28</sup> *Ibid.*, Article 40(e).

<sup>29</sup> Social Security Rules (2014), Article 53(a), above.

<sup>30</sup> *Ibid.*, Article 53(b).

## Annex 3: Social Protection Programmes in Vietnam

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### *General System of Social Security in Vietnam:*

Social protection systems in Vietnam are divided into four main parts: (i) employment intervention that ensures minimum income and poverty reduction; (ii) social insurance; (iii) social assistance to specific vulnerable groups; and (iv) basic social services.<sup>1</sup>

### *The Social Insurance System*

The Social Insurance System includes Compulsory Social Insurance, Voluntary Social Insurance, Unemployment insurance, and Supplementary Pension Insurance. These cover the following situations: sickness; maternity; work related accidents and occupational disease; retirement; survivorship allowance; and unemployment.<sup>2</sup> These schemes apply to Vietnamese citizens and partially apply to foreign nationals working in Vietnam.<sup>3</sup>

### *Compulsory Social Insurance*

The Compulsory Social Insurance scheme covers sickness; maternity; work related accidents and occupational disease; retirement; and survivorship allowance.<sup>4</sup> The compulsory scheme is designed for formal workers, including regular outbound migrant workers under fix-termed contracts. Since 1 January 2018, compulsory social insurance applies to foreign employees working in Vietnam with work permits, and certificates, or licenses granted by competent Vietnamese authorities.<sup>5</sup>

The 2014 Amended Law on Social Insurance states that it is obligatory for regular outbound migrant workers onsite to participate or continue to contribute to the compulsory public old-age pension fund and survivor benefits fund (social insurance).<sup>6</sup> The monthly contribution is equivalent to 22 per cent of a person's previous salary (for those who contributed before migrating) or 22 per cent of twice the basic salary (approximately 30 USD per month) for those who did not contribute towards the system or received a lump sum before migrating.<sup>7</sup> Vietnamese outbound migrant workers can pay their contribution through social security office at province/district level or periodically via recruitment agencies for the duration of the overseas employment contract.<sup>8</sup> However, the current system highlights the double contribution problem whereby an individual is forced to contribute to social security system in two separate jurisdictions from the same salary. It is hoped that respective governments can find a solution to this problem soon.<sup>9</sup> The current

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<sup>1</sup> See Dr. Nguyen Thi Lan Huong, "Increasing social insurance coverage of informal workers in Viet Nam", 2019, accessible at [https://www.unescap.org/sites/default/files/Session\\_3\\_PPT\\_Viet\\_Nam.pdf](https://www.unescap.org/sites/default/files/Session_3_PPT_Viet_Nam.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Law on Social Insurance (No. 58/2014/QH13), promulgated in 2014 and came into effect on 1 January 2015, Article 2, accessible at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99775/126463/F-1921723198/VNM99775%20Eng.pdf>.

<sup>4</sup> Ibid., Article 4.

<sup>5</sup> ILO, "Social Protection for Migrant Workers in ASEAN: Developments, Challenges, and Prospects", p.97, above.

<sup>6</sup> Law on Social Insurance (No. 58/2014/QH13), promulgated in 2014 and came into effect on 1 January 2015, Articles 2(1g) and 85(6), above.

<sup>7</sup> Ibid., Article 85 (2a).

<sup>8</sup> Ibid., Article 85 (2b).

<sup>9</sup> MMN Key Informant Interview with a representative of the ILO Vietnam-Hanoi office, above.

system is also difficult to enforce,<sup>10</sup> with only between two<sup>11</sup> and ten<sup>12</sup> per cent of regular migrant workers with fixed employment contracts contributing towards the system.

*"I did not enrol in social insurance scheme in Vietnam. There was no relationship between the insurance schemes in Vietnam and in Japan."*

Vietnamese migrant returnee from Japan (Female, 28 years old)

*"I did not participate in the Vietnamese social protection schemes, as it was not required by anyone and I really did not know how to enrol. Nobody told me about this."*

Vietnamese migrant returnee from Japan (Male, 27 years old)

### *Voluntary Social Insurance*

The Voluntary Social Insurance scheme covers only public old-age pension and survivor benefits for individuals who are not eligible for the Compulsory Social Insurance.<sup>13</sup> The amount of an individual's contribution is set at 22 per cent of their monthly income and must be at least equal to the poverty threshold in rural areas per month.<sup>14</sup> This voluntary scheme is seen as a channel for irregular Vietnamese outbound migrant workers to join the social insurance system in their home country. However, its limited coverage and the fact that it requires at least 20 years' worth of contributions to receive pension benefits does not encourage participation.<sup>15</sup>

### *Health Insurance for Individuals*

Since 2014, the government of Vietnam has sought to introduce Universal Health Care by 2020.<sup>16</sup> In order to implement the scheme, the 2014 Amended Law on Social Health Insurance makes it compulsory for Vietnamese citizens to pay public health insurance in Vietnam.<sup>17</sup> For those who contribute as individuals, the maximum annual amount is 804,600 Vietnamese Dong (approximately USD 35).<sup>18</sup>

<sup>10</sup> MMN Key Informant Interviews with representatives of Vietnamese recruitment agencies, above; and based on the information shared by a representative of the VAMAS during a MMN meeting entitled "Consultation on Labour Migration from Vietnam to Japan", above.

<sup>11</sup> "Bất cập bảo hiểm xã hội dành cho lao động đi làm việc tại nước ngoài" (Gaps in Implementing Compulsory Social Insurance for Outbound Migrant Workers), Traum Vietnam, 2017, accessible at <https://traumvietnam.com/bao-hiem-xa-hoi-danh-cho-lao-dong-di-lam-viec-tai-nuoc-ngoai>.

<sup>12</sup> Kim Vu, "Bảo hiểm xã hội bắt buộc với người lao động làm việc ở nước ngoài: Khó thực hiện" (Difficulties in Implementing the Regulation on Compulsory Social Insurance for Outbound Migrant Workers), Hanoi moi, 2016, accessible at <https://hanoimoi.com.vn/tin-tuc/Doi-song/855018/bao-hiem-xa-hoi-bat-buoc-voi-nguoi-lao-dong-lam-viec-o-nuoc-ngoai-kho-thuc-hien>.

<sup>13</sup> Law on Social Insurance (No. 58/2014/QH13), promulgated in 2014 and came into effect on 1 January 2015, Articles 2 (4) and 4, above.

<sup>14</sup> Ibid., Article 87, above.

<sup>15</sup> Ibid., Article 73.

<sup>16</sup> See ILO, "Vietnam Health Insurance", accessible at [https://www.social-protection.org/gimi/RessourcePDF.action;jsessionid=qtFfChQyx4HKdTU2aQ2F8cNn7PLo3aJvO\\_9JQlq2zl7xQfKPZHER!2015759462?id=54588](https://www.social-protection.org/gimi/RessourcePDF.action;jsessionid=qtFfChQyx4HKdTU2aQ2F8cNn7PLo3aJvO_9JQlq2zl7xQfKPZHER!2015759462?id=54588).

<sup>17</sup> See Amended Law on Social Health Insurance (No: 46/2014/QH13) on Health Insurance, 2014 came into effect on 1 January 2015, accessible at <http://www.iexpertvn.com/2015/01/law-no-462014qh13-amendments-to-law-on.html>.

<sup>18</sup> This rate has been applied since 1 July 2019. See "Thay đổi mức đóng BHYT theo hộ gia đình từ 1/7/2019" (Change in Contribution Rate for Individual Health Insurance), *Thời Báo Tài Chính*, 1 July 2019, accessible at <http://thoibaotaichinhvietnam.vn/pages/tien-te-bao-hiem/2019-07-01/thay-doi-muc-dong-bhyt-theo-ho-gia-dinh-tu-1-7-2019-73354.aspx>.

### *The Overseas Employment Support Fund*

Overseas migrant workers have an obligation to participate in Vietnam's compulsory social insurance scheme and to contribute to the overseas employment support fund.<sup>19</sup>

The overseas employment support fund is managed by MOLISA since 2007 with the aim of opening and expanding overseas labour markets, improving the quality of labour, and supporting workers and recruitment agencies.<sup>20</sup> In terms of supporting migrant workers, the fund is only used in the event that a migrant dies, becomes too sick to continue working and is repatriated before the expiry of their contract, or under other such exceptional circumstances. The fund also supports recruitment agencies in mitigating risks encountered by migrant workers. Furthermore, the fund is used to promote law and policies relevant to outbound labour migration, increasing social awareness and promoting effective models of sending workers abroad.<sup>21</sup> Both recruitment agencies and migrant workers are obligated to contribute towards the fund. Recruitment agencies contribute 1% of their total service fee per year, while migrant workers contribute 100,000 Vietnamese Dong (USD 4.5) per person per contract.<sup>22</sup>

As of 31 December 2017, the balance of this fund was 166 billion Vietnamese Dong (equivalent to about 7 million USD).<sup>23</sup> Over a period of 10 years, from 2007 to 2017, the total expenses drawn from the fund amounted to 93,698 million Vietnamese Dong (equivalent to about 4 million USD).<sup>24</sup> The majority of the expenses drawn from the fund (approximately 65.7 per cent) were used to support overseas migrant workers and recruitment agencies.<sup>25</sup> Notwithstanding the relatively small amount, some migrant workers, regard this contribution as a form of "support" or "donation".<sup>26</sup> Or migrant workers contribute because they are required to do so.

*"I contributed toward the Fund [the Overseas Employment Support Fund] through the recruitment agency. The contribution was small, only around 100,000 Dong (USD 4.3). The recruitment agency asked me, so I paid. I know that it was a kind of contribution and that it was non-refundable."*

Vietnamese migrant returnee from Japan (Male, 27 years old)

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<sup>19</sup> See Law No. 72/2006/QH11, Article 45, above.

<sup>20</sup> Ibid., Article 66.

<sup>21</sup> See Joint Circular No. 11/2008/TTLT-BLDTBXH-BTC between MOLISA and the Ministry of Finance on Guiding the Management and Use of the Overseas Employment Support Fund, accessible at <https://vanbanphapluat.co/joint-circular-no-11-2008-ttlt-bldtbxh-btc-of-july-21-2008-guiding-the-management-and-use-of-the-overseas-employment-support-fund>; and Prime Minister's Decision 144/2007/QD-TTg, above.

<sup>22</sup> Prime Minister's Decision 144/2007/QD-TTg, Article 2, above.

<sup>23</sup> See MOLISA, "Báo cáo tổng kết thi hành Luật người lao động Việt Nam đi làm việc ở nước ngoài theo hợp đồng năm 2007" (Draft Report on the Implementation of 2007 Law on Vietnamese Workers Working Abroad Under Contract), p.43 (section 9), above.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> MMN case study interview with a Vietnamese migrant returnee from Japan, Male, 25 years old, through IM Japan programme.

Meanwhile, MMN's interviewed migrant workers about the benefits of the fund, but they were not sure if they had enrolled or not.

*“About the overseas employment fund, I cannot remember if I contributed or not. However, I think that I contributed via the recruitment agency, as it might be included with other payments. I understand that each employee has to pay 100,000 Dong (USD 4.5) to this fund.”*

Vietnamese migrant returnee from Japan (Male, 26 years old)

## Annex 4: Compulsory Insurance Scheme Applicable to Trainees under Japan’s Technical Internship Training Program (TITP)

Trainees/ migrant workers are obliged to participate in two separate insurance schemes, namely the labour insurance and social insurance schemes.

<p><b>1. LABOUR INSURANCE SCHEME</b> Labour insurance is a national system that provides benefits (workmen’s compensation insurance) for injuries and illnesses incurred at work or whilst commuting, including unemployment benefits in case of termination.</p> <p>Participation in the labour insurance scheme is an obligation of any business that employs one or more employees, including foreign nationals except for a few exemptions.</p>	
<p><b>Obligation</b></p>	<p>Participation in the labour insurance scheme is an obligation of any business that employs one or more employees, including foreign nationals except for a few exemptions.</p>
<p><b>Schemes</b></p>	
<p><b>1.1 Workmen Compensation Insurance<sup>1</sup></b></p>	
<p><b>About</b></p>	<ul style="list-style-type: none"> <li>In the event that a worker suffers injury at work or while commuting, necessary benefits will be provided to protect the worker and in the event of death their bereaved families.</li> </ul>
<p><b>Eligibility</b></p>	<ul style="list-style-type: none"> <li>This is compulsory insurance except for those employed in agriculture, forestry and the fisheries.</li> <li>For those employed in agriculture, forestry, and the fisheries, Workmen’s compensation Insurance is voluntary. TITP workers employed in these sectors must enrol in private voluntary insurance.<sup>4</sup></li> </ul>
<p><b>1.2 Employment Insurance<sup>2</sup></b></p>	
<ul style="list-style-type: none"> <li>A worker who loses their job due to the bankruptcy or the contraction of their employer’s business is entitled to receive unemployment benefit for a fixed period of time, while they seek new employment.<sup>3</sup></li> <li>A TITP worker who works at least 20 hours per week and is employed for at least 31 days is eligible to enrol in the scheme.<sup>5</sup></li> <li>Where a TITP worker becomes unemployed due to the bankruptcy or contraction of their employer’s business and wishes to continue on the programme, and was covered under the scheme for a total of 12 months or more in the past two years or for a total of 6 months or more in the past 1 year before becoming unemployed, they are eligible to claim benefits.<sup>6</sup></li> </ul>	

<sup>1</sup> The Ministry of Health, Labour and Welfare, “Brochure about Industrial Accident Compensation Insurance for foreign workers”, accessible at <https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/rouesai/gaikoku-pamphlet.html>.

<sup>2</sup> See HelloWork Internet Service about employment insurance, accessible at [https://www.hellowork.go.jp/insurance/insurance\\_guide.html](https://www.hellowork.go.jp/insurance/insurance_guide.html).

<sup>3</sup> OTIT, “Technical Intern Trainee Handbook”, p. 53, accessible at <https://www.otit.go.jp/files/user/181003-eng.pdf>.

<sup>4</sup> OTIT, “Technical Intern Trainee Handbook”, p. 52, above.

<sup>5</sup> OTIT, “Technical Intern Trainee Handbook”, p. 53, above.

<sup>6</sup> Ibid.

	<ul style="list-style-type: none"> <li>The Immigration Control and Refugee Act mandates that any employer who employs TTP trainees must take out insurance or take equivalent measures.<sup>7</sup> If contrary to the Act an employer fails to join the insurance scheme, an employee remains eligible for its benefits.</li> <li>An employee who is injured or becomes ill due to work or while commuting is eligible.</li> </ul>	
<p><b>Benefit</b></p>	<ul style="list-style-type: none"> <li>Medical benefits: the insurance covers the full medical expenses of a worker who is injured or becomes ill due to work or while commuting.</li> <li>Temporary absence from work benefits: Where a worker is absent from work for medical treatment and is unable to work, they receive the basic amount of benefit per day, from the fourth day of their absence.<sup>8</sup></li> <li>Injury and sickness pension: Where an employee does not recover from their injury or sickness after 18 months from the beginning of treatment, the worker is eligible to receive the basic amount of benefit.<sup>9</sup></li> <li>Disability benefits: a worker who becomes disabled is eligible to receive pension or lump sum based on the degree of their disability and average salary.<sup>10</sup></li> </ul>	<ul style="list-style-type: none"> <li>The benefit amounts to 50-80 percent of the person's wages (calculated by total monthly wages from the last 6 months before unemployment / 180 x 50-80 percent per day).<sup>11</sup></li> </ul>

<sup>7</sup> The Immigration Control and Refugee Act (2010), accessible at <https://www.mhlw.go.jp/stf/houdou/2r9852000002ag3s-att/2r9852000002ag9v.pdf>.

<sup>8</sup> Workers' Compensation Department, accessible at <https://www.mhlw.go.jp/english/org/policy/p19.html> and OTIT, "Technical Intern Trainee Handbook", pp. 52-53, above.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> See HelloWork leaflet entitled "To those who left their jobs", accessible at <https://site.mhlw.go.jp/aichi-foreigner/var/rev0/0110/3906/201381165041.pdf>.

	<ul style="list-style-type: none"> <li>Surviving family benefits: when a worker has died due to work or while commuting, the bereaved family is eligible to receive a pension or lump sum.<sup>12</sup></li> <li>Funeral rites benefits: the bereaved family or the company that holds the deceased worker's funeral is eligible to receive JPY 315,000 plus the basic amount of benefit.<sup>13</sup></li> <li>Nursing care benefits: Where a worker requires nursing care, the expense for this will be paid in cash.<sup>14</sup></li> <li>Upon return to countries of origin, migrants cannot receive benefits for aftercare, provision of expenses for artificial limbs and other assistive devices, and post-surgical treatment.</li> </ul>	
<b>Contribution</b>	<ul style="list-style-type: none"> <li>The employer (implementing organization) is responsible for enrolling TTP workers and paying the insurance premiums.</li> <li>The employee (TTP trainee) does not need to contribute. Japanese labour law prohibits employers making employees pay contributions.</li> </ul>	<ul style="list-style-type: none"> <li>The employer (implementing organization) is responsible for enrolling TTP workers in the scheme.</li> <li>The contribution is based on the total salary of the employee, with the employer contributing 0.8 percent and the employee 0.3 percent in general sectors and 0.4 percent in agriculture, forestry, fisheries, and construction sectors.</li> </ul>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<b>2. SOCIAL INSURANCE</b>			
Social insurance is a system designed to cover the cost of medical expenses incurred due to illness and injury, and guarantee the lives of the subscriber and bereaved families through the payment of pensions, etc., in case of death due to illness or injury or in the event of certain disabilities.			
<b>Obligation</b>	TITP workers must join either the “Employee’s Health Insurance and Employees’ Pension” (2.1), or “National Health Insurance and National Pension” (2.2). <sup>15</sup>		
<b>Scheme</b>	<b>2.1.a Employee’s Health Insurance</b> <sup>16</sup>	<b>2.1.b Employee’s Pension Insurance</b> <sup>17</sup>	<b>2.2.a National Health Insurance</b>
<b>About</b>	<ul style="list-style-type: none"> <li>Provides migrant workers and their dependent family members with insurance benefits in the event of sickness, injury, childbirth or death.</li> </ul>	<ul style="list-style-type: none"> <li>Employee’s Pension Insurance is a pension system which provides benefits to employees proportional to their remuneration on top of the basic national pension. If TITP workers entered into the employee’s pension insurance system, the person enters into the national pension system at the same time.</li> </ul>	<ul style="list-style-type: none"> <li>Provides migrant workers who do not belong to the employee’s health insurance programs and their dependent family members with insurance benefits for sickness, injury, childbirth and death.</li> </ul>
<b>Eligibility</b>	<p>TITP workers are employed by:</p> <ul style="list-style-type: none"> <li>Corporations</li> <li>Private businesses employing at least 5 full-time workers</li> </ul>	<p>(i) TITP workers are employed by</p> <ul style="list-style-type: none"> <li>Corporations</li> <li>Private businesses employing at least 5 full-time workers</li> </ul>	<ul style="list-style-type: none"> <li>TITP workers attend post-arrival training (for the first one or two months once in Japan)</li> </ul>
			<ul style="list-style-type: none"> <li>TITP workers attend post-arrival training (for the first one or two months once in Japan)</li> </ul>

<sup>15</sup> OTIT, “Technical Intern Trainee Handbook”, p.48, above.

<sup>16</sup> Japan Pension Service, accessible at <https://www.nenkin.go.jp/international/english/healthinsurance/employee.html>.

<sup>17</sup> Ibid.

	<ul style="list-style-type: none"> <li>Excluding private business in agriculture, forestry, fisheries, hospitality, and cleaning sectors.<sup>18</sup></li> </ul>	<ul style="list-style-type: none"> <li>Excluding private business in agriculture, forestry, fisheries, inns, cleaning establishment.<sup>19</sup> (ii) The employee (A)'s dependent family members can apply for coverage if they are A's first, second or third level of A's family members or relatives. To be approved as a covered dependent, they need to be financially supported mainly by A. When A's dependent has an income, he/she is applicable if 1) he/she lives with A and has an income of less than JPY 1.3 million and less than half of A's annual income or 2) he/she does not live with A and has an income of less than JPY 1.3 million and less than the total financial support amount provided by A. (* JPY 1.8 million if he/she is aged 60 or older or has certain level of disability). A's dependent needs not reside in Japan, and thus TITP trainee's dependent may enrol.</li> </ul>	<ul style="list-style-type: none"> <li>Those who are not eligible for the Employee's Health Insurance scheme (2.1.a)<sup>20</sup></li> </ul>	<ul style="list-style-type: none"> <li>All TITP trainees who are at age of 20 or over, and are not eligible to the Employee's Pension Insurance scheme (2.1.b)<sup>21</sup></li> </ul>
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<sup>18</sup> OTIT, "Technical Intern Trainee Handbook", p. 48, above.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<p><b>Benefit</b></p>	<ul style="list-style-type: none"> <li>Medical treatment: 70 percent of medical expenses arising from illness or injury outside work or commuting is covered by this insurance.</li> <li>Childbirth benefit, JPY 420,000 is paid.</li> <li>Absence from work benefit: In case of injury or illness, workers who are not receiving benefits from the workmen compensation insurance will receive the benefit.</li> <li>Maternity leave benefit, the employee receives 66 percent of their standard daily remuneration per absent day from 42 days prior to birth to 56 days after birth.</li> <li>In case of death, the benefit of JPY 50,000 is paid.</li> </ul>	<ul style="list-style-type: none"> <li>Old-age employees' pension: the participant receives the pension on top of the national pension. The amount is based on the duration of work and salary, and the average is around 100,000-160,000 JPY per month.</li> <li>Disability employees' pension and disability allowance: the participant can receive it when they have a certain level of disability specified by law. The amount is based on their duration of work, salary, and level of disability.</li> <li>Survivors' employees' pension: a deceased person's survivors can receive their pension if they were financially dependent on the deceased person before his/her death.</li> <li>Lump sum payment: A non-Japanese citizen who contributed to this insurance (without participating in the employee's pension insurance) at least six months</li> </ul>	<ul style="list-style-type: none"> <li>70 percent of medical expenses arising from illness or injury outside work or commuting is covered by this insurance.</li> <li>In case of childbirth, JPY 420,000 is paid</li> <li>In case of death, 30,000-70,000 JPY is paid</li> </ul>	<ul style="list-style-type: none"> <li>Old-age basic pension: Pension benefits are paid from age 65 to persons with contribution of 10 years or more. The amount for a person who has contributed for 40 years is JPY 780,100 per year.</li> <li>Disability basic pension: If a person becomes sick or gets injured while he/she is covered by this insurance and if that sickness or injury eventually causes such disability at Grade 1 or Grade 2, he/she is entitled to receive benefits of JPY 780,100 or JPY 975,125 respectively per year</li> <li>Survivor's basic pension: when an insured person dies, his/her dependent spouse who takes care of their child(ren) or his/her dependent child(ren), he/she/they receive JPY 1,004,600 per year (for spouse with one child).</li> </ul>
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		<p>but less than 10 years can claim a lump sum of payment within two years after his/her return. The maximum lump sum is for 36 months of payment, and amounts to JPY 295,380.</p> <ul style="list-style-type: none"> <li>• 20.42 percent of tax is deducted from this amount, and the person needs to ask a person with Japanese residence to file a document to a tax office to retrieve the deducted amount.</li> <li>• If a person continues to TTP-iii, he/she needs to apply for lump sum when he/she returns to their country of origin after TTP-ii and reapply after the completion of TTP-iii.</li> </ul>		<ul style="list-style-type: none"> <li>• Lump sum payment: A non-Japanese citizen who contributed to this insurance (without participating in the employee's pension insurance) at least six months but less than 10 years can claim a lump sum payment within two years after his/her return to their country of origin. The maximum lump sum is for 36 months payments.</li> <li>• If a person continues to TTP-iii, he/she needs to apply for lump sum when he/she returns to their country of origin after TTP-ii and reapply after the completion of TTP-iii.</li> </ul>
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<b>Contribution</b>	<ul style="list-style-type: none"> <li>Both employer and TITP workers contribute at a rate depending on prefecture and insurance organization of the employee's standard monthly remuneration (remuneration includes every payment such as salary, wage and any allowance which you receive from the employer in return for service performed).</li> </ul>	<ul style="list-style-type: none"> <li>Both the employer and TITP workers contribute 18.3 percent of the employee's standard monthly remuneration (remuneration includes every payment such as salary, wage and any allowance received from the employer in return for services performed).<sup>22</sup></li> </ul>	<ul style="list-style-type: none"> <li>TITP workers contribute based on his/her salary and prefecture/city of residence. On average, a person with a salary of JPY 2 million per year pays a contribution of JPY 12,010 per month (7.2 percent).<sup>23</sup></li> </ul>	<ul style="list-style-type: none"> <li>The participant (TITP worker) pays JPY 16,490 per month.<sup>24</sup></li> </ul>
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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> OTIT, "Technical Intern Trainee Handbook", p. 50, above.

## Annex 5: Access to Healthcare and Social Security Benefits for Migrants in Thailand

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### *Healthcare*

Thailand first adopted universal health coverage in 1997, and based on the current Thai Constitution,<sup>1</sup> all Thai nationals are insured for their health care.<sup>2</sup> Migrants' right to access health services in Thailand was explicitly articulated in the "Certificate of Patients' Rights" established by the Medical Practitioners Organization of Thailand in 1998. Article 2 states that, "medical patients have the right to receive medical treatment by a health practitioner without discrimination on the basis of their ethnicity, nationality, religion, society, status, sex, age or medical condition."<sup>3</sup>

The insurance schemes providing healthcare to migrants have varied over time, in accordance with applicable migrant registration policies/regularization schemes, their accompanying regulations at the time, as well as the politics of the day in Thailand.

After 2004, undocumented migrants from Cambodia, Lao PDR and Myanmar<sup>4</sup> were expected to follow the Nationality Verification (NV) process in order to regularize their status during windows of legal registration. During the NV process, migrants could acquire a temporary identity card from the Ministry of Interior and a work permit from the Ministry of Labor (MOL), while they then applied for a temporary passport or Certificate of Identity from their home country. During this process, migrants were obliged to buy annual health insurance under the Health Insurance Card Scheme (HICS) of the Ministry of Public Health (MOPH). The total costs were approximately USD 63 (THB 1900), including USD 20 (THB 600) for their medical exams and USD 43 (THB 1,300) for health insurance. An additional co-payment of USD 1 (THB 30) per visit was required when receiving care from health facilities, and thus it was commonly referred to as the "30 Baht scheme."<sup>5</sup> Over time, the cost of the card increased from USD 43 (THB 1,300) per year to USD 73 (THB 2,200) per year. In 2013, the MOPH also initiated an insurance scheme for migrants' dependent children under seven years old, charging USD 11 (THB 365) per year. The procedures changed in mid-2014 when the government launched its One Stop Service to facilitate the registration process for migrants. The price of a HICS card was reduced to USD 53 (THB 1,600) per year for an adult, but the insured were required to pay USD 106 (THB 3200) for two-year coverage.

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<sup>1</sup> Section 47 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) states that "A person shall have the right to receive public health services provided by the State – [and] [a]n indigent person shall have the right to receive public health services provided by the State free of charge as provided by law."

<sup>2</sup> In Thailand, there are three main health insurance schemes: (1) The Universal Coverage Scheme (UCS) for the general Thai population; (2) the Civil Servant Medical Benefit Scheme; and (3) the Social Security Scheme (SSS) for employees in the private sector (except domestic workers).

<sup>3</sup> See also World Health Organization, "The Kingdom of Thailand Health System Review," 2015, p. 47, accessible at [http://apps.searo.who.int/PDS\\_DOCS/B5410.pdf](http://apps.searo.who.int/PDS_DOCS/B5410.pdf). "...[P]atient rights include: the right to use essential health services without discrimination by social status, race, nationality, religion or others factors."

<sup>4</sup> The process for Myanmar did not commence official until 2009.

<sup>5</sup> The "30 baht scheme," requiring the co-payment of 30 THB, was used for Thai citizens from 2001-06 but now Thai citizens have access to free universal health care, under the UCS.

With the phasing out of previous migrant registration policies, currently there are two official health insurance schemes under which migrants can access health services. (1) The Social Security Scheme (SSS), which is open to migrants who meet the definition of an employee,<sup>6</sup> and who have regularized their immigration status, including those who have either completed the NV process or are “imported workers” or “MOU workers” who have migrated to Thailand through the formal recruitment process established by the bilateral MOUs with the countries of origin. (2) The Compulsory Migrant Health Insurance (CMHI), managed by the MOPH, which targets other migrants, either those subject to explicit exclusions such as seasonal agricultural workers or domestic workers, or those who do not meet the formal definition of an employee.

The current CMHI operates similarly to its predecessor. Migrants who report having any of the following conditions are not granted a work permit: active tuberculosis, obvious leprosy or filariasis, stage 3 syphilis, narcotic drug addiction, intestinal worms or malaria. Workers pay USD 53 (THB 1,600) for one year (plus health exam) upon registration, but also pay a small amount USD 1 (THB 30) per hospital visit. CMHI offers a fairly extensive healthcare benefits, but excludes treatment for chronic diseases, limits treatment to 180 days and child delivery costs to THB 13,000. Migrants may only seek treatment at the hospital where they took the health examination for the work permit and even though they may transfer to other provinces if employer moves, cannot transfer within province. Coverage for dependents is limited to children up to 7 years of age if they can provide a birth certificate and 13-digit ID.

### *Social Security*

Article 33 of the Social Security Act B.E. 2533 (1990) (SSA),<sup>7</sup> covers private employees and provides them with healthcare insurance benefits in cases of injury or disease.<sup>8</sup> Participation in SSS is mandatory for all employees as defined by the Labour Protection Act.<sup>9</sup> Additional benefits include, childbirth and maternity leave,<sup>10</sup> disability,<sup>11</sup> child allowance,<sup>12</sup> old-age pension,<sup>13</sup> death/

<sup>6</sup> The Royal Decree categorizing employees in accordance with Section 4 of Social Security Act, (B.E. 2560) (2017), specifically excludes employees in agricultural activities, the fisheries, forestry and livestock whose employers do not hire employees for the whole year; and their work is not related to other industry/sector.

<sup>7</sup> Article 33 remains in place in current amendment Social Security Act (No. 4), B.E. 2558 (2015)

<sup>8</sup> If establish 3 months of contribution within last 15 months, medical care is free of charge at registered hospitals (there are approximately 242 registered hospitals in Thailand) and includes prescribed medicines. Cash benefits can include 50 percent of wages, 90 days each time, with maximum of 180 days per year and maximum of 365 days for chronic cases.

<sup>9</sup> The definition under the Act is seemingly broad, defining an “employee” as a person who agrees to work for an employer in return for wages regardless of name. However Thai law, often relies on a distinction between “employment” vs. “contract labour” as defined under Sections 575 and 587 of the Civil and Commercial Code (No. 18), B.E. 2551 (2008). Several Labour Court decisions prescribe a test for employment based on the following factors: 1) does the employer have control over the worker 2) are there set hours of work 3) are there regular payments set. (4) if employee takes leave, does he/she need permission from employer. See Labour Court cases: 812/2548, 2548/2548, 2970/2548, 5345/2549, 8750/2550, หนังสือรวบรวมบรรยาย ภาคนี้ สมัยที่ 64 ปีการศึกษา 2554 เล่มที่ 1 จัดพิมพ์โดย สำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา

<sup>10</sup> If establish 7 months contribution within last 15 months, medical care coverage of up to THB 13,000 and 90 days benefits at 50 percent of salary (maximum 2 confinements for each insured person)

<sup>11</sup> If establish 3 months of contribution within last 15 months, eligible for reimbursement up to THB 4,000 per month and 50 percent of wages for the whole life.

<sup>12</sup> If establish 12 months contribution within last 36 months, eligible for a lump sum of THB 400 per month per child, but children must be 6 years old or younger and not more than 2 children at a time.

<sup>13</sup> To be eligible for Social Security retirement benefits, contributions must have been made to the fund for at least 180 months, although such contributions do not need to be consecutive. Employees who reach this threshold can receive benefits after they reach age 55. Currently the pension amounts to 20 percent of the average wage received over the last 60 months and

survivor benefits,<sup>14</sup> and unemployment insurance.<sup>15</sup> A non-Thai national who ceases to be insured and does not wish to continue residing in Thailand will be entitled to old-age compensation in the form of a lump sum payment if they have not contributed towards the scheme for 180 months and completed work contracts without an intention to continue working in Thailand.<sup>16</sup> This is a tripartite payment scheme that includes government, employers, and employees. Employers and employees each contribute 5 percent of an employee's salary (with a current maximum monthly contribution of THB 750 as of August 2019) and the government 2.75 percent. A voluntary social security system for workers not defined "as employees" or otherwise excluded from labour protection, is run by the Social Security Office pursuant to Article 40 of the SSA. However, this coverage was designed for Thais and not migrant workers and does not include medical treatment, which is covered by the UCS for Thai nationals. Depending on the selection of plans offered, voluntary participation in SSS could include disability benefits, funeral expenses and an old-age pension.

All workers classified as employees are also covered by the Workmen's Compensation Act, B.E. 2537, A.D. 1994, which sets forth the obligations of employers to pay compensation to an employee or the employee's representatives in the case of work-related injury, sickness, death or disappearance.<sup>17</sup> Employers are required to contribute to the Workmen's Compensation Fund (WCF), according to rates set by the MOL. No employee contribution is required. The contributions are generally assessed on the total wages of employees multiplied by the contribution rate of the specific type of business, with the rate typically ranging from 0.2-1.0 percent of wages based on the risk rating of the industrial establishment. In September 2015, the Thai Supreme Administrative Court held that the protection was intended to cover all employees without discrimination or categorization. However, the WCF still has exclusions for employers who are not legal entities and who do not carry out any business related work.<sup>18</sup>

In addition to actual expenses for medical treatment, the employee is entitled to monthly wages equivalent to 60 percent of his or her normal wages, for up to fifteen years depending on injury or disability.<sup>19</sup> The method to calculate monthly wages is made according to the MOL. If the employee is deceased, the employer has to pay funeral expenses,<sup>20</sup> and death benefits to the

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1.5 percent per additional 12 months of contributions above 180 months. Thailand has not entered into any Social Security mutual recognition agreements with any other states.

<sup>14</sup> If establish 1 month contribution within 6 months before death, entitled to a funeral grant of THB 40,000 and if contributed to a grant fund for survivors for more than 10 years, family is eligible to receive 5 month wages. For 3-9 years of contribution, eligible for 1.5 month wages.

<sup>15</sup> Technically eligible after 6 months contribution within 15 months before unemployment, but migrant workers are required to leave Thailand or find new employment within 15 days and benefits only began after 10 days.

<sup>16</sup> See MOL, "New Social Security Act Provides More Benefits for Insurers with Effect this 20 October, 2015, accessible at: <http://www.mol.go.th/en/content/new-social-security-act-provides-more-benefits-insurers-effect-20th-october>.

<sup>17</sup> Medical expenses include medical treatment as necessary, not exceeding THB 50,000 per time but if medical expenses exceed THB 500,000, employees may be reimbursed up to THB 1,000,000.

<sup>18</sup> MOL Announcement Regarding the size of business, local employers pay contributions, contribution rate deposit rate to assess and collect contributions, 19 March 2019 (in Thai), accessible at [http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/067/T\\_0019.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/067/T_0019.PDF)

<sup>19</sup> Temporary disability (60 percent of wages for 1 year), partial disability (60 percent of wages for 10 years), total disability (60 percent of wages for 15 years).

<sup>20</sup> Funeral grant is calculated as 100 times the highest minimum daily wage.

employee's family.<sup>21</sup> If the employer is up-to-date with respect to their contributions to the WCF, the fund bears the expenses, although the employer remains obliged to front the initial expense and then seek reimbursement from the fund.

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<sup>21</sup> 8 years of 60 percent of wages.

## Annex 6: List of Key Informant Interviewees

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DATE	INTERVIEWEE
<b>CAMBODIA</b>	
Sep 2018	Association of Cambodian Recruitment Agencies
Oct 2018	Department of Employment and Manpower, Ministry of Labour and Vocational Training
Feb and May 2019	Private recruitment agency
Jul 2019	Department of Employment and Manpower, Ministry of Labour and Vocational Training
<b>MYANMAR</b>	
Oct 2018	Myanmar Overseas Employment Agencies Federation; and a recruitment agency
Apr 2019	Two recruitment agencies
Aug 2019	U Win Shein, Director General, Department of Labour, Ministry of Labour, Immigration and Population
<b>VIETNAM</b>	
Oct 2018	International Labour Organisation, Hanoi Office
Oct 2018	International Organization on Migration, Hanoi Office
Oct 2018	Retired government official
Oct 2018	Information Exchange Vietnam- Japan Project
May 2019	Ben Tre Center for Employment Service, Department of Labour Invalid and Social Affairs
May 2019	Two recruitment agencies
July 2019	Two recruitment agencies



**Mekong Migration Network (MMN)**

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