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**Inter-state Cooperation on
Labour Migration:
Lessons learned from MOUs between
Thailand and neighbouring countries**

Pracha Vasuprasat

**Regional Office for Asia and the Pacific
July 2008**

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Pracha Vasuprasat

Abstract

This paper examines the experience of Thailand and her neighbouring countries, particularly Cambodia and Lao PDR, on bilateral employment agreements. It first gives a brief history and description of the economic and institutional environment under which these bilateral agreements – in the form of Memoranda of Understanding (MOUs) – were forged, proceeds to summarize the lessons learned from the implementation of the MOUs, and finally makes recommendations for future bilateral negotiations.

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Inter-state Cooperation on Labour Migration: Lessons learned from MOUs between Thailand and neighbouring countries

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"Migrant workers are an asset to every country where they bring their labour. Let us give them the dignity they deserve as human beings and the respect they deserve as workers"

Juan Somavia, Director General of the ILO.

I. Introduction

This paper examines the experience on bilateral labour programmes of Thailand and its neighbouring countries in the GMS, with special focus on Cambodia and Lao PDR. It describes the conditions leading to the bilateral cooperation, examines the contents of the MOUs, and assesses the implementation outcomes between Thailand and her neighbouring countries – Lao PDR, and Cambodia. Although the MOU is merely a statement of intent and is not legally binding, it carries certain commitments and is a social contract between the parties, at least from the perspective of migrants and those who are working to protect the rights of migrant workers.

A study conducted in 1997 by the Institute for Population and Social Research, Mahidol University showed the extent and complexity of the cross-border movement of people into Thailand in 1996. The study estimated that about 6.5 million tourists visited Thailand in 1996 and that there was a stock of 316,174 migrants who had legally been granted resident or work permits in the country. At the same period, there were 185,436 Thai migrant workers departing Thailand for jobs abroad, while the stock of Thai migrant workers abroad was estimated at 746,815.

The report also estimated the two categories of irregular migrant workers in 1996. It estimated that (a) approximately 100,000 overstayed their visa and engaged in unlawful employment; and that (b) about 970,903 illegally entered and worked in Thailand. The latter number included roughly 300,000 irregular migrants who registered with authorities for temporary work permits following the resolution of the Cabinet on 25 June 1996. In Thailand there are also two groups of people who have been residing in Thailand for a long time. The first group is the stateless people, who are generally the hill tribe or ethnic people who do not have any citizenship documents. In 1996, there were 348,421 people registered under this category. The second category is refugees, which was estimated at about 100,000, largely the minority people residing in Myanmar, who sometimes fled in and out between Thailand's and Myanmar's borders.

Wide economic disparity, labour market imbalances between the countries, and the undeveloped labour migration regimes have all inevitably contributed to cross-border labour movement, especially irregular migration. This trend will intensify in the future. Needless to say, there are potentially beneficial impacts from labour migration to both

labour-sending and labour-receiving countries, and it is in their common interest to establish an orderly process of migration flows, and to explore ways to capitalize on the positive aspects of labour migration while designing measures to avoid its negative effects.

The International Symposium on Migration "Towards Regional Cooperation on Irregular/Undocumented Migration" 21 - 23 April 1999 hosted by the Government of Thailand with the participation of high-level representatives from 19 countries in Asia and the Pacific, including the Special Administrative Region of China, underscored the importance for sound management of migration and tackling of irregular migration and trafficking in humans. It is an undertaking that requires the concerted effort of the countries concerned, whether bilaterally, regionally, or otherwise, based on principles of equality, mutual understanding and respect of human rights.

To this effect, the "Bangkok Declaration on Irregular Migration" called for participating countries in the region to designate and strengthen a national focal point to serve as a mechanism for bilateral, regional and/or multilateral consultations and cooperation on questions of international migration. The Declaration encouraged the countries of origin, transit, and destination to strengthen their channels of dialogue at appropriate levels, with a view to exchanging information and promoting cooperation for resolving the problem of illegal migration and trafficking in human beings. Hence, the challenge for the governments is to develop, individually and collectively, strategies to address the root causes of irregular migration. Given the international nature of the migration process, the international co-operation among states is essential in developing coherent international policies and practices. It may be concluded that the Bangkok Declaration on 23 April 1999 has paved the way for countries in the Greater Mekong Sub-region to enter into a bilateral migration programme in the form of Memoranda of Understanding (MOU).

The MOU signifies the co-management of migration between governments, which should lead to a reduction in recruitment costs, shortening of recruitment time, and the protection of migrants from exploitative practices. The bilateral labour cooperation should also augment the roles of public employment agencies, and ensure safer, more cost effective labour migration through adherence to international Conventions for protection of migrant workers.

Over time the movement of migrant workers from Cambodia, Lao PDR, and Myanmar has spread all over the different regions of Thailand, which has caused the authorities to introduce measures to curb, control, and account for the number of migrant workers through a series of ad hoc amnesty and registration programmes started since 1993. The most dramatic change was in 2004 when the government introduced the concerted regularization programme, resulting in about 1.3 million migrants coming forward and registering with the authorities. Of these, 849,525 obtained one-year work permit. The regularization in 2004 has set the stage for bilateral cooperation under the MOUs between labour sending and receiving countries to embark on conversion of those registered migrants through verification of nationality and issuance of official travel documents. This may be the first of its kind when Thailand invites and facilitates the sending countries (Cambodia and Lao PDR) to take part in the legalization process in its

territory. The potential for success and effectiveness of such an innovative scheme will be assessed in a later section.

II. Contents of MOUs between Thailand and Lao PDR, Cambodia and Myanmar

A Memorandum of Understanding (MOU) is a non-binding form of bilateral cooperation. It is a document describing the intentions of the concerned parties, expressing a desire to pursue a common line of action, rather than a legal commitment. Generally, the bilateral cooperation on employment programme is confined to four labour movement schemes given below:

Labour movement scheme	Type of migrant
Temporary work	Low skilled and semi-skilled work in factory, domestic work, plantation. They tend to work for at least 2 to 5 years. They may have some career expectations, depending on work tenure and skills gained from working.
Seasonal work	Low or unskilled traditional labour working for a short period of time (3 – 6 months, or intermittently). These migrants work on the segmented labour market in receiving country as secondary workers in agriculture and the service sectors (hotel, retail shops, and restaurants). They try to earn as much money as possible during the shortest time possible in any activity without career expectations.
Trainees and project-tied workers	Skilled or semi-skilled labour migrants engaged in special projects or in factories. They are also driven by the ambition of becoming properly skilled, and acquire the culture of work during the period they work abroad.
Frontier workers – short range migration	A natural labour market along the national borders. The short-term/daily cross-border migration is considered as the 'natural' form of cross-border labour movement. These workers are normally residing in the border areas, and may also engage in seasonal work along the border vicinity apart from daily work.

The MOU on Cooperation in the Employment of Workers had been signed between the Government of Thailand and the Government of Lao PDR in 2002, and between the Government of Thailand and the Governments of Cambodia and Myanmar in 2003. The MOUs were established as a channel for a more systematic approach to managing the flow of migrant workers between these countries, as well as a means to regularize the irregular migrants already residing in Thailand. Specifically, the MOUs include statements of mutual cooperation regarding administrative procedures for recruitment, protection, repatriation, and actions against illegal border crossing and employment of migrant workers. Though, the MOUs were signed a few years ago, the actual

implementation entailing regularization, recruitment and placement of workers has been sluggishly moving.

The following sections provide a brief description of the contents and key elements of the MOUs such as objectives and scope, administrative procedures and consultative mechanisms, return and repatriation, and measures against illegal border crossing and employment. A table presenting the comparison on key components of the MOUs between the three countries is given in Annex 1.

a) Objectives/Scope

The preamble of the MOUs, except the one with Myanmar, has specifically made reference to the International Symposium on Migration "Towards Regional Cooperation on Irregular/Undocumented Migration" 21 - 23 April 1999 and the "Bangkok Declaration on Irregular Migration". The scope and objectives of the MOUs are very similar among the three countries, covering procedures for recruitment and employment of workers, conditions for repatriation of workers, protection of the rights of migrant workers, and prevention and combating of illegal recruitment, transport, border-crossing and employment of workers. Looking at the objectives of the MOUs, it can be inferred that they rationalize the need to formalize the commitments of the concerned countries to ensure that movement of labour across the borders follows the established rules and pre-agreed terms and conditions.

Although the MOU is aimed at promoting the orderly flow of migrants, the actual undertaking seems to focus on legalizing the irregular migrants registered with the Thai government in 2004. This requires a joint effort of the origin and the host countries to verify the nationality of migrants, to issue the Certificate of Identity or Temporary Passport, to process the travel documents, and to approve resident and work permits. These are arduous, time consuming, and costly processes, which the migrants themselves and their employers find burdensome. As a result, many migrant workers become indebted and inadvertently locked up with their employers to work out their debt.

The MOUs do not explicitly link labour migration to development or poverty reduction. Instead, they appear to serve merely as a means for the destination country to meet labour needs and to combat illegal migration. A sound bilateral labour agreement should be used as an effective instrument to:

- 1) Promote economic development in labour sending countries, e.g. selecting rural workers from the depressed regions;
- 2) Set mutually beneficial terms and conditions of employment, and create a more equitable basis for cooperation between origin and destination countries, e.g. mutual recognition of skills, building capacity for origin country to ensure appropriate training for migrant workers;
- 3) Establish safeguards against abuse of workers' rights by building in welfare and labour standards, e.g. establish mechanisms and channels (social/religious network) by which workers can lodge their complaints;

- 4) Lower the costs of migration and remittances by having government and other agencies arrange with financial institutions less costly financial packages for those working abroad.

b) Administrative Procedures and Consultative Mechanism

The MOUs have spelled out a coordination mechanism to review the implementation progress, decide on future actions, and agree on technical cooperation. The regular Senior Officials Meeting (SOM) has been established and hosted on reciprocal basis between the parties. Meetings at technical and informal levels have also been organized to agree on specific issues and joint actions between the countries. Thus far, the major subjects discussed at the SOM are the regularization of 1.3 million irregular migrant workers registered with the Thai Government in 2004, the admission of temporary migrant workers, and the management of cross-border and seasonal employment. In this respect, the MOUs of Cambodia and Myanmar specifically refer to the establishment of procedures to integrate irregular migrants, prior to the entry into force of the MOU. In reality, it can be said that the primary aim of the MOUs is to regularize the irregular migrants, which is the dominant agenda in a series of Senior Officials Meetings. This issue will be further discussed in a later section.

The MOUs state that the recruitment and placement of migrant workers required prior permission from authorities in both countries, which implies a combination of the regulated private and the state-managed foreign employment systems. Under the regulated system, the origin countries would establish laws and regulation pertaining to recruitment practices, minimum standards of employment, and emigration clearance for the workers. In this system, the private recruitment agency will be the key player in the recruitment and placement process. The system used in Cambodia would fall under this category. On the other hand, the state-managed system requires the active involvement of state institutions in influencing migration flows, processes and outcomes. The state sets up state enterprises to recruit and place workers abroad. It also engages in promoting foreign employment policy and negotiating the agreements with receiving countries. The foreign employment and management system in Lao PDR and Myanmar would likely fall under this category.

Efforts to manage the migratory flows will require the establishment of a specialized agency to ensure the fulfillment of foreign employment policy objectives and the spirit of the bilateral cooperation. Many long-experienced labour sending countries have set up a specialized unit/department/ministry to exclusively manage overseas employment, e.g. Bangladesh, Indonesia, Philippines, Sri Lanka, and Thailand. On the other hand, in Lao PDR and Cambodia, foreign employment administration is only an additional function to the departments or ministries responsible for local employment promotion. These departments are already operating with limited capacity and resources are spread out too thinly in the face of additional mandates.

The MOUs spell out the administrative procedures for sending and admitting workers, such as the exchange of information on job opportunities, required qualifications, working conditions and wages offered by employers, and particulars of

prospective/recruited migrants as to their age, education, work experience, and address. It also mentions the administrative requirements with respect to visa, work permit, health insurance, taxes, employment contract, and contribution to saving fund. The contribution to a savings fund of 15 percent of wage/salary is a controversial component and is seen as collateral to ensure that migrants would return to their origin country after completion of their contracts. Migrant workers who fail to return to their home country will have their compulsory savings forfeited by the authority of the labour receiving country. Another shadowy provision in the MOU is that the host government may use these funds to cover the costs of repatriation of other irregular migrants.

Income tax is another contentious element in the MOU. In principle, this provision would obligate the migrant workers to pay double income taxes, one to the host country, which is normally deducted by the employer, and another to the government of their home countries when they return back to their own countries.

As part of administrative measures, labour sending countries have to maintain a database/list of workers recruited under the MOU and ensure that they return to their country of origin upon expiration of their work contract – a maximum of four years. Labour sending countries face difficulty in achieving this condition, due mainly to lack of capacity and resources to maintain the database system, despite technical assistance being offered by various donors, and the counterpart labour receiving countries. Usually, setting up the database system is imposed in the MOU by the labour receiving country. Hence, there is a likelihood that the labour sending countries may have to operate more than one database system for different MOU counterparts, which would further strain their limited capacity to effectively manage labour migration.

c) Return, Repatriation, and Wage Deductions

For labour receiving countries, providing their migrants incentives to strengthen their ties to their destination countries would likely encourage more voluntary return. These include easing re-entry into the destination countries after a visit home, i.e. not insisting on a new visa after each visit home. Making retirement pension and health benefits portable can also encourage voluntary return. However, the origin countries often do not have adequate institutional capacity to live up to their commitment to integrate returning migrants into their underdeveloped labour market.

The MOUs stipulate the terms of employment for two years, but is extendable up to another two years. The MOUs imply the Rotation Principle which limits the time foreign workers can stay in the host country up to the maximum of four years, following which they have to return to their home countries and are not allowed to work in the host country for three years. Under this principle, the new workers are supposed to replace the previous workers whose terms of employment expired. The main argument in favor of this provision is that most of the migrants are from the unskilled category and could be easily replaced by newly recruited workers. In addition, it is believed this will prevent the old workers from entrenchment in the host country and from seeking permanent residency.

In Thailand, a large number of migrants from Myanmar have already settled for over a decade – many accompanied by family members. This seemingly permanent settlement serves the interest of employers, who want to keep the experienced workers, and the migrant themselves who increasingly come to Thailand to take advantage of better income opportunities and public services (healthcare) for the long term. In some instances, migrants simply use their home country as a place for retirement after toiling aboard for many years.

In order to ensure that workers will return to their home countries after completion of their terms of employment, the MOUs have established clauses allowing a deduction from migrants' salary of 15 percent as compulsory savings. For Lao PDR, the 15 percent contribution will be used mainly for deportation of migrants. It should be noted that the deduction for compulsory saving seems to violate the provision in the Labour Protection Act of 1998 which states that employers shall not make any deductions from wage and other earnings of the employee, except for income tax, dues to trade unions, debt owed to saving cooperatives, provident fund contribution, and deposit against negligent damages to employers. The Act further stipulates that each deduction shall not exceed 10 percent and, in the aggregate, one-fifth of total wages and earnings.

However, the Thai government has recently amended the Alien Employment Act of 2008 and introduced the so-called repatriation fund, which is collected from a deduction from the wage of migrant workers. The main objectives of the fund are to serve as forced saving for the workers, to ensure voluntary return after expiration of work contract, and to cover the repatriation costs for those who overstayed their work permit as well as for the irregular migrants. This provision in the Thai law is in contravention of the provisions in ILO Convention No. 95 on Protection of Wages Convention, 1949, which states that “deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award, and workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made”. The Convention also prohibits any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter).

In Cambodia, migrant workers have to sign a consent letter allowing the employers in the receiving country to recoup recruitment costs advanced by them through the agency, by deducting from the monthly salary of the migrants an average rate of about 20 percent (a calculation based on a basic salary of Baht 5,500 a month) within 12 months. Given the high recruitment costs being paid by the workers, not to mention the likelihood that the employer may pass on to them the recently introduced levy for the employment of migrant workers, the imposition of forced saving would likely encourage more migrants to work under irregular status, including those who were legally recruited through the formal channels.

The provisions on the rights of migrant workers have been mentioned in the MOU. Among these are the following: the right to temporary return to their country of origin; entitlement to legal protection; non-discriminatory treatment with respect to gender, race and religion, especially on wages and other benefits; and settlement of disputes based on laws and regulations in the receiving country. Ironically, a number of studies and cases point to the fact that migrant workers, including the legal ones often find it difficult to access public and judicial services. They often work under substandard conditions, sometimes in slave-like confinement, obtain wage/salary lower than national workers, and have their identity and travel documents seized by the employer. Most importantly, there is no channel for them to file complaints against violation of their rights, and few interpreters are provided to bridge the language barrier. The application of the labour protection and workmen compensation Acts is also slack.

A clause in Article 9 of the MOU with Lao PDR stipulating the expiration of the work permit once the contract of the worker has been terminated is a controversial provision. It could lead employers to terminate the employment contract of migrants citing the lack of work competency, which could be ground for deportation. This clause has been omitted in the MOUs with Cambodia and Myanmar. In principle, the work permit and the work contract should be two separate issues, and ending the work contract should not nullify the work permit. Migrant workers should be allowed to freely change employers after working for a certain period, say, one year. Alternatively, they may be allowed a buyout for a new employer, simply through paying for a new work permit. Regrettably, there is no clear provision and negotiation on this issue at the regular Senior Officials Meeting on the MOU.

Another issue relating to the protection of the rights of migrants is that legislations in both origin and host countries do not cover, or provide very limited protection to, the rights and welfare of workers in agriculture and fishing activities, and domestic helpers.

d) Measures against Illegal Employment

A few articles in the MOUs have been devoted to actions required by both labour sending and receiving countries, including the exchange of information, to prevent and suppress illegal border crossing, illegal employment of workers and trafficking in persons. However, hefty recruitment fees, long processing of travel documents, ease in border crossing, and the lure of better income in the receiving country have made the recruitment through MOU unpopular, thus contributing to a rising number of irregular migration. The restrictive migration regime and the poor legal enforcement against the illegal smuggling and employment of undocumented migrants have exacerbated the situation. One of the major causes of migrant vulnerability is the requirement that migrants can only work with a specific employer and in the workplace specified in their work permit. Furthermore, the indebtedness among migrant workers coupled with the deduction of recruitment expenses from their earnings have compelled many of them to run away from employers and resort to illegal employment.

To date, what a receiving country like Thailand has been undertaking is to step up its border control and make massive arrests of migrants who are not eligible to work in the country. These workers will have their profile recorded and they will be deported at particular check points of the origin country. In most cases, they will be handed over to the immigration authority of the receiving country, which may or may not take further legal action against them for illegal border crossing. In some instance, the deported migrants will be detained in shelters where they wait for family members to take them back. In Lao PDR, those who travel abroad without proper travel documents and without sanction by the village authority have their family members, normally parents or spouse, subjected to a fine of Kip 300,000 (\$30) per year, which the authority calls a tax. Similarly, in Burma, the deported migrants may be imprisoned for 2-3 months on account of unlawfully leaving the country. It may be concluded that measures taken by both the receiving and the origin countries have proven to be ineffective in deterring the growing number of irregular migrants. A more flexible admission programme to manage labour migration should be designed to accommodate the true nature of human behavior and the circumstances in the labour market.

III. Overall Assessment of MOU Implementation

The MOUs are supposed to provide framework for bilateral cooperation based on shared responsibility for orderly migration flows. Looking at the minutes of the latest Senior Officials Meeting and technical group meeting, it can be seen that the main trust of the MOUs is to regularize migrant workers registered with the Thai Government in 2004. The process was still going on in 2008 with limited success, and a large number of previously registered migrants have slipped out from the regularization process and became irregular migrants. Many have been deported and some have already returned back to their home countries.

Although the MOUs were signed a few years ago, there is scant information as to the success of its implementation. The following sections will discuss some indicators such as (1) regularization of irregular migrant workers; (2) migrant workers deployed under new regime vis-à-vis the demand for labour placed by receiving country; (3) recruitment costs paid by the workers; (4) trends on clandestine labour migration; (5) conflict between workers, employers, and recruitment agencies on working conditions and recruitment practices; (6) violations of workers rights in the country of employment; and (7) MOU consultative mechanism.

1) Regularization of irregular migrant workers:

For years, national security and economic stability were the main rationales behind the regularization programme for undocumented migrant workers in Thailand. The Thai government introduced several ad hoc measures ranging from the regularization of irregular migrants first introduced in 1992, the threat of deportation, non-renewal of work permit, and massive crackdowns on employment and smuggling of irregular migrant workers. In 1992, there were 101,854 migrants from 10 border provinces who showed up for the first registration and were provided with temporary identity cards (purple color).

In 2003, the government adopted the following measures to address the influx of irregular migrants:

- a) Confining the employment of migrant workers in some economic sectors where the local workers have no interest;
- b) Registering and maintaining personal records of migrants;
- c) Prohibiting family unification;
- d) Setting appropriate wages for migrants;
- e) Planning effective repatriation measure; and
- f) Promoting special economic zones at the border areas.

Realizing that acute labour shortage may further weaken the economic sectors that depend on them, and despite the regional financial crisis that began in Thailand in 1997, the government implemented a series of regularization exercises that covered more provinces and industries/sectors from 1993 to 2004.

The regularization process has been established following the Cabinet resolution to give partial leeway to irregular migrants to register with the authorities. From the legal viewpoint, this is not tantamount to an amnesty programme as there is no such provision in the Immigration and Alien Employment Acts. In this respect, irregular migrant workers will have quasi-legal status and are, in principle, still pending for deportation, unless they obtain legal travel document (Temporary Passport or Certificate of Identity) from their government through nationality verification. The regularization programme covers only migrant workers from Myanmar, Lao PDR, and Cambodia, who form the majority of irregular migrant workers in Thailand. The ad hoc policy has initially succeeded in enticing many of the migrant workers to turn up to renew their registration for employment, but over time the workers have lost faith in the programme, and a large number have not renewed their work permits.

The signing of MOUs on employment between labour sending and labour receiving countries connote the policy intention of partnering to address irregular labour migration. Although regularization of irregular migrants has not been clearly spelled out in the MOUs, it seems that the partner countries have placed a lot of effort in legalization. A total of 1,284,920 migrants turned up for the 2004 registration, of which 849,525 were given one-year work permits. Pending legalization, these migrants were granted quasi-legal status as temporary migrant workers pending repatriation, under Article 17 of the Immigration Act 1979.

As a means to prop up economic sectors that depend on migrant workers, the Thai government has adopted a short-term policy of extending the annual re-registration of quasi-legal migrant workers. In 2007, the government authorised the 668,576 remaining migrant workers, whose work permits expired in February 2007 (208,562) and June 2007 (460,014), to extend their work permits until end of February 2008 and June 2008, respectively. These workers have to bear the expenses such as medical check up (Baht 600), health insurance (Baht 1,300), and one-year work permit (Baht 1,900), totaling Baht 3,800. However, because of the restrictive policy towards changing employers and

geographic mobility, including the complex and costly processes, the number of migrant workers who came forward to renew their registration for extension of work permits declined over time from 849,525 in 2004 to 532,482 in 2007 (number should be much lower than this if 208,562 new regularized migrants were not included), which has inadvertently turned the non-registered migrants (317,043) into irregular status.

In an attempt to convert irregular migrant workers to legal status, the governments of the receiving and sending countries (Cambodia, Lao PDR and Thailand) have agreed to jointly embark on a regularization process by providing workers who have passed nationality verification a document equivalent to a passport – the Certificate of Identity (IC) for Cambodia, and the Temporary Passport (TP) for Lao PDR. The combined cost of the legalization and the extension of work permit is about Baht 7,300, which is equivalent to about two-month basic monthly minimum wage (based on 26 working days). The employment status of migrant workers who pass through the legalization process will fall under the MOU on employment. However, a large number of them do not understand the conditions stipulated on the temporary travel document (CI/TP), which requires them to report and pay the exit fee of Baht 1,000 to the Immigration Department before leaving the country in order to maintain the re-entry right. Those who fail to do so have their work permits revoked and have to restart the whole recruitment process from the origin country. Given the cumbersome process, a number of migrants have opted for illegal exit and re-entry. Table 1 below provides the results of renew registration and regularization.

Table 1: Joint verification of migrant workers, 2007

Categories	Burma	Lao	Cambodia	Total
Target migrant workers	568,878	51,336	48,362	668,576
Work-permit extension	486,060 (85.44%)	21,639 (42.15%)	24,783 (51.24%)	532,482 (79.64%)
Nationality verification	-*	14,165 (27.60%)	11,094 (22.93%)	25,259 (3.79%)
Failed verification	-	725 (1.41%)	24 (0.05%)	749 (0.11%)
No show for verification	82,818 (14.56%)	14,807 (28.84%)	12,461 (25.78%)	110,086 (16.46%)

* The nationality verification could not be established with the government of Myanmar, due to complex ethnic conflicts in the origin country. In addition, the Myanmar authority wants to have the legalization process carried out on its soil across the border, not in Thailand as in the case of Lao and Cambodia, which the non-Burman ethnic groups do not feel comfortable with.

Source: Report on monitoring and evaluation of Management of Labour Migration from Myanmar, Lao, and Cambodia in accordance with resolution of Cabinet in 2007, Ministry of Labour, Thailand (in Thai).

The stable political situation in Cambodia and Lao and the ease of crossing borders between these countries and Thailand have encouraged migrants to temporarily travel

back and forth, but this may not be the case for migrant workers from Myanmar. This could explain the relatively lower number of migrant workers from Lao PDR (42 percent) and Cambodia (51 percent) who turn up to apply for extension of their work permits, compared with Myanmar (85 percent).

The above table also points to the unsuccessful joint legalization process in Thailand, as only about 28 percent of migrant workers from Lao PDR, and 23 percent from Cambodia obtained their travel documents. Ironically, many of them later became irregular migrant workers again, owing to the restrictive and complex conditions stipulated in their travel documents and limits to their mobility.

Thus far, the Thai government has not been able contain the influx of irregular migrant workers, nor is it able to account for their. Since many former regularized migrant workers have their status turned into irregular, this situation is likely to compel the authorities to embark on another mass regularization in the future.

2) Recruitment under framework of MOUs:

Given the scope of labour migration flows and the likelihood that these will intensify in the future, combined with their potentially beneficial impact on the labour sending and receiving countries, it is in the interest of Governments to coordinate to establish an organized process of migration flows and to explore ways to capitalize on its positive aspects. However, it has taken quite sometime for the origin and destination countries to agree on the recruitment formalities after signing the MOUs. As pointed out earlier, the management of foreign employment in Myanmar and Lao PDR can be classified as state-managed regimes in which the governments strongly intervened to regulate the recruitment process. In this regime, foreign employment has to be processed through authorized agencies, while those who depart on their own or through direct arrangements with employers are considered illegal.

From late 2005, the MOUs on recruitment have been formally launched, following which Thailand placed demand for 51,105 workers from Lao PDR and 17,470 from Cambodia. In response, Lao PDR and Cambodia were able to provide only 3,418 and 570 workers, representing 7 and 3 percent of the targets, respectively. Between 2006 and August 2007, the demand for admission of foreign workers increased to 60,890 for Lao PDR and 36,733 for Cambodia, which far exceeded the ability of these countries to furnish. The former was only able to provide 3,939 and the latter 5,282 workers. Details on labour demand, quota request, and actual approved admissions are shown in Table 2.

Table 2: Demand for migrant workers and approved admission

Migrant workers by region	Demand for labour ¹			Request for admission ²			Approved for admission ³		
	Lao	Cambodia	Total	Lao	Cambodia	Total	Lao	Cambodia	Total
Bangkok	14,029	14,559	28,588	795	2,848	3,643	577	1,481	2,058
Central	11,619	7,627	19,246	1,848	1,868	3,716	583	987	1,570
Eastern	4,508	2,388	6,896	309	938	1,247	101	530	631
Western	9,534	2,080	11,614	1,339	122	1,461	432	28	460
Northern	143	42	185	2	0	2	2	0	2
North-eastern	7,849	885	8,734	1,093	293	1,386	774	112	886
Southern	13,208	9,152	22,360	2,478	3,449	5,927	1,470	2,144	3,614
Total	60,890	36,733	97,623	7,864	9,518	17,382	3,939	5,282	9,221

1, 2 Data as of July 2007

3 Data as of August 2007

Source: Report on monitoring and evaluation of Management of Labour Migration from Myanmar, Lao, and Cambodia in accordance with resolution of Cabinet in 2007, Ministry of Labour, Thailand (in Thai).

The table shows that Lao workers were in greater demand than workers from Cambodia. This is due to cultural and language affinity with Thailand. Overall, during late 2005 to August 2007, the number of actual admissions was only 15 percent of labour demand, or about 53 percent of official requests for admission. Migrant workers recruited from Lao PDR accounted for only 6 percent of total demand compared with 14 percent from Cambodia. It is believed that the labour market in Lao PDR is quite tight given that it has a labour force of only 2.7 million with an unemployment rate of 1.4 percent in 2005. It is not very clear how the Thai employers managed to cope with their unmet demand, and there is good reason to believe that they may have turned to irregular migrants, both old and new arrivals. In some cases, the employers were found to hire both legal and irregular migrants to work side by side in the same establishment. When being inspected by the authorities, the employers would hide the irregular migrants in a designated safe-place and show the legal ones to the officials.

It should be noted that the demand for workers placed by the Thai employers is the “anticipated demand”, not the “actual demand”. The recruitment agencies are expected to deploy the workers by batches following the agreed intervals determined by the employers and the admission quota approved by the government. Still, the agencies find it difficult to meet these demands due to the following reasons:

- a) Lack of experience in recruitment management;
- b) Inadequate publicity and information on job opportunity abroad and the recruitment process;
- c) Agencies do not have presence in the local areas to identify and screen the prospective workers from the villages. Rather, they depend on local authorities or brokers to assist in scouring for prospective migrants, who may not necessarily be the right persons for jobs abroad;
- d) Financial burden placed on employers and agencies to advance the costs of processing the recruitment of migrants;

- e) Long and complex procedures in processing/obtaining documents within and between host and origin countries, especially identity verification, passport, and other documents;
- f) Absence of a legitimate placement agency in the receiving country to assist employers in the placement process;
- g) Inadequate capacity of government administrations to provide support;
- h) Restrictive regulations in the labour sending countries, e.g. Lao PDR prohibits the recruitment of migrants to work as domestic helpers, and deployment has to be done through locally authorized agencies;
- i) A short supply of prospective migrant workers, as many have already sneaked into and worked in Thailand; and
- j) High and unaffordable costs of recruitment, making legal recruitment far less attractive than through the informal network.

3) **Recruitment expenses:**

In Cambodia, sub-decree 57, Article 3, in principle requires the prospective migrant workers to submit their job application to the Ministry of Labour and Vocational Training for review of their qualifications for the jobs abroad. In practice, the involvement of the Ministry in the screening of all workers seems a cumbersome undertaking. In addition, the agencies have to be licensed to deploy workers for specific countries. There are about 13 agencies authorized to engage in the recruitment of workers bound for Thailand and Malaysia. The workers have to sign two contracts, one with the recruitment agency covering the services rendered by the agency, including the consent letter allowing employers in the receiving country to deduct the cost of recruitment services advanced by the employer through agencies. The second contract is the bilingual employment contract between the worker and the employer in Thailand, which specifies the date of the contractual agreement in Phnom Penh, the name and particulars of the worker, job description, duration of contract (2 years), probation period, working conditions (working hours/wage/holiday), provision of food, accommodation, medical services, travel, and repatriation. The daily wage rate and the minimum monthly wage have been spelled out in the contract, e.g. Baht 144 per day, and Baht 144 times 26 days, respectively. Because most of the migrant workers are illiterate, it is not clear to what extent they fully understand or are aware of the terms in these two contracts. It is also not clear whether the provision of food and accommodation is free or to be charged against the workers.

There is no specific guideline on the recruitment and placement fee in Cambodia. Normally the migrants pay the fee, which ranges from \$480 to \$709. The costs cover placement services, pre-departure training, medical examination and inoculation, passport, visa fee, and travel. Most of the hidden costs are for documentation processing, especially when workers do not possess an identity card, which is necessary to apply for a passport. Generally, the passport cost is about \$20 for migrant workers, while in many instances migrants have to pay \$120 or more for securing a passport under the fast track mode which takes about a week, compared with normal mode which takes about 2-3 months. It has been reported that some agencies charge their clients recruitment expenses as high as Baht 23,000 (US\$730) or more. As a result, the cost for obtaining work abroad through

formal channel is much higher than the cost through the smuggling network from Cambodia to Thailand, which is about Baht 3,000 (US\$97). The cost of daily border pass between Cambodia and Thailand is only Baht 10 (\$0.3). Many migrants find this a more convenient route as they do not have to pay for high recruitment costs and to wait a long time to travel just across the border. In addition, this also allows them to freely change their employers. But these smuggled migrants are highly vulnerable to exploitation and being forced to work in slave-like conditions, such as in deep-sea fishing boat, drug trafficking, and illegal activities like begging – young migrant children in particular.

In Lao PDR, there are 9 foreign employment agencies authorized to recruit Lao migrant workers, out of which 2 are state enterprises. Not all of the agencies are active. There is no uniform standard employment contract used by the agencies. According to the Prime Minister's Decree No. 68/PMO, the service fee to be charged by the agencies is set at 15 percent of the migrants' monthly base salary/wage over the period of their employment abroad. It is not very clear whether this amount is additional charge apart from recruitment expenses. However, the policy intention of the 15 percent charge is to cover all the expenses associated with the recruitment process. The Lao Prime Minister Decree on Migration stipulates that the agencies have to advance the cost of recruitment of Lao workers, which is approximately Baht 15,500 (\$492), while the UNDP's National Human Development Report 2006 indicated Baht 17,767 (\$564). The Thai employers would normally advance 50 percent of the cost to the agencies in Lao as initial expenses and another 50 percent after the workers have arrived at the workplace in Thailand. It is estimated that the actual amount being charged to migrants could be more or the same level as that paid by Cambodian migrants. This amount will later be recouped by employers in Thailand through installment deductions from the salaries of the migrant workers. According to some agencies, they would earn a profit of Baht 5,000 – 6,000 per migrant. This arrangement is similar to that of Cambodia when the workers are not obliged to invest for migration upfront. As there is no guidance from the labour sending authority, the costs of migration vary among agencies.

The structure of estimated recruitment expenses in Cambodia and Lao PDR is illustrated in Table 3 below.

Table 3: Estimated recruitment costs (at exchange rate US\$ 1 : 31.5 Baht)

Expenditure items	Cambodia	Lao PDR#	
		Agency in Lao	Agency in Thai
Passport	150	63	63
Medical check up	10	19	19
Visa fee (two years)	63	63	63
Exit fee and emergency insurance (Lao)	5	20	17
Training	15	14	42
Service charge paid to agency	70	114	302
Other expenses (documentation and local broker fee, etc)	220	-	111
Cost borne in origin countries	\$533	\$293	\$617
Work permit (two years)	121	121	121
Medical check up	19	19	19
Travel from origin to destination	26	26	26
Other expenses	10	10	-
Cost borne in destination country	\$176	\$176	\$166
Total cost in US dollars	\$709	\$469	\$783

*Normally, the workers are obliged to use the fast track.

Based on interview of agencies in Lao PDR and in Thailand

Sources: (1) Review of Labour Migration Management Institutions, Policies and Legal Framework in Cambodia, 2008

(2) Review of Labour Migration Policies, Strategies, Management Institutions and Immigration Pressure in Thailand, 2007

It can be reasonably estimated that the recruitment expenses borne by migrant workers are between \$492 - \$783 for Lao PDR and \$480 - \$709 for Cambodia, depending on whether the workers possess any personal documents required for passport application. The prospective migrant workers without documents such as personal identity card and family registration books are obliged to pay higher costs for obtaining these documents. In Lao PDR, prospective migrants need to go through a labyrinth of local administrations, from village, district, province, to the capital city. In order to facilitate the approval of the official papers, they need to oil the process, which is normally arranged by the recruitment agencies, which often charge a facilitation fee. Hence, the unknown expenses in the origin countries tend to be very high, and if added to service charges, will form the highest portion of the total recruitment cost, i.e. 41 percent for Cambodia, and 53 percent for Lao PDR (based on information given by their counterpart agency in Thailand).

In comparison with the basic minimum wage of Baht 144 (\$4.6) a day in Thailand and assuming 26 working days a month, the average recruitment expenses borne by the migrants in Cambodia (\$709) and in Lao PDR (\$783) would be equivalent to 6 months and 6.5 months of the basic minimum wage, respectively. Thus, migrant workers are compelled to work overtime for long hours so as to earn enough income to repay debt from recruitment, to cover daily expenses, and to save for remittances. Without overtime, they would be hard-pressed to live with the monthly basic wage after deducting (about Baht 1,300 to 1,800) the recruitment expenses advanced by the employers in Thailand. Many workers who could not earn enough to pay their debts have decided to abandon

their work contracts and switch to new employers or to return back to their home country. Migrants who switch to a new employer will fall into an irregular status (change of employers or geographic mobility without official authorization), while those who return home would be heavily indebted to the recruitment agency in the origin country.

The high cost coupled with the long recruitment process has encouraged the majority of migrants to opt for the service of smugglers. In Lao PDR, the local migrant network would charge migrants a smuggling fee of about Baht 2,000 to 3,000 (US\$58-\$86), or directly charge employers in Thailand the equivalent of one-month salary of the migrant. This type of arrangement is similar to that which occurs in Cambodia. A large gap between the recruitment expenses under the MOU and the informal channel could be a major factor tempting the prospective migrants to opt for illegally entry to Thailand for employment, especially when they do not see any added benefits from being deployed through the official channel. Another reason for migrants to shun the formal recruitment system is that the value of services provided by the agency may not be commensurate with the costs they have to pay, especially the long waiting period, and the poor protection of their rights when they encounter problem in the host country.

It should be noted that complexity in the processing of documents and the lack of support services at the provincial level have greatly contributed to the high costs of recruitment. For example, a migrant from the rural area in Lao PDR undergoes several interviews – from the village authority up to the district and the provincial levels – to ascertain his/her identity, following which the documents will be passed onto various units in the Capital city for issuance of passport and for exit approval. A similar situation could be true in Cambodia. At the receiving country, it also takes a long time for the documents to be processed from local/provincial authority where the demand for labour originated up to Bangkok, down again to the province, and to the embassies of the origin countries of the migrants. The whole recruitment process would normally take 3-5 months, or in the worst cases over six months before the migrants can travel to the destination country. The complex recruitment flow charts are shown in annex 3.

4) Trends on Clandestine Labour Migration:

The extent of the illegal cross-border movement of workers has been reported and discussed at the meeting of the Sub-committee for Management of Labour Migration held in January 2007. The information in this section is based on data collected by authorities in 2006. There were 135,428 migrant workers (on average 11,285 per month) from the three MOU countries who unlawfully crossed the borders to Thailand in 2006. The authorities were able to detect and push 94,695 persons (70%) back to their origin countries, while 40,733 migrants (30%) were either fined or jailed (if they could not afford paying the fine). However, these figures must be interpreted with caution, as it could be resulting from stringent measures adopted by the government to crackdown on the network of migrant smugglers. With the unabated deterioration of economic and social conditions in Myanmar, and the persistent high recruitment costs under the MOU, it is anticipated that the number of irregular migrant workers is expected to rise every year. Table 4 below shows the trend in irregular migrant workers detected by the Thai authority at the border crossing points over the last three years (2004 – 2006):

Table 4: Number of irregular migrant workers from MOU countries detected by Immigration

Years	No. of irregular migrants detected at border points	Average per month
2004	56,629	5,552
2005	102,780	8,565
2006	135,428	11,285

Table 5 below illustrates the dynamics of the cross-border movement of nationals from MOU countries passing through the immigration check points in 2006. These groups of people comprise those traveling as tourists, for business, and as temporary/daily workers. These figures indicate a normal traffic at the official border check points. The difference between those coming in and going out in 2006 were not significant among those from Myanmar and Cambodia but is quite high for those from Lao PDR. It is believed that some of the visitors from Lao PDR may seek unlawful employment in Thailand because of difficult recruitment under the MOU. In terms of number, the irregular migrant workers from Myanmar are the highest, who usually do not pass through the official entry points. However, there is a need of a longer time-series data for analyzing the pattern of the cross-border movement of people between countries.

Table 5: Number of nationals from MOU countries who passed through immigration channel

Year 2006	Myanmar	Cambodia	Lao PDR	Total
Coming in	65,427	118,089	181,036	364,552
Returning out	58,312	111,301	156,317	325,930
Difference	7,115	6,788	24,719	38,622

Table 6 indicates that the number of irregular migrants residing in Thailand arrested by the police increased from 2005 to 2006. Again the figures below have to be interpreted with caution. With the unabated social and economic difficulties in Myanmar, the restrictive migration policies in both sending and receiving countries, and the labour shortages among low skilled jobs in Thailand, the trend of irregular labour migration is likely to be on the rise in the future. This likely creates a lucrative underground business for the smuggling of workers, which may jeopardize health and safety of migrants during transport or when being chased by the police or security force.

Table 6: Number of irregular migrant workers arrested by immigration police

Years	Myanmar	Cambodia	Lao PDR	Others	Total
2005	100,759	98,268	34,565	3,130	236,722
2006	88,819	196,798	45,148	5,268	336,033

Table 7: Number of persons prosecuted for hiring/hosting/smuggling migrant workers

Years	Employers/ business establishments	Residence/shelter Providers	Smugglers	Total
2005	1,005	1,280	2,305	4,590
2006	1,039	1,627	2,626	5,292

The Thai authorities have not only deported the undocumented migrant workers, but also prosecuted some employers and those who facilitate their movement. According to police reports, the number of employers/business establishments who hired migrants, persons who provided residence/shelter to migrants, and smugglers of migrants who have been persecuted are also increasing (see Table 7).

5) Conflict between workers, employers and recruitment agencies on working conditions and recruitment practices:

Not all migrant workers employed through MOUs enjoy happy working arrangements. There were a number of migrant workers who had to end their work contracts and return to their origin countries prematurely. Of 3,418 Laotian migrant workers recruited, 245 already left their jobs and returned home, while a number of them switched to new employers and worked clandestinely. There is no formal investigation on the reasons behind the decision to runaway from their employers. Similar situations have also happened to migrants from Cambodia, where there is no available information as to the extent of the returnees. According to information from migrant workers, disputes typically arise from misinformation about the actual working conditions, especially on agreed wages, working hours, and other facilities such as housing. It is very likely that migrant workers were enticed by agencies or brokers that they would earn a high income (wage and overtime) and enjoy comfortable working conditions. The migrants could earn a sizable income per month as claimed by the broker/agency, provided that they would work overtime for long hours, a condition with which migrants are usually unaware of. Since most migrants are illiterate, they could not read and fully understand the contents of their employment contract, which may not correspond exactly to what they are verbally informed. Though the working conditions may have been nicely specified in the employment contract in accordance with what is stipulated in the labour law, these have often been ignored by employers and there is no mechanism by which migrant workers could lodge their grievances.

From the employers' perspective, most migrant workers are farm labourers who have no experience in working in the factory environment and unable to maintain work discipline. From the recruitment agencies point of view, some migrants take advantage of the government's regulation allowing them to work abroad at the expenses advanced by agencies/employers (fly first and pay later scheme). The agencies claim that some migrants, after enjoying exposure to the lifestyle abroad, would just find an excuse to return to their home country.

Because the basic minimum wage is too low to attract workers, the employers usually promise recruiters that migrant workers would earn additional income from overtime

work of about 3 - 4 hours a day. The opportunity to earn extra income from overtime could indeed be an effective factor to lure the workers. The workers agree to emigrate based on the presumption that they will work overtime throughout their contract tenure, but the extent and frequency of overtime work is not specifically mentioned in their employment contract. In reality, the employers could not maintain their promise on overtime, as this would depend on demand for goods and products which is somewhat unpredictable and erratic. This has caused tension between migrant workers and employers, as the former feel that the latter failed to keep their promise to abide by the contract. As a result many migrants decide to leave their job either to return home or illegally switch to new employers, who are not supposed to deduct any portion of their wage to cover the recruitment expenses. According to regulations, the workers can not change their workplace or employers, unless they obtain an official consent from both the employers and the local authority to do so. The following excerpt provides some anecdotal evidence on disputes between migrant workers and their employers:

Adapted Case: Agency in Cambodia & Factory in the Southern part of Thailand

43 Cambodians including 7 women were recruited by an Agency in Cambodia to work in southern Thailand. They were recruited on the basis of a leaflet that advertised jobs at the rubber factory in Nakhon Sri Thammarat province. The leaflet stated that workers would be paid 250 baht a day, with food and accommodation. The 43 Cambodian said they signed the employment contracts with the Agency before leaving Cambodia but they were never given copies of the contracts (they were promised but never received them).

They went to Thailand on January 24, 2007, with Cambodian passports and Thai work visas arranged by the Agency. They paid the Agency \$100-\$150 for "processing" fees. They were escorted to Thailand by a representative of the Agency who confiscated their passports after they crossed the border.

In the factory, they said that they were paid only Baht 148 per day by the employer and had to pay for their own food and accommodation. Some workers wanted to stop working there and to return back to Cambodia but could not because the factory refused to return their passports to them. After the workers raised their complaints with the factory management, the situation deteriorated. The workers stopped working and were not paid their arrear salary. They did not have enough money to buy food. Factory management told them that they could try to go back to Cambodia, but not with their passports. Workers were intimidated by armed security guards at the factory on several occasions.

On February 12, 2007, the workers telephoned an NGO in Cambodia asking for assistance to return to Cambodia. The NGO informed the NGO Forum Asia, IOM and ILO in Bangkok who contacted the Ministry of Labour, Thailand. The ministry replied that it had instructed the provincial labor inspectors to visit the factory. For several days, provincial labor inspectors did not show up at the factory (or if they did visit they did not talk to the workers).

A week after the information was reported to the organizations in Bangkok, the situation was resolved when the Agency (apparently acting on instructions from the factory management) went to the factory to contact the workers and took them to back Cambodia. Of the 43 workers, 37 were brought back to the Cambodia border on February 21 (the remaining 7 workers chose to keep working at the factory). The Agency paid for the transportation of the workers. The Agency representative escorted the workers, returned their passports so that they could re-enter Cambodia, but later confiscated their passport again once they had re-entered Cambodia. The Agency continue to withhold their passports.

A complaint to the Ministry of Labour and Vocational Training, Cambodia seeking US\$300 compensation from the Agency and the return of their passports has been filed by 18 of the workers. The remaining workers have agreed to file a similar complaint.

6) Protection of the rights of migrant workers:

The collaborative efforts between the sending and receiving countries in the provision of support and knowledge to migrants in the areas of skill development, rights protection, and occupational safety and health have not been adequately addressed in practice. Migrant workers have not been provided systematic pre-departure training before leaving from origin countries, and receive practically no integration orientation after arrival at the receiving country. The Thai Government has made an attempt to provide knowledge to employers and government officials on the rights of migrant workers in accordance with the Labour Protection Act 1998, but little or no initiative has been geared towards the migrants themselves in building their social network. Enforcement of the law is very lenient and many migrants are found working under appalling and exploitative working conditions, especially in the marine foods processing factories, garment factories, and the fishing sector. In addition, there is no avenue for migrants to complain against violations of the labour law. Wage and working conditions for migrant workers are areas often neglected by the authorities. Normally, the officials would respond when severe cases have been reported. The seizure of travel documents by employers is common practice for fear that migrants may runaway and employers could not recoup their registration/recruitment expenses. With the growing concern on national security, some provincial authorities impose regulations barring migrant workers from gathering in large groups, riding motorcycles, using mobile-phone communications, and organizing cultural activities. These practices are tantamount to violating migrants' worker and human rights.

The attitude of nationals in a receiving country like Thailand can influence the protection of the rights of migrant workers. An opinion poll (ABAC's poll) conducted in Thailand in 2006 with support from the ILO and UNIFEM showed that 70 percent of the respondents believed migrant workers were hard workers but only 11 percent thought they had contributed to Thailand's economic growth. The majority of them felt that their presence would make it more difficult for Thai workers, especially those with low skills, to find jobs and that they would depress the general wage level. About 50 percent of the respondents believed that migrant workers did not deserve the same working conditions under the labour law as Thai workers. All these imply that there is a long way to go for the Thai government to extend the protection of the rights of migrant workers, which is essentially one of the measures for rationalizing this segment of the labour market.

7) **MOU Consultative Mechanism:**

Monitoring the implementation of MOUs has been carried out through regular consultative meetings at the Senior Official Meetings (SOM), as well as at the Technical Meetings attended by the concerned ministries. The main agenda at the meetings have largely been overshadowed by the regularization of the remaining migrants registered since 2004 and the follow up on the formal recruitment of workers under the MOUs. The SOM held recently discussed the management of seasonal/daily workers crossing the borders between Thailand and the MOU countries. As noted earlier, over the years both Thailand and its partner countries have invested a lot of resources and time in changing the quasi-legal status of migrants regularized in 2004 so that they have full legal immigration status. The outcome of this has been less than encouraging given that only 25 percent of workers from Lao PDR and Cambodia succeeded in legalization. In the consultative meeting, there was little discussion on how to streamline the current recruitment and admission procedures under the MOU, in terms of cost, time, procedure, and mobility of the migrants. Hence, it is necessary for both countries to shore up the faith of the employers and migrant workers alike on their legal deployment under the MOU. Since the issue of labour migration needs long term and concrete actions from various parts of the government machinery, the National Social Economic and Development Board or the country planning commission should be a member of the national committee on labour migration as well as a participant in the annual MOU consultative meeting. The linking of labour migration and development is also a key instrument for whittling down the emigration pressure. Therefore, the scope for MOU consultations should be more inclusive, and cover a broader perspective on migration issues, rather than trying to adopt short-term measures to correct long-term problems.

IV. **Lessons learned:**

Some lessons from the implementation of the MOUs can be summarized as follows:

- i) A combination of policies to make both labour sending and receiving countries less dependent on migration through expanded foreign investment and cross-border trade should be explored. Many past labour sending countries have transformed into labour receiving countries following success in the promotion of foreign trade and investment that are employment friendly.
- ii) Although an MOU has no legal binding, it is a flexible mechanism for bilateral cooperation to address common issues, which could lead to regional cooperation on cross-border movements, which in turn, will strengthen bilateral cooperation. The signing of the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers in January 2007 by Heads of States is a major breakthrough in this regard.
- iii) The compulsory savings deducted from earnings of migrant workers is considered to be an ineffective means of ensuring circular migration on its own.
- iv) Labour-sending countries that enter into MOUs with different labour-receiving countries should not be subjected to requirements that could strain

the already inadequate capacity to implement the MOU. For instance, if a specific computerized database is required, labour sending countries may have to operate multiple database systems in order to conform to the MOUs. A complex recruitment process established by receiving countries can inhibit smooth migratory flows and would, in turn, discourage migrants from using the legal channel.

- v) The rotational migration policy may not bring the intended outcomes unless it is supplemented by other measures such as preparing migrants for reintegration in their home countries well before their contract ends. In the meantime, labour receiving countries should formulate long-term policies to determine the scale of labour immigration, including the sectors where they are needed.
- vi) Return migration is most likely to happen if temporary migrants are placed in time-bound jobs, not continuing or indefinite ones, and where there are real incentives to return. Temporary migrants in inherently continuous jobs are likely to become permanent migrants.
- vii) Protection of the rights of migrant workers remains inadequate when there is little action to promote and enforce the labour laws to protect migrant workers in receiving as well as in sending countries. The Ministries of Labour in both sending and receiving countries need to extend the protection of migrant workers and devise measures for them to exercise freedom of association and access to legal justice.
- viii) The better management of labour migration cannot be effectively achieved unless actions are taken from both sides of the border to stem the supply of and the demand for irregular migrants. Sanctions against employers who illegally employ and smugglers who transport migrant workers have to be seriously enforced.
- ix) The restrictive regulations stipulated by labour sending countries may work against the interest of migrant workers, and may inadvertently encourage irregular migration, and human smuggling.
- x) The unduly long and complex recruitment and job placement procedures in both sending and receiving countries have contributed to the high cost of labour migration.
- xi) The initial assessment on progress of MOU implementation suggests that in order to be an effective mechanism to facilitate legal migration, there must be coordination among concerned authorities within the country and greater capacity for administration in labour sending countries at the central and the provincial levels.
- xii) Temporary labour migration can be realized only if policies of labour receiving countries are aimed at promoting access to the formal labour market, protecting and empowering migrants, and ensuring the temporariness of migration.

V. Recommendations for future bilateral negotiations:

- 1) The nexus between labour migration and development should be identified and promoted by both sending and receiving countries, e.g. investment in basic skills and entrepreneurship training for migrant workers, expansion of economic opportunities in labour sending countries through investment and trade, etc;
- 2) The efforts to promote and protect the rights of migrant workers should be intensified, in particular the right to organize or join trade unions or;
- 3) There is a need to balance economic and social advancement vis-à-vis national security, while respecting human rights and workers' rights;
- 4) Recruitment and job placement processes should be made more efficient to reduce the costs and the temptation for migrants to resort to illegal channels;
- 5) The regularization policy needs to be transparent, well-planned and comprehensive, so as to not send an ambiguous signal that may work against the merit of MOUs.
- 6) The parties to the MOU should prepare for negotiation on the future course of MOU cooperation, focusing on the following four pillars:
 - a) Strengthening measure such as border control to discourage undocumented flows, and combat human trafficking and smuggling networks;
 - b) Increasing opportunities for legal migration and enhancing the protection of the rights of migrant workers (e.g. making labour migration less restrictive and imposing the economic cost on employers for using migrants workers);
 - c) Promoting economic development in communities prone to migration so as to reduce the push factors (e.g. facilitating remittances for local development programmes, promoting investments, providing skills training to migrant workers, and supporting outsourcing from labour receiving to labour sending countries); and
 - d) Strengthening coordination between the concerned government agencies in the labour-sending and receiving countries, including supporting the roles of workers' and employers' organizations in collecting and exchanging migration information at the national and regional levels, adopting standard employment contracts, and extending labour and social protection to activities/sectors not covered by labour law.

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Annex I

Comparison of Contents of MOUs on Employment Cooperation between Thailand and Cambodia, Lao PDR and Myanmar

Components/Countries	Cambodia	Lao, PDR	Myanmar	Notes/Variations
Reference to the Bangkok Declaration on Illegal Migration in 1999	√	√	-	
Objectives/Scope				
Employment/recruitment procedure	√	√	√	
Conditions for repatriation of workers	√	√	√	
Protection of rights of workers	√	√	√	
Prevention and combating illegal recruitment, border-crossing and employment of workers	√	√	√	
Administrative Procedures and Consultative Mechanism				
Meeting of senior officials level at least once year	√	√	√	
Establish procedures to integrate irregular migrants, prior to enter into force of MOU	√	-	√	
Recruitment and placement of migrants required prior permission of authorities in both countries; Revocation of work permit	√	√	√	Recruitment and placement have to be approved by authorities. Revocation of work permit is applicable by authority.
Provision of information job opportunities, qualifications, working conditions and wages offered by prospective employers	√	√	√	Information about job vacancies in migrant receiving country
Provision of information about the particulars of prospective/recruited migrants as to their age, education, work experience, address	√	√		
Fulfillment of specific administrative requirements with respect to: visa, work permit, health insurance, taxes, employment contract, contribution to saving fund	√	√	√	Cambodia & Myanmar – Compulsory contribution to saving funds has not yet been enforced. Lao – Compulsory contribution to deportation funds, instead of saving funds Myanmar – Requirement for employment contract signed by workers and employer with copy submit to authorities
Myanmar- Employment contract between worker & employer				
Maintaining database/list of workers recruited to under the MOU and ensure that they return to the place of origin in sending country upon expiration of work contract- four years	√	√	√	Lao – Deportation not applicable to workers whose employment contract terminated, not as a result of their faults.

Return and Repatriation					
Terms of employment are two years and extendable up to maximum of four years	√	√	√	√	
A three-year break required for migrant who completed employment contract	√	√	√	√	Lao – Work permit to be expired when employment contract of worker terminated.
Workers required to contribute 15% of their monthly salary to a saving funds established by authority	√	–	√	√	Lao – Contribution of 15% of worker' salary to deportation fund set up by host country
Reimbursement of a saving fund including interest due after migrant returned to their home country on completion/termination of employment contact, within 45 days	√	√	√	√	
Rights to refund of saving fund shall be revoked for workers who failed to returned to country of origin after completion of employment contract	√	√	√	√	
Saving fund may be used to cover expenses for Bank charges and deportation of the workers to origin countries	√	√	√	√	Lao – Bank charge not mentioned
Migrants are allowed to temporary return to country of origin	√	√	√	√	
Workers entitled legal protections in accordance to provision of the laws and regulations in host country	√	√	√	√	
Principles of non-discrimination with respect to gender, race and religion applied to wages and other benefits	√	√	√	√	
Settlement of disputes between workers and employers based on laws and regulations in receiving country	√	√	√	√	
Measures Against Illegal Employment					
Actions taken by both countries to prevent and suppress illegal border crossing, illegal employment of workers, trafficking in person	√	√	√	√	
Exchange information between countries relating to irregular migration, illegal employment, trafficking in person	√	√	√	√	
Enforcement Date	May 2003	Oct. 2002	June 2003		

Annex II

Summary of Components of Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced persons[‡]

Components of Exchange of Information	Country of Immigration	Country of Emigration	Both
<ul style="list-style-type: none"> 2) Legislative & administrative provisions relating to entry, employment, residence; 3) Occupational categories & qualifications needed; 4) Conditions of life and work such as wage, cost of living, social security/medical assistance 5) Training & educational facilities 	<ul style="list-style-type: none"> 1) Legislative & administrative provisions relating to emigration; 2) Number and occupation qualifications of prospective migrants 		
<p>Action against Misleading Propaganda</p>			<p>Take actions against misleading information relating to emigration and immigration</p>
<p>Administrative Formalities</p>			<p>Take measures to accelerate and simplify administrative formalities relating to departure, travel, entry, and residence</p>
<p>Validity of Documents</p>			<p>Mutual recognition of documents relating to civil status, legal status, occupational qualifications, education, etc</p>
<p>Conditions & Criteria of Migration</p>			<ul style="list-style-type: none"> 1) Requirements as to age, physical aptitude & health, occupation qualifications of migrants; 2) Number & occupational categories of migrants to be recruited 3) Geographical areas of recruitment and placement 4) Medical selection: a) required nature of medical examination; b) determine lists of diseases & physical defects constituting a disability; c) minimum health provisions 5) Vocational selection: a) required occupational qualifications; b) Enumeration of alternative occupations; c) Psycho-technical testing

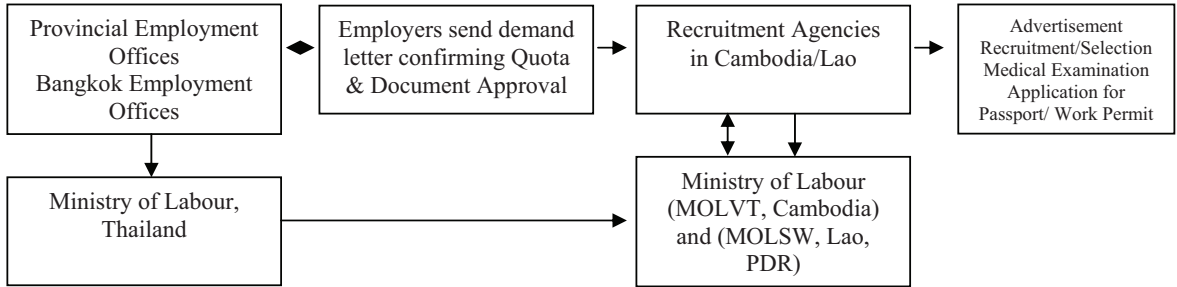
[‡] Based on ILO Recommendation (No.86) concerning migration for employment (Revised 1949)

<p>Organization of Recruitment, Introduction & Placing</p>			<p>1) Right to engage in operations of recruitment, introduction and placing: public employment offices; public bodies; 2) May be undertaken by a) prospective employers/or a person acting on his behalf; b) private agencies; 3) Administrative costs of operations not to be borne by the migrants</p>
<p>Selection Testing</p>		<p>Prospective migrants shall undergo examination in sending countries which could be joint operations</p>	
<p>Information & Assistance of Migrants</p>	<p>On arrival in destination country, migrants shall receive documents needed for their work and residence</p>	<p>Selected migrants shall receive information on nature of work, conditions of work, travel arrangements</p>	
<p>Education & Vocational Training</p>			<p>Coordinate organization of educational courses & vocational training for migrants</p>
<p>Conditions of Transport</p>		<p>Assistance provided to migrants for journey to assembly center</p>	<p>Assistance to safeguard health & welfare of migrants during journey from selection center to place of employment</p>
<p>Travel & Maintenance Expenses</p>			<p>Agree upon cost of travel of migrants and their maintenance while traveling – sickness, & personal belonging</p>
<p>Transfer of Funds</p>	<p>Provide facilities for transfer of savings, including simplify administrative formalities</p>		
<p>Supervision of Living & Working Conditions</p>	<p>Provide supervision of living & working conditions</p>	<p>Authorized representative of emigration country to carryout supervision</p>	
<p>Settlement of Disputes</p>	<p>Migrants shall have access to courts or obtain redress for grievance</p>		
<p>Equality of Treatment</p>	<p>Equality of treatment without discrimination to lawful immigrants with respect to: remuneration, working conditions, trade union membership, recreation, welfare, medical assistance, food supply</p>		

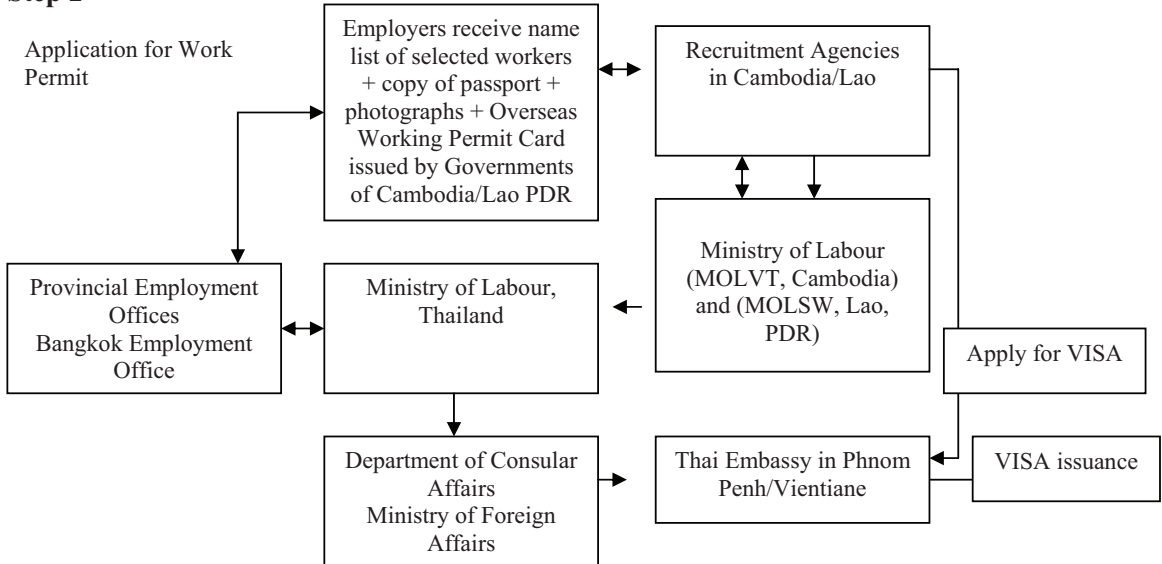
Housing conditions	Migrants have hygienic & suitable housing, when it is available		
Social Security			A separate agreement on a system of social security to be separately determined
Contracts of Employment			Contract with detailed information on individual migrant, nature of the work, travel expenses, & other conditions to be translated in a language understandable to migrants – before departure or in a reception center on arrival (subject to mutually agreed)
Change of Employment	When recruited migrant does not have physical capacity & occupation qualifications		
Employment stability	When migrants become redundant, subject to provision in contract, they may be placed in suitable employment		
Provision Concerning Compulsory Return	Migrant shall not be returned to home country, unless so desired, if he is unable to follow his occupation, due to illness or injury		
Return Journey	Cost shall not be borne by migrant, under a plan sponsored by receiving country, who is obliged to leave for reason for <u>which he is not responsible</u>	Migrants shall exempt from custom duties on their arrival – personal effects; portable hand tools, and portable equipment normally owned by workers for carrying out their trade	Information should be given to migrants at the time of recruitment on conditions and individual/agency responsible for defraying the cost of return
Double Taxation			To determine in a separate agreement to avoid double taxation
Methods of Cooperation			Shall agree on methods of consultation and cooperation to carry out the terms of the Agreement
Final Provision			To determine duration of Agreement and the period of notice for termination

The Process of Recruitment of Cambodian/Laotian Workers to Thailand

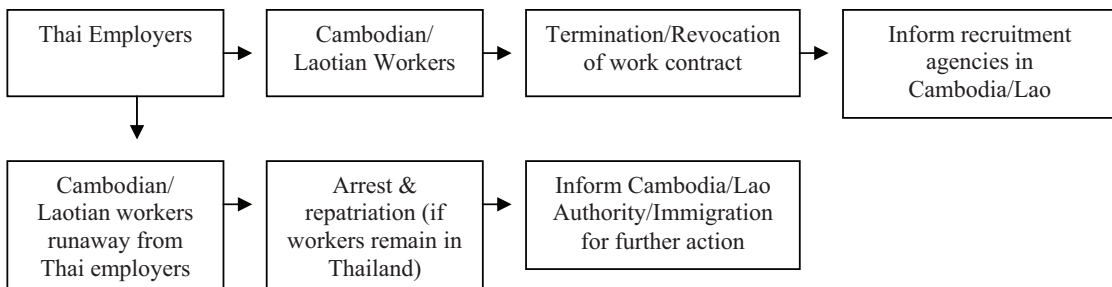
Step 1



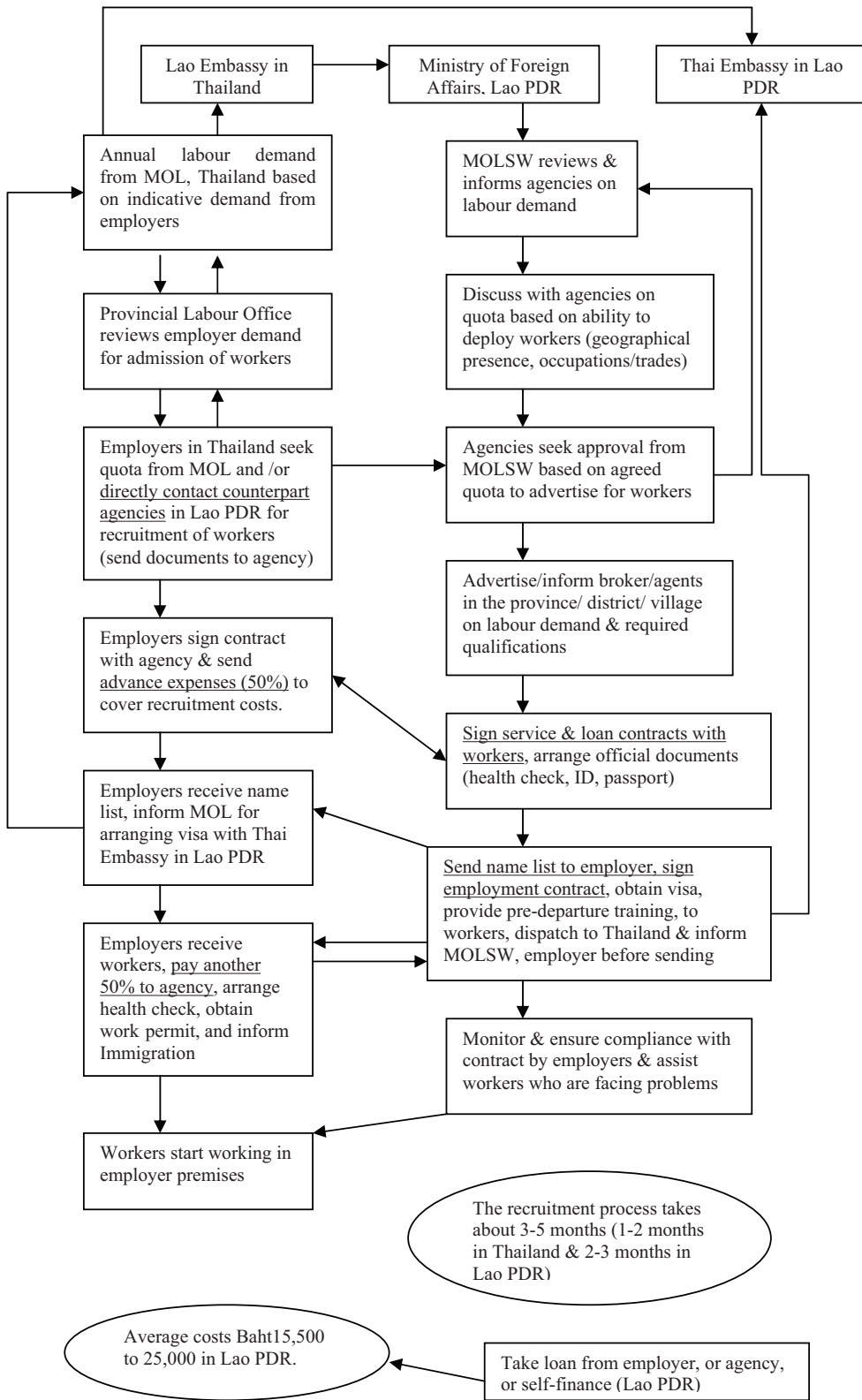
Step 2



Step 3



Recruitment Procedures



**Memorandum of Understanding
between the Government of the Kingdom of Thailand and
the Government of the Kingdom of Cambodia on
Cooperation in the Employment of Workers**

The Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia, hereinafter referred to as “the Parties”; recognizing the principles enshrined in “The Bangkok Declaration on Irregular Migration of 1999”; being concerned about the negative social and economic impacts caused by illegal employment; desirous of enhancing mutually beneficial cooperation between the two countries; have agreed as follows:

**Objective and Scope
Article I**

The Parties shall apply all necessary measures to ensure the following:

- 1) Proper procedures for employment of workers;
- 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses;
- 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
- 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

This Memorandum of Understanding is not applicable to other existing processes of employment that are already in compliance with the laws of the Parties.

**Authorised Agencies
Article II**

For the purpose of this Memorandum of Understanding, the Ministry of Labour of the Kingdom of Thailand and the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation of the Kingdom of Cambodia shall be the authorized agencies for the Government of the Kingdom of Thailand and for the Government of the Kingdom of Cambodia respectively.

Article III

The Parties, represented by the authorized agencies, shall hold regular consultations, at senior official and/or ministerial levels, at least once a year on an alternate basis, on matters related to the implementation of this Memorandum of Understanding.

The authorized agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.

Authorised and Procedure

Article IV

The Parties shall take all necessary measures to ensure proper procedures for employment of workers. Employment of workers requires prior permission of the authorized agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries. The authorized agencies may revoke or nullify their own permission at any time in accordance with the relevant laws and regulations. The revocation or nullification shall not affect any deed already completed prior to the revocation or nullification

Article V

The authorized agencies may through a job offer inform their counterparts of job opportunities, number, period, qualifications required, conditions of employment, and remuneration offered by employers.

Article VI

The authorized agencies shall provide their counterparts with lists of selected applicants for the jobs with information on their ages, permanent addresses, reference persons, education, experiences and other information deemed necessary for consideration by the prospective employers.

Article VII

The authorized agencies shall coordinate with the immigration and other authorities concerned to ensure that applicants, who have been selected by employers and duly permitted in accordance with Article IV, have fulfilled, inter alia, the following requirements:

- 1) Visas or other forms of entry permission;
- 2) Work permits;

- 3) Health insurances or health services;
- 4) Contribution into savings fund as may be required by the authorized agencies of the respective Parties;
- 5) Taxes or others as required by the Parties;
- 6) Employment contracts of employers and workers.

Contract of the terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorized agencies.

Article VIII

The authorised agencies shall be responsible for the administration of the list of workers permitted to work under this Memorandum of Understanding. They shall keep, for the purpose of reference and review, the lists of workers who report themselves or have their documents certified to the effect that they have returned to their permanent addresses after the end of the employment terms and conditions, for at least four years from the date of report or certification.

Return and Repatriation **Article IX**

Unless stated otherwise, the terms and conditions of employment of workers shall not exceed two years. If necessary, it may be extended for another term of two years. In any case, the terms and conditions of employment shall not exceed four years. Afterwards, it shall be deemed the termination of employment.

A three-year break is required for a worker who has already completed the terms and conditions of employment to re-apply for employment.

Article X

The Parties shall extend their fullest cooperation to ensure the return of bona fide workers, who have completed their employment terms and conditions, to their permanent addresses.

Article XI

The authorised agencies of the employing country shall set up and administer a saving fund. Workers are required to make monthly contribution to the fund in the amount equivalent to 15 percent of their monthly salary

Article XII

Workers who have completed their terms and conditions of employment and returned to their permanent addresses shall be entitled to full refund of their accumulated contribution to the savings fund and the interest by submitting the application to the authorised agencies three months prior to their scheduled date of departure after completion of employment. The disbursement shall be made to workers within 45 days after the completion of employment.

In the case of workers whose services are terminated prior to completion of employment and have to return to their permanent addresses, the refund of their accumulated contribution and the interest shall also be made within 45 days after termination of employment.

Article XIII

Temporary return to country of origin by workers whose terms and conditions of employment are still valid and in compliance with the authorised agencies' regulations shall not cause termination of the employment permission as stated in Article IV.

Article XIV

Procedures and documents required in the application for refund as stated in Article XII shall be set forth by the authorised agencies.

Article XV

The right to refund of their contribution to the saving Fund is revoked for workers who do not return their permanent addresses upon the completion of their employment terms and conditions

Article XVI

The authorised agencies of the employing country may draw from the savings fund to cover the administrative expenses incurred by the bank and the deportation of workers to their country of origin.

Protection Article XVII

The Parties in the employing country shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country.

Article XVIII

Workers of both Parties are entitled to wage and other Benefits due for local workers based on the principles of nondiscrimination and equality of sex, race and religion.

Article XIX

Any dispute between workers and employers relating to employment shall be settled by the authorised agencies according to the laws and regulations in the employing country.

Measures against Illegal Employment

Article XX

The Parties shall take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, trafficking of illegal workers and illegal employment of workers.

Article XXI

The Parties shall exchange information on matters relating to human trafficking, illegal immigration, trafficking of illegal workers and illegal employment.

Amendments

Article XXII

Any amendment to this Memorandum of Understanding may be made as agreed upon by the Parties through diplomatic channels.

Settlement of Disputes

Article XXIII

Any difference or dispute arising out of this Memorandum of Understanding shall be settled amicably through consultations between the Parties.

This Memorandum of Understanding shall enter into force after the date of signature and may be terminated by either Party in written notice. Termination shall take effect 90 (ninety) days following the date of notification. In case of termination of this Memorandum of Understanding by either Party, for the benefit of the workers, the Parties shall hold consultation on how to deal with employment contracts that are still valid.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Memorandum of Understanding.

Done at Ubon Ratchatani on the Thirty First Day in the Month of May of Two Thousand and Three of the Christian Era in English language, in two original copies all of which are equally authentic.

For the government of
The kingdom of Thailand

For the government of
The kingdom of Cambodia

Original Signed

Original signed

(Suwat Liptapanlop)
Minister of Labour

(Ith Samheng)
Minister of Social Affairs,
Labour, Vocational Training
and Youth Rehabilitation

**Memorandum of Understanding
between the Royal Thai Government and
the Government of Lao PDR on Employment Cooperation**

Both Governments, hereinafter called “the parties” are concerned with the widespread trafficking in human due to common illegal unemployment, and accept the principles in the Bangkok Declaration on illegal migration 1999, agree to:

**Objectives and Scope
Article 1**

The parties will take action to realize:

- 1.1) appropriate procedure in employment
- 1.2) effective deportation and return of migrant workers who have completed the duration of their work permit
- 1.3) appropriate labour protection
- 1.4) prevention and intervention in illegal border crossing, illegal employment services and illegal employment of migrant workers

The MOU does not include other measures currently in force in national legal frameworks.

**Authorized Agency
Article 2**

MOL of Thailand and MOL of Lao PDR are authorized to carry out this MOU.

Article 3

The parties can organize regular high-level meetings at least once a year to discuss matters related to this MOU.

**Authority and procedures
Article 4**

Employment of workers must be authorized by competent authorities

The competent authorities may cancel work permits issued to individual workers as per the agreement above whenever appropriate within the purview of the parties’ respective

national laws. The cancellation will not affect any action already completed prior to the announced date of cancellation.

Article 5

The competent authority of each party can inform its counterpart of labour needs, number of desired workers, duration, qualifications, employment conditions and wages as proposed by concerned employers.

Article 6

The counterpart competent authority will respond by sending a list of potential workers (name, hometown, reference, education, and other experiences).

Article 7

The competent authorities will work with national immigration services to process:

- 1) visa/other travel document/arrangement
- 2) work permit issuance
- 3) insurance or health insurance
- 4) contribution to the deportation fund
- 5) other taxes as per national regulations

Article 8

Both parties will maintain a list of workers benefited from this MOU. The list will be kept and record the return of the workers until 4 years after the recorded date of return.

Return and Deportation

Article 9

Unless otherwise specified, each worker will receive a two-year work permit. If renewal is necessary, for whatever reasons, the total term of permit shall not exceed 4 years. Thereafter, the person shall be ineligible for work permit. Also, the work permit will expire when the employment of the worker concerned is terminated.

Workers who have completed the terms of their work permit can re-apply for work again after three years have passed between the date of the expiration of the first term and the date of the re-application. Exception shall be made when the worker concern had his or her employment terminated under the conditions not of their faults.

Article 10

The parties will collaborate in sending workers home.

Article 11

Workers will contribute 15% of their salary to deportation fund set up by the host country.

Article 12

Workers who wish to return home can claim their contribution to the fund in full amount with interest. The request must file 3 month before the return date and the money will be paid to the workers within 45 days after the date their employment ends.

Article 13

Home visit during the period of work permit does not end the employment.

Article 14

The host country will determine the procedure and required documents as per the steps/application mentioned in Article 12.

Article 15

A worker will forfeit his or her right to receive his or her contribution to the deportation fund unless s/he reports him/herself to the designated authority in his/her home country upon his/her return.

Article 16

The competent authority of the host country can use the deportation fund to cover the cost of deportation of workers.

**Protection
Article 17**

The parties will apply national laws to protect the rights of workers (to whom this MOU applies)

Article 18

Workers will receive wage and benefits at the same rate applied to national workers based on the principles of nondiscrimination and equality on the basis of gender, ethnic identity, and religious identity.

Article 19

Labour disputes will be governed by the host country's national laws and by its relevant authorities.

Measures on Illegal Employment

Article 20

The parties will take necessary measures to prevent and intervene in illegal cross-border labour practices and employment.

Article 21

The parties will share information with regards to human trafficking, undocumented entry, unlawful employment, and unlawful labour practices.

Amendment on the MOU

Article 22

Amendment of this MOU requires consultation through diplomatic channels.

Dispute Intervention

Article 23

Any conflict arising from this MOU shall be settled through consultation between the parties.

Enforcement and Cancellation

Article 24

The agreements in this MOU are in force upon the date of signing by the representatives of the parties. Cancellation requires written notification and will be in effect 3 months after the date of notification.

This MOU is signed at Vientiane, Lao PDR, on 18 October 2002, in the Lao and Thai version. Both versions have similar values.

For the Government of Thailand

Original Signed

Suwat Liptapanlop
Minister of Labour
Welfare
Royal Government of Thailand

For the Government of Lao PDR

Original Signed

Sompan Pangkamme
Minister of Labour and Social
Lao PDR

**Memorandum of Understanding
between the Government of the Kingdom of Thailand and
the Government of the Union of Myanmar on
Cooperation in the Employment of Workers**

The government of the kingdom of Thailand and the government of the union of Myanmar, hereinafter referred to as “the Parties”; being concerned about the negative social and economic impacts caused by illegal employment; desirous of enhancing mutually beneficial cooperation between the two countries; have agreed as follows:

Objective and Scope

Article I

The Parties shall apply all necessary measures to ensure the following:

- 1) Proper procedures for employment of workers;
- 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses;
- 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
- 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

This Memorandum of Understanding is not applicable to other existing processes of employment that are already in compliance with the laws of the Parties.

Authorised agencies

Article II

For the purpose of this Memorandum of Understanding, the Ministry of Labour of the Kingdom of Thailand and the Ministry of Labour of the Union of Myanmar shall be the authorised agencies for the Government of the Kingdom of Thailand and for the Government of the Union of Myanmar respectively.

Article III

The Parties, represented by the authorized agencies, shall hold regular consultation, at senior official and/or ministerial levels, at least once a year on an alternate basis, on matters related to the implementation of this Memorandum of Understanding.

The authorised agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to

the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.

Authorised and Procedure Article IV

The Parties shall take all necessary measures to ensure proper procedures for employment of workers.

Employment of workers requires prior permission of the authorised agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries. The authorised agencies may revoke or nullify their own permission at any time in accordance with the relevant laws and regulations. The revocation or nullification shall not affect any deed already completed prior to the revocation or nullification.

Article V

The authorised agencies may through a job offer inform their counterparts of job opportunities, number, period, qualifications required, conditions of employment, and remuneration offered by employers.

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The authorised agencies shall provide their counterparts with lists of selected applicants for the jobs with information on their ages, permanent addresses, reference persons, education, experiences and other information deemed necessary for consideration by the prospective employers.

Article VII

The authorised agencies shall coordinate with the immigration and other authorities concerned to ensure that applicants, who have been selected by employers and duly permitted in accordance with Article IV, have fulfilled, inter alia, the following requirements:

- 1) Visas or other forms of entry permission;
- 2) Work permits;
- 3) Health insurances or health services;
- 4) Contribution into savings fund as may be required by the authorised agencies of the respective Parties;
- 5) Taxes or others as required by the Parties;
- 6) Employment contracts of employers and workers.

Contract of the terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorised agencies.

Article VIII

The authorised agencies shall be responsible for the administration of the list of workers permitted to work under this Memorandum of Understanding. They shall keep, for the purpose of reference and review, the lists of workers who report themselves or have their documents certified to the effect that they have returned to their permanent addresses after the end of the employment terms and conditions, for at least four years from the date of report or certification.

Return and Repatriation

Article IX

Unless stated otherwise, the terms and conditions of employment of workers shall not exceed two years. If necessary, it may be extended for another term of two years. In any case, the terms and conditions of employment shall not exceed four years. Afterwards, it shall be deemed the termination of employment.

A three-year break is required for a worker who has already completed the terms and conditions of employment to re-apply for employment.

Article X

The Parties shall extend their fullest cooperation to ensure the return of bona fide workers, who have completed their employment terms and conditions, to their permanent addresses.

Article XI

The authorised agencies of the employing country shall set up and administer a saving fund. Workers are required to make monthly contribution to the fund in the amount equivalent to 15 percent of their monthly salary.

Article XII

Workers who have completed their terms and conditions of employment and returned to their permanent addresses shall be entitled to full refund of their accumulated contribution to the savings fund and the interest by submitting the application to the authorised agencies three months prior to their scheduled date of departure after completion of employment. The disbursement shall be made to workers within 7 days

after the completion of employment.

In the case of workers whose services are terminated prior to completion of employment and have to return to their permanent addresses, the refund of their accumulated contribution and the interest shall also be made within 7 days after termination of employment.

Article XIII

Temporary return to country of origin by workers whose terms and conditions of employment are still valid and in compliance with the authorised agencies' regulations shall not cause termination of the employment permission as stated in Article IV.

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Article XVIII

Workers of both Parties are entitled to wage and other Benefits due for local workers based on the principles of nondiscrimination and equality of sex, race and religion.

Procedures and documents required in the application for refund as stated in Article XII shall be set forth by the authorised agencies.

Article XIX

Any dispute between workers and employers relating to employment shall be settled by the authorised agencies according to the laws and regulations in the employing country.

Measures against Illegal Employment

Article XX

The Parties shall take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, trafficking of illegal workers and illegal employment of workers.

Article XXI

The Parties shall exchange information on matters relating to human trafficking, illegal immigration, trafficking of illegal workers and illegal employment.

Amendments

Article XXII

Any amendment to this Memorandum of Understanding may be made as agreed upon by the Parties through diplomatic channels.

Article XXIII

Any difference or dispute arising out of this Memorandum of Understanding shall be settled amicably through consultations between the Parties.

Enforcement and Termination

Article XXIV

This Memorandum of Understanding shall enter into force after the date of signature and may be terminated by either Party in written notice. Termination shall take effect 90 (ninety) days following the date of notification. In case of termination of this Memorandum of Understanding by either Party, for the benefit of the workers, the Parties shall hold consultation on how to deal with employment contracts that are still valid.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Memorandum of Understanding.

Done at Chiang Mai on the Twenty First Day in the Month of June of Two Thousand and Three of the Christian Era, in the Thai, Myanmar, and English language, in two original copies all of which are equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the government of kingdom
Thailand


Original Signed

(Surakiat Sathirathai)
Minister of Foreign Affairs

For the government of the union of
Myanmar

Original Signed

(Win Aung)
Minister of Foreign Affairs



This paper examines the experience of Thailand and her neighbouring countries, particularly Cambodia and Lao PDR, on bilateral employment agreements. It first gives a brief history and description of the economic and institutional environment under which these bilateral agreements – in the form of Memoranda of Understanding (MOUs) – were forged, proceeds to summarize the lessons learned from the implementation of the MOUs, and finally makes recommendations for future bilateral negotiations.

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