

GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN

ACCESS  
UNKNOWN



Access to Justice from the Perspectives  
of Cambodian Migrant Workers in Thailand

# **Access Unknown**

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Cambodian Migrant Workers in Thailand

@2017 Global Alliance Against Traffic in Women (GAATW)



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# Contents

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List of Abbreviations .....	1
Acknowledgements .....	2
Introduction .....	3
Methodology.....	7
Scope and Limitations.....	8
Interviews and Data Collection .....	9
Research Activities and Partners .....	11
Summary Findings.....	12
Findings: Perspectives of Cambodian Migrant Workers.....	15
Pre-departure.....	16
Working in Thailand .....	18
Conflict Resolution and Workers' Rights .....	22
Justice and Access to Justice .....	26
Fairness in Work.....	31
Recommendations .....	34
Recommendations and Requests from Cambodian workers: .....	35
Conclusion.....	37
Annex I: Thailand - Laws and Policies Concerning Migrant Workers.....	40
Annex II: Cambodia - Laws and Policies Concerning Migrant Workers .....	44

# List of Abbreviations

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- AAPTIP – Australia-Asia Program to Combat Trafficking in Persons
- ACMW – ASEAN Committee on Migrant Workers
- ACTIP – ASEAN Convention Against Trafficking in Persons, Especially Women and Children
- AFML – The ASEAN Forum on Migrant Labour
- ALMM – The ASEAN Labour Ministers Meeting
- ASEAN – Association of Southeast Asian Nations
- ATP – ASEAN Triangle Project
- CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women
- EU – European Union
- FLARE – Forced Labour Action in the Asian Region Project
- GAATW – Global Alliance Against Traffic in Women
- HRDF – Human Rights and Development Foundation
- ILO – International Labour Organisation
- IOM – International Organisation for Migration
- IUU – Illegal, Unreported and Unregulated
- LICADHO – Cambodian League for the Promotion and Defence of Human Rights
- LPN – Labour Rights Promotion Network
- LSCW – Legal Support for Children and Women
- MOU – Memorandum of Understanding
- MWG – Migrant Working Group of Thailand
- RGC – Royal Government of Cambodia
- UN-ACT – United Nations Action for Cooperation against Trafficking in Persons

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# Introduction

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Over the past decade numerous steps have been taken in the Association of Southeast Asia Nations (ASEAN) to build the capacity of law enforcement, governments and service providers to address human trafficking and labour exploitation.

In 2014 the International Labour Organisation (ILO) initiated the Forced Labour Action in the Asian Region Project (FLARE) with the aim of strengthening national institutions and capacities to prevent and address forced labour in East and Southeast Asia. Similarly, many donors have provided resources for training law enforcement officers on issues of human trafficking. The Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) has dedicated AUD 50 million from 2013 through 2018 to support regional cooperation to improve the criminal justice response to human trafficking, forced labour, and exploitative recruitment in ASEAN. The Canadian Department of Foreign Affairs, Trade, and Development began the ASEAN Triangle Project (ATP) in 2012 with the aim of strengthening regional policies on the governance of labour migration, and enhancing the capacity of governments, workers', and employers' organisations to help reduce labour exploitation and inequalities of women and men migrants from ASEAN member states.

Regional governments have also amplified their efforts to support the rights of migrant workers. The ASEAN Labour Ministers Meeting (ALMM) has included as one of their focuses the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) to protect migrant workers against exploitation and mistreatment. The ASEAN Forum on Migration and Labour (AFML) also recently concluded its 9<sup>th</sup> annual meeting with the theme 'Better Quality of Life for ASEAN Migrant Workers through Strengthened Social Protection', and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) aims at preventing trafficking, protecting victims, and prosecuting crimes of trafficking in persons by using regional and international cooperation and coordination. However, despite these efforts, human trafficking and exploitation remain pervasive in the region.

Thailand has the fourth highest GDP per capita in ASEAN after Singapore, Brunei and Malaysia<sup>1</sup>. A quickly aging Thai society along with Thais seeking higher-skilled jobs due to increased educational attainment has translated to a declining proportion of local workers available to meet Thailand's workforce vacancies.<sup>2</sup> At the same time, the booming development of especially the construction and food processing industries has created a demand for low-skilled, low-paid labourers. Gaps of development and economic growth between Thailand and neighbouring countries have attracted formal and informal migrants from Cambodia, the Lao People's Democratic Republic (PDR), and Myanmar to meet this demand. Migrants from these countries are typically employed in the so-called '3D jobs' – dirty, dangerous and demeaning – often finding themselves in situations of human trafficking and labour exploitation.

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<sup>1</sup> International Monetary Fund, World Economic Outlook October 2016, 2016, available at <http://www.imf.org/external/pubs/ft/weo/2016/02/>

<sup>2</sup> World Bank, 'Thailand Economic Monitor - June 2016: Aging Society and Economy', available at <http://www.worldbank.org/en/country/thailand/publication/thailand-economic-monitor-june-2016-aging-society-and-economy>

Since 2007 the Thai government has encountered pressure from local and international communities for its failure to prevent and address human trafficking and forced labour. Consequently, the European Union (EU) has issued a warning against Thailand to seriously address the slavery-like conditions in its seafood industry, worth roughly USD 3 billion per year. Since 2015 Thailand has been listed under a ‘yellow card’ warning for illegal, unreported and unregulated (IUU) fishing by the European Commission<sup>3</sup> and threats that a downgrade to a ‘red card’ listing could result in a banning of all imports of fisheries products from Thailand for the EU market.<sup>4</sup>

Although the Thai government has developed policies to try to address its trafficking and migration issues by regularising irregular migrant workers’ status since 2003<sup>5</sup>, and has increased the channels and options for migrant workers to access legal registration, in April 2016 the number of migrant workers legally registered was only 1,769,509 or roughly 50% of the total estimated number of three million migrant workers in Thailand.<sup>6</sup>

Despite all the resources and efforts dedicated to improving the conditions of migrant workers and addressing trafficking in Thailand, access to justice remains an underserved right for many trafficked persons.

Cambodians migrant workers are the second largest group in Thailand, after the Burmese,<sup>7</sup> but there is little information on their situation and working conditions. Most available studies cover all three neighbouring nationalities (Burmese, Lao, and Cambodian) and the Greater Mekong Sub-region (Burmese, Lao, Cambodian and Chinese - Yunnan and Guangxi). Compared to Lao and Burmese migrants, Cambodians are in a relatively underprivileged position: Lao migrants are closer physically, culturally and linguistically to Thais and it has been easier for them to integrate into the Thai workforce and access support. Burmese people have migrated to Thailand for decades and there are a number of organisations available that offer support to Burmese migrant workers. Thus Cambodians are on one hand more vulnerable to exploitation and on the other have fewer support structures in cases of labour rights violations.

It was this lack of support for Cambodian migrant workers that motivated us to undertake this research focusing on their experiences with labour rights violations and access to justice and remedies.

We were disappointed to discover through discussions with partners and service providers that some of the fundamental challenges that Cambodian migrant workers are facing today are very similar to those

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<sup>3</sup> European Commission Press Release, EU acts on illegal fishing: Yellow card issued to Thailand while South Korea & Philippines are cleared, 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-4806\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4806_en.htm)

<sup>4</sup> G Gotev, Thai seafood products could be banned in Europe, warns MEP, *The Guardian*, 23 July 2015, available at <https://www.theguardian.com/global-development/2015/jul/23/thai-seafood-products-banned-europe-mep-gabriel-mato>

<sup>5</sup> K Archavanitku and K Vajanasara, ‘Employment of Migrant Workers under the Working of Aliens Act 2008 and the List of Occupations Allowed to Foreigners’, The Institute for Population and Social Research, Mahidol University, Bangkok, 2009.

<sup>6</sup> J Huguet (ed.), Thailand Migration Report 2014, International Organisation for Migration, available at [http://th.iom.int/images/report/TMR\\_2014.pdf](http://th.iom.int/images/report/TMR_2014.pdf)

<sup>7</sup> Burmese Migrant Workers’ Education Committee, available at <http://www.bmwec.org/background/>; ILO, Quarterly Briefing Note GMS TRIANGLE Project: Cambodia, 2014, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms\\_334862.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_334862.pdf)

documented by GAATW nearly a decade ago in our report *Collateral Damage*<sup>8</sup>. In the words of one of our partners, ‘We can’t really go very far in the legal arena. We often try to secure out of court settlements. Sometimes what the workers need and what is well within their human rights is not supported by the legal systems of countries of origin and destination.’

We believed that more perspectives and experiences of Cambodian migrant workers and trafficked persons were needed to help understand the obstacles to accessing justice. By analysing these obstacles and working together with service providers we aim to address some of the barriers and contribute to the realisation of their rights.

We did not find literature which emphasised the gathering and sharing of perspectives of Cambodian migrant workers, while also including the input and analysis of service providers. We believe that the opinions and thoughts of Cambodian migrants shared in this report, combined with the joint analysis of service providing partners from both destination and origin country, will provide practical insights into this continuing challenge, and hopefully allow us to better understand the specific difficulties Cambodians are facing.

The aim of this research was to examine why there is still such a significant disconnect between the currently available options in the legal system and Cambodian workers’ unwillingness or inability to practically access them, and explore the access to justice scenario from their experiences and insights at both origin and destination.

Our project employed participatory methodologies, which not only gathered detailed perspectives from migrant workers, but also included capacity building for service providers, and shared findings among key stakeholders to form a preliminary basis on which recommendations and future actions were made and planned for implementation.

We hope that this study will make a contribution to the future plans of support groups already working to improve the rights and access to justice of Cambodian migrant workers.

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<sup>8</sup> GAATW, Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World, Bangkok, 2007, available at [http://www.gaatw.org/Collateral%20Damage\\_Final/singlefile\\_CollateralDamagefinal.pdf](http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf)



# Methodology

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In recent years, comprehensive empirical studies on access to justice for migrant workers have been carried out<sup>9</sup>, but little focus has been dedicated to collecting the qualitative perspectives of Cambodian migrant workers.

This study and initial phase of our participatory action research project inquired as to whether Cambodian migrant workers or trafficked persons in Thailand have been able to access justice as they themselves defined what is just and fair. We gained insights and recommendations from our analysis of interviews with workers along with civil society organisations (CSOs) in both Thailand and Cambodia, and additionally we met with government officials, factory managers, village leaders, and migrants' family members to better understand the context of their experiences.

## SCOPE AND LIMITATIONS

The voices of migrant workers and trafficked persons are conspicuously absent in the many existing reports and studies on access to justice and we began this study with the aim of collecting the views of Cambodian migrants based on the belief that they can best express their needs and should have mechanisms to influence policy makers and service providers.

The scope of our study is a limited qualitative research compared to the many large and quantitative surveys that have been conducted by a number of international organisations. As a network secretariat, GAATW-IS reaches out to workers through partner NGOs in various countries, who are our main constituency. Our aim was to coordinate a project where service providers who were already in regular communication with the Cambodian migrant population would be able to directly engage with their constituents in a way they may not have otherwise. We also tried to develop a more holistic understanding of client experiences by coordinating discussions between groups from destination and origin countries that could lead to insights and concrete plans for improved outreach and support.

During our research we found, confirming what many of the available studies and our service provider partners have also indicated, a greater difficulty accessing and collecting interviews from Cambodian migrant workers than other migrant groups in Thailand.

Challenges in accessing Cambodian migrant workers included:

- CSOs supporting migrant workers had a tendency to focus on Burmese workers and had less contact with Cambodian workers.

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<sup>9</sup> For example, B Farbenblum, E Taylor-Nicholson and S Paoletti, Migrant Workers' Access to Justice at Home: Indonesia, Open Society Foundation, 2014, available at <https://www.opensocietyfoundations.org/publications/migrant-workers-access-justice-home-indonesia>; S Paoletti, E Taylor-Nicholson, B Sijapati and B Farbenblum, Migrant Workers' Access to Justice at Home: Nepal, Open Society Foundation, 2014, available at <https://www.opensocietyfoundations.org/publications/migrant-workers-access-justice-home-nepal>

- Some organisations primarily provide health information and other targeted assistance to migrant workers and had access to Cambodian workers but did not have the capacity to document, identify or collect information on those who had experienced exploitation or abuse.
- In some cases it was difficult to gain access to the workers even after they had been identified as trafficked.
- The location and limited availability of interviewed workers, due to their work and migration schedules, made it difficult to receive information about the situation of other workers.
- Circular migration patterns that many Cambodian migrants practice<sup>10</sup> limited the interviews in Cambodia to holidays when migrant workers would return home.
- Researchers received fewer interviews with Cambodian migrant women than anticipated due to the fact that migrant women whom we had access to in the domestic work and garment sectors were not employed as full-time workers and frequently moved between different employers.

## INTERVIEWS AND DATA COLLECTION

Our 57 respondents included both documented and undocumented workers in the factory, garment, agriculture, construction, domestic, and fishery sectors. The interview locations included Koh Kong, Prey Veng, and Kampong Cham provinces in Cambodia and Songkhla, Ranong, Rayong, Chonburi, Surin, and Srakaew provinces in Thailand, as well as in the capital Bangkok.

The interviews were conducted with Cambodian migrant workers in Thailand, as well as returned migrant workers in Cambodia. We were also able to conduct interviews with the families of migrant workers in Cambodia, as well as collect perspectives from agencies and local village leaders and law enforcement.

Though the number of interviews and locations in both countries is small, we believe that the emphasis on migrants' experiences included in this research, along with the continued partnership with organisations supporting them, adds a unique value to the understanding of Cambodian workers' views on access to justice.

Respondents in Cambodia	Respondents in Thailand
28 Individual Respondents	29 Individual Respondents
Male = 15   Female = 13	Male = 25   Female = 4
Interviews conducted by the Legal Services for Children and Women (LSCW)	<p>Interviews conducted with the assistance of:</p> <ul style="list-style-type: none"> <li>• Labour Rights Promotion Network (LPN)</li> <li>• Friends-International</li> <li>• Stella Maris Centre</li> <li>• Human Rights and Development Foundation (HRDF)</li> <li>• Government shelter for victims of trafficking (Ranong province)</li> </ul>

<sup>10</sup> S Chaisuparakul, Life and Community of Cambodian Migrant Workers in Thai Society, *Journal of Population and Social Studies*, vol. 23, no. 1, January 2015, available at [http://www.jpss.mahidol.ac.th/PDF/JPSS-Vol23\(1\)\\_Sumaree\\_Cambodian-Migrants.pdf](http://www.jpss.mahidol.ac.th/PDF/JPSS-Vol23(1)_Sumaree_Cambodian-Migrants.pdf)

Cambodia Interview Areas	Thailand Interview Areas
<ul style="list-style-type: none"> <li>• Koh Kong Province (Mondol Seima District)</li> <li>• Prey Veng Province (Ba Phnom and Po Rieng Districts)</li> <li>• Kampong Cham Province (Chamkar Leu District)</li> </ul>	<ul style="list-style-type: none"> <li>• Songkhla and Ranong province</li> <li>• Rayong and Chonburi province</li> <li>• Surin and Srakaew province</li> <li>• Bangkok</li> </ul>

To protect the identity of our respondents, interviewees are listed by either only their first name or a pseudonym, with other possible identifying information omitted.

The interviews were guided by the key questions below. This is neither an exact nor an exhaustive list, but rather indicates the topics and lines of questioning used during the study.

**To the workers:**

How long have you been working and what are the different kinds of work that you have done?

Have you received any training for the job or various kinds of jobs you have done?

Do you consider yourself a competent worker?

How would you describe your work experience over the years? Are you being paid adequately and regularly? Are you being treated well?

Have you ever faced problems at your workplace/s? If yes, what was the nature of the problem? Was the problem solved in the right way? Or did you feel that you were badly treated?

How do you respond to a situation when you think some ‘injustice’ or ‘wrong’ is done to you at your work place? Who do you look up to for support and help?

Did you ever receive any help from any organisation or individual? If yes, how did you get to know about them and what services do they provide? What was your experience like?

Did you ever report or complain about ‘mistreatment’ or ‘low wage’ or ‘abusive behaviour’? If yes, to whom?

Have you ever received help from the legal system? If yes, what was the experience like and if not, why did you decide not to do that?

What are the most common concerns of workers at your work place?

What, according to you, would be a ‘just and fair’ workplace or work practice?

What advice would you give to new workers who are planning to come?

What suggestions and advice do you have for service providing organisations?

If you have had any experience with the legal system, what change would you like to see within it?

**To the CSOs:**

What services do you provide to migrant workers?

How do you reach out to them?

What is your own assessment of the legal services that you provide to migrant or returnee workers?

How do you respond to cases of abuse or trafficking?

Have you analysed your own assistance work over the years, especially legal assistance work? If yes, what does the analysis show? If not, why have you not done it or have not been able to do?

Do you think migrant workers have good access to justice? If yes, please share some details. If not, what should be done to make the situation better, to overcome the barriers to accessing justice?

Are you part of any national, regional or international alliance of NGOs that work on the issues of migration and trafficking? What value do those alliances add? What do you think can be done to improve the access to justice situation in collaboration with other civil society workers?

## **RESEARCH ACTIVITIES AND PARTNERS**

We designed our research to focus not only on information gathering but to include an action component as well. As an international alliance, we joined efforts with members and partners including: the Legal Support for Children and Women of Cambodia (LSCW), Labour Rights Promotion Network of Thailand (LPN), Friends-International, Stella Maris Centre, and the Human Rights and Development Foundation of Thailand (HRDF). The Migrant Working Group of Thailand (MWG) has also become an integral new collaborator as we coordinate together the next phase of the action component of this project.

In the short term, the project has enabled NGO colleagues to better understand the perspective of their own constituencies and better analyse their own work. LSCW, our partner in this project responsible for collecting data from origin country interviews, informed us that while they do a great deal of direct support work, they do not have the time or capacity to analyse the data. By using participatory methodologies, this project created an opportunity for LSCW to examine their own work and take action steps towards improving their services. The targeted funds allocated also created an opportunity for them to obtain the necessary human resources to carry out this research and collect additional data on the workers they engage with.

We believe that our approach to this study will inform and influence future awareness-raising and advocacy work of legal and other service providing NGOs in Cambodia and Thailand. We hope that in the long term, the perspectives we share from the migrants themselves will benefit future prospects for Cambodian workers to access justice.



# Summary Findings

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Our findings revealed that many Cambodian workers did not believe that their current options for accessing justice were practical for them to pursue, given the urgency of their economic needs at home.

Workers held very little hope in the possibility of attaining justice after exploitative experiences because of the lack of examples in the community of successful attempts by Cambodian migrant workers to access fair resolutions through existing mechanisms. The absence of positive and timely resolutions, along with a lack of understanding of rights, laws, and alternative options contributed to many workers foregoing pursuits of redress and accountability for abusers.

**Our respondents indicated the following challenges when migrating for work in Thailand:**

- Lack of understanding of fees and waiting periods through the MOU process.
- Misunderstanding of Pink Card limitations.
- Insufficient knowledge of immigration laws and labour policies for migrant workers.
- Little to no knowledge of labour rights or ways to claim rights.
- Inability to recognise or understand official documentation related to immigration, such as work permits, or contracts with brokers or employers.
- Lack of knowledge of instances where someone has been successful at recouping losses from exploitation or abuse.
- Belief that they would not receive help because when they left their hometown, they did not inform local authorities or because they relied on a broker.

Our interviews found that what is ‘just and fair’ from the perspective of Cambodian workers often represents to them an impractical investment of time and resources. The continuously changing rules and regulations around migrant work far too frequently leave the uninformed vulnerable to opportunistic businesses and unregulated recruitment agencies that employ exploitative practices that result in very few, if any, legal repercussions.

Even in cases where all parties involved seem to have a desire to provide safe, fair, and legal options for migration, misinformation can still result in workers unknowingly violating laws, commonly resulting in detention, deportation, and a loss of resources.

Many migrants analysed and accepted their negative experiences as karma or bad luck. Such interpretation inherently precludes seeking justice, as it situates the injustice outside of any particular person or state policy and can even place the responsibility for it on the migrants themselves (*karma is justice*). This should not be understood as a deficiency of Cambodians’ cultural belief systems but rather as a failure of the state to instil in its citizens faith in state institutions.

The lack of faith in or knowledge of the existing systems for accessing justice also creates challenges for service providing CSOs that wish to help their clients receive a fair outcome.

CSOs are often asked by the clients themselves to forego paths for potentially fair compensation, often choosing instead options that offer more predictable and timely, if less just, outcomes. In these

instances, CSOs are sometimes put in a difficult situation of mediating for fast outcomes rather than potentially greater redress which is likely to require a resolution timeline that workers are unable to financially endure.

Many Cambodian migrant workers are unlikely to attempt to access help from service providers or government agencies, or even request for those agencies to advocate on their behalf for fair resolutions, if they do not have faith that their efforts will be worth their limited time and resources. This lack of faith in the system, combined with the burdens from the limited livelihood options available at home, pressures many to continue attempts to enter Thailand without the necessary information, resulting in actions that repeat the negative outcomes.

The lack of channels that can provide timely options to resolve grievances has left many Cambodian migrant workers reluctant to pursue justice, particularly the majority of workers who believe they have no rights because they do not possess the required work permits. Others feel they are unlikely to receive a favourable outcome in Thai courts challenging Thai employers who would receive preferential treatment or, having experienced harassment or exploitation by Thai law enforcement, are reluctant to report corrupt actors.



# Findings: Perspectives of Cambodian Migrant Workers

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## PRE-DEPARTURE

Nam looked for a job and immigrated to Thailand through arrangements made by a broker. According to Nam, contacting brokers on the phone is normal for Cambodians to ask for information and seek work in Thailand. After providing initial information to Nam, the broker came to her village to convince her to migrate. Nam agreed to go without much fear of being exploited or cheated, even though she knew little about the broker and had been warned by people in her village that she might be exploited.

*'I looked for a job via a phone number passed on from someone I knew - this is a normal channel for Cambodian people. I didn't think I would be cheated, though I never knew that person before. I was also warned by people in my village to beware of being sold for work in Thailand. I didn't think it will happen to me but it did. I've told my story to one person and she is also afraid of what might happen to her but she still thinks she can help herself if she ends up having problems. This is the way we Cambodians know how to look for a job. If we don't use this method of trusting brokers, we don't know how else to find a job in Thailand.'*

After arriving in Thailand, Nam was eventually forced to work for five years without pay and even after that experience, she still continued to use the same methods for seeking a job in Thailand. Nam was eventually able to find a stable job and obtain a work permit, but was able to do so through chance and a willingness to continue to risk unfair treatment and abuse with no guarantee that she would find an acceptable work situation. She continued to repeat her reliance on brokers because she believed that there was no other option for her to find employment in Thailand.

Other respondents, who asked not to be mentioned by name, also indicated that they used this same method for job searching and shared that Cambodians who do not have social networks or relatives already working in Thailand to help arrange a job for them, often choose little known brokers, as Nam did, for job placement.

In the below case, the respondent, who will be referred to as R1, received information about a recruitment agency through a radio broadcast - another common method for brokers to reach out to potential workers.

*'In early September 2015, I heard a recruitment agency advertise on the radio that Thailand needed migrant workers and that the salary will be 300 baht per day, overtime will be paid 56 baht per hour and 75 baht on Sunday. I discussed this opportunity with my family and decided to go to Phnom Penh. I applied to migrate for work with this recruitment agency. They requested I deposit USD 300 in advance for procuring my passport and other documents. After I paid, they asked*

*me to wait until they got all the documents for me. Around three months later, I called them and they told me to be ready for departure. They told me that I will work in a fish processing factory. In January 2016, a representative of the recruitment agency called me for departure to Thailand. I left my hometown in Kampong Cham to Phnom Penh. I then left Phnom Penh with the recruitment agency and nine other people to Thailand. After crossing the border, the recruitment agency gave us our passport and this was the only document that we had.'*

R1's case is a common example of how dependent Cambodian workers are on brokers to secure jobs in Thailand. Many of the brokers reach out to remote villages where there is little knowledge of laws, policies, and pathways related to migrating for work in Thailand. Cambodians will supply the fees for documentation and travel with little knowledge of what the fees should cost or what the documents should look like, and wait with no guarantee that their investment will even result in what was promised to them.

Although reliance on informal brokers increases the risk of exploitation, acting on information received from the media and migrating through official channels does not guarantee good working conditions, as the case below shows.

Thorntha, Bo, and Sabieng believed that they were entering Thailand for work through the MOU mechanism but were misled by a broker. They had learnt about job opportunities from a radio station in Cambodia and that a recruitment company was looking for people to work in Thailand and proceeded to register their names with the company for job placement. Six to seven months later, the company called and informed them that they had an available a job at a poultry processing factory. The advertised wage was 300 baht per day with free housing, water and electricity. The broker helped them apply for passports and indicated that the fees would be deducted from their salary in the amount of 2,000 baht per month for the first nine months. When they arrived in Thailand, they were sent to work at a plantation, where their employer deducted 2,900 baht a month out of their salary for 11 months consecutively and continued to add more items onto the list of deductions. After having to accept deductions from their salary that were not agreed upon, the three Cambodian workers felt wronged but still continued working until their employer assigned them to perform work with hazardous material that they suspect resulted in them becoming ill. The employer ignored requests to take them to a hospital and they did not believe they could seek assistance because they were undocumented.

Respondent R4 below provides additional insights into the decision making process prospective migrant workers go through when relying on brokers for assistance.

*'I dropped out of school at the age of 15 and I have no opportunities for work. I sometimes help my parents on the farm, but when the harvest season ends I have nothing to do. I am one of five siblings, but only my younger sister and I live with my parents. My parents have a debt from finance loans, because during the last few years, our rice fields were destroyed. I decided to follow my friend to work in Thailand. I heard that young people like me have found work there. I don't know much about Thailand, except from Thai TV shows, but I heard from people that I could have a paid job that I can earn money to send back to help my family. In May 2015, I left Cambodia with six other men to work in Thailand. I paid around 3000 baht to a broker for transportation to cross the border to Chonburi province.'*

Respondent R11 below also shared a similar experience.

*'Brokers came to our village and told us there is no fee for going to work in Thailand and that I don't need to borrow money to pay for migration fees. The money would come from my employer deducting initially from my salary. I thought this was the best thing that I could do to migrate without leaving debt at home.'*

Worrying about leaving debt at home and not having many other options makes depending on a broker seem like the best solution but leaves many workers vulnerable to exploitation and abuse with little knowledge about how to resolve their issues.

## WORKING IN THAILAND

In the quote below, Sompone shares how, from his perspective, things are improving in Thailand. He mentions how the police are now less likely to harass workers for money because they more often have official documentation now in the form of migrant worker cards. Unfortunately, despite improvements, workers still have to pay bribes to the police, which shows how they view police not as a resource for help or reporting abuses, but an element of exploitation to avoid and fear.

*'Working in Thailand is difficult but it is better than (working) in Cambodia. Life in Thailand is more convenient because Thai laws are improving, but Thai authorities have to be cautious in implementing the laws. Previously, almost all fishing workers were undocumented and frequently faced police check points where police would search for (migrant worker) cards. In reality, they searched for money because they knew that most of the workers had no cards. The police would take all the money they found. If they didn't find any money, they would take the workers to somewhere dark and beat them and threaten them for money. Some of the workers had to call their friends to bring them money to pay the police. However, sometimes the police would just arrest workers and put them in jail before sending them back to Cambodia. Now that workers are more likely to be documented, the police searches at the checkpoints and there is less harassment. If they found illegal migrant workers<sup>11</sup>, the case would be settled with workers paying money. If migrant workers don't have money to pay, they would be arrested and put in jail.'*

The below quotes show additional stories of relying on brokers to find employment. Once they have arrived, many of these workers have little freedom to choose the type of work they perform and accept without a question or negotiation the fee deductions by employers for documentation that they often never actually receive. The common response to such unfair treatment is simply to leave and find new employment, but often only after many months or even years of accepting the unfair treatment. Once departed, few migrant workers ever consider options for redress or reporting abusive employers or dishonest brokers. Some of the workers arrive at employment situations that they find acceptable, but they chance upon these situations, with no knowledge of what labour standards should be met or any

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<sup>11</sup> Translator's note: the term 'illegal migrant workers' here is used to emphasise how migrant workers consider or call themselves and when authorities categorise their status; otherwise 'irregular' or 'undocumented' are the preferred terms.

way to ensure that they will be protected, should they be treated unfairly under the law. Those who did think about reporting their employers were unsure of how to do it, having no Thai language skills and also fearful that their undocumented status would make reporting their employer result in their own arrest or deportation.

**Channi:**

*'My sister (Channa) and I first came to work in Thailand through the help of a broker, who told us we would work in a restaurant for 4,000 baht per month while staying in the employer's residence. No name or location of the restaurant was given. We had one mobile phone to contact an employer sent to pick us up. We went to the restaurant where we were going to work. I worked in the restaurant from dawn to dusk. On my days off, I did my housework and never left my employer's home and restaurant because I was not familiar with the area and was unable to speak Thai.'*

*'My employer did not want us to go out either. After working for two months, I asked my employer about my wage. He said we were in debt and showed us our expenses for travelling costs, food, room, clothes, and other miscellaneous expenses. He showed the list of expenses that he recorded every day and told us that we owed him 60,000 baht and that we had to work to pay off the whole debt before we could have our salary.'*

*'The amount of debt frightened me. I was afraid I had to work until I was not able to go back home anymore. I decided to call my mom in Cambodia to tell her about what had happened. My mom said she would find someone to help us. Two days later, a Thai person called us to ask for our address and came to pick us up at the restaurant. My sister and I then returned home (to Cambodia) without hesitation.'*

**Nam:**

*'I have heard information passed via the phone as well as people speaking in my village about working as a construction worker [in Thailand] so I decided to come to work in Thailand with a broker. But when I arrived the contractor didn't want me because he thought I was too small to work in construction. I was sent to work at a Chinese restaurant instead. I paid 1,500 baht per month for rent and my wage was 150 baht per day. I worked from 4 am to 6 pm. Later, when I could speak some Thai, they assigned me as a busgirl before I could be a waitress. After working for one year, I was assigned to be a cook at a wage of 350 baht per day. I was not allowed to go out and was controlled and not allowed to talk much with anybody. If I talked to a customer for a bit long, my employer would scold me. I would be warned and threatened to not talk to the customers. My employer also said if I went out, I would be arrested and deported. My employer allowed me to talk to my mom on phone, though. I never told my mom about my work because I knew that my mom was living with difficulty in Cambodia. When my mom asked how I was, I told her I was fine but I had been in tears for the first three years.'*

*'My money was deducted at about 17,000 baht in the first year. My employer said that it was for my work permit, which I never actually received. One time the police searched the restaurant, and my employer deducted money from my wage'*

*to pay the police. I was afraid because I didn't know my surroundings or anybody in the area. Sometimes, when the police searched, I tried to show myself from the window on the 5<sup>th</sup> floor. When my employer knew, he would scold me.*

*One day, I opened the window and heard the voice of a few Cambodians talking to each other and sneaked out to meet with those Cambodians twice and they told me to escape but I still went on working for 2-3 years. I patiently worked there for five years until I was certain that my employer would never allow me to leave, so I decided to escape. I called a cab driver to pick me up in a place not so far away from my place because I didn't know the area. I left at 2 am. The cab took me to hide in the forest in Chachengsao province and in the morning, I went back home.'*

**Laem:**

*'A broker persuaded people in my village to work on a ship in Thailand so I decided to join too. But when I arrived in Thailand, I was left at Srakao border. I was told that the employer didn't want workers anymore. I didn't know what to do at that time or know the way home. I had no money so I just stood at the bridge where they left me until it was dark, from morning until evening. Someone then came to ask me to go work raising ducks. He offered me two meals a day and a place to sleep but no wage. I didn't think about the wage at that time because I didn't have any other options and I couldn't speak much Thai. Someone eventually picked me up and took me to raise cattle in Suphanburi. I was provided three meals and a place to sleep and was then asked to help drill a well until late at night. At first, my employer told me that he would pay me 3,000 baht per month but I didn't receive any pay. I didn't understand anything about worker rights at that time.'*

*'After working for 27 days, he transferred me to Mr. A<sup>12</sup> to raise cattle. I didn't receive any salary during the first month. Mr. A's wife told me that they didn't pay me because they bought me from my previous employer for 7,000 baht. The second month Mr. A's son paid me 2,500 Baht, then 3,500 in the next month and later I received 5,000 Baht. They always bought me some food and all necessary products. They treated me like a friend or a family member. When they went out or travelling, we went together.'*

**Nam2:**

*'I came to work at a recycling centre in Wang Noi (Ayutthaya province). I contacted a person via phone and agreed on a wage of 350 baht per day, with a free room but no food supplied. After ten days of working, my employer didn't pay me. When there was no work, I was sent to work with a new employer. He heard from word of mouth that he was a police officer based in the area. He assigned me to do garbage separation. The wage was agreed to at five baht per kilogram but in practice I was paid only three baht. At the beginning I worked very hard because I thought that the more I worked the more I would get paid. I worked so hard that my hand got infected because I had an allergic reaction to the chemicals in the garbage.'*

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<sup>12</sup> Pseudonym, Laem's 3<sup>rd</sup> employer

*I worked without protective equipment for two months from 6 am to 7 or 8 pm. I was confined and not allowed to leave the work place, which was an abandoned house - the same place where the garbage was stored. My employer bought me food but without rice. I had to ask for rice from a nearby monastery and some days I never received any food. I didn't get paid at all and was threatened and physically assaulted. Someone asked when we would get paid and was slapped in the face with a gun. I once looked at my employer's face and he pointed a gun at my head and said he would burst my head into pieces. I was so afraid and dared not look at his face anymore.*

*I finally decided to escape because I thought that he would really kill me after he used a gun to threaten me for two days in a row. One Cambodian man escaped first; once I saw that it was possible, I made a plan with other Cambodian women to escape. I was lucky that my sister also worked nearby and helped me out and we finally escaped at night.'*

**Sokkhla:**

*'I came to work in Thailand at the suggestion of my village friends. I started working with a place pruning Longan trees at the border. When the season ended, I moved to Samut Prakan and worked at a construction site to build a bridge. The wage was agreed to at a rate of 350 baht per day. After working for one month, I was paid less than what was agreed. I continued working there without pay for about three months until I was owed roughly 35,000 baht. When I realised that he wouldn't pay me, I rented a van to look for work in Rayong. I worked as daily labourer but was continually cheated out of my wage. I would get picked up to work in the morning and then returned in the evening but without payment. I did construction work for a month with an agreed wage of 27,000 baht but still never got paid. After that I started work at this construction site for four weeks now and am not sure whether I will be paid fairly this time.'*

**Jade:**

*'I decided to come to work in Thailand for the first time with a broker - a person from my village who knew my aunt. I was told that my work would be to sew sacks. I borrowed 3,500 baht - 2,500 baht for transportation costs and 1,000 baht for pocket money. I worked at a sugar factory around Sriracha area (Chonburi Province) where I shared a room with ten people. Our job was to collect and tie the sugar sacks. The Thai broker said that the wage was 300 baht per day but we would be paid 200 baht, the other 100 baht he would keep. After working for ten days no one received any payment. We almost ran out of the money we brought and couldn't buy food. The broker sometimes brought us food and everyone went on working because nobody knew where we were or what to do at that point. We couldn't contact anyone. After 15 days of working, the broker said there was no more work and that everyone would be moved to a factory at Ao Udom (close to Sriracha). When we arrived at Ao Udom, I coincidentally met with my aunt and had to depend on her for support. We got a new job to sew sacks for covering eucalyptus logs. The wage agreed to was 400 baht per day but the employer said he would pay a lump sum after the work was done. We worked for three months but nobody got paid. Each person should have received 5,000 Baht. Two people in*

*our group had stopped working because they felt so depressed that they couldn't eat. Later, all of us realised that we might not get our money and thought about going to report our employer to the police but we couldn't do it because we couldn't speak Thai. One important thing also was that that we felt we were "illegal workers" and might also be arrested if we went to inform the police so we decided to quit the job without being paid.'*

## CONFLICT RESOLUTION AND WORKERS' RIGHTS

According to a focus group discussion with the Human Rights and Development Foundation (HRDF), a lack of legal knowledge and understanding by Cambodian workers are the barriers that make it difficult for them to analyse their problems from a legal dimension, resulting in greater challenges when they think critically about how to protect their rights or raise their labour standards.

### Quotes from a focus group discussion with HRDF:

*'Cambodian workers lack problem solving skills because they have a lack of knowledge and understanding of the rights they are entitled to and many have not been introduced to the concept of legal rights before.'*

*'We as service providers have to explain to them the basics, for example that being threatened by their employer is not acceptable because they sometimes do not understand this and often think it is their fault.'*

*'We have to explain the labour rights they are entitled to and that being threatened and forced to work is not acceptable. All of these issues need to be explained because they are not familiar with basics like how many hours of work per day is specified by law. When we tell them that it is only eight hours per day, some workers still believe that they need to work more because they already agreed to a schedule with their employer. If they agreed to work 20 hours per day, they feel that they have to follow that. They typically do not feel exploited if they work the hours they agreed to, even if it is against the law.'*

Laem was traded from one boss to another three times until he met finally met with his current employer whom he regards as fair. He left Cambodia for Thailand with a lack of knowledge and was not ready to deal with the risks of irregular migration. Laem's viewpoint as described below corresponds with that of many of our respondents, who analyse rights abuses as a result of two main challenges.

The first challenge frames rights abuses as acceptable or normal employment conditions because of a lack of knowledge of labour standards. The second challenge involves a common Asian cultural belief in karma. Many respondents believed that there is merit in forgiving the abuser and simply restarting the new life over trying to report abuses and receive redress. This form of coping with abuses and injustice is found repeatedly during our interviews and is a key message for NGOs to consider when approaching Cambodian workers and educating them on how to deal with their abuses from a legal dimension.

### **Laem:**

*'Living in Thailand has both advantages and disadvantages but I decided to work in Thailand to earn money to repay the debt that I incurred for my wife's medical*

*treatment. At the beginning of my employment in Thailand, I was thrown around back and forth from employer to employer like a football that was kicked from here to there. I wondered why this was happening to me because I have never done anything bad to anybody but these negative incidents continued to happen. I sometimes thought about it until it gave me a headache. At the beginning when I was sent from one work place to another and worked without any payment, I didn't know what to do or how to manage the problems I was encountering. I couldn't speak Thai and couldn't communicate with anyone. I couldn't escape my employers because I didn't even know where I was and I had no money. It wasn't until I moved to work at Mr. A that I recognised that my previous employers illegally sold me. If in the future I face similar problems again, I still don't know how I would manage to address them. But I don't think I will be sold again. I think I have done away with my old karma. I may have repaid all my karma debt now that I have been able to meet with good employer.'*

Radh is a regular migrant worker and is satisfied with her working situation in Thailand. She feels that she is treated equally to Thai workers and is happy living in Thailand compared to the many hardships she has had to endure in Cambodia. Radh analyses the fairness of her situation in Thailand based on her previous experiences in Cambodia - not on what is fair from a legal perspective. Her reflections are representative of how many Cambodians frame the acceptability and fairness of their work situations, not based on the legal framework and what they are entitled to by law, but on whether their situation in Thailand is an improvement over their previous experiences in Cambodia.

*'When I was young, my life was very tough. It was in the Khmer Rouge period. I couldn't make a living and didn't have education. Before the end of the Khmer Rouge period, I fell in love and got married. Many people I knew had migrated to refugee camps but my parents were old, they wanted me to stay with them at home so I stayed in Cambodia but I moved to live in my husband's house. When I lived with my husband, my life was also difficult. We had five children. We always had family problems. My husband was a drinker and womaniser. I used to have a shop to sell vegetables but it didn't work well and I sold vegetables at a loss. Cambodian people didn't have the money to buy vegetables where I was selling and I ended up in debt. Finally, I divorced my husband and he moved to live with his new wife. We have lost contact since then. I came to work in Thailand and I started to be happy here. I don't need to fight with my husband. I can endure hard work. I just want to be happy. Working in Thailand is the luckiest thing in my life. I think I am luckier than many others. My employers have never deceived me and I have good colleagues. My Cambodian friends at work are nice and the head maid is very kind. I am very happy.'*

Derb Heap did not receive payment for his work for a subcontracting construction company. He tried to ask the company to pay him the money he was owed but the company continually deferred the payment. He consulted with a contact at the Cambodian Embassy in Thailand and received the phone number of the Provincial Labour Office in Thailand. However, following up the case with the government agency has not resulted in any progress. The officials initially showed some intention to help and provided him with advice, but at the same time he was informed that he has worked at the wrong type of job as specified by Thai law and therefore, could not file a legal complaint. Even though he made an effort to migrate legally and understand laws and policies, he was still unable to access information

while in Thailand to help him when he encountered unfair treatment. Derb also analyses his life based on the belief of luck and fortune, and uses this rationale to wait until his bad luck passes instead of trying to change his situation based on his legal rights.

**Derb:**

*'I went to a fortune teller and was told that my life is currently very down. He suggested that I should not think of finding a big job yet but that I should rather try being employed to only make a living first. I also believe that my luck is currently not very good so I just worked as an employee until the wheel of bad fortune passes for me and I can then restart my life. However, I still asked my contractor for payment so that I could pay out what was owed to my workers. I believed that I can then be clear of obligations and can restart my life. I have to be responsible for those who work under me because I also feel frustrated and stressed. I think my problems happened to me because I don't have enough knowledge. Cambodian people come to Thailand to work and we do every job that we can that is available to us. We don't think about whether it is legal or illegal. When I was in Cambodia, I had heard about how to work legally in Thailand. I tried to follow the information. I have a (migrant worker) card that I paid someone to do it for me. You know that the place to register my migrant worker card is far away. (Researcher's note: when I contacted him for the interview, Derb told me that he was traveling with a Thai person he hired to take him to register his migrant worker card) But when I am in Thailand, I don't know whether there are any additional regulations. Nobody tells me anything when I live in Thailand. I work quietly in my place. When I am offered a job, I see it as opportunity but when there is a problem, I don't know where I can make a complaint. I have a Thai friend but he knows nothing. I called the Labour Office and they said I did something against the law. I was frightened and I feel like there is no way out. I almost have no information while living in Thailand.'*<sup>13</sup>

Respondent R4's experience detailed below is common of many workers who rely on brokers to secure employment and find themselves in a situation where they feel as though they have no choice but to accept the job presented to them. Once in Thailand, they feel they have very few options. Not knowing where they are, being unable to speak Thai, not having sufficient funds to leave the broker they have come to depend on, as well as fearing arrest and harassment from the police keep many workers compliant until they are either arrested, as in the case below, or choose to leave on their own, often after not receiving fair payment for their work.

*'Upon arriving in Thailand, the other men I travelled with and I stayed at our broker's relative's home and waited for almost two weeks. Then they told us they have a job for us and that tonight they will bring us to meet our employer. Later that night, they brought us to the port to meet with a boat captain. At that point I felt like I had no choice, so I accepted the work. The boat captain told me that the*

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<sup>13</sup> Note on Derb Heap case: At the day of the interview, Derb did not consider reporting his employer because he thought that he was an 'illegal worker' committing something against the law as informed by an authority. He also worried about his safety from the employer and he was afraid of the police. He had no legal knowledge about employment and breach of employment contract. In the last contact with the researcher (17 September 2016), Derb decided to report the case for prosecution soon because he is getting some supporting information and sees the legal possibilities and he is pressured from his workers that are demanding their wages.

*boat will dock every two weeks or a month. The boat left the dock for a few months. I worked on that boat with three other men. The captain and the broker told me that they will arrange all the necessary documents for me and the other men and that I don't have to worry. But they didn't tell us how much everything would cost. The captain told me that I will earn 5000 baht a month. But I never received it, because he said that I would receive the payment when our boat loads the fish. I received only 2000 baht for about six months of work. I worked almost 12 to 16 hours per day. I released the nets and loaded the fish. During the day, with the other men, I prepared the net and at night, we started fishing again.*

*When the boat was in Indonesian waters, we were arrested by the Indonesians and were detained for two weeks. I didn't have the proper documents. My seamen book was in a Thai name. Early in 2016, the three other men and I were repatriated with support of the Cambodian Embassy, IOM, and LSCW.'*

Below are additional quotes from respondents regarding their experiences of working in Thailand, which echo many of the challenges and obstacles, outlined above.

*R4: 'The owner of the farm told me that I will earn 300 baht a day and I will get paid at the end of the month. I worked six days a week and when it was pay day I never received my full payment. My employer said that my salary was reduced because I stayed in the farm. I didn't know if my salary was reduced for housing or for utilities and for how long my salary would continue to be reduced.'*

*R6: 'The broker told me that he would help to find work in a fish processing factory. I followed him because I didn't know anything about employment in Thailand. When I arrived there, the broker told me they found a job for me. I expected to work in a factory as promised but I ended up to working on a fishing boat.'*

*R8: 'My boss told me that I will earn 7000 baht per month and he will pay me when the contract ends. I work seven days a week but don't know the length of my contract and when I will be paid. I need to send money home, but I can't because I haven't been paid.'*

*R10: 'The broker applied for a tourist visa for me and I didn't know. I thought that I was working legally as a migrant worker. When I arrived at the construction site, I was told that I am undocumented worker and that I have to accept overtime without extra payment. If not, I will be arrested and deported.'*

*R12: 'I work from 5 am to 10 pm. There are no days off. I clean the house and the shop. I help the owner to sell food. I can sleep only when the shop is closed.'*

*R13: 'I worked on a boat for six months before the boat finally docked at port. When I asked for my agreed upon salary, I was told by the boat owner that my salary was paid to my broker for my migrant worker fees. I was only given 3000 baht for six months of work on a boat from the profit share.'*

## **JUSTICE AND ACCESS TO JUSTICE**

Thailand has tried to develop laws and policies to promote on the rights of migrant workers for nearly two decades now. However, the labour rights of Cambodian migrant workers are still very poor. Respondents have limited knowledge and understanding of justice options and the justice systems in Thailand. Justice mechanisms and access to justice in Cambodia are still a distant concept for many people in their daily life. Many respondents indicated that they are unable to depend on the police or the justice system in Cambodia. Their experiences in Cambodia, along with a lack of knowledge and understanding of the laws and policies in Thailand, result in many of them being reluctant to try to access the justice system in Thailand. Respondents indicated that Cambodians are unfortunately used to enduring a high level of injustice that carries over to enduring injustice in Thailand, which leads to less willingness to report abuses or seek redress.

### ***Ung:***

*'We have seen some people who break the law and are sentenced to ten years of imprisonment but most people rarely go to the police. They don't have money and they're afraid of the police. Cambodian people think that they have to pay money when they go to see the police. If people are fighting and the police come, both sides will escape. They help each other to escape because if one of them is arrested, the police will try to follow the other one and take them both in jail. If one side has some money, they will not be in jail, but most Cambodian people don't have money. People who don't have money will not fight with people who have money. They always give up and end the dispute easily.'*

### ***Chaa:***

*'I'm not sure whether Cambodia has a court system.... I heard from other people that if Cambodian people have a problem with each other and go the police, the police will make inquiries, the wrongdoer will be in jail but if he has money to pay the police, he can go home. Hence, people in Cambodia don't fight each other much and they don't like to see police because they are afraid to be arrested and put in jail.'*

Respondents often frame the access to justice scenario in Thailand as an unequal power balance between employers and workers, similar to the perceived power imbalance in Cambodia's justice system involving people with and without money. Cambodians view the police and the courts in Cambodia as a vehicle for people with money and power, and when in Thailand, believe this to be the case too.

The perception of Cambodian migrant workers of the Thai justice system and Thai police is not very different from the situation they experienced in Cambodia. The difference is only the situation and actors changing from the rich and the poor in Cambodia to the perceived wealthy and powerful employers in Thailand and the poor Cambodian workers they employ. Living in Thailand can also cause Cambodian workers to feel an unequal power relation as a result of discrimination by police both at work and in daily life. Hence, we saw a tendency in our respondents to have a lack of confidence in the justice system in Thailand where many share that they are afraid of Thai police and view the justice system as complicated and too costly for them to handle.

**Channi:**

*'I was arrested once when I worked at Talad Thai (a big wholesale fresh market at a suburb in Bangkok). I rode my motorbike to the shop and was arrested because I saw the police and became nervous because I believed I was in Thailand illegally. When I tried to ride my motorbike away, the police arrested me and took me in for inquiry at the police station. They asked what nationality I am but at that time I was so frightened I just cried. I couldn't speak Thai so I didn't answer their questions. I was in jail for two hours before my sister came to help me. When she arrived at the police station she negotiated with the police a reduced payment in the amount of 6,000 baht. After this experience, I panic when I see the police. Sometimes I can't differentiate between police and security guards. I try not to leave my room and my work place. If I need to go out for something, like to come to you (the research team), I will take a taxi or motorbike taxi. I will not walk. I don't feel like I have any choice. If I don't come to work without documentation in Thailand, I have no job in Cambodia. I don't know how I can get a (migrant worker) card if my employer doesn't help me get one. I'm afraid of being arrested by the police, I have to be watchful. If I am arrested, I will call my siblings or relatives to help me. If I'm cheated, I can't go to the police because if I go to the police station, the first thing they will ask for is my official documentation cards for working. Then, they will arrest me.'*

**Sokkhla:**

*'I've seen documented workers who were cheated out of their wage at my working site and then went to inform police. When the police arrived, they arrested the workers and threatened them. What I've seen and heard frightened me. The employer gave 30,000 Baht to the police. I've heard the police and employer shout at the workers and say "don't get smart with a Thai, man!" At that time, we were asking why we needed to keep working if we were not getting paid. We then quit because we couldn't do anything. I've heard from other people in the community that if undocumented migrants try to report an issue, they will be arrested and the police can do anything they want, they can assault or even kill you without any repercussions. To be an irregular worker in Thailand is tough. We can't go to the police. We have nobody to consult with and no one to provide assistance. When we have a problem, we have to shut ourselves in the room and just share our stories with people in our family but this doesn't help us to solve any problems. Sometimes, when facing a problem, I feel so discouraged that I want to go back to Cambodia but I don't have any money for transportation. I also feel embarrassed if I return home without any money. When I have a problem with employers, most of the time the problem is non-payment, but I have no options other than to try to find a new job because I have to make a living.'*

**Laem:**

*'I think it's difficult to inform the police. Many Cambodian workers stay "illegally" in Thailand but even "legal" ones still have difficulty because Cambodian people may not know what they will face when they go to see the police. I think that if I have a problem, I have to manage it myself. For example, looking for a new job may be easier than going to police. "Easier" for me means everything is easier. Not all of us can communicate with the police. Some of us can't speak Thai. We have*

*'to travel to inform the police and to follow up with the case. Now I have a plan to hire someone to get me a migrant worker card to increase my opportunity for work. I don't want to have the card for claiming rights because it is too difficult. I will use the card to hopefully prevent the police from harassing me. I used to be arrested and fined. It was a lot of money. How can we then get help if we need to ask Thai employers for help communicating with the police, so that we can report the employers? And we as Cambodians must inform the Thai police to arrest Thai people? Cambodian people themselves alone can't do much. It is complicated. If we report an issue and it doesn't end quickly, it affects us because we might not be able to work and we need to earn an income. But it is also difficult to go to find work anywhere else.'*

When faced with problems of rights violations, human trafficking or non-payment of wages, Cambodian workers do not believe they can rely on the Thai justice system and police. Cambodian workers have three commonly applied methods for handling their problems:

- Independently negotiate with the employer. With an unequal power balance between employer and employee in areas such as legal, state mechanisms, language access, perception of Thai police, and the lack of advisors or support in negotiations, many workers ask for sympathy from employers rather than make demands for justice or redress.
- Leave and find employment elsewhere. Migrant workers often decide to move on from their problems by giving up on pursuing non-payment and to a new job with no assurances that the outcome will be any better.
- Apply for a migrant worker card. Many Cambodian workers consider applying for a migrant worker card as a long-term solution to addressing some of their problems. However, many respondents said that migrant worker cards cannot protect them from being abused or provide them any justice. It does not help build their confidence to demand justice. The card may help with having more opportunities for finding jobs or reduce police harassment or bribe demands, but labour rights protection and other benefits are not acknowledged as reasons to obtain the card.

**Pengbol:**

*'Being cheated out of their wage is the main problem that most Cambodian workers have faced. Many people I know still face this problem, although they are documented migrant workers. When they are cheated out of their wage, nobody can help them. Thai-speaking, documented Cambodian workers are still unable to help; if even documented workers are not able to negotiate, what can an undocumented person do? When I worked on a project before, I tried to pursue my unpaid wage but was cheated. I submitted my complaint to Thai staff of the project. They forwarded my case to an organisation focusing on rights issues to follow up but I didn't know what the organisation is. Then my case seemed to have disappeared. I didn't follow up again. Cambodian people are unable to negotiate directly with Thai employers. My case can be an example. When I was cheated, I was undocumented worker. I was illiterate in Thai. Though I wanted to report my employer and have him arrested but I didn't have any evidence to prove that he cheated me. I didn't see any document I could use as proof. If my employer refuses to pay, everything ends there. I didn't have a worker card and it wasn't a big amount of money. If it turned to be me who was arrested and deported, there was*

*a high cost to pay. My life would be more difficult than simply being cheated out of my wage. Therefore, people who are cheated have to surrender to such a situation. Nobody dares to inform the police. We need to have intermediary to help negotiate with employers and help from organisations to follow up with our cases.'*

*'If we are cheated out of our wage, we must try negotiation. Even though there is an organisation (named) to help, it doesn't mean it will be possible to get all we want. It is usually agreed on at the amount that the employer is willing to pay. How much they want to pay back is the amount of money we get, and that is final. I don't think I need to report my employer. After negotiation, we look for a new job. Employers are powerful; it is impossible for workers to fight against the influence of employers. We may face difficulty in looking for a job in the future if we sue. The employer may tell the other employers that a worker is not good because they complain about unpaid wages. This can block us from a finding a new job.' (Cambodian worker who preferred not to be named)*

Though negotiation is a crucial process, many times in practice government agencies and authorities take the employer's side. In addition, Cambodian workers filing complaints for justice through governmental mechanisms may be blocked by employers citing the Immigration Act and Alien Employment Act, which allows Cambodian workers to work only as labourers, domestic workers, and repairing machinery of fishing vessels. Moreover, when negotiating and addressing problems through government officials, sometimes the responsible official may allow the employer to deal with their employee themselves, creating an unfair situation for the worker and reducing the likelihood of receiving fair compensation. Even when payment is agreed upon, workers often still find themselves in situations where employers avoid paying the compensation.

***Derb:***

*'I've tried to contact my employer for about two months but he always postpones. I filed a complaint at the Provincial Labour Office. I called to tell officials my situation in detail but the officials tell me that it was illegal for a foreigner to work as contractor in Thailand. It was against Thai law. When I heard this, I felt frightened. I don't have legal knowledge. I have low education. I got offered a job by an employer and I thought it is a good opportunity so I accepted it. The government official explained to me that to file a complaint, my workers should be the persons to do it because they are victims by law. I don't have employer status by law. My workers are in Cambodia currently and they don't have money to come back to Thailand. I asked the official whether there are any other channels to deal with this case. He said there was nothing else I could do.'*

***Kamnai:***

*'I started negotiations with my employer on 20 April (2016). At first we negotiated and the employer promised to pay us and set an appointment date for payment. But he didn't pay and postponed the due date. Again, we arranged a date to meet but the employer wouldn't pay us and asked for more negotiation. There was an intermediary claiming he was a government official and cited the law, he said that I'm a Cambodian worker and I should get only 300 Baht per day. The amount I asked for is impossible. I don't agree because that is not what was agreed with my*

*employer. I also have two Thai workers and they have already reported this to the Provincial Labour Office. The case has been accepted and there is an intermediary helping with negotiation. The employer promised to pay all the remaining wages to my workers and me. On the date of payment, the employer comes only with the document for us to sign but no payment. He says he still doesn't have money but he wants everyone to sign a document so that he will bring this to the official and the money will be paid in the next day. Everyone trusts him and signs the paper. Then, on the due date for payment, the employer brings only a list of deductions, such as fees for migrant worker cards, transportation, advance payment, and other items on a long list. After he shows us that list, he takes it back and we were not paid. We have no evidence with us that we can use to fight against him again later.'*

In addition to these challenges of perception of courts and police, some Cambodian migrant workers, having never experienced a practical application of social or labour protection in Cambodia, insist on basing their decisions on when to report or seek redress by what they believe is fairly agreed upon, even if the standards of what they have agreed to fall far short of their legal rights.

Listed below are additional quotes from workers' experiences related to justice and access to justice.

**R1:**

*'In my case, I don't know if the NGOs can help. I believe that I was deceived by recruitment agencies both in Cambodia and Thailand. I was also deceived by my employer. Why did they employ me if they know that I'm an illegal migrant? I didn't know that I was on tourist visa. Only when you (LSCW) told me that I am on tourist visa and that my visa was for three months did I realise. I never have worked under a contract and I don't know how much my legal wage should be. I trusted the recruitment agency, because it is registered with the government. But now, I don't know which recruitment agency is genuine. I would like to report the recruitment agency, but they have disappeared. In addition, it will be costly for me to pursue them in court. I have debt here at home in Cambodia because I borrowed money from a private lender for the migration costs and I have to pay 10% interest every month for my debt.'*

**R2:**

*'My neighbour told me that in Thailand I should receive 300 baht per day and 9000 baht per month. But I received only between 1500 to 2000 baht per month. I believe that I was deceived by my employer but don't know what to do or where I can get help. I feel I can't ask the local authorities in Cambodia to help me, because when I left home to work in Thailand, I didn't inform them. I don't know if I can receive help in Cambodia or Thailand. I don't know what kind of service will be helpful for me as I already have returned to my home country and while I was in Thailand, I thought it would be better for me to not make any trouble. Now, after I heard from you (LSCW) I understood that it may possible to get help and seek payment from my employer for underpaid labour and exploitation I endured.'*

**R3:**

*'I'm not sure if I was deceived by my broker or employer, but I believe I should have information about government policies or where we can apply legally to work abroad. There should be legal services available when a broker or employer deceives or cheats a worker. Other services, such as information centres for workers should also be created, there are few places that migrants can access information, especially in Thailand.'*

**R4:**

*'Because of the lack of job opportunity in Cambodia, we have little choice than to migrate. However, we feel that we are blind and we don't know how we will end up. We are willing to go through legal channels but some of my friends were deceived by those who are unregistered recruitment agencies. We don't have much information. What we heard is from radio broadcasting by recruitment agencies and not much from the government. Once at our destination, it is too late to return to our country, we have no choice as we have spent a lot of money and need work. When we are deceived by our employer, we have no idea where we can find help. If we were on a boat and in middle of the sea, we have no information or services we can access.'*

**R16:**

*'When I decided to migrate, only my family knew that I will leave. I didn't inform the local authorities. When I returned, I was victim of exploitation, but I didn't seek help from them because I thought that they might blame me.'*

## **FAIRNESS IN WORK**

Service providers we interviewed shared with us that they encountered a common trend among Cambodian migrant workers to view justice as having a close association to their cultural beliefs and explanations for positive and negative outcomes in their life. Many believe in building merit and the concept of karma when viewing misfortune or bad luck befalling them in the form of abuse or labour exploitation. This might contribute to the tendency for Cambodian workers to have lower standards when analysing their own working situations than what they are entitled to under the law. One respondent (R6) stated that *'Justice in work is to follow what has been agreed upon by both parties in terms of working hours and wages.'*

This sentiment was also reflected during a focus group discussion with HRDF where staff shared that *'...(Cambodian workers) may not know what the law has specified as far as what is the legal number of working hours per day, but when we tell them that it is only eight hours, they kept insisting that they still need to follow agreements that they committed to with employers. If they agreed to work 20 hours per day, even if that is more than what the law says, they still feel as though they have to follow that. For many, only if they work more hours than what has been agreed upon, then they will consider that they are being taken advantage of.'*

Workers also seem to lack a general concept of what labour right are under the law. Jade, for instance, was one of very few respondents who understood the concept of 'labour rights under the law'. However, her perception focuses specifically on the rights to not be arrested, harassed or unfairly

investigated by Thai police. '*I know I have rights after I obtained a legal (migrant worker) card. I have rights to travel without being arbitrarily arrested. I do not need to be afraid of police searching or arresting. Previously, when I travelled at night I felt I had to hide myself from the police. Sometimes, this felt dangerous because I travelled in the dark to hide.'*

When we asked Jade about rights such as healthcare, code of conduct and minimum wage, she replied by saying, '*I don't know*'. When we informed her that she currently works twelve hours a day with a wage rate of 300 baht per day, when it is specified in Thai law that one should work for eight hour a day with a one-hour break, and additional hours should be paid overtime (OT), she responded by saying that she does not know what OT is and continued by stating '*I don't think I am exploited because we (employer and Jade) agreed with each other. In making an agreement, he had already told me what I could do and what I couldn't do. I have to be patient because I come to work for money. If I can't endure it, I will leave and look for a new job.*'

Working conditions that are acceptable for Jade corresponds with what fairness in work means for her from her perspective, not from labour law perspective. Cambodian workers operate on the principle that work is an agreement between employer and employee based on each individual's criteria and needs. We have clearly seen in some cases that economic necessity may force some to compromise this principle. But for most of our respondents, non-infringement of an agreement still seems to be the main criterion for fairness in work.

Listed below are additional quotes from workers expressing their views related to justice and fairness in work.

***Channi:***

*'Justice in work is when an employer follows an agreement. If the wage has been agreed to an amount and when the payday is agreed upon and the employer follows that agreement, this is justice. If an employer promises to pay but he doesn't pay, this is injustice. It doesn't need to be 300 baht per day; the employer needs only to follow what was agreed to. Like my case, payment was agreed to at 250 baht per day (the legal minimum wage in Thailand is 300 baht per day). If payment is made on the day agreed upon and I receive the amount of money as agreed, I think this is fair. I also sympathise with my employer - he has many workers and he pays everyone. Some days he sells well but other days he doesn't, but he still pays everyone the amount agreed.'*

***Sokkhla:***

*'Justice in life is loyalty. Justice in work is also to follow an agreement. If an employer makes an agreement with me, we must do as our agreement states. I experience injustice in work when my employer doesn't follow through with our agreement. I work hard but I sometimes don't get paid. Even when we already agreed what type of work I will do and how much I will get paid. When I have completed an assignment but the employer doesn't pay me - that is injustice.'*

***Kamnai:***

*'Justice has no nationality. We should not side with nationality for justice. Everything is negotiable for everyone but what happens is that we create*

*conditions. Laws force us Cambodian workers to have to surrender. Employers are the only ones who have power and if our employer cites laws in a document, we have nothing to respond with. We stay in Thailand under Thai law and with Thai documents. There is nothing that belongs to us. For example, a Chief of a fishing vessel must be of Thai nationality as specified by law but I can also do this job. I am Cambodian. What has happened (with the laws) is not fair at all for us.'*



# Recommendations

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The following recommendations were not derived from our international secretariat group but from a collective of support organisations, partners, and the migrant workers we consulted and shared our findings with throughout this study.

Some of these recommendations have already been incorporated into action plans of the Migrant Working Group of Thailand for 2017 and continue to be developed through our sustained collaboration with them, along with our partners in Cambodia headed by the Legal Support for Children and Women.

## RECOMMENDATIONS AND REQUESTS FROM CAMBODIAN WORKERS:

- Establish an agency or organisation available to receive complaints and provide assistance to Cambodian workers whose labour rights are violated. The agency should meet these requirements: 1) Have Khmer-speaking staff as many Cambodian workers cannot speak Thai; 2) Serve as an intermediary mechanism between employer and employee or represent the employee in following up on late or non-payment of wages, as Cambodian workers do not feel they have negotiation power to deal with employers; 3) Next to providing assistance, the agency should also work on capacity building so that Cambodian workers can have more knowledge of laws and policies and be able to negotiate with employers as well as access the justice system on their own; 4) Help to encourage the Thai government to protect the rights of both regular and irregular workers, and ensure that government officials will provide protection without discrimination.
- Allow Cambodian workers who want to register on their own faster wait times for processing and locations that are accessible and practical. Workers are often exploited by employers who charge them costs for registration fees higher than is specified by the law. Inability to register on their own makes Cambodian workers depend on brokers and employers and vulnerable to exploitation.
- Allow flexibility for migrant workers to change jobs and not be restricted to one job under registration so that they can find new employment. Currently a worker's status can be deemed 'illegal' if the type of job they perform does not match the type of job specified in their documents. This can make them unable to gain benefits provided by law and vulnerable to exploitation and abuse.
- Establish capacity building and support mechanisms to assist Cambodian workers to find employment matching their skills and ability.
- Regulate employers and employees to have work contracts that can be enforced. Enforcing fair contracts between brokers/recruiters and workers is also necessary.
- Distribute information concerning rights, policies, and benefits under the law and provide a list of organisations that Cambodian workers can ask for help in their native language and have available information explained in simplified terms that workers can understand.

Based on the findings of this report and the recommendations of Cambodian migrant workers and discussions among service providers in Thailand and Cambodia, the following have been identified as priorities for actions in 2017:

- Exchange information with updates on laws and policies from both destination and origin countries.
- Organise discussions with case study examination and referral (using regional legal mechanisms and mutual legal assistance services), including discussions on case documentation practices.
- Conduct joint advocacy between destination and origin countries.
- Develop a simplified, language accessible outreach/awareness document for distribution in both destination and origin countries.
- Increase availability of pre-departure training and language accessible knowledge building.
- Incorporate trade unions and workers' groups in planning advocacy and organisational strategies.
- Advocate for standard social protections and social services provided by governments.
- Improve networking and contact exchange between destination and origin countries.
- Encourage organising among Cambodian workers to advocate for improved rights and standards.
- Improve on existing lawyer networks for case referral systems locally and between destination and origin countries.
- Explore ways to jointly engage with recruiters, employers, embassies, and governments to discuss how to improve safe and fair migration and labour standards for migrant workers.
- Organise capacity building for case empowerment of workers, especially ones who participate in a mediation process.
- Establish more drop-in centres for information sharing and referrals.
- Increase information sharing between destination and origin countries regarding case analysis of successful attempts of migrant workers accessing justice to share among worker communities.
- Explore new ways to improve and impact the timelines and power dynamics of the mediation process.



# Conclusion

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Violations of labour rights and human trafficking among both regular and irregular Cambodian workers in Thailand remain serious problems. These violations occur in different forms, ranging from underpayment or non-payment of wages, or requirements to work excessive hours without overtime payment, to more serious violations of forced labour, debt bondage and human trafficking. There are two main factors that contribute to these abuses and the effectiveness of brokers and employers who take advantage of gaps in laws and policies that allow for the exploitation of workers.

First of all, workers lack knowledge of laws, policies, and justice system options necessary to protect themselves or seek redress. Before departing for Thailand, Cambodian workers have little or no information about their labour rights and where to ask for assistance or utilise complaint channels. Consequently, when attempting to address abuses, they face an unequal power relationship between employer and employee, and in many cases do not receive adequate support from government authorities and police.

The other important challenge for Cambodian workers relates to their subjective understandings of work, exploitation and justice. Many analyse their situations based on their existing knowledge, which compares the socio-cultural experience in Cambodia with the improved work opportunities in Thailand. This results in an analysis that measures fairness in employment or acceptable employment conditions either by whether their financial situation has improved compared to options in Cambodia or whether an agreement between employer and employee has been kept, even if that agreement violates labour laws to the detriment of the employee. Even when Cambodian workers realise that their employers are violating their labour rights, they might not believe that any action is necessary to improve those rights because of these factors.

We understand that no matter how advanced labour legislation is, unless some fundamental changes are brought about in the way governments and international organisations are addressing the issue of trafficking and labour migration, laws will continue to serve only the powerful and justice will always be an elusive dream for working class migrants. The findings of our study point to a need to change legislation but also improve the implementation of existing laws, policies and practices.

We are well aware that those fundamental changes may take a very long time. We are also aware that the current governance scenario in the two selected countries is not conducive to positive changes, and there is a repressive attitude towards civil society organisations, especially advocacy groups who critique policies.

That is why we believe that a post-research strategic consultation with key civil society actors is crucial. The consultation will aim to draw up realistic plans that can be carried out collectively between groups working in destination and origin countries. While systemic change will take time, we believe that in the short term some of the findings in this study can be incorporated into the on-going information and awareness-raising work of NGOs in both countries.

For example, knowing more about the perspectives and experiences of abused migrant workers and trafficked persons may enable service providers to include some new information for migrating people in their information and awareness-raising work.



# Annex I: Thailand - Laws and Policies

## Concerning Migrant Workers

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The Thai government has initiated the ‘compromising policy’ for migrant workers from Laos, Myanmar and Cambodia residing and working in Thailand since 1992, but emphasised economic development and security aspects while protections were mostly absent.

The policy focused on short-term or year-to year plans, and migrant workers, though more likely to be registered, were still considered as persons entering into the country irregularly. Their freedom of movement was restricted, their working locations and type of work were also limited. Workers were not allowed to change employers and employers were required to take responsibility for their workers, encouraging and giving some employers justification to seize worker identification cards, resulting in an increased vulnerability to exploitation.

Although the development and implementation of laws and policies for migrant workers continue to progress, security and economic aspects, not migrant worker protection and support, are still the main focuses.

**Below is a summary of laws and policies concerning migrant workers in Thailand.**

### 1.1 Alien Employment Act B.E. 2551(2008)

This Act allows migrant workers from the three countries under these four categories to be allowed to work:

1) The registration group (section 13) - Migrant workers are allowed to register for temporary stay under Cabinet Resolution. Currently they hold work permit with two-year validation (also known as the migrant worker card). This group of migrant workers do not have legal entry status. They are not able to enjoy full rights under Thai labour laws and their right to freedom of movement is restricted.

2) The national verification group (section 9) - after National Verification is completed, this group of migrants gain legal entry status and are able to apply for work permits. They are entitled to full rights under Thai labour law. They have freedom of movement. Their work permit is valid for two years with the ability to extend once; this means that workers are able to stay in Thailand for four consecutive years. After this they must leave the country for at least 30 days and re-enter to work legally under the MOU system.

3) The MOU Group - Migrant workers under Memorandum of Understanding (MOU) on Labour Cooperation and Agreement on Employment between Thailand and its counterparts are allowed to work under the same conditions as migrant workers under the national verification group.

4) The workers who reside around border areas (section 14) - Migrant workers residing in border areas are temporarily allowed to cross the border to work and return in one day. Currently, this category is applied only to Cambodian workers and their permit is valid for 30 days per permit.

The Act also imposes a penalty on employers and migrant workers in the following cases: employment and working without a work permit; engaging in categories of work, area of work, or for an employer not specified in the permit. A holder of a permit must keep the permit on him or herself or at the place of work during work. The Act also specifies the criteria for changing or adding categories of work, place and employers.

Currently, the category of work for migrant workers from the three countries (and Vietnam) are under Cabinet Resolution and Cabinet Announcement (information dated October 2016), which allow three categories of work, including domestic worker, labourer, and technician for sea fishing vessels. In practice, the definition of these categories and nature of work are very broad. Local authorities can utilise their own judgment to approve the employment they deem appropriate with the need for migrant workers in each area.

### 1.2 Immigration Act B.E. 2522 (1979)

This Act allows migrant workers from the three countries under section 11 and section 12 to have legal entry status and temporary stay in Thailand and apply Section 17 under cabinet resolution to allow irregular migrants to temporarily stay and to cross the border to work around border areas as stated in Section 13 (2). In the event migrant workers who entered Thailand irregularly and are working irregularly are found by police, they will be prosecuted under Section 54 of the Immigration Act B.E.2522 and repatriated from the Kingdom of Thailand or will be prosecuted and/or fined based on their guilt under Alien Employment Act B.E. 2551

### 1.3 Migrant worker registration fee

According to an announcement of the Ministry of Labour and the Ministry of Public Health:

- 1) Registered migrant workers who are not eligible to apply for social security.

The total registration cost is 5,600 baht for a two-year work permit: 1,900 baht for operation and work permit; 3,700 baht for physical check and health insurance. For dependents under seven years of age, the migrant can buy additional health insurance for 730 baht without the need for physical check and 1,230 baht for physical check and health insurance of dependents aged 7-18 years.

- 2) Migrant workers under national verification and the MOU group who access the social security system but have not yet registered as insured persons as employees.

The total cost for registration is 2,900 baht for a two-year permit: 1,900 baht for operation costs and work permit and 1,000 Baht for physical check and three months health insurance.

- 3) Migrant workers who cross the border to work and return in the same day.

The cost for registration is 325 baht for operation and work permit.

- 4) Migrant workers registered for fishery and the seafood processing sector based on the Cabinet Resolution of 2 February 2016.

The total cost of registration fees is 3,180 baht: 500 baht for physical check, 1,600 baht for health insurance, 1,000 baht for work permit and 80 baht registration of personal record (Dept. of Employment, 2016)

**1.4 Labour Protection Act B.E. 2541 (1998)** on the obligations of employer and employee in dealings with each other.

The Act ensures the basic rights and benefits of migrant workers are equal to Thai workers. For example, minimum wage rate, overtime payment, compensation in case of being fired by an employer without a due reason, criteria for working hours, holiday and leave, etc. The Act has defined protection measures to prevent employers or responsible persons from abuse, threat, or sexual harassment of employees.

**1.5 Labour Relations Act B.E. 2518 (1975)**

The Act focuses on the relationship between employers and employees to seek agreement for mutual benefit, negotiation and settlement of dispute. Migrant workers are not entitled to organise labour unions or take positions in labour unions. Migrant workers are allowed only to be members of labour unions organised and managed by Thai workers.<sup>14</sup>

**1.6 Social Security Act B.E. 2533 (1990)**

This Act ensures the rights and benefits of migrant workers who enter the country and work legally to receive health and compensation in case of sickness, baby delivery, payment for child allowance, old age and unemployment. Additionally, the Workmen's Compensation Act B.E. 2537 (1994) ensures the rights and benefits of the above group of migrant workers in respect to work-related injuries, sickness, loss of organs, invalidity, or death<sup>15</sup>. Some groups of migrant workers, including domestic workers, workers in informal sectors, workers who are not employed continually through the whole year, on-and-off labour or seasonal workers, such as in agriculture, livestock and fishery, street vendors or stall vendors, are not eligible for the insured person system. The government has instructed them to buy health insurance for all schemes arranged by the Ministry of Public Health and the employers to take responsibility for buying life insurance from private sector based on compensation criteria under the insured person system for migrant workers (Bandit, 2554/2011).

**1.7 Anti-Trafficking in Persons Act B.E. 2551 (2008)**

This Act focuses on the prevention and suppression of trafficking and the protection of trafficked persons. The Thai government has declared trafficking in persons as part of the national agenda since 2004. The policy on regularising the status of migrant workers illegally residing in the country and the importing of migrant workers under the MOU are parts of measures to address trafficking, which is considered as a transnational crime (Dept. of Employment).

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<sup>14</sup> Migrant workers still have limitations to become members and receive benefits from Thai Labour Unions as many of the unions have specified that the member should have Thai nationality.

<sup>15</sup> Migrant workers registered through the compromising policy under the Cabinet Resolution are not eligible for the insurance system. According to the Social Security Office, migrant workers registered to receive insurance should hold work permits and passports or Certificates of Identification issued by the country of origin. Workers under the compromising policy do not have those required documents and Cambodian daily workers at the border area cannot receive these rights and benefits because they are categorised as temporary workers.

## Annex II: Cambodia - Laws and Policies

### Concerning Migrant Workers

Since Sub-Decree No. 70 (on the Creation of Manpower Training and Overseas) was issued in 2006 the number of licensed recruitment agencies increased from 18 in 2008 to 65 in 2016. As of October 2016, only 40 recruitment agencies are licensed to recruit Cambodians for work in Thailand.

In August 2011, the Royal Government of Cambodia (RGC) adopted Sub-Decree No. 190 (Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies), which replaced Sub-Decree 57 of 1995. This new Sub-Decree was meant to regulate and manage migration while addressing the challenges of sending migrant workers abroad.

In September 2013, eight (8) Prakas were issued to supplement Sub-Decree No. 190 by clarifying the role and responsibilities of authorities' concerns. The eight (8) Prakas highlight the use of terms in Sub-Decree No. 190: the requirements of a private recruitment agency to be recognised as a legal entity; a complaint mechanism for migrant workers; inspection of and penalty against recruitment agencies for violations; repatriation of migrant workers; and a job placement standards contract. In addition, two more Prakas are being considered for adoption.

With high demand for employment abroad, the RGC issued Sub-decree No. 205: a provision to provide normal passports<sup>16</sup> for prospective Cambodian migrant workers. While Cambodian migrant workers must pay USD 4 for the passport photo, the RGC subsidises the passport fee. Furthermore, to prevent irregular Cambodian migrant workers, the RGC rapidly issued Inter-ministerial Prakas No. 2574 on the format and procedure for issuing normal passports for Cambodian migrant workers. All migrants can apply for normal passports, but must follow Prakas No. 2574.

To combat human trafficking, the RGC has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the UN Convention on the Rights of the Child (CRC), and its Optional Protocols; ILO Forced Labour Conventions (No: 29 and 105); the UN Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The RGC has also ratified ILO Convention C.138 on the Minimum Age for Admission to Employment and C.182 on the Worst Forms of Child Labour.

The law on Suppression of Human Trafficking and Sexual Exploitation came into force in 2008. This law extends coverage to men and all forms of trafficking. The definition of trafficking in the new law is taken from the UN Protocol.

<sup>16</sup> Cambodia has three types of passports: Normal (intended for every Cambodian citizen), Service (intended for only Government officials) and Diplomat passport.

Currently, in an effort to respond to trafficking and exploitation, the Ministry of Social Affairs Veteran and Youth Rehabilitation (MoSVY) and the National Committee for Counter-Trafficking in Persons (NCCT) adopted guidelines on 'Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision'. The purposes of this guideline is to provide a procedure of victim identification and referral mechanism to appropriate services such as health, legal, rehabilitation, vocational training, employment, and education.



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